

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

PJM Interconnection, L.L.C.)	Docket Nos. EL18-178-000
)	
PJM Interconnection, L.L.C.)	ER18-1314-000
)	ER18-1314-001
Calpine Corporation, et al,)	
Complainants,)	EL16-49-000
v.)	
PJM Interconnection, L.L.C.,)	(Consolidated)
Respondent.)	

**ARGUMENT
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Pursuant to the Federal Energy Regulatory Commission’s (Commission) Rules of Practice and Procedure, 18 C.F.R. § 385.206, the Public Utilities Commission of Ohio (PUCO) submits the following argument in response to the Commission’s June 29, 2018 Order rejecting PJM’s proposed tariff revisions and instituting a new proceeding pursuant to Section 206 of the Federal Power Act (FPA). The Commission proposes to address the impact of supply-side state subsidies on just and reasonable Reliability Pricing Model (RPM) prices by adoption of a bifurcated capacity construct, including both the expanded Minimum Offer Price Rule (MOPR) and the Fixed Resource Requirement (FRR)

Alternative option. The Commission invited interested parties to submit their initial round of testimony, evidence, and/or argument by August 28, 2018; however, on August 22, 2018, the Commission ruled on a Motion for Extension of Time filed by the Organization of PJM States, Inc. (OPSI). The Commission granted parties additional time to file initial testimony, evidence, and/or argument on October 2, 2018; and reply testimony, evidence, and/or argument on November 6, 2018.

The PUCO respectfully submits the following argument generally in support of the Commission's bifurcated capacity construct while recommending additional clarification of certain implementation aspects of the Commission's proposal.

I. EXECUTIVE SUMMARY

- The PUCO supports the Commission's pro-markets Order; we agree with the Commission's finding that it has exclusive jurisdiction to ensure that wholesale electric rates are just and reasonable.
- The PUCO discusses several implementation issues with the proposed resource-specific FRR Alternative including state approval, administrative burden in identifying/maintaining a resource's corresponding load in Ohio - a retail choice state.
- Thus, the PUCO prefers the proposed expanded MOPR because it preserves the integrity of Ohio's retail electric market and provides certainty to market participants.

II. BACKGROUND

On June 29, 2018, the Commission issued an Order rejecting PJM's proposed tariff revisions that were intended to address the effects of state public policy initiatives on the capacity market. The Commission noted with concern that state programs providing out-of-market payments are growing, and that they are leading to price suppression in the RPM. "With each such subsidy, the market becomes less grounded in fundamental principles of supply and demand," the Commission wrote.¹ PJM had proposed that the Commission choose between a broadening of PJM's existing MOPR and Capacity Repricing, a two-tier capacity market auction to mitigate the effects of out-of-market payments on capacity clearing prices. The Commission found that PJM's current tariff is unjust and unreasonable and that both options offered in PJM's filing also are unjust and unreasonable. While the PUCO provides constructive recommendations to the Commission's approach to revise PJM's tariff herein, the PUCO also avers to the Commission, consistent with the PUCO's Comments and Protest and OPSI's Request for Rehearing in ER18-1314, that there has been a failure to demonstrate that the current PJM market construct is unjust and unreasonable.

The Commission initiated an FPA section 206 proceeding in this docket, and called for a paper hearing to arrive at a just and reasonable rate mechanism to replace the rate in PJM's tariff. The Commission suggested that PJM modify the MOPR to apply to new and

¹ *Calpine Corporation, et al. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236, at P 2 (Order).

existing resources that receive subsidies or to allow resources receiving out-of-market support to remove themselves from the capacity market – along with a commensurate amount of load – in a concept called the FRR Alternative. Similar to PJM’s current FRR construct, the resource-specific FRR Alternative would enable subsidized units to participate in the energy and ancillary services markets.

