

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

CPV Power Holdings, L.P., Calpine Corporation and Eastern Generation, LLC,)	
)	
Complainants)	
)	
v.)	Docket No. EL18-169-000
)	
PJM Interconnection, L.L.C.,)	
)	
Respondent.)	

**MOTION TO INTERVENE
AND PROTEST
OF THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

I. INTRODUCTION

Pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.211, 385.214 (2018), and the Notice of Complaint issued in the above-referenced proceeding on June 1, 2018, the National Rural Electric Cooperative Association (“NRECA”) moves to intervene in this proceeding and protests the Complaint filed on May 31, 2018, by CPV Power Holdings, L.P. (“CPV”), Calpine Corporation (“Calpine”), and Eastern Generation, LLC (“Eastern Generation”) (collectively “Complainants”). The Complaint is the third attempt by certain incumbent generating companies to re-purpose and expand the Minimum Offer Price Rule (“MOPR”) in the PJM Interconnection, L.L.C. (“PJM”) Reliability Pricing Model (“RPM”) to mitigate alleged price suppression resulting from state public policies affecting existing capacity resources. And unlike the two prior efforts—the initial and amended complaints in Docket No. EL16-49-000—the instant Complaint also seeks to mitigate the effects on prices of certain federal public policies on existing resources. Of particular concern to NRECA, however,

the instant Complaint, unlike the earlier efforts in Docket No. EL16-49-000,¹ seeks a MOPR that not only applies to existing resources but also does not have any exemptions, including a Self-Supply Exemption. The Complaint requests that the Commission direct PJM to file tariff language with a MOPR “applicable to all subsidized resources and without categorical exemptions”² and that the Commission direct PJM “to modify the definition of ‘Material Subsidy’ to cover not only material state subsidies but also material federal subsidies or other support granted after the date of this Complaint.”³

II. OVERVIEW OF RELATED PJM PROCEEDING AND NRECA’S POSITION

On April 9, 2018 in Docket No. ER18-1314, PJM submitted under FPA Section 205 two separate proposals to modify the RPM rules in its Tariff, to “address supply-side state subsidies and their impact on the determination of just and reasonable prices in the PJM capacity market.”⁴ PJM’s preferred approach in the April 9 Filing is its Capacity Repricing proposal which involves a two-step Base Residual Auction (“BRA”) where resources are cleared and capacity commitments are assigned in an initial auction, then PJM will conduct a second auction where Capacity Resources with an Actionable Subsidy will be repriced to an Actionable Subsidy Reference Price. Because the Capacity Repricing mechanism would apply to both new and existing resources which qualify as a Capacity Resource with Actionable Subsidy, PJM proposes to eliminate the BRA’s MOPR as unnecessary.⁵ The second proposal is the “MOPR-Ex” proposal developed by the Independent Market Monitor (“IMM”) for PJM. Under MOPR-Ex, the existing MOPR would be expanded to apply to existing resources as well as new entry and

¹ Complaint Requesting Fast-Track Processing, submitted in Docket No. EL16-49-000 on March 21, 2016, at 36.

² Third Complaint at 2.

³ *Id.* at 19.

⁴ PJM’s April 9 Filing in Docket No. ER18-1314-000, at 1.

⁵ *Id.* at 95.

would mitigate resources that receive a Material Subsidy and qualify as a Capacity Resource with Actionable Subsidy.⁶ MOPR-Ex would also expand the existing MOPR from applying only to certain types of gas-fired resources, to all types of Generation Capacity Resources except Qualifying Facilities.⁷ Further, MOPR-Ex would apply to external Capacity Resources.⁸ With respect to exemptions, PJM proposes to retain a Unit Specific Exception as well as reinstitute the Self-Supply and Competitive Entry Exemptions which existed prior to the Commission’s order on remand in Docket No. ER13-535,⁹ and add two new exemptions: a Public Entity Exemption and a Renewable Portfolio Standard Exemption.

