UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Power Providers Group	)	
	)	
v.	)	Docket No. EL11-20-000
	)	
PJM Interconnection, L.L.C.	)	
PJM Interconnection, L.L.C.	)	Docket No. ER11-2875-002

PROTEST OF THE PJM POWER PROVIDERS GROUP

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2011), the PJM Power Providers Group ("P3")[1] submits this protest of the compliance filing submitted by the PJM Interconnection, L.L.C. ("PJM") on May 12, 2011, in the above-reference proceeding ("Compliance Filing"). The Compliance Filing fails to comply with the Commission's directives in the order issued on April 12, 2011 ("April 12 Order"),[2] thereby disregarding the Commission's intent to fully mitigate potential buyer market power in the PJM region. Approval of PJM's proposed revisions to the PJM Open Access Transmission Tariff ("Tariff"), submitted in this Compliance Filing, will delay and/or thwart crucial, now clarified, provisions of the minimum offer price rule ("MOPR"). Specifically, P3 has identified four specific areas in which the Compliance Filing

[1] 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 region. Combined, P3's twelve member companies own over 87,000 megawatts of power and over 51,000 miles of transmission lines in the PJM region, serve nearly 12.2 million customers and employ over 55,000 people in the 13-state and District of Columbia PJM region. The contents of this Protest 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, please visit www.p3powergroup.com.
[2] *PJM Interconnection, L.L.C.,* 135 FERC ¶ 61,022 (2011), dated April 12, 2011.

does not fully comport with the letter and the intent of the April 12 Order, as described more fully in this protest, below.

I. BACKGROUND

On February 1, 2011, P3 filed a complaint with this Commission alleging that the MOPR, as it was then written and applied, was ineffective in deterring buyer market power in the PJM region. P3 proposed reforms to be considered and immediately applied in order to render the MOPR just, reasonable, and not unduly discriminatory.[3] On February 11, 2011, PJM filed tariff revisions addressing these same MOPR issues.[4] On March 4, 2011, P3 filed comments on PJM's proposed tariff provisions, agreeing to several of its proposed modifications and also suggesting further revisions.[5] On March 18, 2011, P3 answered various parties' motions to dismiss and other pleadings, accompanied by expert testimonies of William W. Hogan, Ph.D. and Roy J. Shanker, Ph.D.[6] On May 12, 2011, P3 filed a request for rehearing and clarification of the Commission's April 12 Order.[7] On May 27, 2011, P3 filed an answer to requests for clarification.[8]

II. PROTEST

P3 respectively requests that the Commission find that PJM's Compliance Filing has failed to comply with the Commission's clear directives in its April 12 Order in this proceeding, and as such, is not just and reasonable. PJM should be directed to amend its Compliance Filing to address the following issues, as further described herein.

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[3] *P3 Complaint and Request for Clarification Requesting Fast Track Processing*, Docket No. EL11-20-000 (Feb. 1, 2011) ("P3 Complaint"), accompanied by Exhibit 1, Testimony of Roy J. Shanker Ph.D. ("Shanker")

[4] *PJM Tariff Revisions,* Docket No. ER11-2875-000 (Feb. 11, 2011).

[5] *P3 Comments and Protest*, Docket Nos. EL11-20-000 and ER11-2875-000 (Mar. 4, 2011), accompanied by Exhibit 4, supplementary Testimony of Roy J. Shanker, Ph.D. ("Shanker Supp."), as amended.

[6] *P3 Answer to Motions to Dismiss and Other Pleadings,* Docket No. EL11-20-000 and ER11-2875-000 (Mar. 18, 2011), accompanied by Exhibit 7, Statement of William W. Hogan, Ph.D. ("Hogan") and Exhibit 8, Answering Testimony of Roy J. Shanker, Ph.D. ("Shanker Answer").

[7] *P3 Request for Rehearing and Clarification*, Docket No. EL11-20-000 and ER11-2875-000 (May 12, 2011).

