

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

PJM Interconnection, L.L.C.)

Docket No. ER21-2582-000

**MOTION TO INTERVENE AND PROTEST OF
THE NATURAL GAS SUPPLY ASSOCIATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.211 and 385.214, and the Commission's July 30, 2021, Combined Notice of Filing ("Notice"), the Natural Gas Supply Association ("NGSA") hereby submits its Motion to Intervene and Protest in the above-entitled proceeding ("PJM MOPR Filing").¹

I. MOTION TO INTERVENE

NGSA represents companies that produce and market natural gas to gas-fired power generators throughout the United States. NGSA encourages the use of natural gas within a balanced national energy policy. Recognizing the benefits of competitive markets, NGSA has a long-established commitment to pursuing a public policy environment that fosters a growing, competitive market for natural gas. Also, NGSA advocates for a balanced energy future, one that ensures a level playing field for all market participants and recognizes that fuel-neutral policies are essential components of a functioning market. For these reasons, the actions in this proceeding will directly impact NGSA members and our interests are not adequately represented

¹ PJM Interconnection, L.L.C., "Revisions to Application of Minimum Offer Price Rule," Docket No. ER21-2582-000 (July 30, 2021).

by any other party.² Accordingly, NGSAs respectfully requests that it be permitted to intervene in Docket No. ER21-2582-000.

II. EXECUTIVE SUMMARY

On July 30, 2021, PJM Interconnection L.L.C. (“PJM”) filed a proposal to make significant revisions to the application of the Minimum Offer Price Rule (“MOPR”) in what it refers to as the “Focused MOPR,” which effectively eliminates the MOPR’s application to state-subsidized resources except in extremely limited circumstances. In this proceeding, PJM’s Focused MOPR proposal completely reverses course from its current MOPR and ignores the clear directives in the Commission’s previous orders by effectively eliminating any mitigation of the capacity market distortions created by the growing level of state-subsidized resources.

NGSA believes that, instead of approving yet another iteration of the MOPR, PJM should focus on creating sustainable long-term market solutions that will stand the test of time as we continue to see dramatic changes in the resource mix. The PJM MOPR Filing should be rejected as it allows for state subsidy programs to disrupt the ability of competitive capacity markets to produce just and reasonable rates. In fact, given that PJM’s MOPR Filing makes no meaningful changes to the tariff that the Commission found to be unjust and unreasonable only two years ago, the Commission must reject this filing as unjust and unreasonable.³ Nevertheless, if FERC does not reject PJM’s MOPR Filing, it should set the filing for hearing to determine if it is just and reasonable and to address any deficiencies so that PJM’s competitive capacity market can

² Founded in 1965, NGSAs represents integrated and independent energy companies that produce and market domestic natural gas and is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry.

³ *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) and *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019).

continue to support resource adequacy requirements to ensure reliability of the system until a new comprehensive market design is proposed.

III. COMMENTS

a. NGSa is concerned with the longer-term ramifications of hastily reversing course on the MOPR rather than focusing on sustainable market solutions as we transition to a low-emissions energy future.

Both PJM and FERC are faced with increasingly complex issues for ensuring just and reasonable rates, competitive wholesale markets and fuel-neutral policies, all while ensuring that the power grid remains reliable and that climate policies can be effectively pursued. That challenge requires careful balancing of multiple factors to achieve effective and durable long-term solutions.

As PJM mentions in its submission, it has initiated a comprehensive review of the capacity market rules to ensure the continued reliability of the PJM system given the evolution of the PJM Region's resource mix, which takes into account its proposed MOPR reforms.⁴ PJM's expert witness, Professor Peter Cramton, developed models that claim PJM will have sufficient resources in place that provide sufficient reliability to its region through 2040 under either the expanded or Focused MOPR. Yet even PJM acknowledges that there is a need "[t]o ensure the continued success of PJM's capacity market...to ensure that the PJM Region is able to get the reliability value from each Capacity Resource."⁵ The question the Commission must consider is whether it can deem this filing just and reasonable without knowing the products PJM will need to meet the resource adequacy and new reliability challenges presented by the transitioning electric grid. In fact, the Commission has recognized the need for new services in its notice

⁴ Ibid, pg. 4.

