

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

Monongahela Power Company)
)
and)
Allegheny Energy Supply Company)
)

Docket No. EC17-88-000

**PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIATION AND
THE PJM POWER PROVIDERS GROUP**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), 18 C.F.R. §385.211 (2017), the Electric Power Supply Association (“EPSA”)¹ and the PJM Power Providers Group (“P3”)² (collectively, “EPSA/P3”) respectfully submit this protest regarding the application by Monongahela Power Company (“Mon Power”) and its merchant generation affiliate Allegheny Energy Supply Company, LLC (“AE Supply”) (the “Applicants”) requesting Commission authorization under Section 203 of the Federal Power Act (“FPA”) for Mon

¹ Celebrating its 20th anniversary in 2017, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA filed a doc-less Motion to Intervene in this proceeding on March 13, 2017.

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 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. 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. For more information on P3, visit www.p3powergroup.com. P3 filed a doc-less Motion to Intervene in this proceeding on April 28, 2017.

Power to purchase the Pleasants Power Station from AE Supply.³ Specifically, Mon Power proposes to acquire from its affiliate AE Supply, the Pleasants Power Station, a coal-fired electric generating facility located in Willow Island, West Virginia, that is approximately 1,159 megawatts (“MW”), along with the associated interconnection facilities, materials, supplies, fuel and books and records. For the reasons discussed below, EPSA/P3 urge the Commission to deny the Application. At a minimum, the Commission should initiate further proceedings or hold the proceeding in abeyance to allow interested parties an opportunity to obtain additional information regarding the underlying Request for Proposals (“RFP”) that resulted in the proposed affiliate transfer.

I. BACKGROUND

The Application follows a RFP issued by Mon Power on December 16, 2016, seeking to procure up to approximately 1,300 MW of unforced capacity (“UCAP”) generation, and up to 100 MW of demand response (“DR”) resources.⁴ The Application further discusses that Mon Power retained an independent third-party, Charles River Associations (“CRA”), to conduct the RFP and evaluate bids submitted taking into account the Commission’s *Edgar/Ameren* guidelines for evaluating transfers of jurisdictional facilities between affiliates. The Application states that five bids were submitted in response to the RFP, and CRA determined that only three of the five bids were conforming.⁵ After reviewing the three conforming bids, CFA recommended to Mon Power acquisition of the Pleasants facility to meet its projected needs, and concluded

³ Application for Authorization Pursuant to Section 203 of the Federal Power Act and Requests for Confidential Treatment, Shortened Comment Period, And Limited Waiver Of the Part 33 Filing Requirements, Docket No. EC17-88-000 (filed March 7, 2017)(“Application”).

⁴ Transfer filing at 2 and fn 5. Also see MonPower RFP at <http://monpower-rfp.com/>.

⁵ *Id.* at 3.

that “the RFP was performed in a transparent, fair and nondiscriminatory manner and no Mon Power affiliate was given an undue advantage or preference in the RFP.”⁶

Pursuant to this recommendation, Mon Power began the negotiation process with AE Supply and on March 6, 2017, and entered into the Asset Purchase Agreement to acquire the Pleasants Power Station. A companion application by Mon Power seeking approval of this transaction is pending before the West Virginia Public Service Commission (“WV PSC”).⁷

II. COMMENTS

EPSA and P3 have consistently advocated for and supported policies that facilitate well-functioning competitive electric markets and allow consumers to enjoy the benefits of competition. This includes formally participating or commenting in proceedings at both the federal and state level in support of competitive procurement processes, and in particular the benefits of a properly structured RFP.⁸ In this regard, EPSA/P3 previously filed comments in support of the WV PSC staff and the WV PSC Consumer Advocate Division (“CAD”) on the need for Mon Power to conduct a broad, competitively-neutral RFP to examine future generation supply needs (Attachment 1).⁹

⁶ *Id.*

⁷ Petition for Approval of a Generation Resource Transaction and Related Relief, before the Public Service Commission of West Virginia, Case No. 17-0296-E-PC, (filed March 7, 2017) (“WV PSC Application”).

⁸ See e.g., Application of Virginia Electric and Power Company, For approval and certification of the proposed Greensville County Power Station and related transmission facilities, and for approval of a rate adjustment clause, designated Rider GV, Virginia State Corporation Commission (“VA SCC”), Case No. PUE-2015-00075 (filed January 5, 2016) (with Appendix reflecting correspondence between VA SCC staff and EPSA/P3 regarding Dominion’s RFP for the Greensville Power Station).

⁹ Comments of EPSA/P3: Petition of Commission Staff and the Consumer Advocate Division Requiring Mon Power and the Potomac Edison Co. to Show Cause Why They Should Not Be Required to File Requests For Proposals for All Future Capacity and Energy Requirements Above 100 MW. Case No. 16-1074-E-P, September 20, 2016.

