UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

State Policies and Wholesale Markets	)	Docket No. AD17-11-000
Operated by ISO New England Inc., New York	)	
Independent System Operator, Inc., and	)	
PJM Interconnection, L.L.C.	)	

COMMENTS OF THE
NATURAL GAS SUPPLY ASSOCIATION
IN RESPONSE TO NOTICE INVITING
POST-TECHNICAL CONFERENCE COMMENTS

On May 1-2, 2017, the Federal Energy Regulatory Commission ("the Commission" or "FERC") staff convened a technical conference to discuss the interplay between state policy goals and wholesale markets operated by ISO New England Inc. ("ISO-NE"), New York Independent System Operator, Inc., and PJM Interconnection, L.L.C. ("PJM"). The Natural Gas Supply Association ("NGSA") respectfully submits the following comments in response to the Commission's May 23, 2017 "Notice Inviting Post-Technical Conference Comments" ("Notice") in the above-referenced proceeding.

NGSA was established in 1965 and represents major integrated and large independent domestic producers of natural gas. NGSA seeks to maintain competitive markets, improve downstream efficiencies and foster increased supply to U.S. markets. NGSA is a staunch advocate for well-functioning competitive markets and supports a balanced energy future, one that ensures a level playing field for all market participants without unnecessary regulatory barriers to the production and use of natural gas.

Widespread implementation of out-of-market state subsidies has broad implications that significantly impact our members' business interests.[1] If FERC allows state fuel and other policy preferences to interfere with wholesale market prices, they will impact the type of resources dispatched and alter the resource mix that would have otherwise been selected in a competitive market. Additionally, price distortions as a consequence of state subsidies will further decrease not only gas-fired generators' ability to contract for firm pipeline capacity, but also make it increasingly difficult for generators to economically support additional natural gas capacity needed to supply natural gas to meet growing power consumption.

I. The Commission should defend its jurisdiction and pro-competitive policies, which are at the heart of "competitive" regional organized markets.

Creation of regional organized markets -- and the continual efforts to introduce and enhance competition in those markets -- has been the centerpiece of FERC electricity policy over the past two decades. There have been countless hurdles along the way, yet FERC's perseverance has resulted in what is perhaps one of its most significant achievements and one in which FERC's authority has been upheld by the Supreme Court.[2]

In the Commission's latest strategic plan, its primary strategy for establishing jurisdictional rates that are just, reasonable, and not unduly discriminatory or preferential is to "[e]mploy competitive forces" because "[m]arketplace competition benefits energy consumers by encouraging diverse resources, spurring innovation and deployment of new technologies, improving operating performance, and exerting downward pressure on costs. . . . Building on its past efforts to enhance competition in regional organized wholesale electricity markets, FERC

[1] While this proceeding is primarily focused on state actions that subsidize baseload generation units that may otherwise be uneconomic, other state subsidies, such as jump-starting investment in hydro and offshore wind, can also mask competitive market signals and be problematic for the functioning of competitive markets.

[2] *See FERC v. Electric Power Supply Assn.*, 136 S. Ct. 760 (2016) and *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1291 (2016) (holding that federal law preempts state actions that "intrude on FERC's authority over interstate wholesale rates").

will engage regional transmission organizations (RTO) and independent system operators (ISO), as well as other regulated entities and interested stakeholders, to ensure that energy, capacity, and ancillary services markets provide appropriate price signals, support market evolution, and provide appropriate opportunities ***for all eligible resources***, including emerging technologies." [3] This strategy has served energy markets and consumers well with lower prices for consumers.[4] Choosing the most efficient cost options is just what is intended through the creation of a competitive market and it is imprudent to direct market outcomes in the face of competition, which takes away the cost savings that the market has provided. The time and effort devoted over the past two decades to successfully develop and implement competitive power market structures should not be for naught.

State subsidies such as those at issue here fly in the face of wholesale competitive market principles for which efficient well-functioning, regional, organized wholesale power markets were created and that the Commission has long embraced. While states have the right to take actions that help them achieve their public policy objectives, those choices should not impact interstate wholesale market prices.[5] If state actions that interfere with the wholesale market are unabated, the capacity and energy markets will no longer function as intended. This is especially true as the number of subsidized generators participating in FERC jurisdictional markets increases.

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[3] ." Federal Energy Regulatory Commission, Strategic Plan FY 2014-2018, at 8 (March 2014), https://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf (emphasis added).

