UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	**)**	**Docket No. EL16-49-000**

MOTION TO INTERVENE AND COMMENTS
OF THE NATURAL GAS SUPPLY ASSOCIATION
IN SUPPORT OF COMPLAINT REQUESTING FAST TRACK PROCESSING

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission[1] ("FERC" or the "Commission"), the Natural Gas Supply Association ("NGSA") hereby respectfully moves to intervene in the above-captioned proceeding and submits its comments in support of the Complaint Requesting Fast Track Processing submitted by Calpine Corporation *et al*. (collectively, "Complainants") on March 21, 2016 (the "March 21 Complaint").[2]

I. COMMUNICATIONS

Any communications with respect to this pleading and this proceeding should be addressed to:

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[1] 18 C.F.R. §§ 385.212 and 385.214 (2015).

[2] *See* Calpine Corp. *et al.*, Complaint Requesting Fast Track Processing, Docket No. EL16-49-000 (submitted Mar. 21, 2016).

II. THE MARCH 21 COMPLAINT

On March 31, 2016, the Public Utility Commission of Ohio ("PUCO") approved Power Purchase Agreements between certain Ohio utilities and their unregulated affiliates ("Affiliate PPAs"). These Affiliate PPAs will require the Ohio utilities to purchase power generated by their unregulated affiliates, resell the purchased power in the PJM markets, and then receive non-bypassable charges from *all* retail customers in their service territories (including retail customers receiving service from competitive retail suppliers) reflecting the difference between the costs incurred under the Affiliate PPAs and the revenue received from selling power in the PJM markets (the "Riders").

In light of the then-pending Affiliate PPAs and Riders, Complainants filed the March 21 Complaint to protect the integrity of PJM's upcoming 2019/2020 Base Residual Auction ("BRA") and future PJM Reliability Pricing Model ("RPM") Auctions. The March 21 Complaint requests that the Commission: (i) find, in advance of the BRA for the 2019/2020 Delivery Year (the "2019/2020 BRA"), that the current Minimum Offer Price Rule (the "MOPR") in PJM's Tariff is unjust and unreasonable; (ii) expand the MOPR to prevent artificial price suppression in PJM's BRA; and (iii) direct PJM to initiate a stakeholder process to develop a long-term solution to State-approved out-of-market subsidization of existing generation resources that, in turn, submit non-competitive bids into RPM Auctions.

III. MOTION TO INTERVENE

NGSA represents integrated and independent energy companies that produce and market domestic natural gas. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy, and supports the benefits of competitive markets. NGSA promotes increased supply and the reliable, efficient delivery of natural gas to customers. It is important to our member companies that wholesale power markets compensate gas-fired power generators for investments that are required in order to meet their capacity obligations under PJM's new Capacity Resource Performance requirements as well as sending the appropriate price signals for new investment. Intrusions into the capacity market, such as the Riders in this proceeding, discourage investments needed to support reliable fuel supply arrangements and can lead to adverse repercussions for the natural gas industry and to policies that are not fuel neutral in competitive markets. As such, NGSA has a substantial interest in this proceeding that cannot be adequately served by any other party. Accordingly, NGSA respectfully moves to intervene and requests that it be granted full rights as a party to this proceeding.

IV. COMMENTS

A. Absent Expansion of PJM's MOPR, Below-Cost Offers Submitted by Subsidized Utilities Will Artificially Suppress Prices in PJM Markets; Creating Non-Competitive Outcomes and Adversely Impacting Ratepayers and Market Participants.

As stated in the March 21 Complaint, the Commission approved the MOPR to ensure capacity markets appropriately compensate existing generation units and encourage new suppliers to enter capacity markets when there is a need for additional capacity.[3] The MOPR seeks to prevent suppliers from submitting non-competitive (*i.e.*, below-cost) supply offers into the RPM market, which could suppress the PJM RPM clearing price. Specifically, the MOPR requires that supply offers submitted in any RPM Auction for any Delivery Year based on a MOPR Screened Generation Resource[4] reflect an offer price no lower than the MOPR Floor

[3] *Maine Pub. Utils. Comm'n v. FERC*, 520 F.3d 464, 473 (D.C. Cir. 2008) (internal citation omitted), *rev'd in part not relevant*, *NRG Power Mktg. LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010).

