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

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| PJM Interconnection, L.L.C. | ) | Docket Nos. ER18-1314-000<br>ER18-1314-001 |

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**MOTION TO DISMISS 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 18 C.F.R. §§ 385.211, 382.212, and the Notice of Extension of Time issued on April 17, 2018, extending the deadline for comments and protests to May 7, 2018, in the above-captioned docket, the Illinois Commerce Commission ("ICC") respectfully submits this motion to dismiss and protest of the PJM Interconnection, L.L.C. ("PJM") Capacity Repricing or in the Alternative MOPR-Ex Proposal: Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market that it filed on April 9, 2018 ("April 9 Filing") as amended in its errata filed on April 16, 2018. The ICC filed a Notice of Intervention in this docket on April 12, 2018, and therefore, is a party to the docket.

## I. THE APRIL 9 FILING

In February 2018, PJM Chief Executive Officer Andrew Ott announced that PJM's Board could not decide which of two different policy approaches to advance with respect to new capacity auction design rules to address state compensation for beneficial resource attributes ("State Policy Revenues"). Both competing approaches submitted by PJM raise issues of federalism, states' rights and comity previously litigated in the Supreme Court. Ultimately, Mr. Ott and the PJM Board were either not capable of, or simply did not wish to decide which of the

two auction design change approaches to implement and concluded that the Commission should answer this "policy" question.[1]

The April 9 Filing proposes revisions to PJM's Reliability Pricing Model ("RPM") contained in the PJM Open Access Transmission Tariff ("Tariff"). The revisions address how PJM would treat offers submitted in its base residual auctions ("BRA").[2] Specifically, the revisions treat offers in the BRA from resources receiving State Policy Revenues differently than those generators that do not receive such out-of-PJM market revenue. PJM claims that such revenues may lead to reduced capacity price offers and the suppression of auction-clearing prices.[3] PJM states that it submitted the April 9 Filing as an appropriate federal and regional transmission organization ("RTO") response, to address the purported effects State Policy Revenue may have on the long-term viability of its resource adequacy construct and to prevent the potential unintended suppression of auction-clearing prices.

The April 9 Filing was submitted by PJM in two parts, Capacity Repricing and MOPR-Ex, referred to by PJM as "Option A" and "Option B," respectively. As characterized by PJM, MOPR-Ex does not honor "the state's legitimate policy choices to promote resources with certain attributes not otherwise valued in the current wholesale market rules."[4] Equally troubling is that PJM claims that Capacity Repricing "honors" state policy choices.[5] As explained herein, neither of the two approaches proposed by PJM respect state policy initiatives.

PJM, describes its Capacity Repricing proposal as follows[6]:

- Replaces the existing MOPR;

[1] April 9 Filing, at 17-18.
[2] April 9 Filing, at 1.
[3] April 9 Filing, at 25
[4] April 9 Filing, at 54.
[5] *Id*.
[6] April 9 Filing, at 51-52.

- Applies to offers from both existing resources and new resources that receive a material subsidy and meet the actionable subsidy criteria;
- The first stage of the auction, using subsidized[7] prices, determines resource commitment; the second stage, substituting competitive prices for subsidized prices, determines the clearing price for all resources committed in the first stage;
- A single clearing price, determined in the second stage, is paid to all capacity resources and charged to all zonal load;
- Given that two-stage structure, a resource offering at a price above the first-stage clearing price will not be committed even if its offer is below the second-stage clearing price;
- Relies on the higher of the avoidable cost rate ("ACR") or the resource's specific opportunity cost as the measure of a competitive price in most cases;
- Does not subject offers from "Self-Supply Entities" to repricing;
- Is fuel neutral;
- Applies to a subsidized resource only if the dollar value of the subsidy each year is at least one percent of the resource's annual revenues from PJM's markets;
- Applies to a generation resource only if the resource capacity is 20 MWs or greater; there is no minimum resource capacity value in the limited circumstance where Capacity Repricing applies to Demand Resources;
- Does not apply to a generation resource for which energy production is a byproduct or ancillary to its primary business function, such as combined heat and power and the burning of municipal solid waste; and
- Will not apply to any offer in the PJM Region until 5,000 MW of offers subject to repricing have been offered in the PJM Region, or in an LDA unless offers equal to at least 3.5 percent of the Reliability Requirement in the LDA have been submitted in that LDA.

PJM describes the MOPR-Ex proposal as follows[8]:

- Expands and extends the existing MOPR;
- Applies to offers from both existing resources and new resources;
- Uses the greater of ACR or the resource's specific opportunity cost as the exception to the MOPR Floor Price measure of a competitive offer;
- Readopts the substance of the competitive entry exemption that was in place from 2013 through 2017;
- Readopts a self-supply exemption based on that in place from 2013 through 2017, but adopts a new categorical exemption for public power entities and employs relaxed tests for qualifying for the exemption;
- Grandfathers existing renewable resources and offers defined exclusion for future renewable resources;

[7] "Subsidize" is PJM's term. The ICC believes that term is pejorative and illustrates PJM's fundamental mischaracterization of state laws and programs which provide due compensation for output produced by resources having beneficial environmental and public health characteristics. The purpose of such state initiatives is not to subsidize, rather it is to compensate the provision of valuable attributes that are uncompensated in PJM markets.