[4] The competitive markets appear to be working well from the standpoint of consumer value. Frederick S. ("Stu") Bresler, PJM senior vice president, told *POWER* in a recent interview that PJM's sometimes controversial capacity markets "have been very successful in attracting investments and efficient retirements." In the energy markets, he said, "prices have been very low," thanks to natural gas from shale deposits, and the market is "doing the job markets were intended to do." *See* Kennedy Maize, *U.S. Electric Markets in Transition*, POWER, Jan. 1, 2017, http://www.powermag.com/u-s-electric-markets-transition/?pagenum=2. Also, a PJM 2016 capacity auction resulted in $4 billion in electricity savings over the next three years for consumers due to a wave of new natural gas-fired plants. Jeffrey Tomich, *PJM power costs fall by $4B on efficiency, new gas plants*, E&E News, May 25, 2016, https://www.eenews.net/stories/1060037836.

[5] *See Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288.

In the five paths outlined in the Notice, staff does not even suggest the most obvious path in which FERC defends its jurisdictional authority and competitive markets by rejecting actions that create impermissible interference in wholesale markets. While the Commission may wish to find a middle ground that does not potentially put it at odds with states and their policy objectives ("Path 2"), the risk of large-scale market price disruptions is simply too great. Protecting competitive markets is the Commission's primary responsibility when an entity's actions blatantly interfere with the efficient operation of the interstate market. Therefore, we urge FERC to select a sixth path in which it holds to its jurisdictional authority to preempt and wholly reject actions that intrude on and harm the wholesale power market.

It is incumbent on the Commission to remain focused on implementing its important objective of allowing competitive market forces to establish just and reasonable wholesale rates in a non-preferential manner. Federal regulation of wholesale energy markets exists to ensure that parochial interests do not interfere with actions that are in the national interest. Moreover, the Commission may be effectively ceding its own jurisdictional authority if it does not strongly defend its jurisdiction in both its policies and in the courts. Once this happens, reversing this precedent and reasserting jurisdiction will be extremely difficult if not impossible.

II. The Commission should preserve competitive market efficiencies in regional organized markets.

Well-functioning energy markets that provide accurate market signals are of the utmost importance to ensuring energy reliability, affordability, and investment in energy infrastructure. The wholesale electricity markets were established on the basis that a megawatt is a megawatt in terms of meeting reliability needs and the market administrator's role was to ensure that the system was dispatched on that basis so that the most efficient and cost-effective results could be achieved. However, the numerous state subsidized resources that are entering the markets are changing the fundamental basis on which the markets were built, and, if not addressed, threaten the functionality of the RTO/ISO administered markets.

In numerous proceedings, NGSA has advocated competitive market solutions for capacity and energy markets that provide a greater opportunity for generators to be compensated for actions they take to ensure they can meet their power market obligations, such as new investment in generation, new pipeline capacity or contractually firming up their fuel deliveries. Most recently, NGSA supported the Commission's energy price formation reforms implemented in Order No. 825 that better align dispatch and settlement intervals and remove current restrictions on shortage pricing.[6] Price reforms, such as those proposed by the Commission in Order No. 825, enhance the ability of generators to bolster fuel assurance in the regional markets they serve. Additionally, NGSA supported ISO-NE's and PJM's pay-for-performance programs that provide incentives for improved generator performance, which are positive steps toward more accurate market price signals that bolster fuel assurance and grid reliability.[7]

State subsidies that support otherwise uneconomic generation not only undermine the fundamental basis on which the wholesale markets were established, they undermine the Commission's efforts to continue to improve transparency and price signals in energy and capacity markets and it would be unfortunate to retreat back from where we have come. While it may not be possible to craft a perfectly competitive market that is free from any type of out-of-market influences, the recent onslaught of these activities with subsidies for large resources such

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[6] "Comments of the Natural Gas Supply Association In Support of Energy Price Formation Reforms," *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations And Independent System Operators,* Notice of Proposed Rulemaking, Docket No. RM15-24-000, (Filed Nov. 30, 2015); Order No. 825, *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations And Independent System Operators,* FERC Stats. & Regs. ¶ 31,384 (2016).

[7] "Motion to Intervene and Comments of the Natural Gas Supply Association in Support of ISO New England's Pay for Performance Proposal," *ISO New England Inc.,* Docket Nos. ER14-1050-000, 001 (Filed Feb. 12, 2014); "Motion to Intervene and Comments of the Natural Gas Supply Association in Support of PJM's Proposed Capacity Performance Resource Provision," *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (Filed Jan. 20, 2015).

as ZECs, if left unchecked, will spell the end of the competitive market model. Thus, to continue the efficient operation of the grid and adequately protect energy consumers, the status quo (as outlined in Path 3 of the Notice) is simply not sustainable.

