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OPSI RESOLUTION # 2012-15

Resolution Rejecting the Ad-Hoc PJM Stakeholder Process Excluding State Commissions and Consumer Advocates from Development of PJM's Proposed 2012 Tariff Modifications to the Application of the Minimum Offer Price Rule of PJM's Reliability Pricing Model

Whereas, on April 12, 2011 and November 17, 2011, FERC issued Orders modifying aspects of the PJM Tariff governing the application of the Minimum Offer Price Rule (MOPR) to both Self Supply and State Sponsored Generation Development in the Reliability Pricing Model, and requiring that each be subject to the MOPR and price mitigation unless exempted pursuant to a unit specific cost review process¹; and

Whereas, on October 19, 2012, PJM posted tariff language for a proposed further modification to its Tariff, Attachment DD, Section 5.14(h) – Minimum Offer Price Rule for Certain Generation Capacity Resources, in which a limited group of interested Stakeholders agreed to reverse several changes made by FERC to application of the MOPR in its 2011 Orders, including specifically exempting from MOPR self-supply transactions but not State Sponsored Generation Development; and

Whereas, the MOPR issue involved is one of importance to a number of individual State Commissions that are OPSI members, i.e. the process by which States whose State Legislature has adopted a public policy favoring state sponsored development of generation resources within their boundaries to satisfy reliability, adequacy of supply and other concerns may do so consistent with the proper operation of PJM's Market Construct; and

Whereas, State Commissions have historically been active in monitoring the reliability of electric system operation within their boundaries and the adequacy of electric supply to their residents, taking action where necessary and appropriate to assure these objectives are met; and

Whereas, the proposed MOPR related Tariff modifications posted on October 19 were developed in a secret and exclusionary PJM Stakeholder process, participated in and facilitated by PJM Staff and the Independent Market Monitor, which began in June 2012 and continued for over three months requiring

¹ PJM Power Providers Group v. PJM Interconnection, LLC, 135 FERC ¶ 61,022 (April 12 Order), order on rehearing, 137 FERC ¶ 61,145 (2011)(November 17 Order), order on rehearing, 138 FERC ¶ 61,194, order on compliance filing, 139 FERC ¶ 61,011 (2012). OPSI Members were active participants in this extended litigation and two have appealed the orders issued by FERC to the US Circuit Court of Appeals for the 3rd Circuit. New Jersey Board of Public Utilities Commission, et al. v. Federal Energy Regulatory Commission, Nos. 11-4245, et al. (3rd Cir. 2012).

approximately six to seven meetings and an equal number of telephonic conferences, but which process was never noticed to PJM Members or interested Stakeholders, and was indeed treated as a settlement of a FERC proceeding though no such proceeding was open, and most particularly provided neither notice nor opportunity to participate to individual State Commissions (OPSI Members) and State Consumer Advocates; and

Whereas, despite the requirements of PJM Manual 34 – PJM Stakeholder Process, no notice of these Stakeholder discussions was provided to any OPSI Member State Commission or to any PJM Consumer Advocate Member and thus each was deprived of the opportunity to participate in these discussions.² Thus, Manual 34’s objective that “all stakeholders will participate in the . . . [Stakeholder] . . . process beginning at the lowest level stakeholder group” to assure that “the most comprehensive solutions will be generated and the inefficiency of re-reviewing material . . . will be avoided”, as well as PJM’s “recognition of the importance of transparency of the stakeholder process to all those affected by it” can clearly not be achieved as to this matter in light of the flawed Stakeholder process which has been pursued to date³; and

Whereas, of equal concern to individual State Commissions (OPSI Members), the net effect of the exclusion of such Commissions and Consumer Advocates from this Stakeholder process has been to deprive a substantial body of OPSI Member state citizens and ratepayers (i.e. residential, small commercial and small industrial customers not served by Public Power) of representation and the ability to express their views in PJM decisional processes through their traditional representatives, State Commissions and Consumer Advocates; and

Whereas, OPSI acknowledges that PJM has scheduled a further Stakeholder Process to take place over an approximate 30 days in an effort to provide interested State Commissions and Consumer Advocates with some, albeit clearly inadequate opportunity to participate in a Stakeholder process devoted to these matters, the inadequacy of this process arising from its limited time period, the complexity of this matter and its surprise announcement resulting from its secretive development has prevented State Commissions and Consumer Advocates from obtaining or allocating resources to fully participate in this matter; and

Whereas, OPSI perceives no necessity for haste in the consideration and decision upon the Proposed 2012 PJM MOPR Modifications as there presently exist at most one additional State Sponsored Generator presently to be developed by May 2013, and no State has announced plans for such further development prior to May 2014.

Therefore, Be It Resolved, OPSI urges that PJM commit to a new full and fair prospective Stakeholder process on the proposed 2012 MOPR changes, not subject to an arbitrary 30 day timing limitation which

² PJM Manual 34 defines two Stakeholder processes which could have been implemented by these discussions, i.e. “User Groups” (See paragraph 5.5 at p. 14) or a “Consensus Based Issue Resolution Process” directed by a PJM Standing Committee (See Paragraph 7.1.1 at p. 29). However, the Manual expressly requires that “Notification of the formation of a User Group shall be provided to all Members of the Members Committee”, notices and meeting agendas for the Group are to be provided all Members, any Member may attend a User Group Meeting and Meeting Notes for all User Group meetings are to be posted on PJM.com. The procedures provided in Paragraph 7.1.1 are to be pursued only following approval by the Standing Committee of a Problem Statement and Charge, which would similarly provide notice to interested Stakeholders of the process being pursued, and further provides that that process “shall be open to all stakeholders”. OPSI and its “Member Regulatory Agencies” are expressly recognized as “participants in the stakeholder process” with the opportunity to “participate, deliberate, give input and engage at all levels of PJM Stakeholder Groups”. See Manual 34, Section 4 –Roles and Responsibilities.& 4.4 (at pp. 6 & 8).

³ (See Section 3 – Purpose of the Stakeholder Process at p. 5 & Section 4.5 - Code of Conduct at p. 8)

limitation does not provide sufficient time for alternative development and consensual decision making;
and

Be It Further resolved, OPSI urges full consideration of the alternatives that are sure to be developed and offered by OPSI Members and Consumer Advocates if such a fully inclusive Stakeholder process responsibly structured to permit adequate time and deliberative structure to allow such position development and presentation, is held; and

Be it Further Resolved, interested State Commissions commit to their active and good faith participation in such a process and further note their support in concept for expanded MOPR exemptions for Public Power and Regulated State generation self-supply; and

Be it Further Resolved, that the OPSI Board urges that PJM commit to review its Manual 34 procedures to further strengthen them to eliminate whatever lack of clarity PJM believes may exist that permitted the flawed Stakeholder process described above to occur and to unequivocally guarantee a full, prospective Stakeholder process where requested by an excluded Stakeholder such as the State Commissions and Consumer Advocates excluded from PJM's development of its 2012 proposed MOPR Tariff modifications as described above.

Motion by: Commissioner Lawrence Brenner, Maryland PSC
Seconded by: Commissioner Joanne Doddy Fort, District of Columbia PSC
Illinois and West Virginia abstained; Ohio and Pennsylvania voted no; Tennessee was not present

Adopted by the OPSI Board of Directors on November 12, 2012