

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

Calpine Corporation, Dynegy Inc., Eastern	)	Docket No. EL16-49-000
Generation, LLC, Homer City Generation,	)	
L.P., NRG Power Marketing LLC, GenOn	)	
Energy Management, LLC, Carroll County	)	
Energy LLC, C.P. Crane LLC, Essential	)	
Power, LLC, Essential Power OPP, LLC,	)	
Essential Power Rock Springs, LLC,	)	
Lakewood Cogeneration, L.P., GDF SUEZ	)	
Energy Marketing NA, Inc., Oregon Clean	)	
Energy, LLC and Panda Power Generation	)	
Infrastructure Fund, LLC	)	

v.

PJM Interconnection, L.L.C.	)	
	)	
PJM Interconnection, L.L.C.	)	Docket No. ER18-1314-003
	)	
PJM Interconnection, L.L.C.	)	Docket No. EL18-178
	)	(Consolidated)

---

**COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO**

---

**I. INTRODUCTION**

Pursuant to Section 18 C.F.R 385.212 of the Federal Power Act (FPA) and Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or the Commission), the Public Utilities Commission of Ohio (PUCO) respectfully requests consideration of the following comments in response to

several elements of PJM Interconnection LLC's (PJM) compliance filing submitted March 18, 2020. These comments are filed in conformance with the Notice of Extension of Time issued by FERC on March 31, 2020, establishing May 15, 2020, as the deadline for interventions, comments, and protests. The PUCO filed a notice of intervention in Docket No. ER18-1314 on April 18, 2018, and is, therefore, a party to this proceeding.

## **II. BACKGROUND AND SCOPE OF COMMENTS**

On June 29, 2018, the Commission found, without evidence, that PJM's tariff was unjust and unreasonable because it allowed generators that receive state subsidies to compete with those that did not receive such assistance. The Commission noted an increasing number of generators were participating in PJM's capacity market with subsidies or out-of-market payments for programs including zero-emission credits and Renewable Portfolio Standards (RPS), theoretically suppressing prices in the market and theoretically harming generators without subsidies. The Commission suggested expanding the minimum offer price rule (MOPR), which applied only to new, natural gas-fired resources, to include all resources receiving state subsidies. The Commission, however, decided it could not determine a just and reasonable replacement rate and, therefore, initiated a paper hearing under section 206 of the Federal Power Act.

On December 19, 2019, the Commission ordered PJM, again without evidence of harm, to submit a replacement rate that extends the MOPR to new and existing resources that receive, or are entitled to receive, certain out-of-market payments, with some exemptions – existing self-supply resources, existing demand response, energy efficiency

and storage resources and existing renewable energy resources participating in RPS programs, and a competitive exemption for new and existing resources that don't receive state subsidies. The Commission also directed PJM to expand its Unit-Specific Exemption to encompass all new and existing state-subsidized resources, to enable offers lower than the default offer floor under the oversight of the Market Monitor.<sup>1</sup> The Commission defined "state subsidy,"<sup>2</sup> but qualified it by saying it "is not intended to cover every form of state financial assistance,"<sup>3</sup> and excluded industrial development and siting support from its definition. The Commission also declined to expand the MOPR to capacity offers supported by federal subsidies, which the Commission stated it cannot nullify due to their creation by Congress under federal law.

Several parties, including the PUCO, filed for rehearing of the Commission's December 19, 2019 Order.<sup>4</sup> The PUCO made the following arguments, among several others, that the December 19, 2019 Order is unjust, unreasonable, and unlawful because it:

- Violates the statutory limitation on federal regulation by attempting to regulate the generation choices of some states;
- Does not provide evidence of a problem presented by state supported resources and will likely result in higher wholesale

---

<sup>1</sup> FERC uses the term "Unit-Specific Exemption" in its December 19 Order, whereas PJM uses the term "resource-specific" for clarity reasons explained in note 7 of PJM's March 18 compliance filing. In these comments, PUCO employs both terms as appropriate in the context of the PUCO's discussion.

<sup>2</sup> December 19 Order at P 67

<sup>3</sup> December 19 Order at P 68

<sup>4</sup> PUCO Application for Rehearing in the above-captioned dockets, filed January 21, 2020.

capacity costs;

- Exempts some state subsidized resources and all federally subsidized resources and is, therefore, discriminatory;
- Is ambiguous and presents factual errors regarding Ohio's House Bill 6 for both zero-emitting and Ohio Valley Electric Corporation (OVEC) units;<sup>5</sup> and is inconsistent with the U.S. Department of Energy's efforts to support nuclear facilities;
- Focuses only on certain state supported resources in the capacity market without regard to the other segments of PJM's markets, resulting in a more complex and less efficient construct.

