

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

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

**MOTION TO FILE PROTEST OUT OF TIME
AND
PROTEST OF THE ILLINOIS COMMERCE COMMISSION**

Pursuant to Rules 211 and 212 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ and the Notice of Filing issued on June 1, 2018, establishing June 20, 2018 as the deadline for comments and protests in the above-captioned docket, the Illinois Commerce Commission (“ICC”) respectfully submits this Motion to file comments out of time and comments on the May 31, 2018, complaint (“May 31 Complaint”) filed by CPV Power Holdings, L.P., Calpine Corporation, and Eastern Generation, LLC, (collectively, “Complainants”). Complainants request that the Commission act expeditiously under Section 206 of the Federal Power Act (“FPA”) to require PJM Interconnection LLC., (“PJM”) to adopt a Minimum Offer Pricing Rule (“MOPR”) applicable to all resources meeting PJM’s proposed definition of “Material Subsidy”, but without the categorical exemptions proposed by PJM. Complainants refer to their proposal as “Clean

¹ 18 C.F.R. §§ 385.211 and 385.212.

MOPR.” The ICC Comments ask the Commission to reject the Clean MOPR proposed in the May 31 Complaint. The ICC filed its Notice of Intervention in this docket on June 07, 2018, and, therefore, is a party to the docket.

I. MOTION TO FILE PROTEST OUT OF TIME

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,² the ICC hereby submits this motion to file comments out of time on the May 31 Complaint. Given the ICC’s administrative process, and state rules and regulations, it was unable to meet the June 20, 2018 comment date.

The Commission may allow an untimely response where there is no showing of any undue prejudice or delay.³ With these comments, the ICC does not wish to disrupt or delay the proceedings. Rather, the ICC wishes to clarify the record and provide context that may be useful to the Commission in its decision making process. In addition, the positions expressed by the ICC in this docket are entirely consistent with the positions the ICC took in its filings in the EL16-49 and ER18-1314 proceedings and as such no party can be surprised or prejudiced by the positions taken here. Therefore, and particularly in light of the significance to Illinois of the Commission’s potential outcome in this proceeding, good cause exists to grant this motion and leave to comment.⁴ The ICC does hereby so move.

II. SUMMARY OF THE MAY 31 COMPLAINT

The Complainants contend that there is ample evidence already before the Commission in the EL16-49 and ER18-1314 proceedings showing that the currently effective MOPR is unjust and unreasonable because it fails to adequately mitigate artificial suppression of RPM clearing

² 18 C.F.R. § 385.212.

³ See, *North Carolina Municipal Power Agency No. 1*, 50 FERC ¶ 61,138 (1987).

⁴ See, *Trans Alaska Pipeline System, et al.*, 104 FERC ¶ 61,201, at 61,706 (2003); *Natural Gas Pipeline Company of America*, 66 FERC ¶ 61,310 (1994) (motions granted for good cause shown).

prices by subsidized resources.⁵ The Complainants contend that the May 31 Complaint offers a procedural vehicle by which the Commission can require PJM to adopt a “Clean MOPR” in time for the base residual capacity auction for the 2022-2023 delivery year and thereby fully mitigate the impact of subsidized resources on the RPM market.⁶ The Clean MOPR proposed by Complainants would be the MOPR-Ex proposed by PJM in the ER18-1314 proceeding, with the unit-specific exception included, but without the self-supply, competitive, public entity and RPS MOPR exemptions.⁷ The May 31 Complaint also proposes that the Commission require PJM to modify its previously-proposed definition of “Material Subsidy” to cover not only material state subsidies, but also material federal subsidies or other support granted after the date of the complaint.⁸ Complainants request that the Commission establish timeframes that will ensure that a Clean MOPR is implemented in time for the 2022-2023 base residual auction.⁹ Complainants submit no proposed tariff language and instead they express the belief that there would need to be a “Commission-directed filing” and such filing could be submitted within “approximately two months.”¹⁰

III. POSITION AND RECOMMENDATION

The ICC recommends that the Commission reject the May 31 Complaint.

In their Amended Complaint filed in Docket No. EL16-49-000 on January 9, 2017, Calpine Corporation, *et. al.*,¹¹ proposed that PJM’s current MOPR be expanded to cover existing

⁵ May 31 Complaint, at 10.

⁶ May 31 Complaint, at 9 and 22-23.

⁷ May 31 Complaint, at 18.

⁸ May 31 Complaint, at 19.

