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

PJM Interconnection, L.L.C.	)))	Docket No. ER20-1764-000

**MOTION FOR LEAVE TO FILE COMMENTS OUT OF TIME AND
COMMENTS AND PROTEST SUBMITTED
ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO'S
OFFICE OF THE FEDERAL ENERGY ADVOCATE**

Pursuant to Rules 211 and 212 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure, the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate (Ohio FEA) submits the following motion to file comments out of time, comments and protest in response to the filing of PJM Interconnection, L.L.C. ("PJM") proposing revisions to its Amended and Restated Operating Agreement ("Operating Agreement"). This filing was submitted on May 4, 2020, for the purpose of enhancing the Fuel Cost Policies rules.

The Ohio FEA, on behalf of Ohio's retail electric service consumers,[1] provides comments and protest of PJM's proposed revisions to the extent, as described more fully below, that the revisions, and in particular the proposed "limited" force majeure exemption, should be modified to ensure just and reasonable rates.

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[1] The Ohio FEA advocates on behalf of the interests Ohio retail electric customers pursuant to O.R.C. 4928.24.

I. Motion for Leave to File Comments Out of Time

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, the Ohio FEA respectfully moves to file comments out of time. The Ohio FEA timely filed a Notice of Intervention on May 20, 2020; however, it did not file comments by the May 26, 2020, comment filing deadline. The Ohio FEA believes that the outcome of this proceeding could impact Ohio customers. Also, the Ohio FEA wishes to address concerns raised in the protest of the Independent Market Monitor for PJM ("IMM"), which was filed on the comment filing deadline. Additionally, the Ohio FEA accepts the record to date and believes that granting the motion at this juncture would not disrupt the proceedings or prejudice any party. In its filing, PJM asked for an order from the Commission by July 6, 2020, thus consideration of the Ohio FEA comments should not unduly delay the proceeding. For the foregoing reasons, the Ohio FEA believes that its comments will help the Commission in its deliberations and that good cause exists to grant its motion.[2]

II. Summary

The Ohio FEA strongly supports rules that will foster just and reasonable rates for consumers. The Ohio FEA shares concerns with the IMM that PJM's proposed revisions to its force majeure provision may be too broad to properly support such just and reasonable rates. Such a broad force majeure exemption would undermine the effectiveness of the Fuel Cost Policy when it is needed most. Therefore, the Ohio FEA respectfully submits this

[2] See *Trans Alaska Pipeline System, et al*., 104 FERC ¶ 61,201 (2003) and *Natural Gas Pipeline Company of America*, 66 FERC ¶ 61,310 (1994) (motion for leave to file comments out of time granted for good cause shown).

protest and comments in support of concerns raised by the IMM.

III. Background

For the past three years, Market Sellers have been required to submit Fuel Cost Policies to PJM and the IMM prior to inclusion of fuel costs in the resource's cost-based offers. Operating Agreement, Schedule 2, requires a Market Seller to provide detailed explanations of the methodology used to estimate fuel costs and how commodity handling and transportation costs are calculated. In addition, the existing rules require Market Sellers to (1) submit a Fuel Cost Policy to PJM and the Market Monitor for each fuel type used by a particular generation resource that the Market Seller intends to offer into the PJM energy market; and (2) document how they estimate fuel prices under different scenarios, and whether purchases are based on spot prices or contracts. PJM may reject a Fuel Cost Policy that doesn't comply with its standards. Market Sellers also may be subject to a penalty.

With feedback from stakeholders, PJM proposes to revise its Amended and Restated Operating Agreement by "reducing some of the administrative burdens on Market Sellers associated with developing and maintaining Fuel Cost Policies as well as easing, in certain circumstances, the penalties for cost-based offers that do not adhere to an approved Fuel Cost Policy."[3]

The main components of the proposed enhancements in PJM's filing, as explained by PJM, pertain to the: (1) replacement of the annual review process with a periodic

[3] PJM filing, page 1

review; (2) removal of the requirement for resources with zero marginal cost to submit a Fuel Cost Policy; (3) allowance of a temporary cost offer methodology in circumstances where a Market Seller does not have a PJM-approved Fuel Cost Policy; (4) replacement of the revocation provision with the ability for PJM to expire Fuel Cost Policies in three distinct scenarios; (5) enhancement to the existing penalty calculation and reduction of penalties for non-compliant cost-based offers where there is no market impact or the Market Seller self-identifies an error in the cost-based offer; and (6) elimination of the penalty for non-compliant cost-based offers in limited circumstances.[4]

The IMM submitted a protest to PJM's filing on May 26, 2020, contending that PJM's filing proposes to weaken, or in some cases eliminate, the rules that govern Fuel Cost Policies, permits PJM to define cost-based offers to replace market-seller-defined cost-based offers in some cases, in contravention of the PJM tariff, and allows for the reduction or elimination of the penalties associated with the submittal of incorrect cost-based offers. The IMM advocates that the proposed changes will result in rates that are unjust and unreasonable because of fuel costs that would not be accurate and verifiable.

