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Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

May 7, 2018

SENT VIA ELECTRONIC FILING

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket No. ER18-1314-000 - PJM Interconnection,
L.L.C.

Dear Secretary Bose:

Attached for filing in the above-referenced proceeding, please find the Protest of the New York State Public Service Commission and New York State Energy Research and Development Authority. The parties have also been provided a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions regarding the attached, please feel free to contact me at (518) 402-1537.

Very truly yours,

S. Jay Goodman

S. Jay Goodman, Esq.
Assistant Counsel

Attachment
cc: Service List

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

PJM Interconnection, L.L.C.) Docket No. ER18-1314-000

**PROTEST OF THE NEW YORK STATE
PUBLIC SERVICE COMMISSION AND NEW YORK STATE ENERGY
RESEARCH AND DEVELOPMENT AUTHORITY**

INTRODUCTION

On April 9, 2018, PJM Interconnection, L.L.C. (PJM) filed proposed tariff amendments that address the impact of state policy interests on the PJM capacity market (Tariff Filing).¹ PJM's Tariff Filing presents two distinct options to address these impacts - (1) a "Capacity Repricing" mechanism designed to accommodate state policy objectives via a two-stage capacity auction, or (2) a minimum offer price rule (MOPR) (referred to as "MOPR-Ex") that would mitigate new and existing resources that further state policy objectives. PJM explains that neither proposal garnered the stakeholder support within the PJM regional transmission organization necessary to advance it to the Federal Energy Regulatory Commission (Commission) for review and approval. The Tariff Filing states that PJM prefers

¹ Docket No. ER18-1314-000, PJM Interconnection, L.L.C., Capacity Repricing or in the Alternative MOPR-Ex Proposal: Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market (filed April 9, 2018).

the "accommodative" approach of the Capacity Repricing proposal but, due to the lack of a stakeholder consensus for either option, asks the Commission to make the policy decision as to which option PJM should implement.

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§385.211), the New York State Public Service Commission (NYPSC) and New York State Energy Research and Development Authority (NYSERDA) (collectively, the NY State Entities) hereby submit their Protest to the Tariff Filing.² In making the policy decision presented by PJM, the Commission should find that its decision will not serve as binding precedent for other control areas. This is critical for other control areas to have the autonomy needed to develop market mechanisms that address their regions' unique circumstances. Further, although the NY State Entities generally urge the Commission to preserve this flexibility, it should be noted that the Tariff Filing presents only one option - the Capacity Repricing option - that is designed to accommodate state policies concerning resource adequacy and the environment.

² The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York State Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

NOTICE OF INTERVENTION AND MOTION TO INTERVENE

The NYPSC hereby provides its Notice of Intervention pursuant to the Commission's Combined Notice of Filings #1, issued on April 17, 2018, and Rule 214(a)(2) of the Commission's Rules of Practice and Procedure.³

NYSERDA hereby submits its motion to intervene in this proceeding pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214. NYSERDA is a public benefit corporation in the State of New York which promotes energy efficiency and the use of renewable energy sources. These efforts are key to developing a less polluting and more reliable and affordable energy system for all New Yorkers. Collectively, NYSERDA's efforts aim to reduce greenhouse gas emissions, accelerate economic growth, and reduce customer energy bills. NYSERDA participates as a voting member in the NYISO's Governance Committees process, representing the interests of end-use consumers. The resolution of issues raised in this proceeding could have a significant future impact on the cost that end-use consumers in New York pay for electricity. As

³ 18 C.F.R. §385.214(a)(2). The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State, and is therefore a State Commission as defined in section 3(15) of the FPA (16 U.S.C. §796(15)).

a result, NYSERDA's interests will be directly affected by this proceeding. NYSERDA cannot be adequately represented by any other party, and NYSERDA's intervention would be in the public interest. Therefore, NYSERDA respectfully requests that the Commission grant its timely motion to intervene.