III. Get energy and ancillary prices right and the market will readily resolve any issues associated with reliability and performance without additional regulatory interference.

Path 4 suggests that parties consider whether state subsidy concerns can be addressed by valuing externalities, such as resilience. However, if energy prices are free from market distortions, consideration of additional attributes other than actual generator performance, are unnecessary to encourage new investment, enhance performance and maintain system reliability. It is only when energy prices are suppressed through state subsidies or other market intrusions that additional regulatory-directed payments on top of the market clearing price are needed to compensate for those market distortions.[8]

Additionally, NGSA believes the market should be able to value high-performance services that go beyond simply providing power such as ramp times, black start capabilities, and frequency response. However, every type of generation that can provide these high performance services should be able to receive the market price with the Commission and regional market operators indifferent as to what type of generation provides such services. Competitive market pricing can achieve this result in a fuel neutral manner. However, generically valuing attributes that are not directly tied to a generator's ability to perform does nothing more than provide an undue preference to one fuel source over another. In such instances, FERC and regional operators would be providing an undue preference to certain types of generation they deemed more "resilient" relative to other resources and giving the preferred resources additional

[8] Suppressed clearing prices and the uncertainty created in a subsidized environment can make it more difficult for a generator to enter into contractual arrangements for firm services and to enter into hedging agreements designed to limit volatility.

payments in lieu of simply allowing the market to put a value on the generator's ability to perform.[9]

IV. Expanding the MOPR to cover existing generation in addition to new generation is a valid short-term measure for markets with state subsidies -- but it is not a long-term solution.

As suggested in Path 5 outlined in the Notice, expanding the minimum price offer rule ("MOPR") to also apply to existing generation can provide some level of protection to unsubsidized generators that are exposed to artificially depressed prices. Simply allowing state subsidies to be passed through without a MOPR will not adequately protect consumers nor will it result in just and reasonable rates as required under the Federal Power Act. In Docket No. EL16-49-000, NGSA supported the complainants that asked FERC to expand the application of the MOPR in PJM to existing generation – but only as an interim short-term solution.[10] NGSA supports Commission action that can help mitigate the effect of state subsidies in regional organized power markets <u>as an interim measure</u> during the period in which state subsidies are still permitted to interfere with wholesale market prices. Over the long-term, however, expanding the MOPR will not provide sufficient mitigation because it is yet another non-competitive mechanism put in place to correct for other distortions in the market.

If left unabated, it is inconceivable how competitive organized markets could withstand the magnitude of out-of-market distortions that may result from state subsidies, particularly if other states begin to follow suit and the number of subsidized market participants in FERC jurisdictional markets dramatically increases. Already, at least nine states are implementing or considering implementing programs that subsidize units that may otherwise be uneconomic in a

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[9] Using the Path 4 example of resiliency, the relative resilience of any single resource will vary widely depending on each specific situation.

[10] "Motion to Intervene and Comment of Natural Gas Supply Association In Support of Complaint Requesting Fast Track Processing," *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, Docket No. EL16-49-000 (Filed Apr. 11, 2016).

competitive market. As subsidized units become an increasing prominent portion of the total generation, corrections such as expansion of the MOPR will increasingly lose their ability to mitigate market distortions and protect unsubsidized generators and consumers.

V. Conclusion.

The future of competitive generation depends on regulatory certainty and companies that have invested in these assets are now looking to the Commission to provide that regulatory certainty by adamantly defending the competitive market it worked so hard to achieve. We have not given up on competitive markets and neither should the Commission.

NGSA urges the Commission to continue its efforts to improve price signals in regional organized markets, which are vital to the efficient operation of competitive markets. State subsidies of otherwise uneconomic units erode many of the energy market improvements recently adopted by the Commission and failure to prevent such interference will erode market confidence and discourage future investment.

While state subsidies are intended to preserve existing generation, in the long run, interfering with the operation of the competitive market will actually result in less, not more, generation. Such unintended consequences are likely because states are under no obligation to fully consider the broader, long-term regional and national ramifications of actions they take for their own parochial interests. That is FERC's job and its statutory obligation.

Respectfully submitted,

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