IV. Comments and Protest

PJM's filing proposes an exemption from a penalty under the Operating Agreement, Schedule 2, for Market Sellers that submit a non-compliant cost-based offer if the reason for fuel pricing, cost estimation deviation, or both is due to an unforeseen event that is

[4] PJM Filing, pgs. 1-2.

outside of the control of the Market Seller, its agents, and its affiliated fuel suppliers.[5] PJM recognizes that Market Sellers include in their Fuel Cost Policies methods for estimating fuel costs under various scenarios. But, PJM contends, Market Sellers cannot foresee every possible scenario. For this reason, PJM proposes an exemption from the penalty for non-compliant cost-based offers, characterizing the exemption as "limited in scope … not designed to act as a blanket exemption to the penalty provisions of Operating Agreement, Schedule 2" whenever a force majeure event occurs.[6]

The Ohio FEA appreciates PJM's desire to secure a clear nexus between the force majeure event and its impact on a Market Seller's ability to follow its Fuel Cost Policy. The Ohio FEA supports PJM's proposed requirement that the force majeure event must be declared by a third party in order for the exemption to apply. Also, the Ohio FEA agrees with PJM's proposal to incorporate the advice and input from the IMM in determining whether the exemption applies.[7]

However, the Ohio FEA shares the IMM's concerns that the specific language of the proposed exemption is too broad to amount to a true force majeure provision, which is essentially an event that cannot be reasonably foreseen. If FERC approves PJM's tariff language, the Ohio FEA strongly believes that such a broad set of exemptions will undermine the Fuel Cost Policy precisely when it is needed the most. As the Commission is aware, the Fuel Cost Policy is relevant during times when generation resources are scarce

[5] Id. at 18-19.

[6] Id. at 22.

[7] Id. at 22-23.

and market power may be exercised by the Market Seller. As the Commission will recall, these were the circumstances under which Capacity Performance incentives and penalties and Fuel Cost Policies were established to ensure reliable performance by every generating unit in the PJM region.

While the exemption proposed by PJM is for an "unforeseen event outside of the control of the Market Seller, its agents, and its affiliated fuel suppliers which, by exercise of due diligence the Market Seller could not reasonably have contemplated at the time the Fuel Cost Policy was developed," the examples that follow include many common occurrences that can and should be included in a Market Seller's Fuel Cost Policy. Such examples include: lightning, storms or storm warnings, floods, breakage, accidents, and "low temperatures which cause freezing."[8] While these events, when they occur, may be outside of the control of a Market Seller, they are certainly not unforeseeable, particularly in the PJM region.

The Ohio FEA agrees with the IMM that the inclusion of these circumstances is inconsistent with a characterization of the proposed exemption as "limited." The Ohio FEA further agrees that the common circumstances listed by PJM fall outside of Catastrophic Force Majeure as defined in the PJM tariff and accepted by FERC.[9]

The Ohio FEA shares the IMM's concern that the proposed revised force majeure exemption creates an incentive to exclude reasonable provisions from Fuel Cost Policies and, ultimately, system reliability. As explained by the IMM, Market Sellers may tend to

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[8] Id at 23.

[9] IMM Protest, pg. 12.

seek a level of flexibility in their Fuel Cost Policies that would allow them to overestimate unverifiable fuel costs to avoid risks. The IMM's market power review process operates to correct these overestimates in many cases; such a process would be preferable to a broad, open-ended exemption that amounts to the blanket approval of such overly flexible Fuel Cost Policies that would allow Market Sellers to avoid penalties designed to incent performance and reliability during times of emergency or system stress. Wholesale and retail customers continue to pay for Capacity Performance and reasonably expect reliability through Fuel Cost Policies that cannot be undermined by unreasonable and overly flexible force majeure exceptions.

V. Conclusion

PJM, the IMM, and stakeholders have been working toward the development of a fuel cost review policy that strikes the right balance between providing accommodations for Market Sellers encountering unanticipated, uncontrollable events and ensuring just and reasonable rates for consumers. While the Ohio FEA supports the general aim of the PJM filing and many of the safeguards that PJM has endeavored to incorporate into its proposed revisions, ultimately, the Ohio FEA shares concerns of the IMM that PJM's proposed force majeure exemption will be too broad and incorporates too many common events to ensure just and reasonable rates.

The Ohio FEA urges the Commission to analyze the impacts of PJM's proposed changes to its Fuel Cost Policy for potential unintended consequences in force majeure events that could weaken the response of generators or lead to inappropriate pricing. PJM's proposal would enable sellers to sidestep FERC's verifiable and systematic standard to employ arbitrary pricing during events as predictable as cold weather and storms. As always, we support rates that are just and reasonable, based in policy that requires adherence to those standards. For this and the foregoing reasons, the Ohio FEA respectfully submits the above comments and protest.

Respectfully submitted,

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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 G. Lindgren
Thomas G. Lindgren
Assistant Attorney General

Dated at Columbus, Ohio, this June 12, 2020.