Copies of all correspondence and pleadings should be addressed to:

S. Jay Goodman, Esq.
Assistant Counsel
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
jay.goodman@dps.ny.gov

Noah C. Shaw, Esq.
General Counsel
New York State Energy Research
& Development Authority
17 Columbia Circle
Albany, New York 12203-1090
noah.shaw@nyserda.ny.gov

William Heinrich
Chief, Wholesale Market
Issues
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
william.heinrich@dps.ny.gov

Sarah Main, Esq.
Excelsior Fellow
New York State Energy Research
& Development Authority
17 Columbia Circle
Albany, New York 12203-1090
sarah.main@nyserda.ny.gov

BACKGROUND

The Tariff Filing asks the Commission to choose between two mechanisms that seek to address the interplay between state policy objectives and the wholesale capacity market. PJM emphasizes that its filing does not question states' settled right "to encourage development of new or clean generation' or other vital public policy goals," nor does it ask

the Commission to preempt such action.⁴ Instead, PJM asks for guidance on how the wholesale market should preserve just and reasonable rates in response to state policies.⁵

PJM explains that the Capacity Repricing proposal is its preferred solution because it “honors the state’s legitimate policy choice to promote resources with certain attributes not otherwise valued in the current wholesale market rules...”⁶

PJM explains that the MOPR-Ex proposal does not accommodate state policy interests.⁷ Instead, certain entities within PJM that support MOPR-Ex intend this mechanism to “disincent states from” supporting any resource.⁸ This proposal would significantly alter the scope of the existing MOPR by applying it to existing resources as well as new resources, and targeting it to demand and generation capacity resources that receive material payments from state policy programs.⁹ PJM

⁴ Tariff Filing, p. 4 (citing Hughes v. Talen Energy Mktg., LLC, 136 S.Ct. 1288, 1299 (2016) (internal quotation marks in original)).

⁵ Id. PJM’s Tariff Filing incorporates language from the Commission’s recently issued order approving a two-stage capacity auction proposed by ISO New England Inc. (ISO-NE) to address the interplay of state policies and the wholesale capacity market. (ISO New England Inc., 162 FERC ¶61,205 (2018) (the “CASPR Order”).)

⁶ Tariff Filing, p. 54.

⁷ See, e.g., id.

⁸ Id., p. 56, n.138.

⁹ Id., pp. 98-99.

proposes several MOPR-Ex exemptions, including a competitive entry exemption and a limited exemption for resources participating in a qualifying renewable portfolio standard (RPS) program.¹⁰ State-supported resources selected based on fuel-type and/or location would not qualify for the RPS exemption, however, and thus would be subject to MOPR-Ex.¹¹

DISCUSSION

I. The Commission Should Explicitly State That Its Resolution Of The Tariff Filing Is Nonbinding On Other Control Regions

As Commissioner LaFleur noted in the CASPR Order, addressing "the interplay of competitive wholesale markets and state policy initiatives is one of the most important and complex issues facing the Commission and the nation's electricity markets."¹² This interplay necessarily will differ among Regional Transmission Operator (RTO) and Independent System Operator (ISO) control areas, each of which is characterized by a different mix of states, state policies, resources, and wholesale market rules and designs. The allowance for MOPR alternatives thus is critical to ensuring

¹⁰ Tariff Filing, pp. 112-13.

¹¹ Id.; Proposed PJM Tariff, Att. DD, §5.14(h)(10)(b)(ii).

¹² CASPR Order, LaFleur concurring at 1.

that mechanisms accommodating state policies in wholesale markets may be tailored to the individual needs of each control area.

The CASPR Order states that MOPR alternatives may be a "valid method of managing" the interplay between state policy interests and wholesale markets, "and that methods may be tailored to challenges posed by the state policies in a given region."¹³ The Commission thus approved CASPR as a just and reasonable alternative to the MOPR, and found that it suits the individual needs of the ISO-NE regional market.¹⁴

It is critical that any order addressing PJM's Tariff Filing not serve as binding precedent on other RTOs/ISOs by requiring them to implement the mechanism selected in this proceeding. A "one size fits all" approach would be inappropriate and ineffective to address the varied needs of diverse control areas and would impinge States' interests. Each control area has its own unique circumstances that should be addressed with rules tailored to that region by the relevant RTO/ISO. The Commission, therefore, should explicitly indicate that other control areas may design market mechanisms that address their regions' unique circumstances.

¹³ CASPR Order, ¶22, and LaFleur concurring at 2.

¹⁴ CASPR Order, ¶25, LaFleur concurring at 1-2, Glick dissenting in part and concurring in part at 6-7.

II. The Commission Should Ensure That Market Mechanisms Do Not Unduly Interfere With State Resource Adequacy Determinations

The FPA establishes a framework of cooperative federalism that preserves States' rights to pursue legitimate policy interests, while directing the Commission to assure just and reasonable rates in the wholesale markets. These jurisdictional spheres should be harmonized to satisfy the FPA.

