

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

PJM Interconnection, L.L.C.

: Docket No. ER15-852-000

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**COMMENTS AND LIMITED PROTEST  
SUBMITTED ON BEHALF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**February 13, 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 limited protest in response to PJM Interconnection, L.L.C.'s (PJM)'s proposed revisions to its Open Access Transmission Tariff (Tariff). The PUCO intervened in this matter on February 3, 2015.

**I. INTRODUCTION**

PJM seeks Commission approval of a stop-gap mechanism to allow demand response to participate in the May 2015 Base Residual Auction (BRA) in the event the United States Supreme Court (Court) denies petitions for *certiorari* of *Electric Power Sup-*

*ply Ass’n v. FERC* (EPSA).<sup>1</sup> The PUCO urges the Commission to hold PJM’s stop-gap proposal in abeyance until the Court takes affirmative action by either denying petitions for *certiorari* or issuing an order on the merits of the EPSA proceeding.

PJM’s filing amounts to a substantial tariff revision that has not been examined through any meaningful stakeholder process and is based on speculative outcomes of two pending proceedings. The PUCO maintains that demand response has a role in PJM’s markets, and does not necessarily oppose PJM’s stop-gap approach in the event petitions for *certiorari* are denied. However, PJM’s proposed tariff revision is not ripe for review.

Even if the Commission were to adopt PJM’s stop-gap proposal, PJM’s perceived market certainty for the May 2015 BRA is not achievable. PJM does not contemplate the time and effort restructured states will need to incorporate demand-side commitments into state laws and policies. Consequently, PJM’s stop-gap proposal cannot possibly guarantee just and reasonable capacity prices for the 2018/2019 Delivery Year. The PUCO requests that the Commission hold PJM’s proposal in abeyance.

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<sup>1</sup> See 753 F.3d 216 (D.C. Cir. 2014). In this proceeding, the United States Court of Appeals for the District of Columbia (Court of Appeals) vacated FERC Order 745, holding that the Commission lacked the statutory authority to establish a compensation mechanism for demand response. The Court of Appeals determined that demand response is solely a retail matter subject exclusively to state jurisdiction. The United States Solicitor General, on behalf of the Commission, filed a petition for a writ of *certiorari* at the United States Supreme Court on January 15, 2015.

## II. BACKGROUND

PJM suggests that, in the event the Court denies review of EPSA prior to April 1, 2015, a stop-gap mechanism should be established to allow wholesale entities to reduce their wholesale loads in PJM's Reliability Pricing Model (RPM).<sup>2</sup> PJM proposes to shift what are presently known as demand response resources from the supply side of RPM to the demand side.<sup>3</sup> The new scheme, called Wholesale Load Reduction (WLR), would allow for load serving entities (LSEs) to provide load reductions that would reduce their RPM capacity obligations.<sup>4</sup> A reduction in capacity obligations would shift PJM's Variable Resource Requirement curve to the left, lowering capacity costs that a wholesale entity owes to PJM.<sup>5</sup>

PJM proposes two alternate sets of tariff revisions in order to account for the pending Capacity Performance proceeding.<sup>6</sup> PJM requests that "Option A" be effective in the event that the Commission has already approved Capacity Performance before the Court has denied *certiorari* or affirms the Court of Appeals Order. PJM's Option A would create a base capacity WLR mechanism and a Capacity Performance WLR mechanism.<sup>7</sup>

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<sup>2</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-852 (PJM Transmittal Letter at 3-6) (Jan. 14, 2015) (Transmittal Letter).

<sup>3</sup> Transmittal Letter at 7-9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 9-11.

<sup>6</sup> *Id.* at 12-13.

<sup>7</sup> *Id.* at 15-16.

In the event that the Commission has not yet acted on PJM’s Capacity Performance proposal or rejects Capacity Performance, PJM suggests that the Commission adopt “Option B” tariff revisions. Under Option B, PJM would utilize a Limited WLR, Extended Summer WLR, and Annual WLR mechanism in its RPM construct.<sup>8</sup>

If the Court does not take action prior to April 1, 2015, PJM requests that the Commission accept, and subsequently suspend, this matter for five days. PJM explains that a five-day suspension would allow for PJM to formalize a request to suspend the approved tariff revision until the Court takes action in EPSA. PJM would maintain status quo; demand response would continue to participate on the supply side of RPM for the May 2015 BRA.<sup>9</sup>

If the Court grants *certiorari* prior to April 1, 2015, PJM indicates that it will maintain status quo and keep demand response resources on the supply side of RPM for the May 2015 BRA.<sup>10</sup>

### **III. COMMENTS AND LIMITED PROTEST**

PJM’s proposal seeks to force the Commission into acting on a significant tariff modification prior to receiving guidance from the Court. PJM’s proposal does not contemplate whether other options could be available in the event *certiorari* is ultimately denied.

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<sup>8</sup> Transmittal Letter at 15.

<sup>9</sup> *Id.* at 11-12.

<sup>10</sup> *Id.*

Further, even if PJM's proposal was not premature, it fails to consider actions that its member states, particularly restructured electricity states, would need to take in order for its stop-gap mechanism to achieve the intended purpose of allowing demand response resources to participate in the May 2015 BRA.

**A. Demand response has a role in PJM's markets.**

The PUCO has been supportive of PJM's recent RPM reforms that have placed availability requirements on demand response resources in order to support reliability initiatives.<sup>11</sup> Compensating demand resources in a manner that reflects its value and role in ensuring PJM's reliability is important. Accordingly, the PUCO believes that demand response should continue to have a role in PJM's markets.