PJM responded, as required, on March 18, 2020 by filing proposed tariff changes to implement the expanded MOPR in its capacity market, known as the Reliability Pricing Model (RPM). PJM detailed its interpretation of what does and does *not* constitute state subsidies; proposed compliance with the Commission order with tariff language to establish MOPR floor offer prices based on the Net Cost of New Entry (Net CONE) for new capacity resources; proposed compliance for cleared capacity resources with state subsidies to be held to MOPR floor offer prices based on the resource's Avoidable Cost Rate (ACR); and proposed compliance for new and existing resources to use the Unit-Specific Exemption process to offer at their actual costs.

---

<sup>5</sup> FERC's Order on Rehearing and Clarification exempted OVEC units from the application of MOPR, April 16, 2020, 171 FERC ¶ 61,035 at 102.

Finally, PJM proposed awaiting final Commission action before implementing the expanded MOPR in its next Base Residual Auction (BRA) and proposed a BRA schedule for the 2022-2023 Delivery Year and the following three years.

On April 16, 2020, the Commission reaffirmed its June 2018 order, denying rehearing and granting limited requests for clarification. Also, that day, the Commission denied in part and granted in part requests for rehearing and clarification of its December 19, 2019 order and directed PJM to submit another compliance filing with 45 days or June 1, 2020.

### **III. COMMENTS**

The PUCO incorporates by reference, herein, all of its rehearing arguments set forth in its January 21, 2020 application for rehearing as previously referenced. The PUCO's rehearing arguments and recommendations pertain to many of PJM's proposed tariff provisions in its March 18, 2020 compliance filing. The PUCO objects to PJM's March 18, 2020 compliance filing to the extent it is a furtherance of an unjust, unreasonable, and unlawful Commission order and, therefore, suffers from the same defects as we identified in our application for rehearing. Again, many of these same tariff provisions will be impacted by PJM's next required compliance filing, and the PUCO will provide comments at that time with the benefit of review of both compliance filings. Without waiving any lawful challenges or requests for clarification or rehearing to any Commission order in any of the associated dockets, the PUCO reserves its right to continue to challenge FERC's MOPR on legal, policy, and jurisdictional grounds.

Furthermore, the PUCO understands that FERC's actions on April 16, 2020 impact PJM's future compliance filing due on June 1, 2020, and, therefore, the PUCO is not in the position to provide detailed comments, at this time, on PJM's March 18, 2020 compliance filing without the benefit of PJM's second compliance filing that will necessarily revise the first. The PUCO notes the difficulty, unnecessary redundancy and potential unintended consequences that will result if the PUCO or other parties are required to provide comments on PJM's March 18, 2020 compliance filing without the full benefit of review of both filings.

As a final matter, the PUCO notes FERC's partial grant of the PUCO's Request for Additional Time (Request) to file comments in these dockets until May 15, 2020 on PJM's March 18, 2020 compliance filing. The PUCO appreciates FERC's recognition of the COVID-19 national emergency that prompted the PUCO's Request. At that time, the PUCO did not anticipate that FERC would deny rehearing while granting limited clarification and require a second compliance filing from PJM.

#### **IV. CONCLUSION**

While the PUCO continues to maintain that there is no demonstrated need for the expansion of the MOPR as ordered by FERC on December 19, 2019 and maintains its continuing objection to the application of the MOPR, the PUCO respectfully declines to provide comment on PJM's first compliance filing at this time without the benefit of reviewing PJM's second required compliance filing that must be taken up together to understand the full effect of the Commission Orders and PJM's implementation of the

same. The PUCO reserves its right to comment separately on PJM's subsequent compliance filing to be made in conformity with FERC's April 16, 2020 Order on Rehearing and reserves its right to make legal challenges and requests for rehearing and clarification in associated dockets.

Respectfully submitted,

**Dave Yost**  
Ohio Attorney General

**John H. Jones**  
Section Chief

*/s/ Thomas W. McNamee* \_\_\_\_\_

**Thomas W. McNamee**  
Assistant Attorney General  
Public Utilities Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-3414  
614.466.4395 (telephone)  
614.644.8764 (fax)  
thomas.mcnamee@ohioattorneygeneral.gov  
john.jones@ohioattorneygeneral.gov

## **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**

Assistant Attorney General

Dated at Columbus, Ohio, this May 15, 2020.



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/15/2020 9:49:00 AM**

**in**

**Case No(s). 93-7000-EL-FAD**

Summary: Comments of The Public Utilities Commission of Ohio electronically filed by Mrs. Kimberly M Naeder on behalf of PUCO