[8] April 9 Filing, at 52-53.

- While generally fuel neutral, applies to renewable resources only in certain limited circumstances; and
- Does not apply to demand resources.

PJM argues that both approaches are just and reasonable approaches to addressing its concerns and that the Commission may choose either.[9] PJM states that it prefers Capacity Repricing on the basis that it accommodates state policy choices, while MOPR-Ex does not.[10] PJM further states that it is properly exercising its Section 205 rights to submit two just and reasonable approaches.[11] PJM proposes an effective date of January 4, 2019 for the proposed tariff revisions and asks the Commission to issue an order by June 29, 2018.[12] If the Commission determines that it can only accept one approach subject to suspension and further proceedings, then PJM requests that the Commission: (1) Accept and suspend only one of the two approaches; (2) Not adopt trial-type proceedings; (3) Order a paper hearing on any issues that require further examination; (4) Provide the option for the parties to use settlement judge procedures to address the identified issues; and (5) Issue its final decision by January 4, 2019, to allow PJM and market participants sufficient time to implement the terms of the accepted approach in time for the May 2019 Base Residual Auction ("BRA") for the 2022/2023 Delivery Year.[13]

## II. THE ICC'S POSITION AND RECOMMENDATION

The ICC requests that the Commission dismiss the April 9 Filing because PJM's request for t is impermissible under Section 205. PJM's request would require the Commission to exceed its jurisdictional authority under the Federal Power Act as PJM seeks to impede states'

[9] April 9 Filing, at 53.
[10] April 9 Filing, at 53.
[11] April 9 Filing, at 47.
[12] April 9 Filing, at 6.
[13] April 9 Filing, at 7-8.

rights to implement legitimate policies related to energy generation unrelated to wholesale sales of electricity. For these reasons, the Commission should dismiss the April 9 Filing.

If the Commission does not dismiss the April 9 Filing, the ICC requests that the Commission find both PJM's Option A and Option B are unjust and unreasonable and unduly discriminatory and reject PJM's filing on that basis.

If, despite the ICC's recommendation, the Commission finds that Option A or Option B has some merit worthy of consideration, the ICC requests that the Commission set the matter for hearing, permit discovery and require PJM to demonstrate that its proposal is just and reasonableness and is not unduly discriminatory.

## III. MOTION TO DISMISS

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.212, the ICC submits this motion to dismiss the April 9 Filing in the above-captioned docket. PJM claims the need for its April 9 Filing stems from state "subsidies" to resources that participate in its capacity markets. Notably, PJM does not cite a single actual occurrence where such "subsidies" have interfered with or suppressed the clearing price in any capacity auction, which raises the question: Is there a problem that warrants correction? Nevertheless, PJM specifically asks the Commission to choose between one of two mutually exclusive sets of proposed revisions to its Reliability Pricing Model ("RPM") rules in the PJM Open Access Transmission Tariff ("Tariff"). PJM claims that it's "Option A," a/k/a "Capacity Repricing" "honors the states legitimate policy choice to promote resources with certain attributes not otherwise valued in the current wholesale market rules." This claim is incorrect. Capacity Repricing does not respect state's rights including the right to regulate resource diversity and generation within their territory. Nor does Capacity Repricing protect consumers from excessive

rates as this option would increase consumer cost, ironically in the name of competition. As to Option B, a/k/a "MOPR-Ex," PJM admits, that this option does not respect state's rights.

PJM's request fails to meet its burden of proof under Section 205 of the Federal Power Act, is well beyond the scope of Section 205[14] and impermissibly violates Illinois and other states' rights to pursue legitimate state policy objectives. Notwithstanding PJM's effort to expedite its baseless changes to capacity auction design, PJM bases its request on unfounded assertions and numerous material facts in dispute. Therefore, the Commission should summarily dismiss the filing in its entirety.

### A. PJM's April 9 Filing Improperly Requests the Commission Take Federal Policy Action Under Section 205 Of The Federal Power Act.

Although PJM offers no actual evidence that the existing tariff produces rates in the BRA that are unjust and unreasonable, it asks the Commission to improperly act under Section 205 and effectively declare that such rates are unjust and unreasonable to justify its further request that the Commission pick one of two PJM-proposed approaches. PJM fails to demonstrate that the relief it seeks is permitted by Section 205 and the Commission should reject the April 9 Filing.

The ICC recognizes the Commission's authority to express federal policy preferences, but respectfully, the Commission has no authority under Section 205 to formulate or adopt new policies and implement wholesale changes to PJM's BRA in conjunction with a proposed tariff revision as PJM requests.[15]

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[14] 16 U.S.C. § 824d(a), (b); *City of Winnfield v. FERC*, 744 F.2d 871, 875-76 (D.C. Cir. 1984) (*hereinafter*, "Winnfield")

[15] *Id*.