While EPSA/P3 appreciate that Mon Power did in fact conduct an RFP as discussed in the Application, the overall structure of the RFP *does not reflect* that such a broad and competitively-neutral RFP occurred, and instead was heavily weighted towards an outcome favoring its affiliate. In fact, EPSA and P3 submit the requirements and timing of the RFP made it very difficult for any proposal other than Pleasants to be conforming. Mon Power issued the RFP on Friday, December 16, 2016, and required a Notice of Intent to participate and accompanying documentation by December 23, 2016, with Proposals due by February 3, 2017. EPSA/P3 members have previously reported that this type of unrealistic and compressed timeline for an RFP is unreasonably restrictive and all but ensures that third-party bidders will not have the requisite information together to meet the RFP proposal requirements. This was further compounded by the timing of the RFP at the year-end holiday period where key individuals who would be required to review and sign-off on such a proposal may be unavailable.

From the perspective of simply lining up supply, other elements are also questionable. The RFP had further limiting parameters for generation supply that narrowed and edged the process toward the desired outcome of the Pleasants facility with respect to the fuel and geographical provisions, as well as the preference for owning the plant versus owning the output. Specifically, the RFP was limited geographically to the Allegheny Power Supply (“APS”) zone with preference for generation assets and fuel sources from West Virginia. Further, the RFP specified that the generation source must be fully-dispatchable.¹⁰ EPSA/P3 members have previously indicated that a fully-

¹⁰ See Mon Power RFP at p. 13.

dispatchable product is a choice and not a requirement and a load following option is more typical and a better request for the portfolio. A 1,300 MW fully dispatchable product may provide maximum flexibility for Mon Power, but not necessarily the least cost option for its customers. We believe that the RFP should generally allow options for all assets, regardless of technology or vintage and including agreements, so long as they meet the utility's power need.

Further, EPSA/P3 note that Mon Power previously purchased the Harrison coal-fired plant from affiliate AE Supply, and a recent study has shown that has resulted in \$164 million in additional costs to West Virginia electric customers since 2013.¹¹ The study and other analysis has questioned whether this instant proposed transfer of Pleasants to Mon Power is part of a larger strategy whereby parent company FirstEnergy is attempting to (continue) to shift market risk to ratepayers.¹² EPSA/P3 assert that the proposed transaction in the Application should be denied as it does not meet the requirements for an open and transparent RFP. Alternatively, the Commission should undertake further careful scrutiny, of the Application to confirm the RFP was conducted in a manner that conforms with the *Edgar/Ameren* guidelines and ensure the proposed transaction results in the most cost-efficient outcome to protect consumers.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, EPSA and P3 respectfully request that the Commission deny the Application. Alternatively, the Commission should initiate

¹¹ *Re-Regulating Coal Plants in West Virginia: A Boon to FirstEnergy, a Burden to Ratepayers*, by Cathy Kunkel, Energy Analyst, Institute for Energy Economics & Financial Analysis, IEEFA.org. <https://www.documentcloud.org/documents/3104603-IEEFA-report-on-Harrison-acquisition.html>

¹² "FirstEnergy CEO says Pleasants power plant sale may happen," Charleston Gazette-Mail, April 27, 2016, available here, <http://www.wvgazettemail.com/news/20160427/firstenergy-ceo-says-pleasants-power-plant-sale-may-happen>.

further proceedings or hold the proceeding in abeyance to allow interested parties an opportunity to obtain additional information regarding the RFP to ensure the RFP was conducted without undue discrimination or preference.

Respectfully Submitted,

By: /s/ Nancy Bagot
Nancy Bagot, Senior Vice President
Sharon Theodore, Senior Director, Regulatory Affairs
Electric Power Supply Association
1401 New York Avenue, NW, Suite 1230
Washington, DC 20005
Tel: 202-628-8200
NancyB@epsa.org

On behalf of the PJM Power Providers Group:

By: /s/ Glen Thomas
Glen Thomas
Laura Chappelle
GT Power Group 101
Lindenwood Drive, Suite 225
Malvern, PA 19355 gthomas@gtpowergroup.com
610-768-8080

May 8, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 8th day of May, 2017.

