UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
PJM Interconnection, L.L.C	)	Docket No. ER18-1314-000
	)	ER18-1314-001

COMMENTS OF THE
ORGANIZATION OF PJM STATES, INC.

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("FERC" or "the Commission") Rules of Practice and Procedure 18 C.F.R. § 385.211, and the Notice of Filings issued on April 17, 2018, establishing May 7, 2018, as the deadline for comments and protests in the above-captioned docket, the Organization of PJM States, Inc. ("OPSI"), respectfully submits the following comments regarding the April 9, 2018, capacity auction design filing ("April 9 Filing") by PJM Interconnection, L.L.C. ("PJM"), in the above-captioned docket.[1] OPSI filed a Motion to Intervene in this docket on April 13, 2018.[2]

I. SUMMARY OF OPSI COMMENTS

Boiled down to its essence, the April 9 Filing's proposed capacity market revisions will raise prices across the entire PJM region, thereby increasing the rates of end users within the PJM region. PJM does not demonstrate that such price increase is just and reasonable and, therefore, PJM has failed to meet its burden under Federal Power Act ("FPA") Section 205.[3] Section 205 requires that "all rates or charges shall be just and reasonable, and any such rate or charge that is

[1] These comments were adopted unanimously by the OPSI Board on May 7, 2018
[2] Doc-less Motion to Intervene of OPSI under ER18-1314. Apr. 13, 2018. https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14659710.
[3] 16 U.S.C. § 824d(e).

not just and reasonable is hereby declared to be unlawful."[4] Because PJM has not met its burden to show that either Option A or Option B is just and reasonable, FERC must reject both proposals in their entirety.[5]

II. COMMENTS

FERC should reject both Option A and Option B as neither is proven to be just and reasonable. OPSI supports the objective inherent in PJM's capacity auction design that seeks to minimize the cost of sufficient and reliable resources procured to satisfy demand in its region.[6] In pursuing that objective, FERC should expect, and require, that PJM respect the resource choices of state policy-makers unless there is a legal determination that a state policy impermissibly intrudes into matters properly reserved for federal oversight. Yet, in this proceeding PJM abandons the cost minimizing principle and instead proposes an exceedingly complex design change that will place more weight on administratively determined artificially inflated prices rather than actual market participant offers. PJM's proposal is both unsupported by actual evidence and destined to raise capacity prices for customers. Despite initiating a stakeholder process charged, in part, with attempting to identify a market design problem associated with capacity price formation,[7] PJM has still[8] failed to provide evidence to support its allegations that harmful market impacts occur when

[4] 16 U.S.C. § 824d(a).
[5] *Id.*, *NRG Power Marketing v. FERC*, 862 F.3d 108, 114 (D.C. Cir. 2017). If the Commission should find merit in either of PJM's proposals, despite OPSI's recommendation to reject both, then OPSI requests the Commission set the matter for hearing, with discovery, and require PJM to prove its claims that the proposed tariff revisions will produce a just and reasonable outcome.
[6] April 9 Filing at 61, Attachment E Affidavit of Adam J. Keech at P 3 ("…efficient, intuitive market outcomes that minimize the cost of procurement...").
[7] Capacity Construct Public Policy Senior Task Force ("CCPPSTF") Issue Charge, PJM. https://bit.ly/2HF7K5l. ("Identify areas where state actions and the current RPM capacity construct may not be aligned.").
[8] *See* OPSI Letter to PJM Board of Managers, Oct. 9, 2017 at 2. ("As shown in PJM's Matrix for [key work activity] 3, the Key Components of the RPM Construct studied either 'had no impact' or at most 'may have' results for Impact of State Actions. For example, for all of the Demand/Cost/Planning Parameters of the RPM, i.e., reliability requirement, Net Cone, Sloped VRR Curve, there was no impact from state actions identified.") (internal citations omitted). *See also* OPSI Letter to PJM Board of Managers, Feb. 7, 2018 at 2-3 ("…PJM Staff has not provided any

resources receive financial support from state policy initiatives that seek to advance important state environmental, public health, or other public policy goals. Without such evidence, the Commission should find that both Option A and Option B do not meet the standard set forth in Section 205. The Federal Power Act reserves to the states jurisdiction over, among other things, "facilities used for the generation of electricity,"[9] and the proposals in PJM's April 9 Filing would impinge upon these state rights without a just and reasonable basis.

