

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

PJM Interconnection, L.L.C.

)

Docket No. ER18-1314-006

SUPPORTING COMMENTS OF CALPINE CORPORATION

Pursuant to the notice issued by the Federal Energy Regulatory Commission (the “Commission”) in the above-captioned proceeding,¹ Calpine Corporation respectfully submits these comments supporting the filing² of PJM Interconnection, L.L.C. (“PJM”) proposing revisions to its Minimum Offer Price Rule (the “MOPR”)³ to comply with the Commission’s April 16, 2020 order.⁴ The Second Compliance Filing properly implements the Commission’s directives; in particular, and as explained in detail herein, PJM’s proposed language regarding state-directed default service procurement programs appropriately ensures that only those resources receiving payments from procurement programs that are competitive, non-discriminatory, and resource neutral will be exempt from the MOPR. Accordingly, the Commission should promptly accept the Second Compliance Filing, as well as the earlier compliance filing submitted by PJM,⁵ such that PJM may hold the Base Residual Auction for the 2022/2023 Delivery Year (the “2022/2023 BRA”) as soon as possible.

¹ Combined Notice of Filings #1, Docket Nos. ER10-2042-032, *et al.* (June 2, 2020) (unreported).

² Second Compliance Filing Concerning Application of the Minimum Offer Price Rule, Docket No. ER18-1314-006 (filed June 1, 2020) (the “Second Compliance Filing”).

³ Capitalized terms not otherwise defined herein have the meaning set forth in the PJM Open Access Transmission Tariff (the “Tariff”) or, if not therein defined, the Second Compliance Filing.

⁴ *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) (the “April 2020 Order”).

⁵ *See* Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at Least 35 Days, Docket No. ER18-1314-003 (filed Mar. 18, 2020, errata filed Mar. 25, 2020) (the “Initial Compliance Filing”). The Initial Compliance Filing was filed in response to the Commission’s December 19, 2019 order. *Calpine Corp. v.*

I.**COMMENTS**

As indicated in Calpine's comments regarding PJM's Initial Compliance Filing, Calpine strongly supports the Commission's efforts to address the harm to PJM's Reliability Pricing Model ("RPM") market from State Subsidies.⁶ Calpine also supports the steps taken by the Commission in the December 2019 Order and April 2020 Order to minimize any gaps in PJM's rules that could allow States to funnel subsidies to favored resources without triggering the expanded MOPR.

At the same time, Calpine is concerned that statements in the April 16 Order with respect to state default service auctions may have unintended consequences. State default offer service programs are an integral component of the market design of states that have elected to pursue retail choice. These programs provide a time-tested means of procuring power for those consumers, regardless of customer class, who elect not to choose an alternative supplier. For nearly two decades, default procurement auctions have produced competitive rates for these "non-shopping" consumers while providing a means to acquire a reliable supply of generation to a restructured utility's homes and businesses.

In addressing requests for rehearing and clarification, the April 2020 Order found that—

State default service auctions meet the definition of State Subsidy to the extent they are a payment or other financial benefit that is a result of a state-sponsored or state-mandated process and the payment or financial benefit is derived from or connected to the procurement of electricity or electric generation capacity sold at wholesale, or an attribute of the generation process for electricity or electric generation capacity sold at wholesale, or will support the construction, development, or operation of a capacity resource, or

PJM Interconnection, L.L.C., 169 FERC ¶ 61,239 (2019) (the "December 2019 Order"), *on reh'g*, April 16 Order, 171 FERC ¶ 61,035, *appeal docketed sub nom. Illinois Commerce Commission v. FERC*, Nos. 20-1645, *et al.* (7th Cir. filed Apr. 20, 2020).