⁹ May 31 Complaint, at 25.

¹⁰ May 31 Complaint, Attachment A, Shanker Affidavit, at 4-5. P 8.

¹¹ Amended Complaint of Calpine Corporation, *et. al.* and Requesting Fast Track Processing of Calpine Corporation, *et. al.*, Docket No. EL16-49.

resources, including nuclear power plants addressed in Illinois' Future Energy Jobs Act¹² which the State of Illinois enacted on December 7, 2016. In its comments in that case, the ICC opposed those Complainants' proposal, explaining that Complainants in that case had not shown PJM's existing MOPR to be unjust and unreasonable, nor demonstrated that expanding the MOPR to existing resources would be just and reasonable.¹³ On April 9, 2018, in Docket No. ER18-1314-000, PJM proposed, among other things, an expanded MOPR ("MOPR-Ex") which would be applied to all resources meeting PJM's definition of "Material Subsidy", but featuring a Unit-Specific Exception and exemptions for Self-Supply, Competitive, Public Entity and RPS ("April 9 Filing"). In its protest of PJM's April 9 Filing in Docket No. ER18-1314-000, the ICC opposed PJM's two-part proposal, explaining both its procedural and substantive flaws.¹⁴ The ICC also opposed PJM's MOPR-Ex alternative which would eliminate the RPS Exemption from its main MOPR-Ex proposal, but retain the Unit Specific Exception, Self-Supply Exemption, Competitive Exemption, and Public Entity Exemption.¹⁵

As described in the previous paragraph, the ICC has consistently opposed as unjust and unreasonable all proposed modifications to PJM's existing MOPR and similarly recommends here that the Commission reject the May 31 Complaint.

¹² Illinois Pub. Act 99-0906 (eff. June 1, 2017)

¹³ Motion to File Comments Out of Time and Comments Of the Illinois Commerce Commission, Docket No. EL16-49, at 3.

¹⁴ Motion to Dismiss and Protests of the Illinois Commerce Commission, filed May 7, 2018, in Docket Nos. ER18-1314-000, and ER18-1314-001 ("ICC Protest"), at 4-5.

¹⁵ ICC Protest at 45, *citing* PJM's April 9 Filing at 114, which describes PJM's "Notice under Federal Power Act Section 205 that PJM is willing to accept a MOPR-Ex proposal that does not include an RPS Exemption."

IV. PROTEST

A. Complainants Propose a Massive Expansion of the MOPR, But Provide No Actual Support or Evidence that the Existing MOPR is Unjust and Unreasonable or that Wide-spread Mitigation Expansion Would Yield Just and Reasonable Results.

Complainants' proposal to eliminate the self-supply, competitive, public entity and RPS exemptions from the MOPR previously proposed by PJM in Docket No. ER18-1314 represents a massive expansion of the MOPR, whether compared to PJM's existing MOPR or to PJM's proposed MOPR-Ex. Complainants' proposal completely ignores or rejects PJM's, and the Commission's, recognition that "certain types of sellers and resources . . . do not present price suppression concerns."¹⁶ Complainants' proposal completely ignores or rejects PJM's concept of "Actionable Subsidy."¹⁷ Eliminating the public entity exemption would impose the MOPR on resource choices of municipal and cooperative utilities not heretofore targeted. Eliminating the self-supply exemption would impose the MOPR on resources of traditionally regulated vertically integrated utilities and represent a direct challenge to states practicing traditional retail rate-of-return regulation, which the Commission has heretofore respected. Eliminating the RPS exemption would constitute a direct challenge to state statutes regarding renewable resources.

Complainants state that "the currently effective MOPR is manifestly unjust and unreasonable, because it fails adequately to mitigate artificial suppression of RPM clearing prices by subsidized resources."¹⁸ Complainants refer to the impacts of "state subsidy programs" as "pernicious"¹⁹ and assert that, "if left unchecked, state subsidy programs will have devastating impacts on RPM auction results."²⁰ However, Complainants rely almost entirely on the rationale

¹⁶ April 9 Filing, at 97 citing *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at P 53, 107 (2013), and 153 FERC ¶ 61,066, at PP 32, 52 (2015).

¹⁷ April 9 Filing, at 96.

¹⁸ May 31 Complaint, at 10.

¹⁹ May 31 Complaint, at 18.