On April 7, 2018, NRECA submitted Comments on PJM’s April 9 Filing. NRECA reiterated its continued opposition to forced reliance on mandatory capacity constructs such as RPM.¹⁰ Instead, PJM should move towards a voluntary, residual capacity market, which works alongside longer-term bilateral contracting as a long-term solution to maintain reliability while accommodating long-standing business models such as those of NRECA’s cooperative utility members, and allowing for true competitive outcomes.¹¹ NRECA urged the Commission to at least accommodate and encourage the self-supply of capacity under long-standing business models by mandating that any outcome of the Docket No. ER18-1314-000 proceeding must contain specific exemptions for self-supply by cooperative utilities and other load-serving entities (“LSEs”).

⁶ *Id.* at 98-116.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 105; *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011); *order on reh’g*, 137 FERC ¶ 61,145 (2011); *order on reh’g*, 138 FERC ¶ 61,194 (2012); *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013); *order on reh’g*, 153 FERC ¶ 61,066 (2015); *vacated and remanded sub nom., NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (“*NRG*”); *reh’g denied, NRG Power Mktg., LLC v. FERC*, No. 15-1452 (D.C. Cir. Sept. 20, 2017) (per curiam); *order on remand, PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 (2017).

¹⁰ NRECA April 7, 2018 Comments in Docket No. ER18-1314 at 1.

¹¹ *Id.*

III. SUMMARY OF NRECA'S POSITION

As discussed herein, the Complaint should be rejected outright because the Complainants have failed to demonstrate that (1) RPM with the existing MOPR is unjust and unreasonable; and (2) the Complainants' proposed limitless MOPR is just and reasonable.

Even if the Commission does not reject the Complaint outright, it should reject the Complainants' unreasonable and speculative attack on LSE self-supply. An elimination of any exemption for self-supply is unjust and unreasonable for all of the reasons the Commission has consistently acknowledged, including the fact that LSEs such as NRECA's electric cooperative members in PJM must have assurance that their long-term investments in generation will be honored and accommodated to meet their capacity obligations so that their customers do not face unreasonable double payment for capacity. In short, the Complainants have not justified such a harmful evisceration of the Commission's policy and precedent of accommodating self-supply in PJM's RPM. The Complaint is contrary to the Commission's precedent of honoring and accommodating self-supply by entities who do so under long-standing business models and with no incentive to artificially depress clearing prices. The Complainants' attempt to treat LSE self-supply as a material subsidy that must be mitigated by the MOPR is unreasonable and unwarranted, and serves only their goal of forcing all capacity procurement through RPM, to the benefit of certain generators and the detriment of competition, long-standing business models, and customers.

NRECA does not take a position in this proceeding on the merits of the various state and federal public policies that the Complainants seek to mitigate in RPM with their proposed MOPR. But it cannot be ignored that the prevalence of such state actions indicates that RPM itself is not just and reasonable because it is not producing the long-run outcomes for consumers that the Commission intended and the states expected. Instead, RPM, with its narrow focus on

near-term cost minimization, fails to capture generation values and attributes demanded in the wholesale market by wholesale customers and their state regulators.

The Complainants' use of possible federal subsidies as the basis for their Complaint is too speculative to be relied upon here. It is simply too early to know which federal policies will be adopted and how they might impact wholesale capacity markets or RPM. Similar to the initial complaint in EL16-49-000, which sought revisions of the MOPR to address possible actions by Ohio that never came to pass, the Complainants' threat of federal policies here cannot reasonably serve as the basis for drastic and urgent changes to the MOPR.