[8] *P3 Answer to Requests for Clarification*, Docket No. EL11-20-000 and ER11-2875-000 (May 27, 2011).

1. PJM's attempt to change the standard of review of the MOPR order (5(iii)) should be rejected;
2. The tariff should be clear that sell offers should be established for every year in which they bidder intends to offer;
3. PJM should ensure that becoming an existing generation capacity resource by initiating interconnection service is not used as a means of avoiding the MOPR; and
4. The revised MOPR should apply to incremental auctions for 2012 and 2013.

First, certain proposed provisions for PJM's Replacement of Exception Process Based on Commission Review Under FPA Section 206 with Exemption Process Based on PJM and IMM Review, contained in proposed Tariff section 5.14(h)(5), fail to be fully defined, are confusing and/or misleading, and appear to go beyond the clear directives of the Commission. In part, PJM states that section 5.14(h)(5) is an "objective standard" that provides that "a sell offer falling below the MOPR screen is nonetheless permissible if it is shown that the offer 'is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry were the resource to rely solely on revenues from PJM-administered markets."[9] However, crucial portions of this important section are ill defined and confusing, at best.

For example, in section 5.14(h)(5)(ii), the term "long-term power supply contracts" is not defined. Does the term "long term" mean more than one year? Or 10 years? Or more? Frankly, all power supply contracts, not just "long-term" ones, should be reviewed under the Tariff. This is an important tariff provision detailing the requirements that a Capacity Market Seller must include in its request for an exception from the MOPR. Such a pivotal tariff section needs further refinement and clarification before this Commission accepts its provisions.

[9] *PJM Interconnection, L.L.C., Transmittal Letter for Compliance Filing, supra, at p 10.*

A far more confusing provision of the proposed Tariff is in section 5.14(h)(5)(iii). P3 is troubled by PJM's apparent unsupported attempt to alter its standard of review for sell offers to determine if the MOPR should be applied to them. PJM's proposed tariff language not only confuses important provisions in existing tariff language, but also adds criteria that are well beyond those envisioned by the April 12 Order.

Specifically, the Commission's April 12 Order was explicit as to what PJM's standard of review should be:

> "In conducting an individualized generation review, PJM proposes that: a sell offer would be permissible when such offer is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry **were the resource to rely solely on revenues from PJM-administered markets.** We find that this standard is appropriate for reviewing such cost estimates and that PJM must include this language in its revised tariff."[10] (emphasis added)

However, in its Compliance Filing, PJM significantly altered this standard of review and in doing so, introduced considerations that were not contemplated by the Commission, PJM (in its February 11, 2011 filing), the Independent Market Monitor, or any other parties to this proceeding. In section 5.15(h)(5)(iii), PJM suggests that sell offers be reviewed by the following standard (emphasis added):

> (iii) A Sell Offer evaluated hereunder shall be permitted if the information provided reasonably demonstrates that the Sell Offer's competitive, cost-based, fixed, nominal levelized, net cost of new entry is below the minimum offer level prescribed by subsection **(4),** ***based on competitive cost advantages relative to the costs estimated for subsection (4), including, without limitation, competitive cost advantages resulting from the Capacity Market Seller's business model, financial condition, tax status, access to capital or other similar conditions affecting the applicant's costs, or based on net revenues that are reasonably demonstrated hereunder to be higher than estimated for subsection (4). Capacity Market Sellers shall be asked to demonstrate that claimed cost advantages or sources of net revenue that are irregular or anomalous, that do not reflect arm's-length transactions, or that are***

[10] April 12 Order at P 122.