[4] PJM Tariff, Attachment DD, Section 5.14(h)(2), defines a MOPR "Screened Generation Resource" as "any Generation Capacity Resource, and any uprate to a Generation Capacity Resource that is being, or has been, modified to increase the number of megawatts of available installed capacity thereof by 20 MW or more, based on a combustion turbine, combined cycle, or integrated gasification combined cycle generating plant (including

Offer Price,[5] unless some exemption applies.[6] The Commission has approved modifications to PJM's MOPR to address various threats to the RPM market, including market-distorting sell offers caused by State-approved subsidies to new generation resources in New Jersey and Maryland. Significantly, these State-approved subsidies were rejected by FERC and the courts.[7]

The Riders recently approved by the PUCO are similar to the State-approved subsidy schemes rejected in New Jersey and Maryland except that they apply to existing resources. Under these Riders, Ohio retail customers will be forced to subsidize over 6 GW of generation resources. Although the Affiliate PPAs result in subsidies to existing rather than new generation resources, they also have the potential to create market distortions by providing incentives for those resources to submit below-cost offers in the PJM market and may prevent the exit of uneconomic generation resources, which would effectively discriminate against natural gas-fired generation.[8]

To receive the benefit of the Riders contemplated in the Affiliate PPAs, the Ohio utilities must demonstrate to PUCO that they took the actions necessary to limit the exposure of Ohio ratepayers when selling capacity into the PJM markets. Consequently, the Ohio utilities are incentivized to submit below-cost offers (*e.g.*, a zero offer) to ensure that they receive a revenue

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Repowering of an existing plant whenever the repowered plant utilizes combustion turbine, combined cycle, or integrated gasification combined cycle technology) with an installed capacity rating, combined for all units comprising such resource at a single point of interconnection to the Transmission System, of no less than 20 MW."

[5] PJM Tariff, Attachment DD, Section 5.14(h)(3), defines a "MOPR Floor Offer Price" as the "Net Asset Class Cost of New Entry for the relevant generator type and location."

[6] PJM Tariff, Attachment DD, Section 5.14(h)(1).

[7] 8 See PPL EnergyPlus, LLC, et al v. Solomon, et al, 766 F.3d 241 (3rd Cir. 2014), petition for cert. filed, 83 U.S.L.W. 3564 (U.S. Dec. 10, 2014); 83 U.S.L.W. 3355 (U.S. Nov. 26, 2014); see also PPL EnergyPlus, LLC, et al v. Nazarian, et al, 753 F.3d 467 (4th Cir. 2014), cert. granted, 136 S.Ct. 356 (U.S. Oct. 19, 2015) (No. 14-623); 136 S.Ct.382 (U.S. Oct. 19, 2015) (No. 14-614).

[8] *See* March 21 Complaint at 4 (citing March 21 Complaint, Attachment A, which includes the affidavit of Joseph Cavicchi, Executive Vice President of Compass Lexecon).

stream from the PJM capacity market to offset the investment of the Ohio ratepayers who otherwise bear all of the financial risk for all costs associated with the capacity agreed to under the Affiliate PPAs.[9] Additionally, because Ohio retail ratepayers would bear all costs and performance risks of the existing generation resources referenced in the Affiliate PPAs, the Ohio utilities will be indifferent to prices established in the RPM Auctions.[10] Thus, the Affiliate PPAs and Riders contemplated therein undoubtedly will incentivize the submission of uneconomic offers in the PJM capacity auction, artificially lowering the clearing price of the PJM capacity auction, thereby creating an unlevel playing field between subsidized and unsubsidized generation participating in the auction and in today's environment, creating a disadvantage for natural gas-fired generation.