IV. MOTION TO INTERVENE

NRECA is the national service organization for America's electric cooperatives. The nation's member-owned, not-for-profit electric co-ops constitute a unique sector of the electric utility industry. NRECA represents the interests of the nation's more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are driven by their purpose to power communities and empower their members to improve their quality of life. Because of their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve. America's electric cooperatives serve 56 percent of the nation, 88 percent of all counties, and 12 percent of the nation's electric customers, while accounting for approximately 11 percent of all electric energy sold in the United States. NRECA's member cooperatives include 63 generation and transmission ("G&T") cooperatives and 834 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. The G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives, those cooperatives that provide power directly to the end-of-the-line consumer-owners. Remaining distribution cooperatives receive power directly from other

generation sources within the electric utility sector. NRECA members account for about five percent of national generation and, on net, generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent from non-NRECA members. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service. NRECA's members participate in all of the nation's organized wholesale electricity markets, including PJM. Further, NRECA has consistently participated in proceedings regarding capacity markets in regional transmission organizations and independent system operator regions, including PJM's. As such, NRECA has an interest in this proceeding which cannot adequately be represented by any other party.

V. COMMUNICATIONS

NRECA requests that the following representatives be included on the Official Service

List for this proceeding:

Adrienne E. Clair
Thompson Coburn, LLP
1909 K Street, NW
Suite 600
Washington, DC 20006
Phone: (202) 585-6919
Email: aclair@thompsoncoburn.com

Randolph Elliott
Senior Director, Regulatory Counsel
National Rural Electric Cooperative
Association
4301 Wilson Blvd., 11th Floor
Arlington, VA 22203
Tel: (703) 907-6818
Randolph.Elliott@nreca.coop

VI. PROTEST

On its face, the Complaint fails to meet the two-part burden of proof imposed by section 206, that (1) the existing MOPR is unjust and unreasonable, and (2) that their proposed solution is just, reasonable and not unduly discriminatory or preferential.¹² Therefore, the Complaint should be rejected.

¹² See *Blumenthal v. FERC*, 552 F.3d 875, 881 (D.C. Cir. 2009).

A. Complainants Have Not Demonstrated that the Existing MOPR is Unjust and Unreasonable.

The Complainants have not shown that the existing MOPR is unjust and unreasonable because it does not apply to all capacity resources without exemptions. The primary focus of the Complaint is subsidies caused by state and federal actions, not actions by entities like cooperative utilities operating under long-standing business models.¹³ PJM's April 9 Filing in Docket No. ER18-1314-000 already addresses subsidies caused by government action such as those raised in the Complaint, without going so far as to unreasonably target legitimate self-supply by entities operating under long-standing business models.

As it relates to self-supply by cooperative utilities acting under long-standing business models, the Complaint does not demonstrate that a MOPR with an exemption for self-supply by such entities is unjust and unreasonable. Indeed, the Complaint itself never explains why allowing LSE self-supply in RPM is unjust and unreasonable. The Complainants' case against LSE self-supply is relegated to the attached affidavit of Dr. Roy Shanker, where the following statement is made:

Parties can self-supply over a wide range, creating excesses that suppress price and 'lean' on the rest of the market to carry some portion of the excess costs. This is particularly true for vertically integrated companies such as IOUs, municipals and cooperatives that have almost assured cost recovery. Again, it reflects an opportunity for parties to exploit loopholes in the RTO structure that supports their 'historic business models' while at the same time rewarding them with the many benefits of RTO participation. The benefits must be material as none of these parties have expressed any interest in taking on FRR status and limiting their commerce with the RTO.

¹³ See Third Complaint at 10, 17, arguing that "state subsidies represent a serious and imminent threat to the RPM market," and that "[t]he Commission must, therefore, ensure that 'the actions of a single state' do not 'have the effect of preventing other states from participating in wholesale markets' or otherwise adversely affect the functioning of the wholesale capacity market. Indeed, as the Commission recognized in *ISO New England*, it has a duty under the FPA to act to protect the RPM market from the effects of state subsidies." See also Third Complaint at 19, raising concern over "material federal subsidies."

