UNITED STATES OF AMERICA
BEFORE THE
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 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 No. EL16-49-000**
Complainants	)	
v.	)	
PJM Interconnection, L.L.C.	)	
Respondent.	)	

PROTEST OF THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

I. INTRODUCTION AND SUMMARY OF POSITION

The National Rural Electric Cooperative Association ("NRECA") protests the Complaint Requesting Fast Tack Processing ("Complaint") submitted by various generators in the above-referenced proceeding on March 21, 2016.[1] The Complaint alleges that the Minimum Offer Price Rule ("MOPR") in the Open Access Transmission Tariff ("Tariff") of PJM Interconnection, L.L.C. ("PJM") is unjust and unreasonable because it has not been expanded to impose upward price adjustment on existing resources in PJM's Reliability Pricing Model ("RPM"). The Complaint should be rejected outright, as it is nothing more than a misplaced overreaction to purchase power agreements ("PPAs") that have now been approved by the Public Utilities

[1] NRECA submitted a Motion to Intervene in this proceeding on March 21, 2016.

Commission of Ohio ("PUCO") between subsidiaries of American Electric Power Company, Inc. ("AEP") and FirstEnergy Corporation ("FirstEnergy") and their respective affiliates.[2] As opposed to any narrowly tailored relief, the Complaint requests that the Commission direct PJM to (1) adopt proposed Tariff revisions which would apply the MOPR to existing resources; and (2) initiate a stakeholder process to address matters raised in the Complaint going forward, with a compliance filing due by November 1, 2016.

As detailed below, the Complaint fails to meet the Federal Power Act ("FPA") Section 206 requirement[3] of demonstrating that the existing MOPR is unjust, unreasonable, unduly discriminatory or preferential, and that the proposed remedy is just, reasonable and not unduly discriminatory or preferential. It should thus be rejected. In the event the Commission is inclined to grant the Complaint, then it must ensure that the proposed Tariff revisions do not threaten or impact the existing MOPR Self-Supply Exemption and Competitive Entry Exemption. Further, if the Commission directs any stakeholder proceeding as a result of the Complaint, the Commission must not presuppose that existing resources should be subject to the MOPR, and the Commission must direct that the existing Self-Supply Exemption and Competitive Entry Exemption continue to be available for all qualified capacity resources that would be subject to the MOPR.

II. RELEVANT BACKGROUND

The background of the Ohio PUC approval of the AEP and FirstEnergy PPAs is provided in the Complaint. However, the Complaint does not discuss or acknowledge the importance of self-supply resources, both owned and through bilateral contracts, as reflected in the current MOPR exemptions. The background regarding the MOPR's accommodation of self-supply by

[2] On April 7, 2016, Complainants filed in this proceeding a motion to lodge PUCO orders approving the AEP and FE PPAs.
[3] 16 U.S.C. § 824e.

load-serving entities ("LSEs") operating under longstanding business models must be considered in the context of the Complaint and preserved notwithstanding the outcome of this proceeding.

The MOPR was included in the initial RPM settlement which was approved by the Commission in 2006.[4] The initial RPM settlement contained provisions whereby self-supply resources offered into RPM by LSEs were guaranteed to clear the RPM auction and, therefore, count towards the LSEs' capacity obligations. The guaranteed clearing for self-supply provided critical assurance to LSEs that their investments in owned or contracted capacity resources obtained outside of the RPM auctions were certain to clear those auctions. NRECA's members share a common concern against the risk of double payment for capacity. Cooperative utilities' traditional business model is to invest in resources to meet the long-term power supply needs of their member distribution cooperatives. Those decisions to invest or purchase generation resources are made based on a number of cost and non-cost factors. Once made, cooperative utilities as not-for-profit entities must look to their customers – who in most instances govern the cooperative and therefore approve the resource investment – to fund the investment. If those resources procured outside of the centralized capacity market are not honored toward the cooperatives' capacity obligation, the cooperative utility and its customers will face paying twice to satisfy a single capacity obligation – once for the investment which is not honored toward meeting the capacity obligation, then a second time for capacity procured through the centralized market to replace the dishonored self-supply.

In 2011, the Commission accepted in large part sweeping changes to the MOPR that were proposed by PJM in reaction to concerns over the impact of state initiatives to construct capacity

[4] *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 103 (2006).

subject to out-of-market payments.[5] The 2011 MOPR Order eliminated this aspect of the MOPR, instead establishing a requirement that self-supplying LSEs demonstrate consistency between their bids and a "competitive, cost-based, fixed, nominal levelized Net CONE [Cost of New Entry]."[6]

Even while eliminating the guaranteed clearing for self-supply, the Commission acknowledged that self-supply by LSEs acting under longstanding business models should be accommodated. The Commission stated that an appropriate MOPR "balances the need to protect against uneconomic entry while also mitigating parties' concerns about having to pay twice for capacity as a result of failing to clear in RPM."[7] The Commission also recognized that "the purpose and function of the MOPR is not to unreasonably impede the efforts of resources choosing to procure or build capacity under longstanding business models…" and that "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."[8]

The unit-specific test was unworkable, and in 2012 PJM submitted further revisions to the MOPR. In an order issued May 2, 2013, the Commission adopted PJM's proposal for a Self-Supply Exemption and a Competitive Entry Exemption, and retention of the unit-specific

[5] *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011)("2011 MOPR Order"); *order on reh'g*, 137 FERC ¶ 61,145 (2011), *order on reh'g*, 138 FERC ¶ 61,194 (2012); *aff'd sub nom. New Jersey Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3rd Cir. 2014).
[6] 137 FERC ¶ 61,145 at P 66 (2011).
[7] *Id.* at P 209; *see also New York Public Service Comm'n, et al.*, 153 FERC ¶ 61,022 at P 61 (2015) ("We recognize the need for certain load serving entities to plan on a long-term basis. A well-formulated self-supply exemption will allow a load serving entity to procure a portfolio that best allows it to manage its assessment of the risks it faces and . . . eliminates the risk of effectively requiring load serving entities to pay twice for capacity in the event that a self-supplied resource does not clear the capacity market.") .
[8] *Id.* at P 208.

exception process.[9] With these Exemptions and exception, LSEs have greater assurance and transparency regarding use of their self-supply toward satisfaction of their capacity obligation than they had when the guaranteed self-supply clearing was eliminated.

The Complaint in this proceeding should be rejected outright. However, in the event the Commission decides to take other action on the Complaint, it is critical that the Self-Supply Exemption and Competitive Entry Exemption remain unchanged. Self-supply by LSEs has already been threatened by previous MOPR revisions, despite acknowledgement that certain LSE longstanding business models and arrangements should be accommodated. The Complaint indicates an intention to retain the Self-Supply Exemption and Competitive Entry Exemption for at least the 2019/2020 RPM Base Residual Auction ("BRA").[10] NRECA would of course favor a return to guaranteed clearing for self-supply. However, at the very least, the Commission should mandate that the Exemptions must survive, unchanged, in any Tariff revisions that result from the Complaint. Otherwise, legitimate investment by LSEs such as NRECA's members might again be at risk, to the detriment of consumers.

III. DESCRIPTION OF NRECA

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 – and face a unique set of challenges. 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. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to

[9] *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013); *order on reh'g*, 153 FERC ¶ 61,066 (2013).
[10] Complaint at 36.

keep the lights on. 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 bring power to 75 percent of the nation's landscape 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 65 generation and transmission (G&T) cooperatives and 840 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 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.

IV. PROTEST

A. The Complaint Must Be Denied Outright

The Complaint seeks an expedited expansion of the MOPR to apply to existing resources, based on hypothetical concerns over the Ohio PPAs. The existence of the Ohio PPAs is far from sufficient to demonstrate that the existing MOPR is unjust and unreasonable, and the request for specific tariff changes and a pre-determined stakeholder process have not been shown to be just, reasonable and not unduly discriminatory or preferential. Therefore, the Complaint must be denied outright for failing to satisfy the requirements of FPA Section 206.[11]

[11] 16 U.S.C. § 824e; *See Louisiana Pub. Serv. Comm'n v. Entergy Corp., et al*., 132 FERC ¶ 61,003 at P 28 (2010) ("Section 206 of the FPA requires a complainant to satisfy a dual burden in order to obtain the

First, the Complaint does not establish that the existing MOPR is unjust and unreasonable because it does not apply to existing resources. Since its inception as part of the RPM settlement, the MOPR has been specifically limited to new entry.[12] The possibility that existing resources could offer at lower prices than new resources has always existed; it existed when the Commission approved the initial MOPR. The changed circumstance upon which the Complaint is based is the Ohio PPAs. However, the fact that Ohio approved these two specific PPAs does not demonstrate that a MOPR that is limited to new resources is unjust and unreasonable.

While the Complaint hypothesizes what could happen if the AEP and FE units are offered at zero, there is of course neither proof that they will do so nor proof that their offers into RPM would result in lost revenues for other resource owners of the magnitude posed in the Complaint.[13] The Complaint does not at all demonstrate intent by AEP and FE to artificially depress clearing prices, and the extent of their ability to do so is uncertain.[14]

As Complainants acknowledge, the Commission confronted the issue of "uneconomic 'non-exit'" in a recent complaint case regarding the New York Independent System Operator, Inc.'s ("NYISO") capacity market.[15] Whereas in the instant proceeding the Complainants argue harm to the market *if* the AEP and FE resources would have retired but-for the PPAs, in the *NYISO* case the units at issue had already entered into reliability-must-run ("RMR") agreements. Even still, in the *NYISO* proceeding the Commission denied a complaint seeking relief on a fast-

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relief it seeks in a complaint. The complainant must (1) establish that the current rate is unjust and unreasonable and (2) that its alternative rate proposal is just and reasonable.").

[12] *See PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at P103 (2006).

[13] *See* Complaint at 27-28.

[14] *See New York Public Service Comm'n, et al.*, 153 FERC ¶ 61,022 at P 2 (2015)(the Commission found that it was unjust, unreasonable or unduly discriminatory or preferential to apply buyer-side market power mitigation rules to certain resources that have "limited or no incentive and ability to exercise buyer-market power to artificially suppress ICAP market prices.").

[15] *New York Public Service Comm'n, et al. v. New York Independent System Operator, Inc.*, 153 FERC ¶ 61,022 (2015) at P 2.

track basis to exclude from the capacity auction units that the complainants argued would have exited the market but-for the RMR payments. [16] The notion of "uneconomic non-exit" is too uncertain to support a finding that the PJM tariff is unjust and unreasonable unless the MOPR applies to existing resources.

Second, the Complainants have not provided a just and reasonable alternative. Their request to redesign the MOPR so that it applies to existing resources is a drastic change to a fundamental aspect of the mitigation measures in PJM's capacity construct. The Complaint makes no attempt to demonstrate that existing resources are likely to have the incentive and ability to artificially suppress clearing prices. Instead, on the basis of two specific PPA arrangements, the Complainants want to introduce mitigation to all resources in PJM, with limited exception. In the past, the Commission has not made such sweeping revisions on the basis of hypothetical concerns and it must not do so now.[17]

The Complaint threatens adverse market impacts if existing resources are not subject to the MOPR. However, the Commission must also consider the risk of over-mitigation.[18] The very existence of a MOPR means resource developers – private investors as well as LSEs whose longstanding business models include investing in resources to serve their load – must weigh the risk of their resources being subject to mitigation and not clear the market. For LSEs like many

[16] *Id.*

[17] *See PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,037 (2008); *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272 (2008); *see also, PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, *order on reh'g and compliance, PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 90 (2009); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145 at P 242 (2011).

[18] *See, e.g., Consolidated Edison Co. of New York, Inc.*, 150 FERC ¶ 61,139 (2015) at P 4 (In granting a complaint seeking a competitive entry exemption to the NY ISO MOPR, the Commission noted its desire to "balance two objectives: preventing the exercise of market power to depress capacity prices, and providing flexibility to project developers to implement certain business decisions without inappropriate regulatory restrictions." The Commission further advised that without the modifications, "private investors would be unnecessarily mitigated and possibly deterred from entering the market altogether. Such an outcome is unreasonable.")

of NRECA's members, not clearing exposes them to double payment for capacity; once for the investment in an owned resource and a second time for capacity procured through the RPM auction to replace the self-supply resource that does not clear. The risk of not clearing as a new resource in the first year is a significant consideration. Subjecting existing resources to the MOPR would mean that not only currently existing resources, which were constructed with no expectation of being subject to upward price mitigation, but also developers of prospective resources would need to factor into their investment decisions the ongoing possibility of being subjected to the MOPR. Applying the MOPR to existing resources could have a chilling effect on resource decisions that is not warranted on the basis of the Complaint.

Finally, on this point, even if the Commission believes application of the MOPR to existing resources is just and reasonable, the proposed tariff language in the Complaint may not be just and reasonable. For example, the existing MOPR contains both a Self-Supply Exemption and a Competitive Entry Exemption. These exemptions were carefully crafted after an over-reaction to state initiatives resulted in the elimination of guaranteed clearing of legitimate self-supply resources. For LSEs like NRECA's members in PJM, the Self-Supply Exemption is critical to ensure that resources legitimately procured under longstanding business models can be used toward their capacity obligation. The existing, FERC-approved MOPR makes clear that the MOPR does not apply to Generation Capacity Resources for which the Capacity Market Seller has obtained a Self-Supply Exemption, a Competitive Entry Exemption, or a Unit-Specific Exception.[19] The Self-Supply Exemption, in turn, is available to "Self-Supply LSEs", which are defined as LSEs "which operate under long-standing business models: Municipal/Cooperative Entity, Single Customer Entity, or Vertically Integrated Utility."[20] The proposed language to

[19] PJM Tariff Attachment DD, Section 5.14(h)(1).
[20] PJM Tariff Attachment DD, Section 5.14(h)(6)(vii)(A).

apply the MOPR to existing resources does not mirror this language. It is unclear whether the Complainants intend to preserve exactly the current exemptions and exception for application to the MOPR for existing resources. To the extent they do not, the Commission cannot allow this proceeding to result in a further diminution of the right of LSEs operating under long standing business models to use their self-supply resources to meet their capacity obligation. No case has been made in the Complaint for doing so.

Moreover, it is not clear the extent to which the proposed language will expose legitimate existing resources to the MOPR and risk of not clearing. The Complainants' proposal would establish an Existing Resource MOPR Floor Offer Price that is based in part on the Net Cost of New Entry ("CONE"). Applying these values to existing resources could cause the unreasonable result of some existing resources being mitigated and risk not clearing because they would be subject to Net CONE values that were developed for a different type of resource as a new entrant.

B. The Commission Should Not be Forced into Immediate Rule Changes

Complainants insist that the Commission must adopt their proposal to apply the MOPR to existing resources in time for the 2019/2020 Base Residual Auction ("BRA"). In the *NYISO* case, where a unit subject to an RMR agreement had actually submitted *de minimis* offers and the concern was that additional RMR units would artificially suppress clearing prices by submitting *de minimis* offers, the Commission did not grant the request for fast-track relief. Among the reasons for denying the complaint, the Commission rejected the argument that decreases in capacity prices were due to the RMR units and noted that "because the reasons for changes in capacity prices are complex and multi-faceted, changes in prices cannot be attributed

to one cause . . ."[21] While the agreements and markets at issue in *NYISO* differ from those at issue in this Complaint proceeding, the precedent applies – the Commission should not force an expedited and drastic change to the MOPR to apply it to existing resources on the basis of unproven, hypothetical concerns. Notably, the "urgency" is at least in part of the Complainants' own making. The AEP PPA was proposed in October 2014 and amended in May, 2015 and the FE PPA was proposed in August, 2014. Complainants inexplicably waited until shortly before the BRA to bring their Complaint.

Further, NRECA notes two pending proceedings which may impact the issues in the Complaint. First, there are complaints pending in Docket Nos. EL16-33 and EL16-34, asking that the Commission rescind waivers of the Commission's affiliate power sales restrictions with respect to the AEP and FirstEnergy PPAs.[22] The outcome of the complaints in Docket Nos. EL16-33 and EL16-34 could render the Complaint in this proceeding moot as it is based on the AEP and FirstEnergy PPAs, or otherwise affect the outcome of this proceeding. Second, more generally, the U.S. Supreme Court has granted certiorari to hear the case regarding Maryland's attempt to develop new natural gas-fired resources in the state.[23] The outcome of the proceeding could impact the Commission's actions in preventing such state initiatives and, therefore, could impact the outcome of this proceeding where the Complaint is based on the PUCO-approved PPAs.

C. The Commission Should Reject the Request for a Predetermined Stakeholder Process

Given the fact that Complainants have not demonstrated that the existing MOPR is unjust and unreasonable because it is limited to new resources, the Commission should also reject

[21] *NYISO*, 150 FERC ¶ 61,214 at P 67.
[22] *See* Complaint at 20-22.
[23] Consolidated cases: *Hughes et al. v. PPL EnergyPlus LLC et al*., (14-614), and *CPV Maryland LLC v. PPL EnergyPlus LLC et al.,* (14-623)

request for a stakeholder process to develop a long-term "solution" that presupposes that existing resources need to be subject to the MOPR.[24] The Commission has recognized the value of stakeholder processes as a forum to allow diverse interests to study the issues, prepare and review analyses, and attempt a resolution that will accommodate broad interests as opposed to the will of a few.[25] A mandated stakeholder process as the Complainants request would unreasonably handicap the ability of PJM to work with its stakeholders to determine whether there is any issue to be addressed with respect to existing resources and, if so, the best way to address it.

If the Commission is inclined to mandate a stakeholder process to consider existing resources in RPM, then it must not presuppose the issue. On its surface the Complaint is about existing resources and is based on the Ohio PPAs. However, what is really at issue is how the Commission will treat capacity resources that are subject to state-based initiatives like the PPAs. RPM is a complex construct based on several integrated components, including market power mitigation mechanisms. The current MOPR, particularly the Exemptions and Exception, were developed by a diverse set of PJM market participants and then vetted with PJM stakeholders.[26] Any revisions to the MOPR should be developed through a stakeholder process that presupposes neither the problem nor the solution. Instead, if the Commission mandates a stakeholder process, then it should leave to the stakeholders to determine whether any revisions are necessary in order

[24] *See* Complaint at 39, requesting a stakeholder process to "address the threat to the RPM market posed by subsidized existing resources."

[25] *See, e.g., PJM Interconnection, LLC*, 117 FERC ¶ 61179 at P 43 (2006)("The Commission continues to believe that the stakeholder process helps to resolve disputes between parties and is entitled to due weight."); *PJM Interconnection, LLC*, 104 FERC ¶ 61321 at P 8 (2003)(giving stakeholder-approved filings "due deference"); *Sw. Power Pool, Inc*, 127 FERC ¶ 61283 at P 33 (2009)(according "an appropriate degree of deference to RTO stakeholder processes").

[26] *See PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 12 (2013).

to address participation by resources that may be subject to state initiatives or policies, as well as the MOPR and/or other RPM provisions that should be revised.

The one area for which the Commission must issue a mandate if it directs PJM to convene a stakeholder process is the treatment of the Self-Supply Exemption and Competitive Entry Exemption. In the 2011 MOPR Order, previously LSEs lost their guarantee that self-supplied resources would be used toward satisfying their capacity obligation in the RPM auctions. The Self-Supply Exemption and Competitive Entry Exemption are critical to providing some assurance to LSEs that their investments in owned resources and bilateral contracts will be used toward their capacity obligation. In prior proceedings where guaranteed clearing for self-supply was eliminated, the Commission recognized that self-supply by those acting under long standing, legitimate business models must be accommodated.[27] The current Self-Supply and Competitive Entry Exemptions are the FERC-approved mechanisms to balance the concern against uneconomic entry and the recognition of longstanding business models. Nothing in the Complaint justifies any adverse impact on these Exemptions and self-supply by LSEs must not again be caught in the net. Therefore, if the Commission directs a PJM stakeholder process, NRECA requests that the Commission mandate that the Self-Supply Exemption and Competitive Entry Exemption must continue to apply, in their current form, to all resources to which the MOPR would apply.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, NRECA requests that the Commission reject the Complaint outright for failing to make the requisite showing under FPA Section 206. Alternatively, if the Commission does not reject the Complaint outright, then NRECA requests that the Commission (1) ensure that the proposed Tariff revisions do not impact the current Self-

[27] 2011 MOPR Order, 137 FERC ¶ 61,145 at PP 208-209.

Supply Exemption and Competitive Entry Exemption; and (2) if a stakeholder process is ordered, do not presuppose either that existing resources should be mitigated or any other issue, except to mandate that the current Self-Supply Exemption and Competitive Entry Exemption must continue to be available to all qualified capacity resources that would be subject to the MOPR.

Respectfully submitted,

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Dated: April 11, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2016, I have caused a copy of the foregoing to be served upon each party designated on the Official Service list in this proceeding.

/s- Paul M. Breakman