Also at issue in the paper hearing are: the scope of out-of-market support to be mitigated by an expanded MOPR, eligibility for a resource-specific FRR Alternative, how to identify the load to be removed from the PJM capacity market as the offset for resource-specific FRR Alternative megawatts, whether public power entities or others should be exempt from the MOPR, the duration that a resource which takes the FRR Alternative is to remain outside the capacity market, how to account for reserves for the load removed from the capacity market under the FRR Alternative, adjustment of the demand curve for the load removed under the FRR Alternative, and whether Capacity Performance requirements can be applied to units opting for the FRR Alternative. The Commission also seeks comment on related matters, including whether federal sources of out-of-market support also should be subject to the proposed changes as well as the anticipated effects of an expanded MOPR and FRR Alternative on the capacity market.

III. ARGUMENT

A. The Commission’s Order Supports Competition

The PUCO agrees with the premise of the Commission’s Order that competition in PJM’s capacity market is essential to maintaining just and reasonable rates to the benefit

of consumers, including those in Ohio. To the extent that out-of-market support is increasing in PJM's capacity market, non-competitive offers will become even more problematic because, as the Commission notes, "there is an important difference between a resource that offers low as a result of competition in the market and one that offers low because a state subsidy gives it the luxury of doing so."² The PUCO agrees that out-of-market subsidies create a price suppression effect in the market that discourages the entry of non-subsidized and efficient new generation resources, impacts the financial certainty of existing efficient generation resources, and delays the retirement of inefficient and otherwise uneconomic generation resources.

We believe that a competitive wholesale market is a necessary pre-requisite to a competitive retail market in retail choice states like Ohio. As of March 31, 2018, over 56% of the customers of Ohio's investor owned utilities were shopping for generation service, which together accounted for over 80% of electricity sales.³ For those Ohio customers who choose not to shop, default service rates are competitively procured through a series of declining clock auctions. In addition, major new generating facilities that have recently come online or are under development in Ohio are largely being financed and constructed by independent power producers (IPPs). These market participants base their decisions, at least in part, on the investment incentives provided by PJM's capacity market construct.

² *Order* at P 153.

³ See *Electric Customer Choice Switch Rates and Aggregation Activity* (June 29, 2018), available at <https://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates-and-aggregation-activity/>.

Each of the elements of Ohio's electricity generation industry described above rely on successfully operating competitive wholesale markets administered by PJM in order to function effectively.

We agree with the Commission's finding that it has exclusive jurisdiction over *wholesale* rates of both subsidized and unsubsidized resources, and a statutory obligation to ensure that such rates are just and reasonable.⁴ Accordingly, it is appropriate for the Commission to continue to preserve the integrity of the wholesale market by limiting the price distortions of out-of-market subsidies.

B. Replacement Rate Proposal

The PUCO agrees with the Commission's finding that due to the increasing levels of state-subsidized generation it can no longer rely on the current construct to "harness competitive market forces" to produce just and reasonable rates.⁵ To address the out-of-market subsidies in PJM's capacity market, the Commission preliminarily found that modifying two aspects of PJM's tariff may produce just and reasonable rates. First, the Commission stated that the replacement rate should apply the expanded MOPR to all new and existing state subsidized resources with few to no exceptions. Second, in addition to the expanded MOPR, the Commission proposed to implement the resource-specific FRR Alternative option. The PUCO prefers the expanded MOPR to the FRR Alternative.

⁴ *Order* at P 158.

⁵ *Id.* at P 156.

However, if the Commission wishes to proceed with a bifurcated capacity construct, we provide several implementation issues for the Commission's consideration.

1. Resource-specific FRR Alternative

Initially, the PUCO raises an issue for clarification regarding the resource-specific FRR Alternative. The Commission proposed “that PJM adapt its current FRR option to allow, on a resource specific basis, *resources* receiving out-of-market support *to choose* to be removed from the PJM capacity market, along with a commensurate amount of load, for some period of time.”⁶ However, in order for the resource's associated load or demand to be removed from PJM's capacity market, it is necessary for the state that approved the subsidy to determine the amount and location of the corresponding load. The PUCO believes that this is not a decision that can be made unilaterally by the owner of the resource due to the far-reaching impacts that such a decision will have on the retail electricity markets in our state. It is the PUCO's understanding that state approval is necessary under PJM's current FRR construct and, therefore, the PUCO recommends that the Commission's proposal be clarified accordingly to allow for state approval of FRR Alternative elections.