²⁰ May 31 Complaint, at 27.

and rhetoric offered by PJM in support of PJM’s MOPR-Ex proposal (specifically, alleged price suppression) to support Complainants’ much broader “Clean MOPR” proposal. Like PJM, Complainants bring no evidence of actual price suppression and no new information of any kind. Under Section 206 of the Federal Power Act, the Commission may exercise its authority to impose a new rate **only after** having made the determination that a utility’s existing rate is unjust, unreasonable, unduly discriminatory, or preferential.²¹ The burden in this complaint case is on the Complainants to make that showing.²² The Complainants have not adequately supported such a finding. Moreover, the Complainants’ proposed “Clean MOPR” would yield untenable results for PJM and its wholesale markets.

Beyond Complainants’ challenge to states, municipalities, and cooperatives, Complainants propose to even further expand the MOPR to apply to “federal subsidies or other support granted after the date of the complaint.”²³ Complainants’ proposal in this regard would be unworkable as well as bad policy. Complainants ignore or reject PJM’s observation that, “[a]s a general matter, federal subsidies have broader application and more expansive scope than state subsidies.”²⁴ Mitigating national policy initiatives only for resources participating in PJM markets would be unduly discriminatory as well as not useful, and it would set up unnecessary conflict within the federal government as well as contradictory federal policy.

It is notable that Complainants’ affiant, Roy J. Shanker, Ph.D., included a statement in his affidavit declining to express a position on Complainants’ proposal to apply MOPR to resources associated with federal programs. Specifically, Dr. Shanker states,

²¹ 16 U.S.C. § 824 e(a) (emphasis added); *Maine v. FERC*, 854 F.3d 9, 21, P. 14 (D.C. Cir. 2017).

²² *Id.*, *See, e.g., Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1143 (D.C. Cir. 1984); 16 U.S.C. § 824e(b); *FirstEnergy Service Co. v. FERC*, 758 F.3d. 346, at 353 (D.C. Cir. 2014).

²³ May 31 Complaint, at 19.

²⁴ April 9 Filing, at 71.

I understand that Complainants propose to expand this definition to include certain federal subsidies. I have no position on such an expansion as a economic policy matter, but view PJM's reasons for excluding federal subsidies as relating less to economic policy than to legal issues, on which I express no opinion.²⁵

After introducing the idea of applying MOPR to federal policies on page 19 of the May 31 Complaint, Complainants fail to follow up to describe any actual proposal to implement their idea. Complainants casually assert that,

Clean MOPR would be easy to implement as it would merely involve certain straightforward changes to PJM's proposed MOPR-Ex that would result in an approach that is very straight-forward, easily understood and, with the elimination of the exceptions and exemptions, administratively simpler than MOPR-Ex.²⁶

However, Complainants' proposal to apply MOPR to all resources impacted by federal government policies would make implementation and administration of Complainants' proposal much more complicated and much more difficult because there are many federal programs of many different types affecting many different resources in many different ways.

B. Application of the MOPR is Only Appropriate in Instances of Buyer-Side Market Power Exercise.

The ICC has previously recommended to the Commission,²⁷ and recommends again here, that application of the MOPR be limited only to instances where entities exercise market power or otherwise attempt to intentionally manipulate capacity auction clearing prices lower. This was the position of the Commission until very recently, and it should be the position of the Commission again. As the Commission stated in a 2015 Order regarding a PJM MOPR filing, "a resource that can show that it does not have an incentive to exercise buyer-side market power

²⁵ May 31 Complaint, Attachment A, Shanker Affidavit, at 4, fn. 1.

²⁶ May 31 Complaint, at 18.

²⁷ See, e.g., Motion for Leave to File a Response Out of Time and Response to the PJM Interconnection, L.L.C. ("PJM") Motion for an Order on Remand, EER13-535-000 (November 21, 2017), at 7-9. See also, Motion to Dismiss and Protest of the Illinois Commerce Commission, ER18-1314-000/ER18-1314-001 (May 7, 2018) at 34-35.

should not be subject to market power mitigation.”²⁸ The ICC agrees that a resource owner that can demonstrate that it has nothing to gain from lower capacity auction clearing prices (for example, it is in a net long position) is not exercising buyer-side market power, or otherwise attempting to manipulate the market, and should not be subject to MOPR.