> ***not in the ordinary course of the Capacity Market Seller's business are consistent with the standards of this subsection.*** Failure to adequately support such costs or revenues so as to enable the Office of the Interconnection to make the determination required in this section will result in denial of an exception hereunder by the Office of the Interconnection. (emphasis added)

P3 would respectfully suggest that PJM's unexplained and unsupported alteration of the standard of review, represented by the emphasized language, is not appropriate and should be rejected. First, there is no explanation of why the pertinent language "*were the resource to rely solely on revenues from PJM-administered markets*" is not included in this provision**.** Second, as presented, the provision is filled with arbitrary and subjective elements that beg for contentious and/or arbitrary implementation. Furthermore, the additions of factors such as "business model," "financial condition" and "tax status" introduce variables to the review that are ill-defined, subject to wide ranging interpretation and risk misapplication of the Commission's clear direction in the April 12 Order. For instance, as written, PJM would presumably allow lower cost estimates to be used that were a direct result of the award of a discriminatory solicitation (e.g. the use of a lower capital cost structure based on the presence of a "new only" state sponsored solicitation contract). FERC should reject this attempt to re-write the Commission's directives via PJM's Compliance Filing.

P3 has consistently maintained that sell offers should not be subjected to mitigation if they can establish that they did not receive any subsidies from outside of the PJM market structure (see P3 Complaint at 34, Shanker at 53:2-12). While the Commission rejected this approach, P3 still believes that this "no-subsidy off-ramp" is an elegant solution to the challenge of identifying sell offers that are below 90% of CONE, yet are not by any reasonable measures harmful to the market. P3 asserts that this simple "no-subsidy off-ramp" addresses many of the concerns raised by some whom believe that their sell offers are not harmful to the market, yet may fail the

MOPR screen. PJM, while initially reluctant to pursue this approach, appears to be interested in exploring this concept through the stakeholder process.[11] While not endorsing P3's exact proposal, PJM has stated that:

> "(T)he concept of an additional route to MOPR exceptions that focuses more directly on the harm that MOPR is intended to avoid has considerable appeal, both in reducing administrative burdens on PJM, the IMM, and new entry project sponsors, and in fostering greater certainty for parties developing new generation for the PJM region."[12]

P3 believes that stakeholder discussions are the optimal forum to discuss PJM's desire to alter their standard of review. Accordingly, P3 asks this Commission to delete the emphasized language, require PJM to reinstate the language that was included in April 12 Order, and direct that any efforts to refine, rewrite or alter the PJM standard of review for sell offers be addressed in the stakeholder process.

Second, the Compliance Filing and the proposed Tariff language do not make explicit that the Net Asset Class Cost of New Entry that will set the offer price floor of a proposed new resource will be the Net Asset Class Cost of New Entry that applies for the relevant Delivery Year of the RPM Auction in which the unit is offering. This is an important clarification, because the Tariff itself contemplates that a Planned Generation Capacity Resource may offer into RPM Auctions (i.e., Base Residual Auctions and Incremental Auctions) for several Delivery Years until the resource clears. While PJM has effectively amended the Tariff to apply the MOPR to a new-entry resource until an offer based on that new-entry resource clears in at least one RPM Auction, it has failed to make clear that the offer price of the unit itself must remain indicative of the class asset or unit costs for the relevant Delivery Year until it clears. Economic conditions can vary from year to year and it is critically important that sell offers be evaluated

[11] *Request of PJM Interconnection, L.L.C., for Clarification*, Docket No. ER11-2875-000, dated May 12, 2011.
[12] *Request of PJM Interconnection, supra, at pp. 5-6.*

against accurate and current benchmarks. Failure to do so will lead to over-valued or under-valued units, and will distort the overall prices in the capacity auction. Insertion of the simple phrase "for the relevant Delivery Year associated with the RPM Auction" after the phrase "that is less than 90 percent of the applicable Net Asset Class Cost of New Entry" in Section 5.14(h)(4) would achieve this goal.