Complaint, Attachment A, para. 35.¹⁴ First, the affidavit offers no evidence in support of the assertion that LSE self-supply leads to any unreasonable “excesses” that must be carried by the rest of the market. RPM was not designed to guarantee generators missing money or insulate them from the fact that capacity can be procured outside of the PJM capacity construct. The annual RPM auction is called the “Base Residual Auction” precisely because RPM allows for capacity resources to be procured outside RPM. Dr. Shanker’s argument evidences the Complainants’ intent that self-supply be replaced entirely by capacity obtained through RPM, a truly mandatory construct for all capacity. The Commission has not mandated such a drastic change in PJM, and the Complaint offers no reasonable basis for doing so now.

Second, this unsupported assertion against LSE self-supply is contrary to the Commission’s precedent with respect to preservation of self-supply under long-standing business models. The Commission has consistently recognized the need to accommodate self-supply, from the inception of RPM where the Commission accepted it as a residual market: “[A]fter LSEs have had the opportunity to procure capacity on their own, it is reasonable for PJM to procure capacity in an open auction at a time when further delay in procurement could jeopardize reliability. This, however should be a last resort.”¹⁵ When the MOPR was revised to address concerns over state subsidies, the Commission held to its policy for accommodating self-supply, as follows:

However, we agree with the position taken by petitioners, on rehearing, and supported by PJM in its post-technical conference comments (and in its compliance filing), **that the purpose and function of the MOPR is not to unreasonably impede the efforts of resources choosing to procure or build capacity under long-standing business models.** We agree with PJM that certain

¹⁴ See also Exhibit RJS-2 to Attachment A to the Complaint, which is a copy of the affidavit submitted in PJM’s April 9 Filing, where at paras. 36-40 Dr. Shanker made an expanded version of the same argument that PJM’s proposed Self-Supply Exemption is a “political compromise” which should be removed and self-supply LSEs should opt for the Fixed Resource Requirement alternative.

¹⁵ *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 at P 71 (2006).

advantages associated with long-standing and well-recognized business models should not be deemed automatically suspect (or summarily barred) when determining whether a particular sell offer accurately reflects a resource's net costs.¹⁶

Moreover, the Commission has found that the Self-Supply Exemption does not allow for the exercise of buyer market power and, therefore, is just and reasonable.¹⁷ Even in directing PJM to eliminate the Self-Supply Exemption on remand from the *NRG* decision,¹⁸ the Commission acknowledged that the case “involves the Commission’s improper revision of PJM’s filing under FPA section 205, not the merits of the competitive entry and Self-Supply Exemptions that were implemented during the relevant period and which the Commission found just and reasonable.”¹⁹

Third, the assertion by Dr. Shanker that the MOPR exemptions are a particular problem with “vertically integrated companies such as IOUs, municipals and cooperatives” and, the implication that such entities should instead be forced to the Fixed Resource Requirement (“FRR”), is contrary to the Commission precedent and should be disregarded. In response to similar arguments in previous proceedings, the Commission stated that “[a]t issue, however, is not the adequacy, or inadequacy, of the FRR option for vertically-integrated utilities. Rather, the issue is whether PJM’s proposed tariff changes are just and reasonable. We find that PJM has met this burden because entities that self-supply a sufficiently large portion of their capacity

¹⁶ *PJM Interconnection, L.L.C., et al.*, 137 FERC ¶ 61,145 at P 208 (2011)(emphasis added); *see also*, *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 108 (2013) (“May 2013 Order”).

¹⁷ *See PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066 at PP 36-38 (The Commission advised that “. . . residual needs must not be satisfied in a way that allows for the exercise of buyer-side market power” yet approved the Self-Supply and Competitive Entry Exemptions because “[b]oth exemptions are structured to exempt resources of entities that lack the incentive or ability to suppress prices.”).

¹⁸ *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011); *order on reh’g*, 137 FERC ¶ 61,145 (2011); *order on reh’g*, 138 FERC ¶ 61,194 (2012); *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013); *order on reh’g*, 153 FERC ¶ 61,066 (2015); *vacated and remanded sub nom., NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (“*NRG*”); *reh’g denied, NRG Power Mktg., LLC v. FERC*, No. 15-1452 (D.C. Cir. Sept. 20, 2017) (per curiam); *order on remand, PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 (2017).