Under Section 205, when a public utility seeks to "change" any rates or rules, it must file the proposed changes with the Commission for approval. In this case, PJM bears "the burden of proof to show that the increased rate or tariff revision is just and reasonable". The Commission's role when evaluating a filing under Section 205 is a "passive and reactive role"[16] restricted to evaluating the confined proposal. The Commission may make minor changes to a rate filing under Section 205 but may not go beyond its passive role.[17]

Indeed, PJM expressly invites the Commission to join it, not in determining whether PJM demonstrated that its proposed rates are "just and reasonable" but in formulating and implementing federal policy that will "*respond* to such [state] actions so that the goal . . . is not frustrated by an individual state's actions."[18] PJM's request requires the Commission to exceed its passive role under Section 205. However, the Commission may not go beyond its statutory authority under Section 205,[19] and it should not entertain PJM's request that it do so here. PJM alone must meet the burdens placed on it by Section 205 and the Commission's role is not to assist. As established herein, PJM fails to meet its burden to demonstrate that its proposed revisions are just and reasonable.

PJM improperly filed its proposed changes to the BRA under Section 205 by submitting two competing and materially different sets of revisions and asking the Commission to make a policy choice. PJM indicates that its dual option proposal revisions, Options A and B, are

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[16] *Id.*
[17] *See, NRG Power Marketing v. FERC* 862 F.3d, 108, at 110 DC Cir. (2017).
[18] April 9 Filing at 4.
[19] Under the [Administrative Procedure Act] APA, a reviewing court "shall hold unlawful and set aside agency action, findings, and conclusions found to be in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C)). The United States Court of Appeals clarifies that "To determine whether the agency's action is contrary to law, we look first to determine whether Congress has delegated to the agency the legal authority to take the action that is under dispute." *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C.Cir.2001); *see also id.* at 1082 ("Agency authority may not be lightly presumed."); *Pharmaceutical Research and Manufacturers of America v United States Department of Health and Human Services, et al* , 43 F.Supp.3d 28, 35 (D. D.C. 2014)

consistent with the FERC Office of the Secretary Implementation Guide for Electronic Filings ("Implementation Guide").[20]

The Implementation Guide, however, is an electronic filing form guide and is not a substitute for authority under Section 205 or other provision of the Federal Power Act ("FPA"). As courts have clarified, "[a]gency authority may not be lightly presumed."[21] Specifically, "[a]s a federal agency, FERC is a 'creature of statute,' having 'no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress.'"[22]

The Implementation Guide is a guide for form, not substance.[23] It does not authorize filing alternative rate designs that are mutually exclusive and completely different from one another and asking the Commission to make a new policy determination. Rather, the guide permits a filer to submit options that include minor variations in the implementation of a core rate framework. The past "jump ball" filings that PJM cites as support are clearly distinguishable from PJM's submission here as those proceedings involved choices between limited and subtle distinctions in how to calculate one input variable or allocate costs – the options related to minor issues. None of the proceedings cited by PJM presented competing and different rate designs.

For example, in ISO-New England the Commission referred to the proposals as having the same core approach, clarifying that "[t]he main difference between the proposals relates to

[20] April 9 Filing, at 4, note 16.
[21] *Bowen v. Georgetown Univ. Hosp*., 488 U.S. 204, 208 (1988) ("It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress."); *See also Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C.Cir.2002) ("In the absence of statutory authorization for its act, an agency's action is plainly contrary to law and cannot stand.")
[22] *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002)
[23] FERC Office of the Secretary Implementation Guide for Electronic Filings, Nov. 14, 2016, at 1 (The following is a guide describing the various processes/mechanisms, data tables, code values/reference tables, and technical specifications used in the submission of such Tariff Filings.")

the types of resources eligible for compensation under the program."[24] Similarly, in *Midcontinent Independent System. Operator, Inc*., the matter concerned a limited choice between methods to calculate one input (avoidable costs) for market mitigation purposes.[25] Here, PJM's multiple-choice filing, on the other hand, features one part of the proposal (Repricing) that reflects a wholly different approach than the other (MOPR-Ex). The examples PJM cites are readily distinguishable and do not support PJM's unprecedented request that the Commission choose between two mutually exclusive rate designs. Federal Power Act Section 205 does not conceive of, let alone authorize the Commission to respond to, such a request. If the Commission permits PJM's competing rate design filing to proceed, it will create precedent for future filings of this type – massive multi-art proposals requiring all parties, including the Commission, to waste resources analyzing and evaluating, and requiring the Commission to decide.

Should the Commission believe it necessary to adopt a new policy to govern capacity auctions, a variety of forums exist where it may appropriately exercise its authority to implement such changes. Decisions regarding new capacity auction design are more appropriately made in forums such as a rulemaking proceeding, a request for declaratory order on a policy determination, or a Section 206 complaint proceeding. In any of these contexts, all those who may be potentially impacted would will have an opportunity to be heard. However, PJM faces clear opposition from its stakeholders to make a change to the capacity market design at this time.[26]

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[24] *ISO-New England*, 152 FERC at ¶ 61,891.
[25] *Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,242, at P 22 (2016).
[26] April 9 Filing, at 41 ("The [Markets and Reliability Committee] MRC voted on both proposals, neither of which passed").