⁶ See Comments of Calpine Corporation, Docket Nos. ER18-1314-003, *et al.* (filed May 15, 2020) (the "Calpine Initial Comments").

could have the effect of allowing a resource to clear in any PJM auction.⁷

This holding could subject a vast swath of suppliers in PJM to the MOPR. Resources would be subject to MOPR mitigation because they have successfully participated in default service auctions, even if such auctions are truly competitive and are not designed to funnel out-of-market subsidies to specific types of favored resources. Moreover, and as the Second Compliance Filing correctly explains, resources could be subject to the MOPR even if they have not directly participated in a state default service auction because the definition of a State Subsidy includes any indirect payments or financial benefits,⁸ while “winning bids in default service auctions are not tied to any particular generating resource.”⁹ Accordingly, a resource could be considered subject to the MOPR simply because it makes third-party sales to the winning bidder.¹⁰ An application of the MOPR that “effectively sweep[s] in all Capacity Resources that supply to an entity that was awarded a state default service obligation could [therefore] paralyze the voluntary bilateral markets as they exist today.”¹¹

The Second Compliance Filing addresses the Commission’s concerns while rationally limiting the scope of the MOPR with respect to default service procurement programs. Specifically, the Second Compliance Filing provides that a State Subsidy shall not include—

any revenues from the sale or allocation, either direct or indirect, to an Entity Providing Supply Services to Default Retail Service Provider where such entity’s obligations was [sic] awarded through

⁷ April 2020 Order, 171 FERC ¶ 61,035 at P 386.

⁸ *See, e.g.*, December 2019 Order, 169 FERC ¶ 61,239 at P 9.

⁹ Second Compliance Filing at 17.

¹⁰ *See id.* at 17-18 (explaining that “a power marketer winning a tranche may satisfy its default retail service obligations through numerous voluntary bilateral transactions with third parties at any time in advance of the Day-ahead Energy Market and Real-time Energy Market, or may simply carry the obligation into the Day-ahead Energy Market and Real-time Energy Market where PJM would be the counter-party”).

¹¹ *Id.* at 18.

a state default procurement auction that was subject to independent oversight by a consultant or manager who certifies that the auction was conducted through a non-discriminatory and competitive bidding process, subject to the below condition, and provided further that nothing herein would exempt a Capacity Resource that would otherwise be subject to the minimum offer price rule pursuant to this Tariff[.]¹²

The proposed Tariff language further stipulates that a state default service procurement auction may only be certified as non-discriminatory and competitive if it satisfies certain requirements.¹³

PJM's proposal is consistent with Calpine's recommendations in the Calpine Initial Comments regarding state default service procurement programs,¹⁴ and would allow those programs that are competitive, non-discriminatory and resource neutral to continue with their normal commercial activity without subjecting suppliers who directly or indirectly participate in the programs to the MOPR rules. Most importantly, this proposal meets the Commission's goal of establishing a replacement rate that addresses state efforts to subsidize preferred generation resources while also allowing well-functioning, non-discriminatory retail access programs to continue to provide the benefits of competition for consumers. The Commission should therefore accept PJM's proposed language with respect to state default service procurement programs, as well as the remainder of the Second Compliance Filing, which complies with the Commission's directives in the April 2020 Order.

Calpine further urges the Commission to act expeditiously on both the Initial and Second Compliance Filings. As the Commission well knows, the 2022/2023 BRA has already been delayed by more than a year, thereby making it difficult for market participants to make necessary plans in advance of the 2022/2023 Delivery Year. Given that PJM has indicated that it will require

¹² *Id.*, Attachment A, Proposed Tariff Revisions, Definition of "State Subsidy."

¹³ *See id.*

¹⁴ *See* Calpine Initial Comments at 6-8.

six and a half months after the issuance of a Commission order accepting its compliance filings to prepare for the 2022/2023 BRA,¹⁵ it is imperative that the Commission act swiftly on the Initial and Second Compliance Filings.

II.

CONCLUSION

WHEREFORE, Calpine respectfully requests that the Commission promptly accept the Initial and Second Compliance Filings to allow the 2022/2023 BRA to take place as soon as possible.

Respectfully submitted,

/s/ Neil L. Levy

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Dated: June 22, 2020

¹⁵ See Initial Compliance Filing at 84.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, DC, this 22nd day of June, 2020.

/s/ Neil L. Levy
Neil L. Levy

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