/s/ Nancy Bagot
Nancy Bagot, Sr. Vice President



September 20, 2016

Ms. Ingrid Ferrell
Executive Secretary
West Virginia Public Service Commission
P.O. Box 812
Charleston, West Virginia 25323

Re: CASE NO. 16-1074-E-P, PETITION OF COMMISSION STAFF AND THE CONSUMER ADVOCATE DIVISION REQUIRING MONONGAHELA POWER AND THE POTOMAC EDISON COMPANY TO SHOW CAUSE WHY THEY SHOULD NOT BE REQUIRED TO FILE REQUESTS FOR PROPOSALS FOR ALL FUTURE CAPACITY AND ENERGY REQUIREMENTS ABOVE 100 MW

Dear Ms. Ferrell:

The PJM Power Providers Group (“P3”)¹ and the Electric Power Supply Association (“EPSA”)² respectfully submit this letter in support of the Petition of Commission Staff (“Staff”) and the Consumer Advocate Division (“CAD”) Requiring Monongahela Power Company and The Potomac Edison Company (“Companies”) to Show Cause Why They Should not be Required to File Requests for Proposals for All Future Capacity and Energy Requirements Above 100 MW, filed on August 5, 2016, in Case No. 16-1074-E-P (“Show Cause Petition”).

In its Show Cause Petition, Staff and CAD express serious concerns with the Companies’ apparent plans to purchase yet another coal plant, or portion thereof, from

¹ P3 is a non-profit organization whose members are energy providers in the PJM Interconnection LLC (“PJM”) region, conduct business in the PJM balancing authority area, and are signatories to various PJM agreements. Altogether, P3 members own over 84,000 megawatts (“MWs”) of generation assets, produce enough power to supply over 20 million homes, and employ over 40,000 people in the PJM region, representing 13 states and the District of Columbia. These comments do not necessarily reflect the specific views of any particular member of P3 with respect to any argument or issue, but collectively presents P3’s positions. For more information on P3 see www.p3powergroup.com.

² EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. These comments do not necessarily reflect the specific views of any particular member of EPSA with respect to any argument or issue, but collectively presents EPSA’s positions. For more information on EPSA, visit www.epsa.org.

one of its subsidiaries, contrary to the settlement agreement parties made in the prior case involving a coal plant purchase from one of its affiliates in 2013,³ and the statutory provisions pertaining to an Integrated Resource Plan (“IRP”).

On September 6, 2016, the Companies filed a Response and Motion to Dismiss the Show Cause Petition, alleging, in part, that the settlement agreement at issue has not been triggered, that the Commission should not prescribe any particular manner for a utility’s procurement of capacity and energy, and that the Commission allegedly lacks authority to issue Requests for Proposals (“RFP” or “RFPs”) because such issuances are characterized as a “management” decision.⁴

P3/EP SA believe that this Commission has the requisite statutory authority to require the issuance of RFPs by the Companies in order to procure any amount of capacity. Such an RFP would satisfy both the statutory requirements for the Commission to consider all “supply side” resources, as well as to ensure the “reasonable balance of cost” for West Virginia customers.

As competitive energy suppliers that collectively own over 84,000 megawatts of generation assets in the PJM Interconnection, LLC (“PJM”) region, P3 and EP SA members are best suited to offer competitively-priced generation options that would meet West Virginia’s reliability needs in a least cost manner. The best and most appropriate manner for this Commission to fully examine potential supply options would be with the use of a broad, competitively neutral RFP in which multiple suppliers could actively compete to meet the needs of West Virginia consumers. This would ensure that all available supply-side and demand-side resources are transparently reviewed in accordance with the state’s applicable rules and laws.

Specifically, W. Va. Code §24-2-19 states:

(d) The Commission may consider both supply-side and demand-side resources when developing the requirements for the integrated resource plans. The plan shall compare projected peak demands with current and planned capacity resources in order to develop a portfolio of resources that represents a reasonable balance of cost and risk for the utility and its customers in meeting future demand for the provision of adequate and reliable service to its electric customers as specified by the Public Service Commission.

Both Staff and the CAD also recognized the importance of a properly structured RFP in this instance, by stating, in part, that:

³ Case No. 12-1571-E-PC, Joint Stipulation, filed on September 13, 2013, adopted by the Commission's Order entered on October 7, 2013.

⁴ Response and Motion to Dismiss, Monongahela Power Company and The Potomac Edison Company, Show Cause Petition, Case No. 16-1074-E-P, (filed September 7, 2016) (“Companies’ Response and Motion to Dismiss”).