Complainants, like PJM in Docket No. ER18-1314, make unsupported assertions about price suppression.²⁹ Complainants state, for example, “With states considering subsidies for as much as 10,000-12,000 MW of generation, it is easy to envision price suppression in excess of \$10 billion annually.”³⁰ Also like PJM, Complainants provide absolutely no evidence of offer price suppression or auction clearing price suppression attributable to state policy action. Like PJM, Complainants make overcharged assertions about auction outcomes without ever establishing any link to auction offer behavior associated with resources obtaining out-of-PJM market revenue. This is insufficient support for a complaint under the Commission’s regulations.³¹ And, to be clear, Complainants use the term “subsidy” to refer to any revenue that a resource owner obtains from any source other than PJM markets for energy, ancillary services and capacity.³² Consider the following impact of agreeing with such a broad definition:

- Compensation for zero-emission benefits—subsidy.
- Encouragement for renewable resource development—subsidy.
- Ratepayer contributions to demand-side resources—subsidy.
- Payment received for sales of generator non-electric byproducts in an open market—subsidy.
- Proceeds from bilateral contract sales—subsidy.
- Revenue from retail rates subject to a state commission-approved public utility revenue requirement—subsidy.

²⁸ *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066, at P 34 (2015).

²⁹ *See, e.g.*, May 31 Complaint, at 13-14.

³⁰ *See, e.g.*, May 31 Complaint, at 13-14.

³¹ *See* 18 C.F.R. § 385.206(b).

³² May 31 Complaint, at 7 *citing* PJM’s April 9 Filing at 19, “a central premise of RPM is that sellers are expected to offer their capacity at a price sufficient to cover their costs, to the extent not recouped in other PJM markets,” (emphasis added).

- Revenue from all sales at retail by municipal and cooperative utilities—subsidy.
- Federal Government support for research and development—subsidy.
- Revenue from certain (non-PJM market) ancillary services sales—subsidy.

This list is not exhaustive—there are many other revenue sources that would be classified as “subsidies” by Complainants’ proposal. The Commission itself has supported many of these programs, including Order No. 745 (Demand Response) and Order No. 841 (Storage).

Complainants’ penchant for over-reach is extensive—and highlights the folly of their proposal.

PJM currently applies the MOPR to market participants that have nothing to gain from lower auction clearing prices and are not engaging in the exercise of buyer-side market power, or otherwise attempting to manipulate the market. Through its April 9 Filing, PJM has proposed to extend the MOPR to additional resources that do not have an incentive to exercise buyer-side market power. Complainants go even further to seek application of MOPR to all resources obtaining revenue from any source other than PJM markets—no exceptions, no exemptions, no thresholds. The ICC asserts that MOPR is not appropriate in any of these circumstances absent demonstration of buyer-side market power manipulation.

If a demonstration can be made that state public policy is associated with an incidental or unintended impact which significantly lowers auction clearing prices (and no party has made such demonstration), and demonstrably affects other market participant business decisions regarding decreased entry or increased exit, or lowers capital investment in a way that endangers short-term or long-term resource adequacy, PJM should seek to work, collaboratively with the states and other stakeholders, as it has in the past, to find a mutually acceptable solution.

The ICC has applauded PJM’s past cooperative approach for integrating utilities into PJM, particularly utilities in states practicing traditional rate-of-return regulation of vertically

integrated utilities.³³ The ICC recognized that integration of the resources from those states into PJM markets would have and does have impacts on the other states in PJM. Such impacts (both positive and negative) are unavoidable in a regional market. Complainants' proposal would upend PJM's good work integrating these traditionally regulated resources. The ICC has requested that PJM, again, work collaboratively with the states, and other stakeholders as necessary, as PJM did with respect to resources located in traditionally regulated states, to find a mutually acceptable path forward regarding PJM's current capacity auction concerns associated with restructured state public policy.³⁴

Adoption of PJM's MOPR-Ex proposal may well lead to the disintegration of PJM markets because no state approved its utilities' participation in PJM markets where generators are mandated to ignore all non-PJM revenue streams and inflate their PJM market offers above their net costs and where plants that are economic when accounting for environmental considerations are forced from the market. Instead, states are likely to explore non-PJM alternatives which preserve the kinds of beneficial services PJM has traditionally provided. Adoption of Complainants' Clean MOPR proposal would likely accelerate and intensify that exploration of alternatives, particularly because Complainants' Clean MOPR targets the state policy historically practiced in traditionally regulated states, as well as the restructured state policies targeted by PJM's MOPR-Ex proposal. Adoption of Complainants' proposal would unite all PJM states, both traditionally-regulated and retail restructured, more firmly in common cause.