The U.S. Supreme Court has affirmed the States' right to encourage the development of resources that further public policy goals.¹⁵ Such regulation may be valid even if it "incidentally affect[s] areas within FERC's domain."¹⁶ PJM explains repeatedly in the Tariff Filing that its preferred solution - the Capacity Repricing option - was developed with an intent to achieve the balancing required by the FPA. PJM states clearly, however, that only the Capacity Repricing proposal, and not the MOPR-Ex, attempts to achieve this balance and respect of States' long-standing rights.

PJM explains that the "important difference between the two approaches ... gets to the heart of the policy question

¹⁵ Tariff Filing, p. 4 (citing Hughes v. Talen Energy Mktg., LLC, 136 S.Ct. 1288, 1299 (2016)).

¹⁶ Hughes v. Talen Energy Mktg., LLC, 136 S.Ct. 1288, 1298 (2016).

before the Commission..."¹⁷ The Capacity Repricing option, PJM continues, "honors the state's legitimate policy choice to promote resources with certain attributes not otherwise valued in the current wholesale market rules," whereas "MOPR-Ex does not."¹⁸ PJM explains that the Commission should select the Capacity Repricing option if it "decides as a matter of federal wholesale market policy to respect those state policy choices..."¹⁹

At this time, the NY State Entities express no opinion on whether the Capacity Repricing option adequately accommodates States' long-standing authority to make energy and environmental policy choices, or results in just and reasonable rates.

As to PJM's alternative proposal, the MOPR-Ex would expand existing mitigation measures in a way that inappropriately would impede the states' ability to pursue legitimate energy and environmental policy objectives. In fact, PJM states that proponents of this mechanism expressly intended it to discourage states from exercising their right to pursue legitimate policy interests.²⁰

¹⁷ Tariff Filing, p. 54.

¹⁸ Id.

¹⁹ Id.

²⁰ Id., p. 56, n.38.

The failure of MOPR-Ex to accommodate state energy and environmental policy interests is not remedied by PJM's proposal to exempt resources selected through certain RPS programs.²¹ The proposed RPS exemption, for instance, would not include resources whose selection considered geographic location or fuel type.²² Legitimate State policy interests may include, but are not limited to: (i) promoting clean resources in discrete areas within the State, including in or near dense urban load centers and locations where it is not practical to develop certain clean energy technologies; and (ii) promoting clean resources in addition to solar and on-shore wind (e.g., storage, off-shore wind, and distributed energy resources) that diversify the supply portfolio and provide beneficial capabilities and services. The limitations proposed for the optional RPS exemption thus constrain the energy and environmental policy objectives that states may pursue under the MOPR-Ex.²³

PJM stakeholders could not reach consensus on either option presented in the Tariff Filing, and instead passed the matter to the Commission to decide. While portrayed as a just

²¹ Tariff Filing, pp. 112-13; Proposed PJM Tariff, Att. DD §5.14(h)(10).

²² Tariff Filing, p. 113; Proposed PJM Tariff, Att. DD §5.14(h)(10)(b)(3).

²³ PJM states that the RPS exemption is optional, and it would implement the MOPR-Ex without the RPS exemption if ordered by the Commission to do so. (Tariff Filing, p. 114.)

and reasonable alternative, the Commission should not choose the MOPR-Ex proposal because it fails to adequately balance state and federal interests as required by the FPA. Although, as a general matter, RTOs/ISOs should decide which market solutions are appropriate for their regions, directing PJM to implement the MOPR-Ex proposal could have national consequences by signaling that the Commission will tolerate market rules usurping rights reserved to states by the FPA. Consequently, it should not be selected for implementation.

CONCLUSION

For the reasons detailed herein, the NY State Entities respectfully urge the Commission to find that its order addressing the Tariff Filing will not bind other control areas to implement either the Capacity Repricing option or MOPR-Ex alternative. Further, for the reasons detailed herein, the Commission should decline to select the MOPR-Ex proposal because it would interfere with state policy matters.

Respectfully submitted,

/s/ Paul Agresta

Paul Agresta
General Counsel
Public Service Commission
of the State of New York
By: S. Jay Goodman
Assistant Counsel
3 Empire State Plaza
Albany, New York 12223-1350
Tel: (518) 402-1537
jay.goodman@dps.ny.gov



Noah C. Shaw, Esq.
General Counsel
New York State Energy
& Development Authority
17 Columbia Circle
Albany, NY 12203-6399
Tel: (518) 862-1090
noah.shaw@nyserda.ny.gov

Dated: May 7, 2018
Albany, New York

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: Albany, New York
May 7, 2018

/s/ S. Jay Goodman

S. Jay Goodman
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 402-1537