PJM argues that higher prices are required to maintain competition in the capacity market.[10] However, the extent of support that PJM provides in its April 9 Filing is limited to a brief simulation of an unrelated scenario, and affidavits that contribute little or nothing to justify PJM's proposal. PJM submits affidavits in lieu of the empirical facts and data necessary to establish the justness and reasonableness of its proposed market changes and resulting price increases. Indeed, substantial countervailing evidence exists to demonstrate that inflated prices are not needed to maintain robust competition or to satisfy any of the FERC's first principles[11] of capacity markets.

PJM argues consistently throughout the filing that state public policies that provide additional revenues to resources having attributes desirable to that state cause, or will cause, suppression of PJM's capacity auction price. However, the support proffered for this contention is unpersuasive. Neither PJM affiant described any specific capacity price offer that was affected by an alternative revenue source, or any actual capacity clearing price that was in fact suppressed as a result. PJM's failure to support its underlying premise of speculated auction clearing price

meaningful facts, data, or information to support either of these assertions – in spite of numerous requests and opportunity to do so during the CCPPSTF stakeholder process…"). *See also* PJM Stakeholders Look to Slow Capacity Redesign Process. RTO Insider. Nov. 7, 2017, at 16. (Describing analyses requested by stakeholders but not provided by PJM Staff).

[9] 16 U.S.C. § 824(b)(1).

[10] *See generally* April 9 Filing at Section II.

[11] 162 FERC ¶ 61,205 (2018), at P 21 ("CASPR Order").

suppression also demonstrates its failure to establish the justness and reasonableness of its proposal to increase prices for electricity consumers throughout thirteen states and the District of Columbia.

While PJM argues that prices produced by the current capacity auction design will result in inefficient entry and exit of generation, evidence shows that generators in PJM's markets are able both to compete robustly for capacity supply obligations and to retain the opportunity to achieve revenue adequacy, while at the same time receiving rational signals for market entry and exit. Further evidence shows that, even with existing state-sponsored actions, substantial new entry has occurred at prices below the competitive level assumed to be sufficient for new entry. As a result, the April 9 Filing lacks support for its proposed price increase, and therefore fails to be just and reasonable.

To justify the proposed increase in capacity prices, PJM contends in its April 9 Filing that investment in competitive markets will be chilled as a result of state actions. PJM's own data and analysis show the opposite thus far. In May 2016, PJM issued a whitepaper titled Resource Investment in Competitive Markets.[12] In Part 1 of that whitepaper, PJM provides detailed analysis illustrating the robust capacity competition in PJM's markets. Among the Part 1 findings, "[a]ctual evidence shows that PJM has successfully attracted significant new merchant investment in generating plants, both new entry and upgrade to existing facilities,"[13] and "[f]or the Base Residual Auctions in PJM's capacity market occurring between 2010 and 2015, approximately 24,000 MW of new generation were cleared and committed."[14] Further, PJM markets were able to add these resources at rates substantially below PJM's assumed Net Cost of New Entry ("CONE") values.[15]

[12] Resource Investment in Competitive Markets. PJM. May 5, 2016. https://bit.ly/2HAQeTF. ("Resource Investment Whitepaper").
[13] *Id.* at 23.
[14] *Id.* at 24.
[15] PJM CONE. The Brattle Group. Apr. 19, 2018, at 4. https://bit.ly/2KkRkk2. ("Brattle Report").

Despite the "hyper-competitive"[16] merchant generation business, Part 1 concluded that "[t]he abundance of merchant projects coming online in PJM indicates that the market is providing adequate returns to attract capital,"[17] and that "[s]trong evidence supports the belief that markets are providing adequate returns to incent new generation investment where warranted."[18] The conclusion of Part 1 is supported by in-depth study of risk and analysis of PJM's internal data, demonstrating the health of the markets.[19] PJM follows this Part 1 analysis with Part 2, which unsuccessfully attempts to undermine the supported conclusions reached in Part 1 by an anecdote claiming to show "the need for mitigation."[20] This is similar to the April 9 Filing, wherein PJM follows substantiated conclusions about the health of markets[21] with anecdotal and unsupported arguments intended to undermine those conclusions, in support of higher prices. PJM's Part 1 conclusions detailing their robust and healthy market still stand today and undercut the stated purpose of the April 9 Filing.

Data shows that adequate numbers of generation resources are consistently able to recover their costs, while receiving rational price signals, from PJM markets. Substantial evidence supporting the health of PJM's markets outweighs the speculative arguments PJM makes in its request for higher prices paid for by load. As PJM's Independent Market Monitor ("IMM") notes, the vast majority of the generation fleet is revenue adequate. The IMM's 2017 State of the Market

[16] April 9 Filing at 12.
[17] Resource Investment Whitepaper at 29.
[18] *Id.* at ii.
[19] *Id.* at 28.
[20] *Id.* at 37-39.
[21] April 9 Filing at 10-11. ("PJM's recent capacity market auctions have seen tens of thousands of megawatts of new combined cycle gas enter in the face of historically low wholesale energy prices, flat to declining load growth, increased transmission investment and reduced congestion rents, and very robust reserve margins, over 23% from capacity commitments in the most recent Base Residual Auction. From the perspective of traditional utility planning, this new entry is not "needed" by an administrative determination of target capacity.") (internal citations omitted).

Report[22] shows that the average age of at risk[23] generating units is 42 years.[24] PJM urges FERC to evaluate the "operational life"[25] of the asset when evaluating the performance of today's capacity market, but fails to indicate that the useful lives of coal and combustion turbine plants are 40 and 30 years respectively.[26] Such findings seem less indicative of market failure, than of rational market signals of entry and exit. The PJM markets are not static, state actions do not occur unannounced, and sophisticated market participants are able to respond to internal and external market influences of many varieties. Without countervailing evidence demonstrating the existence of the "gap" in capacity market rules, the April 9 Filing is unsupported, and the resulting price increase cannot be found just and reasonable.

Rather than rising, there is significant data that shows capacity prices should be falling. A recent analysis illustrates that price offers in the current auction design may provide even more accurate signals if reduced, rather than increased, in direct contrast to the April 9 Filing. The Brattle Group's quadrennial review of the CONE shows that updated values for the 2022/2023 delivery year are between 22 and 41% lower than the current CONE.[27] While this CONE data is not necessarily indicative of the preferred capacity prices in the auction, this evaluation does show that changes in the business environment and equipment efficiencies[28] have led to the "hyper-competitive"[29] merchant generation business exerting downward price pressure. This independent

[22] 2017 State of the Market Report ("SOM"). IMM, at 309. https://bit.ly/2vU8ceA.
[23] The SOM defines "at risk" units as those that "have not recovered avoidable costs from total market revenues in two of the last three years or have not cleared either the 2019/2020 or the 2020/2021 capacity auctions…" *Id*. at 334.
[24] *Id*. at 335, Table 7-36.
[25] April 9 Filing at n. 26.
[26] Current State and Future Direction of Coal-Fired Power in the Eastern Interconnection. Eastern Interconnection States Planning Council. Jun. 2013, at 105, Exhibit 57. https://bit.ly/2nLtV0T.
[27] Brattle Report at iv, Table ES-1.
[28] *Id.* at v, Table ES-2.
[29] April 9 Filing at 12.

analysis shows that the Commission-defined default offer cap[30] should be substantially reduced, and that additional competition should continue to drive clearing prices down, consistent with the goal of minimizing prices in the capacity construct.[31]

In addition, PJM alleges there is a detrimental effect that the targeted state policies will have upon other states and other market participants not receiving alternative revenue streams.[32] This assertion also lacks supporting evidence. PJM presents only a simplified example in its attempt to support this claim. After providing an inconsistent example, [33] PJM erroneously claims "in this example, in-state load pays no more in total in the subsidy scenario than it paid in the non-subsidy scenario."[34] These broad declarations could be misinterpreted to mean that out-of-market payments due to a state's public policy decision may be directly paid by customers in other states. OPSI emphasizes that the out-of-market payments are made only by the citizens of the state adopting the public policy, and are not tied to PJM market operations.

Finally, PJM relies in part on the CASPR Order, but substantively, the circumstances in this case are distinguishable from those upon which the CASPR Order is based. For instance, the CASPR Order addresses New England Independent System Operator's treatment of new renewable resources in its capacity market, whereas the April 9 Filing proposes capacity market design changes aimed at existing resources in PJM subject to any state policy initiatives. Further,

[30] 151 FERC ¶ 61,208 (2015) at P 336. ("We find the Capacity Performance Resource offer cap set at Net CONE times the Balancing Ratio, as well as a standard of review of unit-specific offer caps based on the competitive offer equation presented by PJM, to be just and reasonable.").
[31] *Supra* n. 6, CASPR Order at P 21.
[32] April 9 Filing at 29. (". . . a state's subsidies to wholesale market participants impose costs on market participants and customers outside such state's purview that participate in, or depend on, the wholesale markets. In effect, the state is exporting the impact of its subsidy onto other states . . .").
[33] The simplified example used by PJM is flawed and misleading. The example assumes only one state being served so it cannot support the PJM argument that a state is exporting its subsidy to other states. If the example assumed half of the load was in the state providing the "subsidy", and the balance was in another state, the in-state load would pay $4,500 under the "Without State Intervention" example, and $5,000 under the "With State Intervention Example." Thus, a proper multi-state example demonstrates that PJM's conclusory statement, that: "in-state load pays no more in total in the subsidy scenario than it paid in the non-subsidy scenario" is incorrect.
[34] April 9 Filing at 31.

in a recent Order addressing Midcontinent Independent System Operator, Inc., FERC stated "the Commission considers the specific attributes of regions and their members when evaluating the justness and reasonableness of capacity constructs."[35]

Procedurally, the CASPR proposal was the product of extensive compromise, while PJM's proposal is not. In its April 9 Filing, PJM cites the history of its stakeholder process to suggest that stakeholders had considered its repricing proposal for two years.[36] But throughout that period, PJM failed to convince stakeholders, including those who would be most impacted by its proposals, that any problem requiring a "solution" existed. This is clearly evident in the outcome of the CCPPSTF's key work activity #3, where stakeholders determined that, at worst, state actions "may" impact the capacity construct.[37] Finally, stakeholders decisively illustrated their preference for the status quo, with 64% of voters favoring no additional action at the conclusion of the CCPPSTF process.[38] This vote occurred after substantial stakeholder involvement, and numerous PJM presentations claiming to illustrate the very same problem alleged in the April 9 Filing.

From OPSI's perspective, the CCPPSTF was flawed from its inception, as its charter severely limited the task force to only consider the capacity market; despite this, after two years PJM's stakeholders strongly preferred an outcome undesirable to PJM.[39] This process, steered by PJM throughout, but failing to persuade its stakeholders, further illustrates that PJM has not met its burden to prove either proposal in this proceeding is just and reasonable. PJM's Revised Tariff Sheets offered herein present details composed and finalized by PJM effectively discounting meaningful stakeholder input, which runs contrary to prior sentiments expressed by FERC

[35] 162 FERC ¶ 61,176 (2018) at P 79.
[36] April 9 Filing at 17.
[37] CCPPSTF Matrix. PJM. Spreadsheet titled "KWA #3." Nov. 10, 2017. https://bit.ly/2FtZp31.
[38] CCPPSTF Vote Results. PJM. Nov. 21, 2017, at 5. https://bit.ly/2Fsv58h.
[39] April 9 Filing at 17. ("After a lengthy PJM stakeholder process on this challenging issue, two alternatives emerged, but neither could gain the two-thirds affirmative sector vote needed for endorsement. Doing nothing, however, is not an option…. PJM is taking the action it has determined is needed…").

Commissioners, such as Commissioner LaFleur, for FERC to "receive market design proposals developed by other RTO/ISOs and their stakeholders."[40] OPSI appreciates that FERC Commissioner Glick has also encouraged wholesale market operators to "*work with the states"* in pursuit of resource adequacy objectives.[41] This is an important objective.

OPSI is open to further discussion and collaboration, and joins FERC Commissioner Glick in "encourag[ing] RTOs/ISOs to work with the states to pursue a resource adequacy paradigm that respects states' role in shaping the generation mix."[42] Until such time that PJM can convince stakeholders and states that a legitimate problem exists that requires action, and until PJM successfully engages state participation in determining an effective capacity construct which selects resources "that possess the attributes sought by the markets,"[43] changes of the magnitude PJM proposes in its April 9 Filing are unwarranted, not proven to be just and reasonable, and therefore, unlawful.

III. CONCLUSION

WHEREFORE, for the reasons discussed above, OPSI urges FERC to reject both proposals in PJM's April 9 Filing in their entirety.

[40] CASPR Order, LaFleur Concurrence in part, at 2.
[41] *Id.*, Glick Dissenting in part and Concurring in part, at 6 (emphasis added).
[42] *Id.*
[43] CASPR Order at P 21.

Respectfully submitted,

s/s Gregory V. Carmean

Gregory V. Carmean
Executive Director
Organization of PJM States Inc
700 Barksdale Rd. Suite 1
Newark, Delaware 19711
greg@opsi.us

Dated: May 7, 2018

CERTIFICATE OF SERVICE I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

s/s Gregory V. Carmean
Executive Director
Organization of PJM States, Inc.
700 Barksdale Road - Suite 1
Newark, DE 19711
Tel: 302-266-0914

Dated at Newark, Delaware this May 7, 2018.