**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**

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| PJM Interconnection, LLC | : | Docket No. ER16-372-000 |

**COMMENTS AND PROTEST
SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**December 11, 2015**

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 Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (Commis­sion) Rules of Practice and Procedure, 18 C.F.R. 385.211, the Public Utilities Commis­sion of Ohio (PUCO) submits the following comments and protest in response to PJM Interconnection, L.L.C.’s (PJM) November 20, 2015 proposed revisions to its Open Access Transmission Tariff (OATT) and Amended and Restated Operating Agreement (Operating Agreement). In response to the Commission’s initiating this proceeding under section 206 of the FPA, PJM proposes to allow Market Sellers to submit day-ahead offers that vary by hour and to allow Market Sellers to update their offers in real time on an hourly basis under certain circumstances. The PUCO recommends that the Commission not approve PJM’s filing. Rather, PJM should retain the current requirement of single daily offers in PJM’s market that do not vary in real time. In addition, the Commission should direct PJM to further evaluate the current need for such changes.

# BACKGROUND

## A. The Polar Vortex of January 2014 and Duke Energy Corporation (Duke)

 On the morning of January 27, 2014, PJM declared a Maximum Emergency Gen­eration Alert for its entire territory for the following day. Acting upon alerts and phone calls with PJM, Duke procured natural gas to operate units at its Lee Facility in Dixon, Illinois, in expectation that the units would run on January 28 despite the high cost of nat­ural gas. PJM did not call the units to run in real time, and despite Duke’s actions to mit­igate its losses, Duke lost $9.8 million on the gas purchases for that day. On May 15, 2014, Duke filed a formal complaint against PJM[[1]](#footnote-1) seeking to recover its losses.

## B. FERC Denies Duke’s Complaint and Orders PJM to Examine Hourly Offers

 On June 9, 2015, the Commission denied Duke’s complaint, reasoning that “Duke has failed to demonstrate that it is entitled to indemnification under section 10.3 of the PJM OATT. We also deny the requested waiver because, in the circumstances presented, granting the requested waiver would violate the filed rate doctrine and the rule against retroactive ratemaking.”[[2]](#footnote-2) At the same time, the Commission found that “PJM’s OATT and Operating Agreement may be unjust and unreasonable because the OATT and Oper­ating Agreement do not appear to allow market participants to submit day-ahead offers that vary by hour and do not appear to allow market participants to update their offers in real time, including during emergency situations.”[[3]](#footnote-3)

 The Commission instituted a proceeding in Docket No. EL15-73-000 requiring PJM “to (1) report whether it will propose tariff changes that (a) allow market partici­pants to submit day‐ahead offers that vary by hour and to update their offers in real time, including during emergency situations, and (b) make any associated modifications to its market power mitigation rules; such report must include a proposed timeline from PJM explaining how it will implement such changes by November 1, 2015, or as soon as prac­ticable thereafter; or (2) explain why such changes are not necessary.”[[4]](#footnote-4)

 PJM responded on November 20, 2015 in this docket with its proposal to institute hourly offers in the day-ahead and real-time markets.

# COMMENTS

 The Commission should not approve PJM’s recommended OATT revisions because PJM has not demonstrated a compelling reason to revise the energy market in this manner. In a Section 206 proceeding, the Federal Power Act places the burden of proof on the complainant or the Commission “to show that any rate, charge, classifica­tion, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential.”[[5]](#footnote-5) PJM’s proposal does not provide evidence that the OATT is unjust or unreasonable. Meanwhile, the Commission, State Commissions and PJM stakeholders have taken sig­nificant steps forward to resolve the issue of fuel procurement by gas-fired generators. Most significantly, PJM’s recent overhaul of its capacity market construct has enabled generators to hedge fuel costs through offers into the capacity market that reflect the cost of firm fuel and to address physical withholding of resources. The Capac­ity Performance initiative and many others, current and upcoming, may negate the need to allow for the hourly offer flexibility as proposed by PJM. Specifically, the PUCO recommends that the Commission direct PJM to retain the current construct for energy offers and to review the impact of Capacity Performance, gas/electric coordination, and energy price formation rulemaking dockets. If a review of these dockets indicates the need to further proceed with hourly offer flexibility, then PJM should provide a targeted and detailed proposal to resolve any remaining issues. Further, PJM’s incomplete and over-reaching proposal should be rejected at this time to avoid likely significant market power and market manipulation opportunities that do not exist in the current energy mar­ket.