³³ See, *Motion to Strike, Motion for Leave to Answer and Answer of Illinois Commerce Commission to May 25, 2018 Answers by PJM Interconnection, L.L.C., et al.*, Docket No. ER18-1314, at 10 ("ICC Answer")

³⁴ *Id.*

C. State Laws and Public Policies that Compensate Desirable Resource Attributes are Not “Subsidies” and are Not Exercises of Monopsony Power.

Compensation provided for the provision of desirable resource attributes not otherwise compensated in wholesale markets does not constitute a “subsidy”, regardless of how many times PJM and Complainants say it. Internalizing a negative societal externality is an economic efficiency-increasing act in a market context, regardless of how many times PJM and Complainants claim it to be “uneconomic.” State RPS and ZES programs are not “anti-market” or “anti-competition” no matter how many times PJM and Complainants level that charge. RPS and ZES programs represent state environmental and public health objectives, not attempts to suppress offer prices or auction clearing prices or exercise monopsony power in wholesale markets.

The ICC urges the Commission to disregard any attempts to lure it into a fruitless hunt for what some pejoratively call “subsidies.” Traditional retail regulation and state laws and policies addressing environmental and public health issues are not subsidies. Neither is a state’s exercise (through traditional retail regulation, or otherwise) of its jurisdiction under the Federal Power Act over “facilities used for the generation of electric energy.”³⁵ The Commission correctly teed up the appropriate issue in its Notice of Technical Conference, specifically, “how the competitive wholesale markets, particularly in states or regions that restructured their retail electricity service, can select resources of interest to state policy makers while preserving the benefits of regional markets and economic resource selection.”³⁶ No use of terms such as “subsidy” or “mitigation” there. Rather, the Commission put the onus on PJM and its

³⁵ Federal Power Act, Section 201.

³⁶ *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Notice of Technical Conference, Docket No. AD17-11-000 (March 3, 2017) (“Notice”), at 1.

stakeholders to figure out how PJM's markets "can select resources of interest to state policy makers" while preserving the benefits that competitive regional markets can ultimately provide to the ratepayers and electricity consumers that the Commission is duty bound, by statute and tradition, to protect. The proposals filed so far fall miserably short of that perfectly reasonable objective. Because the Complainants' proposal, like PJM's preceding MOPR-Ex proposal, does not contribute to addressing the concern identified by the Commission in the above-quoted Notice, they both merit rejection.

Furthermore, while Complainants feign concern for competitive regional PJM markets, while seeking to foreclose business competitors by attacking states' laws and policies, they would do well to consider that, but for the states taking the initiative to pass laws restructuring the electricity industry and helping to form regional transmission organizations, it is unlikely there would be any regional, competitive RTO markets at all. Similarly, it is unlikely that there will be any PJM market in the future if Complainants' Clean MOPR is implemented and restructured states and traditionally regulated states are effectively forced to find workable alternatives to PJM.

Dr. Shanker states,

"First, there is a concern that uneconomic subsidized entry has the potential to allow the exercise of market power by buyers or collectively by agent(s) of the state to suppress prices."³⁷

All of these characterizations about state public policy are false. Dr. Shanker incorrectly reads too much motive into state statutes. State public policy is just that - state public policy. State statutes are not vehicles to subsidize uneconomic participation in wholesale markets, or to suppress prices, or to exercise monopsony power, either directly or through any imagined

³⁷ May 31 Complaint, Attachment A, Shanker Affidavit, at 6-7, P 11 (emphasis added).

“agents.” Rather, they are efforts to maintain and enhance the health, welfare and safety of state residents. These are objectives that are at the core of state government, regardless of whether a state is restructured or traditionally regulated.

D. Expelling all Municipal and Cooperative Market Participants as well as Market Participants from States that Practice Traditional Retail Regulation and from Restructured States with RPS or ZES Statutes would be More Likely to Destroy PJM’s Capacity Market Rather than Improve it.