Next, we urge the Commission to consider the heavy administrative burden that will be required to match a resource with demand in Ohio, a retail choice state, under a resource-specific FRR Alternative. Retail electric consumers in Ohio are not static; they can

⁶ *Id.* at P 160 (emphasis added).

continually shop for their electricity service from different Load Serving Entities (LSEs) or choose not to shop and be served by their Electric Distribution Utility (EDU). Generation resources are no longer primarily affiliated with the EDUs. In fact, more than 60 percent of generation resources located in Ohio are owned by entities who are not affiliated with any Ohio investor-owned EDUs.⁷

While the PUCO has no retail rate jurisdiction over IPPs, the PUCO has retail rate jurisdiction for our EDUs' Standard Service Offer (SSO) applicable to non-shopping customer load (default service). However, as previously noted, the EDUs' SSO load does not represent the entirety of load and it, too, is subject to a migration risk as customers shop with competitive suppliers or governmental electric aggregations. What is more, those SSO customers may be further incited to shop when faced with a bypassable surcharge to support an FRR Alternative unit, leaving fewer customers to subsidize that resource.

The PUCO expects that the number of shopping customers will continue to grow in Ohio. We are concerned that there will not be a sufficient quantity of non-shopping load in Ohio, at any point in the future, to pair with an FRR Alternative designated unit. In order to effectively implement the FRR Alternative, the PUCO would have to limit shopping in our state. This limitation would undo much of the success of retail competition in Ohio. If the Commission proceeds with the FRR Alternative option, the PUCO urges the

⁷ ABB Velocity Suite

Commission to recognize the administrative difficulty of implementing this option in Ohio, a retail choice state.

2. *Expanded MOPR*

As stated previously, the PUCO has a unique and profound interest in the integrity of competitive wholesale electricity markets. Thus, we aver that the Commission's proposed enhanced MOPR with few to no exemptions will preserve Ohio's fully developed and functioning retail electric market. The PUCO believes that instead of parsing out participants as PJM's MOPR currently operates, the proposed expanded MOPR ensures that all participants in a centralized capacity market are subject to the same rules in order for that market to function appropriately. We strongly concur with the Commission that "[e]xpanding the MOPR to apply to state-subsidized resources will help ensure that rates for the unsubsidized resources in the capacity market are the result of competitive forces, and therefore are just and reasonable."⁸

The PUCO agrees with the Commission that the enhanced MOPR balances the interests of states with subsidized units with states in the PJM region that currently do not subsidize generation.⁹ The enhanced MOPR will appropriately constrain the cost of the public policy decision to the state that mandated the subsidy. This methodology is

⁸ *Order* at P 158.

⁹ See PUCO's Comments in FERC Docket ER13-535-000 supporting PJM's proposal to strengthen the MOPR criteria applied to those generation facilities receiving out-of-market payments, December 28, 2012.

consistent with the State Agreement Approach for PJM's public policy transmission projects.¹⁰

The PUCO supports the proposed expanded MOPR because it provides a flexible, rule-based approach to prevent price suppression to artificial levels, ensuring that market participants have full flexibility to react to market conditions while achieving a level of certainty for market investment. Finally, the PUCO believes that PJM's MOPR is well understood and administratively efficient.

It is for these reasons that the PUCO expresses its support for the Commission's proposed enhanced MOPR construct.

IV. CONCLUSION

The PUCO thanks the Commission for the opportunity to provide input to its proposed bifurcated capacity market solutions to remedy the effects of out-of-market support on PJM's capacity market. The PUCO believes a strong competitive wholesale market preserves the integrity of Ohio's retail electric market for both suppliers and consumers. To that end, we have provided input regarding implementation issues in Ohio with the FRR Alternative and support for the proposed enhanced MOPR. We look forward to continued input on the Commission's proposals throughout the paper hearing process.

¹⁰ See PJM Operating Agreement, Schedule 6, Section 1.5.9.

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 October 2, 2018.

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Summary: Comments submitted on behalf of the Public Utilities Commission of Ohio.
electronically filed by Ms. Tonnetta Scott on behalf of PUC