

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

Calpine Corporation, Dynegy Inc., Eastern Generation, LLC, Homer City Generation, L.P., NRG Power Marketing LLC, GenOn Energy Management, LLC, Carroll County Energy LLC, C.P. Crane LLC, Essential Power, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, L.P., GDF SUEZ Energy Marketing NA, Inc., Oregon Clean Energy, LLC and Panda Power Generation Infrastructure Fund, LLC

Docket Nos. EL16-49-000
EL18-178-000
(Consolidated)

v.

PJM Interconnection, L.L.C.

PJM Interconnection, L.L.C.

**MOTION FOR RECONSIDERATION OF
THE EDISON ELECTRIC INSTITUTE**

I. INTRODUCTION

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the Edison Electric Institute (“EEI”) respectfully submits this motion for reconsideration of the Commission’s December 19, 2019, order in the above-captioned proceedings.²

EEI is the association that represents all investor-owned electric companies in the United States. Our members provide electricity for about 220 million Americans and operate in all fifty states and the District of Columbia. As a whole, the electric power industry supports more than

¹ 18 C.F.R. § 385.212.

² *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (“Expanded MOPR Order”).

seven million jobs in communities across the United States. EEI's members are committed to providing affordable and reliable electricity to customers now and in the future. EEI's diverse membership includes electric utilities that operate in PJM Interconnection, L.L.C. ("PJM"), serve customers within the PJM region, and are regulated by the state public service commissions of the states in PJM.

Through these comments, EEI does not take a position on whether PJM's current capacity market rules are unjust and unreasonable. Rather, EEI addresses the broader issues of the role of state policy goals within the wholesale market and the need for policies that are resource neutral. First, EEI supports a state's ability to engage in legitimate state activity that is consistent with judicial precedent.³ The Commission should recognize the states' role in determining their preferred resource attributes. Second, EEI urges the Commission to continue its policies of being technology and resource neutral.

II. BACKGROUND

On April 9, 2018, in Docket No. ER18-1314, PJM submitted revisions to the Reliability Pricing Model rules in the PJM Open Access Transmission Tariff ("Tariff") to address supply-side state subsidies and their impact on the determination of just and reasonable prices in the PJM capacity market.⁴ EEI submitted a doc-less Motion to Intervene in Docket No. ER18-1314.⁵

On June 29, 2018, the Commission issued an order rejecting the Tariff revisions proposed in the PJM April 2018 Filing, granting in part and denying in part a complaint filed by generation

³ The state activity will be informed by Federal Court decisions. *See e.g.* Supreme Court decision in *Kevin Hughes, Chairman, Maryland Public Service Commission et al. v. PPL EnergyPlus et al.* S.Ct. Nos. 14-614, 14-623 and *EPSCA v. FERC*, S.Ct. Nos. 14-840, 14-841.

⁴ Capacity Repricing or in the Alternative MOPR-Ex Proposal: PJM Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market, Docket No. ER18-1314-000 (Apr. 9, 2018) ("PJM April 2018 Filing").

⁵ Motion to Intervene of the Edison Electric Institute (doc-less), Docket No. ER18-1314-000 (May 7, 2018).

entities against PJM in Docket No. EL16-49-000, and instituting a proceeding under section 206 of the Federal Power Act (“FPA”) in Docket No. EL18-178-000.⁶ The Commission found that the Minimum Offer Price Rules (“MOPR”) contained in the PJM Tariff did not address “the price suppressive impact of resources receiving out-of-market support.”⁷ However, the Commission explained that it was “unable to determine . . . the just and reasonable rate to replace the rate in PJM’s Tariff.”⁸ The Commission therefore instituted a paper hearing in Docket No. EL16-49 to address a proposed alternative approach that would:

(i) modify PJM’s MOPR such that it would apply to new and existing resources that receive out-of-market payments, regardless of resource type, but would include few to no exemptions; and (ii) in order to accommodate state policy decisions and allow resources that receive out-of-market support to remain online, establish an option in the Tariff that would allow, on a resource-specific basis, resources receiving out-of-market support to choose to be removed from the PJM capacity market, along with a commensurate amount of load, for some period of time.⁹

The June 2018 Order invited parties to submit testimony, evidence, or argument regarding this proposed approach.

In the Expanded MOPR Order, the Commission directed PJM to submit a replacement rate that retains PJM’s current review of new natural gas-fired resources under the MOPR and extends the MOPR to include both new and existing resources, external and internal, that receive, or are entitled to receive, certain out-of-market payments, subject to certain

⁶ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (“June 2018 Order”). In the June 2018 Order, the Commission stated that it was incorporating the record from Docket No. ER18-1314 into the newly-established proceeding in Docket No. EL18-178 and that it was consolidating Docket No. EL18-178 with complaint proceeding in Docket No. EL16-49. June 2018 Order at P 8. Accordingly, EEI’s timely intervention in Docket No. ER18-1314 makes it a party in the consolidated docket.

⁷ June 2018 Order at P 5.

⁸ *Id.* at P 7.