In today's market, it simply makes sense for the Companies to issue an RFP for an acquisition of capacity and energy above 100 MW. The Companies could obtain competitive, cost-effective proposals for acquiring capacity and energy by using the RFP process. The use of an RFP could allow the Companies to move beyond past approaches and allow the competitive process to offer to offer a variety of generation resources to meet customers' needs. . . . Given that ratepayers ultimately bear the financial risks associated with acquiring capacity and energy, they should be allowed the benefits of the RFP process.⁵

P3 and EPSA completely agree with Staff's and CAD's assessment of the cost and supply benefits of a properly structured RFP. In a research paper previously prepared in response to a request from the National Association of Regulatory Commissioners ("NARUC"), in collaboration with the Federal Energy Regulatory Commission ("FERC"), seeking a study of state and utility policies and practices for competitive procurement of retail electric supply, the Analysis Group concluded, in part, that:

Competitive procurements can provide utilities with a way of obtaining electricity supply that has the "best" fit to customers' needs at the "best" possible terms. In principle, competitive procurements accomplish this goal by requiring market participants to compete for the opportunity to provide these services. However, for competitive procurements to fulfill their promise, they must be designed and implemented in a manner that fosters competition among market participants, including potentially the regulated utility and its affiliated companies.⁶

According to the NARUC/FERC Competitive Procurement Whitepaper, one of the most important benefits of any competitive procurement is a proper design to curtail self-dealing for which a utility would be otherwise inclined:

The first key issue for incremental resource procurements is the design of safeguards to prevent potential improper self-dealing by the utility. Because the utility may financially benefit from the selection of its own self-build offer or a proposal from an affiliate, safeguards are necessary to ensure that the process is not improperly tilted toward the selection of such offers.⁷

⁵ Show Cause Petition, *supra*, at p.3.

⁶ Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices Susan F. Tierney, Ph.D. Todd Schatzki, Ph.D. Analysis Group Boston, Massachusetts July 2008, https://www.hks.harvard.edu/hepg/Papers/Analysis_Group.pdf ("NARUC/FERC Competitive Procurement Whitepaper"), p. i.

⁷ NARUC/FERC Competitive Procurement Whitepaper, *supra*, at p. iv.

The apparent plan of the Companies to utilize its 650 MW coal-fired Pleasants Power Station to meet its alleged supply need would violate not only its former settlement agreement to issue an RFP for future generation supply needs, it also runs contrary to West Virginia statutory requirements to examine all supply-side and demand-side resources in order to ensure the lowest costs for customers.⁸

Moreover, P3 and EPSA disagree with the Companies' position that it need not conduct RFPs, in part, because RFPs are best left to a "management" decision-making process and that this Commission allegedly lacks straight-forward statutory authority to require utilities to conduct RFPs.⁹ P3 and EPSA believe that, as the Companies acknowledge, "cost recovery authority" is very much within the purview of this Commission.¹⁰ Conducting RFPs in order to ascertain the full supply-side options that may be available to a utility in a cost-efficient manner, procured "*without unjust discrimination or preference,*" such as self-dealing with affiliates would render, would not be outside this Commission's statutory jurisdiction, as state law requires that the Commission:

"[ensure that rates and charges for utility services are just, reasonable, **applied without unjust discrimination or preference**, applied in a manner consistent with the purposes and policies set forth in . . . [5 24-2A- 1 et seq.], and based primarily on the costs of providing these services[.]" W. Va. Code 6 24-1-I (a)(4) (emphasis added)

Conducting a broad, competitively-neutral RFP is an industry-wide best practice for securing the most reliable resources in the most cost-efficient manner and would clearly be within the Commission's jurisdiction as it would ensure that the Companies do not discriminate or place a preference on their own, internal supply options, and the Commission is able to fully review all the supply- and demand-side resources available to the utility.

P3 and EPSA respectfully request that the Commission consider these comments and grant Staff's and the CAD's request to expeditiously issue an order directing the Companies to show cause as to why they are not required to issue an RFP for any additional energy above 100 MW.

⁸ A recent study by the Institute for Energy Economics and Financial Analysis ("IEEFA"), has calculated that Mon Power's takeover of the Harrison coal-fired coal plant has cost West Virginia electric customers \$164 million since 2013. The study also provides analysis that, in seeking to transfer the coal-fired, 1,300-megawatt Pleasants Power Station to Mon Power, is part of a larger strategy whereby FirstEnergy is attempting to shift market risk to ratepayers. See IEEFA, "Re-regulating Coal Plants in West Virginia: A Boon to FirstEnergy, a Burden to Ratepayers, by Cathy Kunkel, Energy Analyst (issued September 2016), available at <http://ieefa.org/ieefa-report-cynical-re-regulation-strategy-west-virginia%e2%80%a8/>.

⁹ Companies' Response and Motion to Dismiss at 2-4.

¹⁰ *Id.* at 4.

Sincerely,

/s/

John E. Shelk
President & CEO
Electric Power Supply Association
(EPSA)
1401 New York Avenue, NW, Suite 1230
Washington, D.C. 20005
202.628.8200

/s/

Glen Thomas
President
PJM Power Provider Group (P3)
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
610.768.8080