¹⁹ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 at P 60 (2017).

requirement do not have an incentive to use uncompetitive entry to lower capacity prices . . .”).²⁰ As has been explained in various prior proceedings, the FRR alternative is not a viable option for most LSEs because of its all-or-nothing requirements, which is demonstrated by the fact that it is rarely used in PJM.²¹ Moreover, Dr. Shanker’s assertion that cooperative utilities are somehow getting an unfair benefit of RTO participation and instead should be forced to use the FRR option makes no sense. Support for long-standing business models and RTO participation are not mutually exclusive.

B. The Complainants’ Requested Relief Is Unjust, Unreasonable, Unduly Discriminatory and Preferential.

The Complaint requests that the Commission direct PJM to “file tariff language . . . in time for the BRA for the 2022/2023 Delivery Year” for a MOPR which is “applicable to all subsidized resources and without categorical exemptions like those in PJM’s MOPR-Ex proposal.”²² Complainants’ requested relief also includes modifying “the definition of ‘Material Subsidy’ to cover not only material state subsidies but also material federal subsidies or other support granted after the date of this Complaint.”²³

For the reasons discussed above, the Complainants’ request for a MOPR to apply to all resources with no exception or exemption should be rejected as contrary to Commission policy and unsupported by the Complaint. The Complainants have not demonstrated why the Commission’s previous rulings on accommodation of self-supply should be abandoned now—much less why the MOPR should be applied for the first time to all existing LSE self-supplied

²⁰ See May 2013 Order at P 110 (2013).

²¹ *Protest and Request for Rejection or, in the Alternative, Request for Suspension and Further Procedures of the PJM Load Group*, submitted on March 4, 2011 in Docket No. ER11-2875, at 32-25; see also *PJM Power Providers Group v. PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at PP 188 (summarizing arguments that the FRR alternative is not a viable replacement for the flexibility needed by vertically-integrated utilities).

²² Third Complaint at 2.

²³ *Id.* at 19.

capacity resources. Instead, as NRECA explained in detail in its Comments on PJM’s April 9 Filing, “it is critical that LSEs’ long-term investments in generation and other resources are honored and encouraged”, and the Commission should protect against a repeat of history where RPM design changes threatened LSEs’ long-standing business models.²⁴ Absent such assurance, LSE customers face the unreasonable risk of paying twice to satisfy a single capacity obligation; once in procuring the resource outside of RPM under long-standing business models, then a second time to replace the owned resource which does not clear the PJM BRA.

For all of the reasons that the Commission has previously adopted the Self-Supply Exemption over objection from entities like the Complainants, the Commission should again reject the Complainants’ request for a limitless MOPR in this proceeding. The Complaint should be rejected outright or at least the Commission should direct that any outcome of this proceeding must include exemptions for self-supply by at least cooperative utilities and municipal utilities.

²⁴ NRECA April 7, 2018 Comments in Docket No. ER18-1314 at 7-8.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, NRECA requests that the Commission: (1) grant NRECA's motion to intervene; and (2) reject the Complaint.

Respectfully submitted,

Adrienne E. Clair
Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006
(202) 585-6900
(202) 585-6969 (fax)
aclair@thompsoncoburn.com

/s/ Randolph Elliott
Randolph Elliott
Senior Director, Regulatory Counsel
National Rural Electric Cooperative
Association
4301 Wilson Blvd., 11th Floor
Arlington, VA 22203
Tel: (703) 907-6818
Randolph.Elliott@nreca.coop

Counsel for the National Rural Electric Cooperative Association

Dated: June 20, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2018, I have caused a copy of the foregoing to be served upon each person designated on the Official Service List for this proceeding.

/s – Adrienne E. Clair/