Dr. Shanker states,

. . .if any single market participant or state wishes to reflect its own views of a preferred social policy, it should do so in a manner that isolates its preferences from the rest of the PJM market. It can withdraw from PJM or utilize an option such as the Fixed Resource Requirement.³⁸

Complainants describe their “Clean MOPR” proposal as “MOPR-Ex with the Unit-Specific Exception but without the Self-Supply, Competitive, Public Entity and RPS Exemptions.”³⁹ Most states in PJM have adopted RPS requirements. Several PJM states rely on self-supply by their vertically integrated, traditionally regulated utilities. “Public Entity” refers to municipal and cooperative utilities which are associated with state jurisdiction and state regulation in several PJM states. So, if Dr. Shanker’s reference to “any single market participant or state [that] wishes to reflect its own views of a preferred social policy” is applied to Complainants’ Clean MOPR proposal, Dr. Shanker’s proposal is tantamount to recommending that all or nearly all states, municipal and cooperative market participants “withdraw from PJM or utilize an option such as the Fixed Resource Requirement.” Complainants’ Clean MOPR proposal would target all units targeted by PJM’s proposed MOPR-Ex plus all units that would be exempted from PJM’s proposed MOPR-Ex pursuant to the Self-Supply, Public Entity and

³⁸ May 31 Complaint, Attachment A, Shanker Affidavit, at 7, P 14 (emphasis added).

³⁹ May 31 Complaint, at 18.

RPS Exemptions. Left standing would be the utilities utilizing the FRR option and their state regulators. In this way, implementation of Complainants Clean MOPR proposal would likely lead to the disintegration of PJM.⁴⁰

E. Complainants’ Assertion That, Without A “Clean MOPR”, Unsubsidized Suppliers Are “Indisputably Being Deprived Of Their Statutory And Constitutional Rights To An “Opportunity To Recover [Their] Costs” Is Without Merit.

Complainants’ assert that, without a Clean MOPR, unsubsidized suppliers are “indisputably being deprived of their statutory and constitutional rights to an “opportunity to recover [their] costs.”⁴¹ In support of their assertion, Complainants point to *Bridgeport Energy, LLC*.⁴² In *Bridgeport*, the Commission was assessing whether a Reliability Must Run agreement - providing Bridgeport a cost-based revenue guarantee off-set by energy market revenues earned - was just and reasonable, when Bridgeport had market-based rate authorization. In requiring a showing of actual evidence, the Commission emphasized that “[e]vidence of actual revenues and costs will allow the Commission to determine the Facility’s need for an RMR agreement to continue providing reliability service.”⁴³ Here, there is no evidence that the Complainants are must run facilities required to run for reliability reasons. Even if they were, however, they have not provided any evidence of actual revenues and costs that would show or substantiate the allegation that the Commission is depriving them of any opportunity to recover costs.

⁴⁰ The FRR alternative is not a reasonable or feasible option for retail restructured states because eligibility for the FRR is limited to an entity that (a) is an IOU, Electric Cooperative, or Public Power Entity; and (b) demonstrates the capability to satisfy the Unforced Capacity obligation for all load in an FRR Service Area, including all expected load growth in such area, for the term of such Party’s participation in the FRR Alternative. (Reliability Assurance Agreement, Section 8.1.A).

⁴¹ May 31 Complaint, at 11.

⁴² *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, P. 29 (2005), *reh’g denied*, 114 FERC ¶ 61,265 (2006)..

⁴³ *Id.*, at P. 30.

Moreover, the Complainants' proposal itself seems to contradict its assertion that they are being deprived of a Constitutional and/or statutory right to an "opportunity to recover their costs." Complainants point to *Federal Power Commission v. Hope Natural Gas Co.*,⁴⁴ presumably for support for the proposition that "investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated."⁴⁵ The Court in that case, however, discusses this in the context of the regulated rate-making process and the return on equity for a regulated natural gas company – not wholesale market prices. Complainants here are not seeking cost of service rate regulation. Rather, they apparently seek to selectively mitigate bids of other market competitors without any actual showing of price suppression or abuse of monopsony power.

The nature of moving to a market as proxy for cost of service regulation is that there will be winners and losers. Mitigating all resources, with limited exceptions, and labeling that a "clean" approach does not negate the fact that it is just more mitigation with no evidence of any market manipulation. The Complainants' Clean MOPR proposal would not be a more competitive approach. To the contrary, such wide-spread blanket mitigation to an administratively cost-based level is equivalent to regulation and would likely decimate wholesale energy and capacity markets as well as any resulting benefits of competition for consumers.

⁴⁴ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*hereinafter*, "Hope").

⁴⁵ *Hope*, at 603.

V. CONCLUSION

WHEREFORE, for the reasons set forth above, the ICC requests that the Commission reject the Complainants' Clean MOPR proposal. The ICC further requests any and all other appropriate relief.

Respectfully submitted,

/s/Christine F. Ericson

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ILLINOIS COMMERCE COMMISSION

Dated: June 28, 2018

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding, a copy of which is attached, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 28th day of June, 2018.

/s/ Christine F. Ericson

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