### B. PJM's Revisions Impermissibly Impede on Illinois' And Other States' Rights To Pursue Legitimate State Policy Objectives When Such Policies Include Lawful Compensation for Beneficial Resource Attributes.

Supreme Court precedent makes crystal clear that under the FPA, the Commission has exclusive jurisdiction over the wholesale sale of electricity, "[b]ut the law places beyond FERC's power, and leaves to the states alone, the regulation of 'any other sale'—most notably, any retail sale—of electricity." There is no question that "[t]he States' reserved authority includes control over in-state "facilities used for the generation of electric energy." [27] In its April 9 Filing, PJM asks the Commission to exceed its authority and invade the states' sovereign rights under the guise of regulating the BRA.

PJM asserts that it and the Commission must take action together against state programs, such as Illinois' Zero Emissions Standard (ZES), which compensate energy resources for beneficial attributes not valued in PJM's auction design. PJM alleges that such compensation can lead resources to submit offers which suppress auction clearing prices– thereby indirectly affecting the price-setting features of the BRA. However, PJM provided no actual evidence of such offer behavior, and failed to demonstrate any clearing price suppression resulting from such offer behavior. As such, PJM simply treats Illinois and other states pursuing legitimate policies that result in State Policy Revenue as strawmen and a target at which to aim its misguided desire to fix what is not broken. As discussed below, PJM's request violates the Supreme Court's direction in *Hughes*.[28]

PJM's proposed revisions unconstitutionally impede Illinois and other states' rights to pursue legitimate state policy objectives when such policies result in State Policy Revenue. Specifically, PJM seeks to deter these legitimate State policies by punishing states' citizens

[27] *Hughes v. Talen Energy Marketing*, 136 S.Ct. 1288, at 1292 (2016) ("*Hughes*").
[28] *Id*.

through higher energy prices and barring generators' opportunities to qualify as capacity resources. The FPA, 16 U.S.C. §791a *et seq.*, vests the Commission with exclusive jurisdiction over wholesale sales of electricity in the interstate market.[29] A wholesale sale is "a sale of electric energy to any person for resale." FPA §824d. However, the law leaves to the states the regulation of any other sale – including retail sales of electricity.[30] The states' reserved authority also includes control over in-state facilities used for the generation of electric energy.[31]
As PJM highlighted in its April 9 Filing, the U.S. Supreme Court's *Hughes* decision declared that "states rightly may pursue 'various … measures … to encourage development of new or clean generation' or other vital public policy goals."[32] PJM's proposal crosses the jurisdictional boundary between the states and the Commission.

Notwithstanding PJM's lip service to states' rights and its claim that Option A honors those rights, both options in the April 9 Filing are specifically aimed at deterring states from pursuing lawful and legitimate policies if such polices result in State Policy Revenue.

State laws that do not seek to impermissibly intrude upon the wholesale electricity market or abrogate a Commission mandated rate, properly fall within the jurisdiction reserved to the states and do not violate the Supremacy Clause."[33] With that clear delineation, PJM may not now work around the law to circumvent the intent of the Supreme Court.

Moreover, PJM systematically seeks to impede states' valid policy choices that result in State Policy Revenue. By punishing some, but not all such states,[34] PJM reserves to itself the discretion to cherry-pick which resources are worthy of State Policy Revenue and which are not

[29] *Id.*.
[30] *FERC v EPSA*, 136 S.Ct. 760, 766 (2016).
[31] FPA, §824(b)(1).
[32] April 9 Filing, at 4.
[33] *Hughes*, at 1299.
[34] April 9 Filing, at 74.

in order to facilitate its new "workably competitive" markets. In sum, not only does PJM's April 9 Filing violate the jurisdictional boundaries established by the FPA, it is also facially unduly discriminatory. For all these reasons, the Commission should dismiss PJM April 9 Filing.

### C. Requested Relief

WHEREFORE, for the reasons set forth above in this Motion to Dismiss, the Commission should dismiss the April 9 Filing in its entirety.

## IV. PROTEST

### A. PJM Fails To Meet Its Burden Under Section 205 To Demonstrate That Its Proposed Tariff Revisions Are Just And Reasonable, And Not Unduly Discriminatory Or Preferential As PJM Provides No Evidence that Resource Owners Receiving Out-Of-PJM Market Revenues have led to Either the Submission of Lower Offers or Price Suppression in Base Residual Auctions.

The Federal Power Act (FPA) requires that "[a]ll rates and charges ... by any public utility for or in connection with the transmission or sale of electric energy" "and all rules and regulations affecting or pertaining to such rates or charges" must be "just and reasonable" and not "undu[ly] preferen[tial]."[35] Under Section 205, when a public utility seeks to "change" any rates or rules, it must file the proposed changes with the Commission. In this case, PJM bears "the burden of proof to show that the increased rate [or tariff revision]... is just and reasonable...."[36]

PJM states that the purpose of the Repricing revisions, "is to address the price suppressive effects of material state subsidies on BRA clearing prices"[37] and that the purpose of the MOPR-Ex, "is to address the price suppressive effects of material state subsidies on RPM

[35] 16 U.S.C. § 824d.
[36] *Id.*
[37] April 9 Filing, at 73.

Auction clearing prices."[38] These statements presume that what PJM calls "material state subsidies" have caused, or, at least, will cause, "price suppressive effects" on BRA clearing prices. Given this basic presumption underlying PJM's proposed capacity auction design changes, PJM has the burden to provide facts and evidence to support its presumption. Yet, PJM has not provided any such evidence, either on the record of this case, or in the Capacity Construct/Public Policy task force stakeholder process that preceded the April 9 Filing.

PJM seeks to frame the question raised in this case as "not *whether* states have the right to act but instead *how* the wholesale market should *respond* to such actions so that the goal of ensuring just and reasonable rates is not frustrated by an individual state's actions."[39] The ICC respectfully suggests that, before the Commission even considers that question, it should first require PJM to provide empirical evidence that any state's action is actually preventing or frustrating the formation of just and reasonable wholesale rates. The April 9 Filing fails to establish that State Policy Revenue causes generators to submit lower offers in the BRA or that any resulting lower or zero-bid offers suppress the clearing price in the BRA. Because PJM fails to make these showings, the Commission should reject PJM's PJM proposals in the April 9 Filing.

Despite bearing the burden of proof, PJM provides no relevant facts or evidence to support its underlying presumption. To the contrary, throughout its April 9 Filing, PJM tacitly admits that the foundation of its presumption is not definitive. Specifically, PJM states that:

- "…submitting offers below the seller's costs **can** have the unintended effect of depressing the market clearing prices."[40]
- "Subsidized, below-cost capacity offers **can** result in significant and widespread clearing price reductions that are attributable to the subsidies."[41]

[38] April 9 Filing, at 102.
[39] April 9 Filing, at 4.
[40] April 9 Filing, at 19.
[41] April 9 Filing, at 28.

- "Reduced capacity price offers from resources that receive such subsidies **can** significantly reduce capacity clearing prices."[42]
- "the PJM Tariff currently has no means to address the price suppressing effects that **might** result from any of the existing or proposed state subsidy programs."[43]
- The PJM capacity market "faces a growing incidence of resources receiving out-of-market state revenues that **could** undermine the market's ability to fulfill the Commission-identified capacity market principles."[44]
- The record here, however, shows the emergence of multiple specific, substantial state subsidy programs that **could have** a material price suppression effect in the wholesale capacity market.[45]

While PJM asserts that state resource policies *can*, or *could*, or *might* lead to lower resource offer prices or lower capacity auction clearing prices, the April 9 Filing is devoid of any evidence to support its claims. Nor has PJM provided any evidence showing that any resource receiving State Policy Revenues has submitted an offer into any BRA at a lower price due to the additional revenue. This absence of evidence is notable because PJM has conducted fourteen base residual auctions, where binding constraints are common, and lead to separate zonal clearing prices. PJM also possesses all the data related to each of these BRAs, including every offer price submitted in every BRA and recognizes that resources receiving RECs have been in the market long enough to achieve the status of "'key driver' for renewable energy generation growth."[46] Given this history, and the massive numbers of offers and clearing prices it provides, if PJM's premise were true, PJM should be able to identify examples where State Policy Revenues caused a resource to lower its bid or suppressed the clearing price in a BRA. However, PJM does not identify a single example to support either allegation. To justify the significant administrative market

[42] April 9 Filing, at 25.
[43] April 9 Filing, at 35.
[44] April 9 Filing, at 18.
[45] April 9 Filing, at 35
[46] April 9 Filing, Giacomoni Affidavit, at P 21,(*citing* Galen Barbose, *U.S. Renewables Portfolio Standards 2017Annual Status Report*, Lawrence Berkeley National Laboratory, 30 (July 2017), http://etapublications. lbl.gov/sites/default/files/2017-annual-rps-summary-report.pdf).

intervention proposed by PJM under either Capacity Repricing or MOPR-Ex, the Commission should require PJM to produce actual evidence of market suppression.

PJM's affiants, Mr. Keech and Mr. Giacomoni, both state the purpose of their affidavits is to support PJM's filing of Tariff revisions "to fill a gap in the current capacity market rules, which have no mechanism to address the price suppressive effects of below-cost offers from a number of resource types that receive substantial subsidies under various state programs."[47] Like PJM, neither Mr. Keech nor Mr. Giacomoni identify any actual below-cost offer or any actual suppressed clearing price. Mr. Giacomoni discusses state laws and programs used to provide out-of-PJM market revenue to resource owners[48] and Mr. Keech speculates about BRA scenario outcomes that might happen if there were zero-cost offers submitted and if those zero-cost offers were to result in lower auction clearing prices.[49] However, neither of these affiants provide any evidence regarding any specific instance of low cost offers submitted as a result of a resource receiving State Policy Revenues and neither affiant provides any evidence regarding any BRA where receipt of State Policy Revenues resulted in suppression of a BRA clearing price. If there is no price suppressive effect, there is no tariff gap.

Instead of citing an actual example of the problem PJM claims exists, PJM creates a simplified hypothetical example with low-cost offer behavior and an assumed suppressed BRA clearing price.[50] PJM does not suggest that this example reflects any actual offer behavior or any

[47] April 9 Filing, Keech Affidavit, at P 5 and Giacomoni Affidavit, at P 3, emphasis added.

[48] Illinois' ZES compensates nuclear generation for the environmental benefit of the energy it produces. Under the ZES, one zero emission credit ("ZEC") is equal to the environmental attributes associated with one megawatt hour of zero emitting nuclear generation. The price paid for these ZECs is explicitly set based upon an estimate of the carbon costs associated with production by substitute generation. Illinois currently has a similar Renewable Portfolio Standard ("RPS") that compensates renewable resources for the environmental benefit of the energy they produce. Under the RPS, one renewable energy credit ("REC") is equal to the environmental attributes associated with one megawatt hour of renewable generation. Pricing for the RECs has generally been set through a competitive bidding process, but will priced in various ways going forward.

[49] April 9 Filing, Keech Affidavit, at P 6-15.

[50] April 9 Filing, at 29-33.

real auction clearing outcome and admits, as it must, that "the real world is more complicated than this simple example."[51] PJM's example fundamentally mischaracterizes the nature of the state policy initiatives it targets. In Illinois, Renewable Energy Credit ("REC") values are primarily determined through competitive procurements and the Zero Emission Credit ("ZEC") value is based on the independently determined social cost of carbon. These state policy instruments provide the mechanism through which alternative revenue streams are made available for resources having desirable attributes that are not incorporated into PJM's capacity construct. Payments which fund the RECs and ZECs are made only by the citizens the state adopting the public policy.[52] PJM's simplified example models a case of contracts-for-differences based on PJM's auction clearing price, and the example reflects no current state policy reality because the Supreme Court found that approach to be impermissible.[53]

PJM is asking the Commission to approve significant non-market, administrative interventions in a capacity auction design that is already replete with administrative interventions, and only tenuously based on competitive market principles. However, PJM makes its request, not based on evidence, or concrete examples of existing problems in the capacity markets but on speculation and hypotheticals it admits are over-simplified (and are not even applicable). Given the magnitude of the administrative intervention PJM is asking the Commission to approve, it is reasonable to expect PJM to provide actual evidence of the problem it claims exists. Because PJM provides no such evidence in the April 9 Filing, the Commission should reject PJM's filing.

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[51] April 9 Filing, at 32.
[52] *See, WSPP Inc*. 139 FERC ¶61,061, P. 21 (2012) ("The Commission recognized that RECs are state-created and state-issued instruments certifying that electric energy was generated pursuant to certain requirements and standards. Thus, a REC does not constitute the transmission of electric energy in interstate commerce or the sale of electric energy at wholesale in interstate commerce.")
[53] Hughes, at 1299.

### B. PJM's Conjectures about Resource Offer Price Strategy are Neither Consistent nor Persuasive.

PJM's affiant, Mr. Keech states that, "a zero-priced offer *that is made possible only because a seller receives an out-of-market subsidy* is not competitive behavior".[54] Mr. Keech does not explain the basis for his conclusion, stating only "The seller is relying on a state subsidy available only to select resources to submit an offer in the PJM capacity market that is well below what it needs if one looks only at its resource costs and the revenues available to it from PJM's other markets."[55] This statement does not explain Mr. Keech's conclusion because Mr. Keech does not describe anything special about "revenues available to it from PJM's other markets."

As Mr. Keech notes, submitting zero-priced offers is a common practice of capacity sellers in PJM base residual auctions.[56] This practice is evident in the "smoothed" supply curves for each BRA posted by PJM. For example, the approximate number of zero-priced offers submitted for the 2016-2017 BRA for RTO, MAAC, SWMAAC, PEPCO, EMAAC, and PSEG areas are:

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|---|---|
| RTO: | ≈ 145,000 MWs |
| MAAC: | ≈ 50,000 MWs |
| SWMAAC: | ≈ 11,000 MWs |
| PEPCO: | ≈ 8,000 MWs |
| EMAAC: | ≈ 3,000 MWs |
| PSEG: | ≈ 9,000 MWs |

Given the magnitude of zero-price offers typically submitted in a BRA, it does not seem reasonable for PJM to assume to know the motivation of capacity sellers to the extent that it can definitively state that, "a zero-priced offer *that is made possible only because a seller receives an*

[54] Keech Affidavit, at P 15.
[55] Keech Affidavit, at P 15.
[56] Keech Affidavit, at P 14: "Many sellers submit zero-price offers in PJM's capacity market."

*out-of-market subsidy* is not competitive behavior."[57] In this context, PJM's conclusion regarding "competitive behavior," is dubious. It is also questionable that PJM can discern when a zero-priced offer is submitted, "only because a seller receives an out-of-market subsidy". The reality is that decisions regarding capacity offers are driven by a multitude of reasons – many of which are likely unknown to PJM.