## A. PJM’s Proposal does not Recognize Capacity Perfor­mance Reforms

 The Commission noted the important balance between the need for offer flexibil­ity and the impact of other potential solutions in the Duke Order:

As noted above, we are concerned that PJM’s OATT and Operating agreement do not provide adequate offer flexibil­ity. We balance our directive in this order with PJM’s posi­tion that given the potentially high costs and impacts on bid­ding behavior, the Commission should move carefully should it seek to impose a sweeping directive coming out of this pro­ceeding and the fact that PJM is currently working on several initiatives with its stakeholders to identify potential solutions to the problems that occurred during January 2014 in the PJM region.[[6]](#footnote-6)

 At the time that Duke experienced its unrecoverable losses in the gas market, PJM’s Capacity Performance tariff did not yet exist. As the Commission is aware, Capacity Performance provides generators with incentives to perform when required or to face penalties.[[7]](#footnote-7) As part of the incentives, PJM generators are allowed to recover fuel costs in their capacity market offers that reflect the cost of obtaining fuel, including firm fuel supply. The rationale for allowing these previously prohibited costs in capacity offers was to permit generators to have the necessary fuel available and to hedge these costs accordingly. Capacity Performance also addresses physical withholding behavior in the energy market. Capacity Performance resources that withhold due to concerns

about obtaining fuel will face significant penalties for non-performance under PJM’s Capacity Performance requirements.[[8]](#footnote-8)

 The Commission stated in the Duke Order that PJM’s OATT and Operating Agreement do not appear to allow appropriate cost recovery for fulfilling the obligations of capacity resources in all circumstances.[[9]](#footnote-9) Currently, however, with PJM’s Capacity Performance provisions this is no longer true. The Commission, State Commissions, PJM and its stakeholders expended substantial time and effort to ensure that the increases in costs to load were offset by reliability benefits received. PJM’s hourly offer flexibility proposal would allow generators to increase their hourly priced-based offers without a relationship to cost incurred and set LMP below $1,000/MWh. Those price increases would not provide a direct reliability benefit to load. Nor would this proposal solve the problem that Duke encountered when it obtained gas but was not dispatched in the real-time energy market by PJM. It is PJM’s Capacity Performance tariff that will potentially allow companies in Duke’s circumstances to hedge fuel prices when they are not dis­patched by PJM. The ability to hedge will continue to exist regardless of PJM’s proposal.

##

## B. Other Initiatives Impacting PJM’s proposal

 In addition to Capacity Performance, the Commission has other completed or upcoming initiatives to address the availability of fuel for generators. These include the recent revisions to the gas and electric days in the gas/electric coordination dockets[[10]](#footnote-10) and the sharing of confidential information between the industries.[[11]](#footnote-11) Both of these initiatives have resulted in improvements in coordination and awareness between the two industries that did not exist at the time of Duke’s complaint.

 The Commission is also engaged with parties in review of energy price formation and energy market cap offers in RTO and ISO markets through technical conferences and notice of proposed rulemakings.[[12]](#footnote-12) The Commission’s findings in its holistic review of energy price formation, including scarcity and shortage pricing issues, will necessarily impact the operation of PJM’s energy market and PJM’s current filing should not be viewed in a vacuum without the benefit of those decisions.

 Further, if the Commission approves PJM’s recent application to exceed the $1,000/MWh offer cap[[13]](#footnote-13) to include demonstrated and verifiable fuel costs in times of sys­tem emergency, generation units will have an additional opportunity to recover such costs through real-time energy prices under certain limited circumstances.

## C. PJM’s Proposal Removes Important Market Power and Market Mitigation Measures

 Since the inception of PJM’s current energy market structure, PJM has required a single, daily, cost-based offer and, if desired, a priced-based offer for every unit. This requirement provides an important mitigation measure. Because a unit is not able to change its offers hourly, it has a strong incentive to provide a competitive offer that will not vary by hour. Simple economic theory indicates that if a unit can increase its markup during times of high demand, it may take advantage of the opportunity to exercise aggre­gate market power with higher prices. As the PUCO previously stated in ER16-76-000, although generation units should be able to recover legitimate marginal costs, it is important that the cost impacts to end-use load customers be taken into account when modifying energy-market offer caps.[[14]](#footnote-14) PJM’s proposal removes the current protections for end-use load customers by allowing for varying hourly offers that may have no rela­tionship to cost. PJM’s proposal to significantly revise how units make basic offers in PJM’s energy market is not warranted and results in the removal of important market mit­igation protections for consumers.

## D. PJM’s Proposal is Incomplete

 PJM admits that it has not developed all of the business rules and specific details needed to implement its proposal and these details would be appropriately elaborated upon in PJM manuals.[[15]](#footnote-15) The PUCO is concerned about leaving important details of its proposal to be developed by PJM in operating manuals and not in its Commission-approved OATT. Without these important specifics, PJM’s proposal is incomplete and may lead to unintended consequences. For this reason alone, the Commission should not approve PJM’s current proposal.

 The PUCO urges the Commission to reject PJM’s proposal consistent with these comments. However, should the Commission believe it necessary to move forward with PJM’s current proposal for hourly offer flexibility, the Commission should direct PJM to revise its OATT to allow for fixed-markup changes in hourly offers based solely on the cost of fuel, consistent with the recommendations of PJM’s Independent Market Monitor. The revised proposal should include a complete tariff with all of the details necessary to implement PJM’s hourly offer flexibility.

# CONCLUSION

 The PUCO recommends that the Commission reject PJM’s current proposal and direct PJM to retain the current structure of its energy market for offers below $1,000/MWh. The Commission should require PJM to review the impact of Capacity Performance, gas/electric coordination initiatives and the energy price formation rule­making dockets that are currently underway at FERC. If PJM and its stakeholders deter­mine that remaining issues exist after this review, PJM should address only those issues in a new and complete tariff proposal. Finally if the Commission believes it necessary to move forward with hourly offer flexibility, PJM should be directed to revise its tariff con­sistent with the recommendation of PJM’s Market Monitor to only allow for fuel cost changes to hourly offers.

 The PUCO looks forward to providing comments on these matters as the Commis­sion continues its review of price formation in energy markets.

Respectfully submitted,

*/s/ Thomas W. McNamee*

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# 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/ Thomas W. McNamee*

**Thomas W. McNamee**

Dated at Columbus, Ohio this December 11, 2015.

1. *Duke Energy Corporation, Duke Energy Commercial Asset Management, Inc., and Duke Energy Lee II, LLC v. PJM Interconnection, LLC, and PJM Settlement, Inc*., FERC Docket No. EL14-45-000 (Duke Complaint). [↑](#footnote-ref-1)
2. *See* FERC Docket Nos. EL14-45-000 and EL15-73-000 (Duke Order) at 27, ¶ 57. [↑](#footnote-ref-2)
3. FERC Docket Nos. EL14-45-000 and EL15-73-000 (Duke Order) at 37, ¶ 73. [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. 16 U.S. Code 824e(b) [↑](#footnote-ref-5)
6. FERC Docket Nos. EL14-45-000 and EL15-73-000 (Duke Order) at ¶ 72. [↑](#footnote-ref-6)
7. FERC Docket No. ER15-623 (Order on Proposed Tariff Revisions at ¶¶ 6-7) (Jun. 9, 2015). [↑](#footnote-ref-7)
8. FERC Docket No. ER15-623 (Order on Proposed Tariff Revisions at ¶¶ 493-497) (Jun. 9, 2015) (“A core principle of such design is that a capacity resource is held accountable for its actual performance during these critical times and is not excused for its non-performance even when factors giving rise to that non-performance are beyond the resource’s control.”) [↑](#footnote-ref-8)
9. *See* Duke Order at ¶ 73. [↑](#footnote-ref-9)
10. FERC Docket No. RM14-2 (Order No. 587-W, 153 FERC 61,061) (Oct. 16, 2015). [↑](#footnote-ref-10)
11. FERC Docket No. RM 13-7-000 (Order 787, FERC 61, 228) (Nov. 15, 2013). [↑](#footnote-ref-11)
12. FERC Docket No. RM15-24 (Notice of Proposed Rulemaking, 152 FERC 61,218) (Sep. 17, 2015). [↑](#footnote-ref-12)
13. *PJM Interconnection, LLC*, FERC Docket No. ER16-76-000 (Filing to Increase Energy Offer Cap) (Oct. 14, 2015). [↑](#footnote-ref-13)
14. FERC Docket No. ER16-76 (Public Utilities Commission of Ohio Comments to FERC at 3) (Nov. 4, 2015). [↑](#footnote-ref-14)
15. *PJM Interconnection LLC*, FERC Docket No. ER16-372-000 (Transmittal Letter at 10, fn 22). [↑](#footnote-ref-15)