Third, P3 is concerned that the tariff language, as currently written, could be read to permit uneconomic entry into the market without the MOPR applying in the manner envisioned by the April 12 Order. Specifically, the draft is not explicit that the MOPR applies to any resource that has not cleared either a Base Residual or Incremental Auction. Draft tariff provision 5.14(h)(4) suggests that the MOPR only applies to a "Planned Generation Capacity Resource." However, as the Commission acknowledged in the April 12 Order, there is a class of resources beyond "Planned Generation Capacity Resources" to which the MOPR should apply.[13]

FERC was abundantly clear in the April 12 order in stating that a new resource be mitigated "until the resource demonstrates that its capacity is needed by the market at a price near its full entry cost—by clearing."[14] It directed PJM to file changes to its tariff to address these concerns.[15] PJM simply failed to address this aspect of the Commission's directives. The tariff language should be amended to be equally clear and eliminate any possibility that becoming an existing generation capacity resource by initiating interconnection service can be used a means to avoid the MOPR and suppress prices.

[13] The Commission also expressed concern that:[o]nce a resource begins to receive interconnection service, it is no longer classified as a Planned Generation Capacity Resource, and thus, . . . [a] resource could lose its status as a Planned Generation Capacity Resource before the resource has cleared a capacity auction, thereby enabling an uneconomic resource to bypass the MOPR and successfully artificially suppress capacity prices. April 12 Order at p.174.
[14] Id at 176.
[15] Id at 178.

Finally¸ the proposed Tariff fails to *immediately* apply the MOPR to new-entry offers in the Incremental Auctions, as well as offers in the Base Residual Auction, as directed by the April 12 Order. In the April 12 Order, the Commission stated that:

> "We agree with the IMM that the appropriate duration is that the MOPR offer floor should apply to each new resource in the base residual ***and each incremental auction*** until the resource demonstrates that its capacity is needed by the market at a price near its full entry cost – by clearing one of the PJM capacity auctions (base residual or incremental) at an offer price near its full cost of entry. Under such an approach, the MOPR would apply to any resource until it has proven that it is needed by the market and from that point forward, the resource would be treated as an existing capacity resource not subject to the MOPR. Unlike PJM's approach, the IMM's approach would not unfairly mitigate a resource (or require it to cost justify a lower bid) in the years after it has cleared the auction." April 12 Order at P 176. (emphasis added)

PJM's Compliance Filing acknowledges that the MOPR will now apply to Incremental Auctions. However, PJM proposes to apply the MOPR only to those Incremental Auctions associated with the 2014-2015 Delivery Year and beyond, ignoring the Incremental Auctions for the next two Delivery Years. However, PJM still must conduct Incremental Auctions for the 2012-2013 and 2013-2014 Delivery Years and P3 believes that the revised MOPR rule should be applicable to those auctions.

P3 has consistently asserted that the MOPR should apply to Incremental Auctions. It has never suggested that the need for this application take place after several years has passed.[16] The Commission's April 12 Order agreed with P3 that expedited resolution of the MOPR issues were needed in time for the May 2011 Base Residual Auction. The Commission conditionally accepted PJM's proposed tariff revisions, submitted via its February 11, 2011 filing in this proceeding, and ordered that they become effective April 13, 2011. The Commission called for

[16] April 12 Order at P 162.

and ordered tariff changes accordingly.[17] Thus, as the Commission acknowledged and ordered immediate application of the revised MOPR to PJM's RPM Auctions, there is every need and expectation that the revised MOPR and accompanying tariff changes will be effective for all future *Incremental Auctions* – not just those for the 2014-15 Delivery Year and beyond.

WHEREFORE, the PJM Power Providers Group respectively requests that the Commission find that PJM's Compliance Filing has failed to comply with the Commission's clear directives in its April 12 Order in this proceeding, and as such, is not just and reasonable. PJM should be directed to amend its Compliance Filing to address the issues herein described and to otherwise comply with FERC's April 12 Order.

Respectfully submitted,

*/s/ Glen Thomas*_______________

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June 2, 2011

[17] April 12 Order at PP 3, 25-27.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served copies of the foregoing document upon each person designated on the official service list as compiled by the Office of the Secretary in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C., this 2nd day of June, 2011.

*/s/ Glen Thomas*_______________

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