A below-cost offer may be a zero-price offer or a non-zero price offer. PJM cites the Commission's *California ISO* order, stating that submitting an offer below the seller's cost can have the unintended effect of depressing auction clearing prices.[58] Similarly, Mr. Keech states that "below-cost capacity offers can result in significant and widespread clearing price reductions."[59] Neither of these statements are definitive, though, because a below-cost offer can only affect the auction clearing price in instances where offering capacity below cost shifts the offer from being extra-marginal to either marginal or infra-marginal, or from marginal to infra-marginal. Even if offering below cost shifts the capacity offer in one of these ways, that does not necessarily mean the clearing price is impacted because the clearing price is always set by the marginal unit and multiple units may share the same offer price. This same logic applies to PJM's discussion of "displacement"[60] or "crowding out"[61] of resources.

PJM states that below-cost offers pose a "danger" to the price signals needed for entry and exit decisions,[62] that resources receiving State Policy Revenues threaten to undermine competitive principles,[63] and that "certain state subsidies" have an "adverse impact" [64] or

[57] Keech Affidavit, at P 15.
[58] April 9 Filing, at 19
[59] Keech Affidavit, at P 6
[60] *See, e.g.*, April 9 Filing, at 57 and 65.
[61] April 9 Filing, at 4 and 29.
[62] April 9 Filing, at 16.
[63] April 9 Filing, at 3.
[64] April 9 Filing, at 5.

"distorting effect"[65] on competition. In certain circumstances and depending on the definition of cost, a below-cost offer can have the unintended effect of lowering the auction clearing price. But, that is not an inevitable result. Even when it does happen, whether it rises to the level of "danger" or "undermining" or "adverse impact" or "distorting effect" would seem to be case-specific (based on slope and position of the supply and demand curves) and depending on whose definitions of "cost" and "efficiency" are used, and intent should matter.

There are multiple instances where it would be logical for a resource owner to submit a lower-priced offer. For example:

- **Bilateral Contract:** An LSE executes a forward bilateral contract with a generator for an amount of capacity equal to its PJM-assigned reliability requirement. Under RPM rules, the LSE will be required to pay PJM the auction clearing price for any MWs procured by PJM on behalf of the LSE to meet its reliability requirement. The LSE will also be paid the auction clearing price for the MWs it has under contract with the generator. So, to ensure that the MWs under its control clear the auction and that it is able to pay PJM for its reliability requirement MWs, the LSE might reasonably submit an offer price of zero for the MWs that it has under contract.
- **Retail Rate Recovery:** A vertically integrated utility with a generator that is included in a state's retail rate-base through which the utility has the opportunity to recover its entire revenue requirement, including allowed profit, through regulated retail rates may be likely to submit an offer-price of zero. This is because the utility recovers all of its generation costs through retail rates and would be content receiving the auction clearing price, whatever it is.
- **Intra-company Sale for Retail:** A merchant company with control over generation capacity and having commitments to serve retail load in a retail access state might offer at zero price for the amount of capacity needed to serve its retail load.
- **Non-electric Product Sales**: A merchant company that owns a coal-fired generator with markets for the bottom ash, fly ash and steam that are byproducts of the generator producing electricity. Assuming that these byproducts generate revenues sufficient to fully cover the resource's net going forward costs, the generator may submit a zero offer price.

[65] April 9 Filing, at 6.

These zero-price offers could potentially suppress PJM's BRA clearing price in the way PJM uses the term "suppress" in the April 9 Filing. To the extent that the price offer submitted in the BRA in each of these examples is switched from being extra-marginal to either marginal or infra-marginal, or from marginal to infra-marginal, due to the receipt of the out-of-PJM market revenue in each of these examples, the clearing price could be "suppressed". Despite this possibility, PJM is not targeting any of these sellers for Repricing or MOPR-Ex application. To be clear, the ICC is not recommending that PJM should be targeting the sell offers in these instances. Rather the ICC is using these examples to illustrate that PJM's rationale for targeting other revenue source circumstances, which may lead resource owners to submit zero-price or below-cost offers, is inconsistent and unduly discriminatory.

### C. PJM's Capacity Auction Design Does Not Select Resources with the Attributes Valued by the States and their Electricity Consumers.

PJM cites the "first principles of capacity markets" from the Commission's recent CASPR Order,[66] one of which is that, "capacity markets" should "result in the selection of the least-cost set of resources that possess the attributes sought by the markets."[67] PJM's markets are a means to an end and not an end in themselves. When evaluating the phrase "sought by the markets," consideration must be given to the electricity consumers who ultimately pay for the resources procured in PJM's capacity auction and bear the consequences of the complete set of attributes represented by that portfolio. It is reasonable to question whether those consumers are receiving optimal value from the portfolio of resources which PJM's auction design selects.

Because the preferences of electricity consumers do not come into the electricity market as directly as they do in some other markets through revealed preference, proxy methods and

[66] April 9 Filing, at 8 citing *ISO New England, Inc.*, 162 FERC ¶ 61,205, at P 21 (2018).
[67] April 9 Filing, at 8.

representation methods are commonly used to reflect electricity consumer desires. As codified in the FPA, states, through their duly elected Legislative and Executive representatives (and the regulatory and administrative agencies they create), play a large role in assuring and conveying the attributes of electricity desired by the state's citizenry.

