

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

Calpine Corporation, Dynegy Inc.,)	Docket No. EL16-49-000
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 OPP, 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,)	
)	
Movants,)	
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
)	
Respondent.)	

**ANSWER OF THE ILLINOIS COMMERCE COMMISSION
TO MOTION TO LODGE**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. §385.213, the Illinois Commerce Commission (“ICC”) hereby submits this Answer to the Motion to Lodge submitted by the Electric Power Supply Association (“EPSA”) in the above-captioned docket on March 14, 2018.

The ICC is the state utility regulatory commission in Illinois. The ICC filed its Notice of Intervention on January 24, 2017, and, therefore, is a party to this proceeding.

I. Answer

EPSA seeks to lodge the Form 8-K (“Form 8-K”) filed with the Securities and Exchange Commission by Public Service Enterprise Group Incorporated and PSEG Power LLC (collectively, “PSEG”) on March 2, 2018. EPSA states that PSEG’s Form 8-K relates to legislation proposed in New Jersey.¹ EPSA cites press articles from February, 2018 describing the proposed New Jersey legislation and its procedural status.²

PSEG’s Form 8-K describes an agreement between the PSEG subsidiary PSEG Nuclear LLC and Exelon Generation Company, co-owners of the Salem generating station in New Jersey, regarding “funding of future capital projects at the Salem generating station that are not required to meet Nuclear Regulatory Commission or other regulatory requirements or that are not required to ensure its safe operation.”³ Contrary to EPSA’s suggestion, this is not a remarkable development. While the Form 8-K cites “recent postponements in the New Jersey legislative process” as preceding the agreement of the Salem plant co-owners, decisions regarding the timing of funding for discretionary capital projects are among the types of routine business decisions one would expect generating plant co-owners to routinely discuss. EPSA’s characterization that PSEG’s Form 8-K “illustrates the way in which PSEG and other utilities are pressuring state legislatures to subsidize existing generation” elevates a routine business decision among co-owners regarding discretionary plant investment far beyond what it merits.

Similarly, EPSA’s contradictory characterizations of the New Jersey legislative proposal as being driven either by “uneconomic and uncompetitive generating units”⁴ or subsidizing a

¹ EPSA Motion to Lodge, Docket No. EL16-49-000, filed March 14, 2018, (“Motion”), at 2.

² Motion, at 2.

³ Form 8-K, at 2.

⁴ Motion, at 4.

“still profitable” plant,⁵ are beside the point. It is likely that New Jersey’s legislative proposal, should it be passed into law, will explain its public policy rationale, so EPSA’s *ex ante* speculation is of no relevance.

EPSA states that it is a “fact” that “until measures are put in place to protect the PJM markets,” such subsidies will “suppress energy and capacity market prices” in the organized markets.⁶ Beyond that bald statement, however, EPSA has provided no evidence to substantiate its prediction regarding future energy or capacity offer prices, or the results of future capacity and energy product auctions, or the implications for PJM markets. Rather, EPSA’s statement is mere speculation.

Similarly, EPSA asserts that “confidence in the markets has deteriorated with every year that the Commission has failed to act on the Amended Complaint.”⁷ Current evidence, however, shows that generation capacity and new entry in PJM is robust.⁸ PJM’s market is not slipping “inexorably and irreversibly,” or any other way, into a “quasi-market paradigm.”⁹ Rather, all evidence shows that PJM’s markets are strong.

EPSA’s suggestion that New Jersey’s Legislature is somehow scheming with the enemies of competition and that New Jersey’s legislative initiative is “only the latest salvo in the attack

⁵ Motion, at 3 and 5.

⁶ Motion, at 6, *citing* Statement of Joseph Bowring before the New Jersey Senate Env’t & Energy Committee, *Subsidies for Selected Nuclear Power Plants in New Jersey*, at 2 (Dec. 4, 2017).

⁷ Motion, at 7.

⁸ The RPM base residual auction for the 2018/2019 delivery year produced a reserve margin of 19.8 percent for all of PJM⁸ (2018/2019 Base Residual Auction Results. PJM. Aug. 28, 2015, at 1. <http://bit.ly/2DX468Y>) (and the summer peak forecasted reserve margin for 2018 is 25.7 percent).⁸ (Forecasted Reserve Margin. PJM. Jul. 5, 2017. <http://bit.ly/2s3DMnV>). The target reserve margin for the 2017 base residual auction (2020/2021 delivery year) was 16.6 percent, and PJM’s capacity auction design procured sufficient capacity to achieve an actual reserve margin of 23.9 percent. Moreover, a significant amount of new generation capacity has successfully cleared recent RPM auctions, with almost 3,000 MWs clearing in the base residual auction for the 2018/2019 delivery year, nearly 5,400 MWs clearing for the 2019/2020 delivery year and roughly 2,400 MWs clearing for the 2020/2021 delivery year.

⁹ Motion, at 7.

on the competitive markets”¹⁰ is unsubstantiated hyperbole. EPSA goes so far as to imagine organized forces “mobilizing to seek such subsidies,”¹¹ whereas, by all accounts, New Jersey’s legislature is proceeding in routine fashion.

In sum, EPSA fails to demonstrate that Form 8-K is relevant to any issue in this docket and, therefore, cannot articulate a persuasive reason why the Commission should consider the Form 8-K as evidence in this case. As such, the Commission should deny the Motion.¹²

Finally, the “amended complaint” referred to by EPSA in its current Motion is procedurally deficient as the ICC explained in its Motion to File Comments Out of Time and Comments submitted in this docket on February 3, 2017.¹³ Because the amended complaint is defective, and likely to be dismissed for that reason, EPSA’s Motion and the Form 8-K is of no moment.

For all these reasons, the ICC recommends that the Commission: (1) deny EPSA’s March 14, 2018 Motion to Lodge; (2) reject EPSA’s request that the Commission consider and “grant the Amended Complaint”¹⁴; and (3) reject EPSA’s request that the Commission require PJM to take action (either “promptly” or otherwise)¹⁵ in response to state public policy initiatives like that being considered by New Jersey legislators.

¹⁰ Motion, at 6, 7.

¹¹ Motion, at 7.

¹² See, *ENE (Environmental Northeast) et al. v. Bangor Hydro-Electric Co. et al.*, Docket No. EL13-33-002, Order Denying Motion to Lodge (FERC ALJ August 13 2015) (motion denied because, *inter alia*, testimony from another docket was outside the scope of the proceeding). See also, *Bluegrass Generation Company, L.L.C.*, Docket No. ER05-522-001, Order Denying Motion to Lodge of E.ON US LLC (FERC ALJ April 18, 2006) (not necessary to lodge an item for which judicial notice may be taken); *Southern California Edison Co.*, 107 FERC ¶ 61,017, at P. 20, 61046 (2004) (motion denied where lodging is unnecessary).

¹³ Motion to File Comments Out of Time and Comments of the Illinois Commerce Commission, Docket No. EL16-49-000, filed February 3, 2017, at 8-9.

¹⁴ Motion, at 8.

¹⁵ Motion, at 8.

II. Conclusion

WHEREFORE, the ICC respectfully requests that the commission accept this Answer and (1) deny EPSA's March 14, 2018 Motion to Lodge; (2) reject EPSA's request that the Commission consider and "grant the Amended Complaint;"¹⁶ and (3) reject EPSA's request that the Commission direct PJM to take action in response to state public policy initiatives.

Respectfully submitted,

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ILLINOIS COMMERCE COMMISSION

Dated: March, 21, 2018

¹⁶ Motion, at 8.

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 21st day of March, 2018.

/s/ Christine F. Ericson

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