⁹ *Id.* at P 8.

exemptions.¹⁰ The three categorical exemptions are: (1) existing self-supply resources; (2) existing demand response, energy efficiency, and storage resources; and (3) existing renewable resources participating in Renewable Portfolio Standards (“RPS”) programs.¹¹

III. MOTION FOR RECONSIDERATION

EEI respectfully moves for reconsideration of certain discrete policy issues in the Expanded MOPR Order. First, by not offering a mechanism to accommodate state programs, the Expanded MOPR Order may impinge on the ability of resources in states in the PJM region with public policy goals to actively participate in the PJM market. Second, by treating existing resources in PJM dissimilarly without providing sufficient rationale for doing so, the Commission contradicts its policy of requiring regional transmission operators (“RTOs”) and independent system operators (“ISOs”) to be technology-neutral in the administration of their wholesale electricity markets.

A. The Expanded MOPR Order Does Not Adequately Accommodate State Programs or State Policy Decisions.

The Expanded MOPR Order does not adequately recognize the states’ role in determining preferred resource attributes and, as a result, exposes consumers to potentially duplicative capacity charges. As an initial matter, EEI is generally supportive of a state’s ability to engage in policy and regulatory activity, consistent with judicial precedent.¹² State energy policies will evolve over time and, as a matter of cooperative federalism, the Commission should help ensure that states are able to co-exist with well-functioning wholesale electricity markets. Due to differing market structures, market needs, and public policy goals in the different RTO/ISO

¹⁰ Expanded MOPR Order at PP 2, 37-42, 50-54.

¹¹ *Id.* at PP 2, 12-14, 173-177, 202-204, 208-209.

¹² *See Elec. Power Supply Ass’n v. FERC*, 136 S. Ct. 760 (2016).

regions, the solutions will not be the same in every RTO/ISO. Different regions should therefore have the flexibility to address the issue of how to accommodate or achieve policy goals within their own region.

In order for capacity markets to be sustainable into the future, the Commission must find a balanced approach that permits states to both achieve their energy goals, while still be able to have their load-serving entities (“LSEs”) participate in capacity markets. The Expanded MOPR Order may impair the ability of states in the PJM region to simultaneously pursue their own policy objectives and allow LSEs in those states to participate in the PJM capacity market. States in the PJM region are seemingly left with the decision either to pursue their policy goals, such as procuring greater amounts of clean energy, at the expense of no longer participating in the PJM capacity market, or forego these policy objectives in order to allow LSEs in their state to participate in the PJM capacity market.

Furthermore, the Expanded MOPR Order potentially exposes consumers in the PJM region to duplicative capacity charges. First, through state programs, states will procure capacity from certain resources in order to achieve their clean energy policy goals. Second, those same consumers may be forced to procure that same capacity again in the PJM capacity market so that an LSE within the state can satisfy its capacity obligations. This result runs contrary to the very purpose of capacity markets, which is to enable participants to procure capacity in the most efficient and economic manner possible. These issues will increase as more states in PJM increase their commitments to clean energy.

The Commission recognized this in the June 2018 Order, finding that “it may be just and reasonable to accommodate resources that received out-of-market support, and mitigate or avoid the potential for double payment . . . , by implementing a resource-specific FRR Alternative

option.”¹³ The Expanded MOPR Order departs from the Commission’s earlier finding without offering any reason why it is no longer necessary to mitigate or avoid duplicative capacity charges.¹⁴

For these reasons, EEI requests that the Commission ensure that legitimate state programs and policy decisions can function within the wholesale markets.

B. The Commission Should Continue to be Resource and Technology Neutral

The Expanded MOPR Order treats existing resources in PJM dissimilarly by extending the MOPR to certain existing resources, while carving out categorical exemptions for other existing resources. As discussed above, the Expanded MOPR Order creates exemptions for: (1) existing self-supply resources; (2) existing demand response, energy efficiency, and storage resources; and (3) existing renewable resources participating in RPS programs.¹⁵ The Commission did not, however, create a similar exemption for all existing resources in the PJM capacity market. Moreover, the Commission did not provide sufficient rationale for its decision to not treat all existing resources in the PJM capacity market similarly. Market rules should recognize the value and attributes that all resources provide to maintaining system reliability and resource adequacy. The Commission should be technology and resource neutral in its policy decisions concerning capacity markets so that all existing resources (regardless of technology) are treated similarly.

Furthermore, all owners of existing resources in PJM rely on Commission guidance in making business decisions. The owners of these existing resources have made significant capital

¹³ See June 2018 Order at P 160.

¹⁴ See, e.g., *Mich. Pub. Power Agency v. FERC*, 405 F.3d 8, 12 (D.C. Cir. 2005) (“The Commission, however, may change its policy only if it provides ‘a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.’”).

¹⁵ Expanded MOPR Order at PP 2, 12-14, 173-177, 202-204, 208-209.

investments to ensure that their units operate in a safe and reliable manner and are able to participate in the capacity market in PJM. These investments have been made with the expectation that the owners would be able to recover these expenses while providing capacity in the wholesale capacity markets in future years of operation. Thus, all existing resources have made business decisions based on Commission-approved market rules and the Commission should therefore treat all existing resources similarly.

IV. CONCLUSION

As discussed above, EEI appreciates the Commission's consideration of its request.

Respectfully Submitted,

/s/ Lopa Parikh

Lopa Parikh
Senior Director, Federal Regulatory Affairs
Phone: (202) 508-5058
Email: lparikh@eei.org

Brett K. White
Senior Manager, Federal Regulatory Affairs
Phone: (202) 508-5144
Email: bwhite@eei.org

Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

February 10, 2020

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 at Washington, D.C. this 10th day of February 2020.

/s/ Brett K. White
Brett K. White
Senior Manager, Federal Regulatory Affairs
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 508-5144
Email: bwhite@eei.org

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