Allowing demand response to be procured and dispatched at a regional level benefits Ohio. Regional dispatch is an efficient means by which PJM can manage its load and respond to emergencies. While the PUCO believes that demand response resources play a valuable role in PJM's markets, it does not necessarily oppose PJM's proposal to create a WLR mechanism in the event there are jurisdictional changes. However, it is not appropriate to consider any changes to RPM until there is guidance from the Court.

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<sup>11</sup> *PJM Interconnection, L.L.C.*, Docket No. ER14-822 (Public Utilities Commission of Ohio Comments) (Jan. 14, 2014); *PJM Interconnection, L.L.C.*, Docket No. ER14-504 (Public Utilities Commission of Ohio Comments) (Dec. 20, 2014).

**B. PJM’s proposal amounts to a substantial tariff revision based on speculative outcomes of two pending proceedings.**

The proposed stop-gap mechanism implicitly pressures the Commission into handing off all discretion on the treatment of demand response resources to PJM. First, the stop-gap mechanism seeks to implement a tariff based on how the Court *may* treat petitions for *certiorari*. It is currently unknown, and may not be known for a period of time, how the Court will respond to petitions for *certiorari*. Nonetheless, PJM wrongfully believes that a preemptive tariff approval will ensure a just and reasonable BRA in May 2015.

Second, PJM outlines two proposed tariff revisions, Option A and Option B. Notwithstanding the fact that the Commission would not know which tariff it was ultimately approving under PJM’s proposal, PJM actually *creates* the possibility of additional market uncertainty. If the Commission has not issued an order on Capacity Performance by April 1, 2015, PJM’s proposal would default to Option B, creating three different types of WLR. However, if the Commission were to approve Capacity Performance after April 1, 2015, but prior to the May 2015 BRA, Option A would become effective concurrently with Capacity Performance. This would change the three types of WLR to two types of WLR: Base WLR and Capacity Performance WLR. Because PJM proposes to assign a “WLR Value” to different WLR products, this automatic shift from one tariff to another will cause market uncertainty.<sup>12</sup>

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Transmittal Letter at 18-19.



It is unreasonable for PJM to request approval of such a transformative tariff revision that has not been vetted by States or stakeholders, particularly when it depends on unknown outcomes of two separate proceedings.<sup>13</sup> Accordingly, the Commission should hold PJM's request in abeyance until the Court takes affirmative action by either denying *certiorari* or issuing an order on the merits of the EPSA proceeding.

**C. Even if the Court denies EPSA review, PJM fails to contemplate that restructured states need time to respond to jurisdictional changes.**

Despite its good intentions to implement a wholesale load reduction alternative in the event the Court decides not consider EPSA, PJM's proposal fails to recognize that restructured electric states may not have programs or incentives in place that could support WLR. In a recent presentation to the Organization of PJM States (OPSI), PJM laid out a "continuum of opportunities" for deregulated retail electricity jurisdictions to consider in the event *certiorari* is denied.<sup>14</sup> Specifically, PJM's pointed out that several options are available, including:

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<sup>13</sup> The PJM Utilities Coalition points out stakeholders were never provided a meaningful opportunity to provide feedback or shape any demand response proposal. See *PJM Interconnection, L.L.C.*, Docket No. ER15-623-000 (PJM Utilities Coalition Motion for an Extension of Time) (Jan. 26, 2015).

<sup>14</sup> Wholesale Market DR & EE Opportunities in the Wake of the EPSA Decision, OPSI DR subcommittee, Jan. 12, 2015.

- LSEs work out their own commercial arrangements;
- States modify standard service offer agreements to allow auction winners to accept and pay electric distribution utilities for demand response and energy efficiency;
- States develop standard contract terms to facilitate commercial agreements;
- States develop and approve any necessary retail market rules to facilitate commercial arrangements;
- States mandate that retail LSEs accept and procure demand response and energy efficiency products through retail curtailment service providers.

With the exception of allowing LSEs to establish their own commercial arrangements, every option PJM provides in its “continuum of opportunities” requires changes to state laws or regulatory policies that cannot be contemplated in time for the May 2015 BRA. While it is certainly ambitious for PJM to believe that its stop-gap mechanism will protect consumers from over-procurement and higher prices, such an outcome is not possible under these significant time constraints.

The Commission does not need to rush to judgment and should hold PJM’s proposal in abeyance. Additional time will allow for the Commission, states, and stakeholders to refine the proposed WLR mechanism and contemplate alternatives to promote just and reasonable BRA results in the event the Court denies *certiorari* or affirms the Court of Appeals order. Further, maintaining status quo until the Court acts will promote market certainty to facilitate just and reasonable prices in the May 2015 BRA.

#### IV. CONCLUSION

The PUCO respectfully requests that the Commission hold PJM's stop-gap proposal in abeyance until the Court takes affirmative action by either denying *certiorari* or issuing an order on the merits of the EPSA proceeding. The Commission should not be forced to approve a tariff without knowing the outcome of the Court's review of EPSA or before an order on PJM's proposed Capacity Performance mechanism is issued. Contrary to PJM's assertion that time is of the essence, PJM fails to consider that restructured electricity states cannot wave a magic wand and have programs in place prior to the May 2015 BRA that will fully incorporate WLR. Demand response plays an essential role in PJM, and it is important for states and stakeholders to have the opportunity to fully contemplate the best means to address matters of technical precision and national importance.

Respectfully submitted,

*/s/ Jonathan J. Tauber*

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**Attorney for the Public Utilities  
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## **V. 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 February 13, 2015.

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Summary: Comments and Limited Protest submitted on February 13, 2015 by Assistant Attorney General Thomas McNamee to the Federal Energy Regulatory Commission to be filed in FERC Docket No. ER15-852-000, In re PJM Interconnection, LLC. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio