

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Advanced Energy Management Alliance,

Petitioner,

v.

Federal Energy Regulatory Commission,

Respondent.

No. 16-1234

Consolidated with Nos. 16-1235, 16-1236, and
16-1239

NON-BINDING STATEMENT OF ISSUES

Petitioners American Public Power Association (APPA), National Rural Electric Cooperative Association (NRECA), New Jersey Board of Public Utilities (NJBPU), and Public Power Association of New Jersey (PPANJ) submit this preliminary, non-binding statement of issues to be presented on appeal.

The orders on review of respondent Federal Energy Regulatory Commission, *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015), *reh'g denied*, *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 (2016), accept in part and reject in part proposed revisions to the tariff of PJM Interconnection, L.L.C., under section 205 of the Federal Power Act, 16 U.S.C. § 824d (“the Act”), and order certain other tariff revisions under section 206 of the Act, 16 U.S.C. § 824e.

The issues on appeal are:

1. Whether the Commission's simultaneous findings that PJM's proposed tariff revisions are just and reasonable under section 205 of the Act, while these revisions render related provisions of PJM's tariff unjust and unreasonable under section 206, are arbitrary and capricious and contrary to the scheme for changes in public utility rates in these sections of the Act.

2. Whether the Commission's acceptance of PJM's proposed tariff revisions and its ordering of related tariff revisions without any empirical analysis of the expected benefits and costs to consumers is arbitrary and capricious, not supported by substantial evidence, and results in unjust and unreasonable, excessive rates to consumers.

3. Whether the Commission's acceptance of PJM's proposed tariff revisions and its ordering of related tariff revisions without considering whether capacity performance and grid reliability could be improved at lower cost to consumers by alternative means is arbitrary and capricious.

4. Whether the Commission's acceptance of PJM's proposed tariff revisions and its ordering of related tariff revisions is arbitrary and capricious as a result of the failure to properly examine and reach a reasoned decision of the many material issues of fact relative to the design of the Non-Performance Charge.

5. Whether the Commission's acceptance of PJM's proposed tariff revisions and its ordering of related tariff revisions is arbitrary and capricious in

adopting an administratively determined Default Offer Cap that negates the value of actual market prices for new entry, disregards endemic structural market power and unjustifiably raises prices on consumers.

Respectfully submitted,

s/ Randolph Elliott
Delia D. Patterson
General Counsel
Randolph Elliott
Senior Regulatory Counsel
American Public Power Association
2451 Crystal Drive, Suite 1000
Arlington, VA 22202
202-467-2900
dpatterson@publicpower.org
relliott@publicpower.org

s/ Paul M. Breakman
Paul M. Breakman
Director, FERC Counsel
National Rural Electric Cooperative
Association
4301 Wilson Boulevard
Arlington, VA 22203
703-907-5811
paul.breakman@nreca.coop

s/ Carolyn McIntosh
Christopher S. Porrino
Attorney General of New Jersey
Carolyn McIntosh
Deputy Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street
Newark, NJ 07101
973-648-3441
carolyn.mcintosh@dol.lps.state.nj.us

s/ Jill M. Barker
Jill M Barker
Betts & Holt, LLP
1100 17th St., N.W.; Suite 901
Washington, D.C. 20036
202-530-3380
jmb@bettsandholt.com

Attorney for Public Power
Association of New Jersey

Attorneys for the New Jersey Board of
Public Utilities

August 12, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties or their counsel of record through the CM/ECF system by e-mail if they are registered users, or, if they are not, by serving a true and correct copy by first-class mail, postage prepaid, at the addresses listed below.

Carol Jayne Banta
Federal Energy Regulatory Commission
(FERC) Office of the Solicitor
888 First Street, NE
Washington, DC 20426
Email: Carol.Banta@ferc.gov

Email

Jill Marie Barker
Betts & Holt
1333 H Street, NW
West Tower, 10th Floor
Washington, DC 20005

US Mail

David Bender
Earthjustice
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036-2212
Email: dbender@earthjustice.org

Email

Ishan Kharshedji Bhabha
Jenner & Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Email: ibhabha@jenner.com

Email

Paul Mitchell Breakman
National Rural Electric Cooperative Association
4301 Wilson Boulevard
Arlington, VA 22203-1860
Email: paul.breakman@nreca.coop

Jennifer Leigh Flint Brough
Locke Lord LLP
701 8th Street, NW
Suite 700
Washington, DC 20001
Email: jlbrough@lockelord.com

Kenneth Richard Carretta
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102-4194
Email: Kenneth.Carretta@PSEG.com

Adrienne Elizabeth Clair
Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006-1167
Email: aclair@thompsoncoburn.com

Aaron S. Colangelo
Natural Resources Defense Council
1152 15th Street, NW
Suite 300
Washington, DC 20005
Email: acolangelo@nrdc.org

Ryan James Collins
Wright & Talisman, PC
1200 G Street, NW
Suite 600
Washington, DC 20005-1200
Email: collins@wrightlaw.com

Email

Ransom Edgar Davis
Public Service Commission of Maryland
6 Saint Paul Street
Baltimore, MD 21202-6806
Email: tdavis@psc.state.md.us

US Mail

Kate Desormeau
Natural Resources Defense Council
111 Sutter Street
21st Floor
San Francisco, CA 94104-4540
Email: kdesormeau@nrdc.org

Email

Larry F. Eisenstat
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
Email: leisenstat@crowell.com

Email

Randolph Lee Elliott
American Public Power Association
2451 Crystal Drive
Suite 1000
Arlington, VA 22202
Email: relliott@publicpower.org

Email

William Mason Emnett
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W.
Room 220
Washington, DC 20004
Email: mason.emnett@nee.com

Paul M. Flynn
Wright & Talisman, PC
1200 G Street, NW
Suite 600
Washington, DC 20005-1200
Email: flynn@wrightlaw.com

Bruce Allen Grabow
Locke Lord LLP
701 8th Street, NW
Suite 700
Washington, DC 20001
Email: bgrabow@lockelord.com

Eugene Grace
American Wind Energy Association
1501 M Street, NW
Washington, DC 20005
Email: ggrace@awea.org

Gerit Hull
Jennings, Strouss & Salmon, PLC
1350 I Street, NW
Suite 810
Washington, DC 20005
Email: ghull@jsslaw.com

Jeffrey Alan Lamken
Molo Lamken LLP
The Watergate
600 New Hampshire Avenue, NW
Washington, DC 20037
Email: jlamken@mololamken.com

Neil Lawrence Levy
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4706
Email: nlevy@kslaw.com

Cara Jill Lewis
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102-4194
Email: Cara.Lewis@PSEG.com

Stephanie Szu-Ping Lim
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4706
Email: sslim@kslaw.com

Christopher G. Mackaronis
Stone Mattheis Xenopoulos & Brew, PC
Suite 800, West Tower
1025 Thomas Jefferson Street, NW
Washington, DC 20007
Email: chris.mackaronis@bbrslaw.com

Cortney Madea
NRG Energy, Inc.
211 Carnegie Center Drive
Princeton, NJ 08540
Email: cortney.madea@nrgenergy.com

Jeffrey Whitefield Mayes
Monitoring Analytics, LLC
Suite 160
2621 Van Buren Avenue
Suite 160
Eagleville, PA 19403
Email: Jeffrey.Mayes@monitoringanalytics.com

Carolyn Anne McIntosh
Office of the Attorney General, State of New Jersey
Dept. of Law & Public Safety
2nd Floor
124 Halsey Street
PO Box 45029
Newark, NJ 07101
Email: carolyn.mcintosh@dol.lps.state.nj.us

Paul Alessio Mezzina
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4706
Email: pmezzina@kslaw.com

Susan Stevens Miller
Earthjustice
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036-2212
Email: smiller@earthjustice.org

Miles Henry Mitchell
Public Service Commission of Maryland
16th Floor
6 Saint Paul Street
Baltimore, MD 21202-6806
Email: miles.mitchell@maryland.gov

Gary James Newell
Jennings, Strouss & Salmon, PLC
1350 I Street, NW
Suite 810
Washington, DC 20005
Email: gnewell@jsslaw.com

Ashley Charles Parrish
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4706
Email: aparrish@kslaw.com

Delia Denise Patterson
American Public Power Association
2451 Crystal Drive
Suite 1000
Arlington, VA 22202
Email: dpatterson@publicpower.org

Matthew E Price
Jenner & Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Email: mprice@jenner.com

Casey Roberts
Sierra Club
1536 Wynkoop Street, Suite 200
Denver, CO 80202
Email: casey.roberts@sierraclub.org

Andrea Sarmentero Garzon
Jennings, Strouss & Salmon, PLC
1350 I Street, NW
Suite 810
Washington, DC 20005
Email: asarmentero@jsslaw.com

Rebecca L. Shelton
Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006-1167
Email: rshelton@thompsoncoburn.com

Abraham Silverman
NRG Energy, Inc.
211 Carnegie Center Drive
Princeton, NJ 08540
Email: abraham.silverman@nrgenergy.com

Robert Harris Solomon
Federal Energy Regulatory Commission
(FERC) Office of the Solicitor
Room 9A-01
888 First Street, NE
Washington, DC 20426
Email: robert.solomon@ferc.gov

Jill Mara Tauber
Earthjustice
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036-2212
Email: jtauber@earthjustice.org

David G. Tewksbury
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4706
Email: dtewksbury@kslaw.com

Jennifer Helene Tribulski
PJM Interconnection, LLC
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403
Email: tribuj@pjm.com

Robert A. Weishaar Jr.
McNees, Wallace & Nurick
777 North Capitol Street, NE
Suite 401
Washington, DC 20002-0000
Email: rweishaa@mwn.com

Elizabeth Ward Whittle
Nixon Peabody LLP
799 9th Street, NW
Suite 500
Washington, DC 20001-4501
Email: ewhittle@nixonpeabody.com

Dated at Arlington, Virginia, this 12th day of August 2016.

s/ Randolph Elliott

Randolph Elliott

Senior Regulatory Counsel

American Public Power Association

2451 Crystal Drive, Suite 1000

Arlington, VA 22202

202-467-2900