⁵ Ibid. "To ensure the continued success of PJM's capacity market, the proposed MOPR reforms contained in this filing will be followed by further PJM stakeholder discussions to examine whether additional reforms are needed to ensure that the PJM Region is able to get the reliability value from each Capacity Resource."

scheduling two staff-led technical conferences to identify new energy and ancillary services that will be needed to support the grid as the resource fleet and load profiles change over time.⁶

We are concerned that FERC, PJM, and stakeholders' continual focus on "fixing" the MOPR, as well as the certain impending legal challenges to come, takes the focus away from this broader initiative and may needlessly complicate the ability of participants to work on more comprehensive long-term market solutions. Moreover, the results of the most recent auction underscore that PJM is not compelled to hastily "fix" the current MOPR and there is time to step back and embrace a more comprehensive approach that can instill market confidence in a sustainable manner over the long-term.⁷

As comprehensive approaches are considered, we urge PJM and its stakeholders to find fuel-neutral market solutions that adequately value resources for what they contribute to a reliable, affordable and low-emission energy future, without tilting the balance in favor of certain resources over others. These efforts should strive to preserve competition in the capacity market to the maximum extent possible, ensure that competitive forces drive entry and exit from the capacity market in a manner that preserves reliability over the long-term, and prevent out-of-market subsidies from artificially suppressing prices in capacity markets that will adversely impact investment certainty and grid reliability. NGSAs support PJM's efforts in this area, including finding ways to properly right-size capacity accreditation and, as discussed in more

⁶ Modernizing Electricity Market Design, Docket No. AD21-10-000, Notice of Technical Conferences Regarding Energy and Ancillary Services Markets, (July 14, 2021) "The technical conferences will discuss potential energy and ancillary services market reforms, such as market reforms to increase operational flexibility, that may be needed as the resource fleet and load profiles change over time."

⁷ PJM's recent auction under the new MOPR resulted in significant increases in renewables, nuclear and new natural gas generators' capacity clearing at prices significantly lower than in the previous auction at a price of \$50/MW-day for much of the PJM footprint, compared to \$140/MW-day in the most recent auction in 2018. See PJM's press release: <https://www.pjm.com/-/media/about-pjm/newsroom/2021-releases/20210602-pjm-successfully-clears-capacity-auction-to-ensure-reliable-electricity-supplies.ashx>.

detail below, performing regular assessments to determine if the system is fully equipped to handle extreme high load demand as we transition to a low-emissions energy future that results in dramatic changes to the resource mix.⁸

Additionally, in the context of this comprehensive review, we believe that PJM and its stakeholders should seriously consider market-based solutions, like carbon pricing and other environmental attribute pricing programs, given that carbon pricing would substantially eliminate the need to continue subsidizing specific resources and clearly fits within the existing FERC-jurisdictional market designs framework. In addition to carbon pricing having broad-based support from market participants, it is fuel neutral because it places a value on the externalities associated with fossil fuel consumption, incorporates the price in the energy markets and allows market participants to take the most efficient approaches to managing costs associated with carbon emissions. FERC-regulated markets have been built on a fuel neutral approach so departing from that approach without sufficient analysis and consideration of market rules to account for the policy change is not appropriate.

b. The Commission must require more meaningful and effective market mitigation of state subsidies if the Expanded MOPR is eliminated.

NGSA believes that implementing economy-wide carbon pricing is the most efficient and cost-effective way to maintain competitive power markets but, to date, state actions to secure low-emissions energy resources remain the primary means for reaching those goals. NGSA supports state efforts to meet their targeted low emissions energy goals and we know that the Commission also supports such efforts. However, support for state actions cannot undermine

⁸ Carey W. King, et al., “The Timeline and Events of the February 2021 Texas Electric Grid Blackouts”, (Austin: University of Texas, July 2021) (8n2). “For wind and solar electricity generation, nameplate capacity is not a meaningful measure of the amount of power generation expected when the unit is not experiencing an outage, though nameplate capacity provides a meaningful metric for the thermal fleet of power plants (e.g., coal, nuclear, and natural gas-fired generating units).”

the need for effective mitigation required in FERC-jurisdictional wholesale capacity markets absent a record that supports such a drastic change. The Commission’s statutory and constitutional obligations are not altered by an evolving resource mix or the desire to support state programs. Therefore, if the Commission decides to consider the PJM MOPR Filing, it is incumbent on the Commission to ensure that appropriate market rules and protections are in place to ensure that the markets produce just and reasonable results. In our view, any such adequate protection or balance is clearly lacking in PJM’s proposal.

PJM’s proposed Focused MOPR significantly limits the application of the MOPR for state-subsidized resources to those that receive “Conditioned State Support,” which is defined as “any financial benefit required or incentivized by a state, or political subdivision of a state acting in its sovereign capacity, provided outside of PJM markets and in exchange for the sale of a FERC-jurisdictional product conditioned on clearing in any RPM Auction.” Such determinations will be submitted to FERC for approval of whether the state actions constitute Conditioned State Support. PJM admits that this criteria for application of the MOPR to state-subsidized resources is the same one applied by the courts for determining whether a state policy is pre-empted by the Federal Power Act (FPA) but PJM argues that this finding should be expressly stated in its tariff because a court challenge may not provide relief in a timely manner. Consequently, the Focused MOPR does not provide any additional mitigation other than merely referencing a current legal standard, which is sorely insufficient to ensure that rates in the capacity market remain just and reasonable.

PJM also exempts current “legacy policies” that may otherwise fit the definition of Conditioned State Support, further limiting the application of the MOPR simply because “it is least disruptive to the states and efficiently allows states to craft future policies and programs to

avoid improperly interfering with the capacity market.” PJM’s justification for a blanket exemption for existing “legacy policies” is woefully inadequate, claiming that a blanket exemption makes it “less disruptive” for states. Including this exemption for convenience’s sake is unfounded and is certainly no justification for a blanket exemption from mitigation of market power that is required under the FPA.

Additionally, PJM specifically identifies and codifies a blanket exemption from the MOPR for a wide range of policies and programs upfront that it believes do not constitute Conditioned State Support and, therefore, are automatically exempt from the MOPR including RECs/ZECs/RGGI, State and local tax incentives, State retail default service auctions, incentives related to fuel supplies, and Federal regulatory programs administered by states such as PURPA and the Cross-State Air Pollution Rule.

In totality, the exhaustive list of exemptions proposed by PJM for application of the MOPR results in virtually no mitigation of state subsidies other than what is already prohibited by law. This is simply unacceptable – FERC has an inescapable duty and obligation under the FPA to ensure that mitigation protections are in place to effectively address buyer-side market power and, absent this, rates will no longer be just and reasonable. Just as there are extensive market power mitigation measures on the supply side, there should be comparable strong mitigation applied on the buyer-side to prevent distorted capacity market outcomes. Supply-side analysis relies on empirical tests to determine market power without assessing the intent of the market participant while PJM’s proposal for addressing buyer-side market power does not. This is a significant distinction and departure of policy without adequate justification for such a departure. Appropriate and balanced mitigation is an essential component of the capacity market to maintain market confidence and encourage investment over the long-term. Even if the

Commission believes that the application of the Expanded MOPR is too expansive, PJM's Focused MOPR takes this to the other extreme by failing to provide for sufficient market mitigation.

c. FERC and regional operators must continually assess future reliability implications that may ensue from dramatic changes in the resource mix as we transition to a lower-emissions energy future.

Reliability of the grid should be the top priority for both regional operators and FERC and this priority becomes increasingly important as we move through this transitional phase to a low-emissions energy future in which more intermittent resources supply power to the system. A well-functioning capacity market provides the foundation for ensuring a reliable grid so that the market can support and attract sufficient investment needed to meet resource adequacy requirements. With the growth of intermittent resources on the system, there will be greater reliance on peaking units, such as fast start, fast-ramping and fast-stop units, that only run a few (yet critical) times per year. These units will need to heavily rely on the capacity market for adequate revenue to maintain their financial viability as well as to incent capital investment. Therefore, since the new Focused MOPR does not effectively prevent the price suppression caused by buyer-side market power, especially in constrained areas, there is greater potential for these types of peaking units to not be available when needed to support renewables integration. The Commission cannot accept the PJM MOPR Filing without assessing the impacts on these resources that are a critical part of meeting reliability needs.