As a result, artificially low supply offers from generation resources supported by such out-of-market PPAs will result in suppressed clearing prices for the 2019/2020 BRA. In this regard, the Ohio-approved subsidies will affect not only the ratepayers in that state, but also will cause a rippling effect, impacting the wholesale prices of loads in other states participating in the PJM markets and possibly leading to additional attempts by other states to artificially suppress capacity market pricing in the future.[11] Notably, PJM and its IMM, the entities tasked with preserving market integrity and competitiveness, have objected to the approval of the State-

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[9] *See id.* at 25 (citing Comments of the Independent Market Monitor ("IMM") for PJM, Attachment A and Attachment B, Docket Nos. EL16-33-000, *et al*. (filed Feb. 23, 2016)).

[10] In contrast to Commission policy, the Affiliate PPAs effectively ensure full cost recovery for the Ohio utilities akin to what they would receive under traditional cost-of-service, rate of return regulation if they do not receive a sufficiently high price from the market. *See, e.g., Bridgeport Energy, LLC,* 118 FERC ¶ 61,243, at P 66 (2007) (holding generation resources should not be given the opportunity to "toggle" between the higher of cost-of-service or market rates to the detriment of ratepayers).

[11] *See PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at P 58 (2013), *on reh'g*, 153 FERC ¶ 61,066 (2015) ("[T]he actions of one state in a multi-state RTO like PJM can have a significant impact on wholesale prices affecting loads in other states . . . .").

subsidized generation resources in Ohio and have expressed concerns with the harm that will be borne by the PJM market participants as a result of the Affiliate PPAs.

Moreover, such subsidies will impact the type of resources that will be selected in the upcoming auction and are likely to distort the resource mix in PJM that would have otherwise been selected in a competitive market construct and discriminate against natural gas-fired generation. Unfortunately, PJM's current tariff does not provide for the use of the MOPR for existing resources in order to mitigate such non-competitive outcomes.

B. The Commission Should Preserve Market Efficiencies and Competition.

NGSA views well-functioning markets and competitive market signals as vital to energy reliability, affordability, and cost-effective investment in energy infrastructure. If the Ohio-subsidized generation units are permitted to submit unmitigated, uneconomic sell offers into PJM markets, distortions to wholesale electricity markets will result, and competitive market signals that deploy resources and capital to where they are needed and valued will be eviscerated. Ultimately, the costs underlying these market distortions will stall investments in competitive power generation resources that otherwise would benefit energy consumers.

The adverse consequences on reliability of the electric system are compounded when you consider the effort PJM and its stakeholders undertook over the past year, and that the Commission recently approved, to improve generator performance through a competitive market structure. Under the new performance model, price signals will be in place that are intended to incent gas-fired generators to secure dual fuel capability or firm gas supplies. However, if generators supported by out-of-market subsidies, such as those provided by the Affiliate PPAs and Riders, are allowed to participate in this market and suppress market prices, it will be increasingly difficult for gas-fired generators to have the means to invest in such measures that increase performance and reliability; ultimately undermining the goals of PJM's capacity performance before the ink has barely dried.

In light of these circumstances, NGSA agrees with Complainants that the MOPR currently contained in PJM's Tariff is unjust and unreasonable. NGSA supports Complainants' request for an immediate expansion of the MOPR to address the imminent threat of uneconomic offers into PJM's 2019/2020 BRA that reflect state-approved subsidies to also include ***existing*** generation resources in Ohio. Finally, NGSA supports the Complainants' request that the Commission initiate a stakeholder process to address a long-term solution to the price suppression problems posed by state-approved out-of-market subsidies to existing generation resources.

III. CONCLUSION

For the reasons set forth above, NGSA supports the March 21 Complaint's conclusion that PJM's existing MOPR should be expanded to preclude the threat of artificial price suppression posed by state-approved subsidies by making the MOPR also applicable to existing generation resources. NGSA also finds reasonable Complainants' request for a stakeholder process to address the potential price suppression caused by state-approved out-of-market subsidies to existing generation resources. Therefore, NGSA urges the Commission to grant, without delay and before the 2019/2020 BRA, the relief requested in the March 21 Complaint.

Respectfully submitted,

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April 11, 2016

Certificate of Service

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, 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 at Washington, D.C. this 11th day of April, 2016.

/s/ *Meghan R. Gruebner*
Meghan R. Gruebner