PJM, and all regional operators, should be performing forward-looking assessments to determine whether its existing and expected resource mix will continue to ensure reliable operations. If we want to avoid a future that relies on expensive, inefficient and administratively challenging Reliability Must Run constructs (RMRs) instead of least-cost market-based

resources, we must all keep our eye on the ball to ensure that we continue to maintain a reliable grid. RTOs and FERC alike should be performing forward-looking assessments and not assume that a snapshot of the resources on the grid today is accurate or that those resources needed down the line will remain operational if generators are not compensated or lack confidence in the market structure.

As mentioned above, PJM's expert witness, Professor Peter Cramton, developed models that claim sufficient resources will be in place to provide reliable service in PJM through 2040 under either the expanded or Focused MOPR. However, Professor Cramton's modeling outcomes are highly dependent on inputs that may not reflect reality. Thus, at a minimum, if PJM's proposal is not rejected, the Commission must set the PJM MOPR Filing for hearing so that experts can test these inputs and an adequate record can be developed to support Commission actions in this proceeding. In this time of dramatic changes in the resource mix, it is of the greatest importance that we fully vet and verify any modeling of future conditions which underpin policy and regulatory decision-making as flawed calculations cannot be simply corrected in real time. Meanwhile, developers will have relied on that modeling and resulting policies or regulations to make the significant investments needed to build additional generation and maintain existing generation in the near and long terms.⁹

d. Natural gas generation continues to be an essential partner with renewables to support grid reliability.

As leaders in the natural gas industry, NGSAs supports the growth of renewables and the development of innovative and advanced technology solutions that will reduce or eliminate carbon emissions entirely in the future. Natural gas is a critical partner to intermittent resources

⁹ Electric Power Supply Association, "Comments of the Electric Power Supply Association", Docket No. AD21-10-000 (April 26, 2021) 16. "Below-cost offers from state-supported resources will inevitably impact financing of otherwise economic merchant resources..."

given that natural gas-fired power plants can ramp up rapidly when needed, enabling ever-greater levels of renewables to be reliably integrated into the power grid. Natural gas and renewable resources work together to provide reliable energy to consumers, with natural gas seamlessly stepping in when the wind dies down or clouds move in. Until the time in which there are technological breakthroughs that allow for widespread reliance on long-duration energy storage, natural gas will continue to play a large role in its partnership with renewables. Thus, it is necessary for regional wholesale electricity markets to ensure that they are continuing to procure sufficient firm and dispatchable resources needed to reliably operate a system with significant levels of intermittent penetration.

IV. CONCLUSION

NGSA recognizes that finding a means to accommodate state subsidies in a manner that limits market distortions in PJM's capacity market is no easy task. This is readily demonstrated in the numerous MOPR variations and other capacity market alternatives that have been considered, rejected, or approved over the course of the last decade. While states have the right to take actions that help them achieve their public policy objectives, we do not believe that regional organizations or FERC should create wholesale market policies that allow some resources to be favored over others. Such policies can have detrimental impacts on all participants' confidence in the market and, over time, will impact the ability of the capacity market to secure the resources required to maintain a reliable system and, ultimately, will be more costly for consumers.

For the reasons set forth above, the Commission must reject PJM's MOPR filing because it fails to impose effective mitigation of state-subsidized resource offers, especially in constrained areas. The Focused MOPR's failure to adequately mitigate the potential for suppressing capacity market prices, which are likely to lead to unjust and unreasonable rates, and

its inability to protect against buyer-side market power, exacerbates uncertainty that natural gas peaking units will remain financially viable and available when they are most needed to support higher levels of renewables integration. This outcome harms both grid reliability and consumers and therefore cannot be ignored. If the Focused MOPR proposal is not rejected, the Commission should set the PJM MOPR Filing for hearing to examine the issues raised in this Protest.

Instead of considering PJM's proposal, the Commission should encourage PJM to focus on its comprehensive efforts to find sustainable long-term market-based solutions that recognize and value the importance of all resources that can achieve the low-emissions energy future we all desire. Given the long lead times associated with building new generation, we must be mindful of what is needed to support grid reliability in the future through continual regional assessments. As PJM continues to pursue more sustainable market-based solutions, any new policies should recognize the essential role that all generation resources play in supporting system reliability, including the important role of natural gas in supporting the growth of renewable resources on the grid.

Respectfully submitted,



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