Mr. Giacomoni describes[68] some of the resource attributes sought by electricity consumers, including zero-emission generation,[69] offshore wind,[70] and renewable generation.[71] These examples highlight the value placed on clean energy by electricity consumers.[72] This news should not be a revelation for PJM or the Commission. This change in the market has been a prominent upward trend for years. Sensing this change in consumer desires, elected officials reacted, and many states adopted policies to promote clean energy. Yet, PJM cannot follow the states' lead, as its current market design and proposed revisions place no value on clean energy attributes. Rather, as it has since the beginning, PJM's annual BRA continues to procure an undifferentiated MW product and churns out a portfolio each year in which the dirtiest and cleanest MWs of electricity capacity are valued equally.

Rather than revising its BRA design to address RPM's inability to give consumers the clean energy that they are demanding, PJM is instead seeking to implement a proposal designed to roll back progress and counteract the state initiatives which recognize the value of clean energy and other valuable resource attributes. Indeed, PJM's Repricing and MOPR-Ex proposals would thwart state-led efforts to help electricity consumers obtain electricity reflecting the attributes they desire. As shown below, Capacity Repricing punishes electricity consumers

[68] Although his descriptions, in some cases, are not correct.
[69] Giacomoni Affidavit, at P 5-6.
[70] Giacomoni Affidavit, at P 7-11.
[71] Giacomoni Affidavit, at P 12-17.
[72] Demand response, which is targeted by PJM's repricing approach also falls into this category.

through higher prices and excess quantity commitments and MOPR-Ex additionally punishes all citizens, and the environment in which they live, by disqualifying clean energy producers from the PJM capacity market.

PJM states with vertically integrated utilities that have retained the traditional retail regulation model and integrated resource planning also have state laws, policies, and practices intended to reflect electricity consumer desires. Traditionally regulated states do not need PJM BRA price signals to guide resource owner and electricity consumer behavior because resource selection proceeds through regulatory means at the state level. Like the states that have proceeded to implement a restructured industry model, the laws, policies, and practices of the traditionally regulated states that guide electric resource development and operation should also be respected by PJM. The April 9 Filing, properly, does not target the resources selected by these traditionally regulated states for Repricing or MOPR-Ex application. Unfortunately, however, PJM's proposal to target restructured states in the PJM region will not only negatively impact the restructured states, but as explained below, will likely also negatively impact the traditionally regulated states through higher capacity prices.

PJM falsely asserts that state initiatives to advance a policy objective "impose costs on market participants <u>and customers</u> outside such state's purview . . ." and "effectively force[s] other participants in the wholesale market to pay for that objective."[73] State Policy Revenues that compensate a generating resource for valuable attributes like zero-emissions or renewability that are not valued or priced in to PJM's BRA, are paid by the citizens of that state. State policy-makers do not have the power to obtain revenues from other states and PJM has not shown otherwise. State policy initiatives are not "underwritten by other participants in the wholesale

[73] April 9 Filing, at 32.

market," as PJM asserts.[74] There is no "forced enlistment of other wholesale market actors to help the state achieve its objective" as PJM asserts.[75]

PJM expresses concern about the impacts of one state's public policy that fall on other states.[76] Many actions that states take, or choose not to take, impact other states, but it is not within PJM or the Commission's role to pass judgment on these decisions. If a state has a valid grievance due to another state's action or inaction, administrative or judicial remedies are readily available.[77]

Even if one accepts, *arguendo*, PJM's speculation about the effect of State Policy Revenues on resource price offers, and accepts that clearing prices would be lower because of the state's policy, it is difficult to see how that is detrimental to electricity consumers in other states, particularly in the short term. To the extent that a state's policy achieves its objective of retaining or inducing the development of resources with beneficial attributes, all electric consumers throughout the PJM region will gain, even if they are not paying directly to achieve the objective. As described below, PJM's proposals to counteract or reverse certain state resource policy decisions will impose unnecessary costs on consumers both in states targeted by PJM's proposal and states not targeted.

PJM states, "the investment hypothesis supporting new entry in PJM has been lower gas prices and better technology (i.e., technology that is more efficient and still innovating) to displace older less efficient generation," particularly citing "older coal" plants.[78] PJM states that

[74] April 9 Filing, at 32.
[75] April 9 Filing, at 33.
[76] April 9 Filing, at 29.
[77] It should be noted that Repricing does not actually address PJM's stated concern about the impact of one state's policy on other states. Rather, it l simply raises the clearing price received by all committed resources. MOPR-Ex does address the alleged cross-state impact, but would obliterate all of the obvious positive impacts in an attempt to prevent the alleged negative ones.
[78] April 9 Filing, at Note 94.

the technology characteristic of most market-driven new entry units is lower cost and more efficient than incumbent generators.[79] PJM has not given any reason to believe this new entry dynamic – efficient, lower cost new technologies replacing older, and, likely, higher emitting plants -- will be disrupted by state policies which largely also are aimed at retaining or inducing entry of lower emitting resources. It is possible that there may be less demand for entry of new technologies, to the extent that state policies succeed in retaining and inducing entry of resources with currently uncompensated valuable attributes, but the new entry vector described by PJM has not been and is not likely to be altered because of those state resource policies.

PJM also asserts that the result of retaining the *status quo* BRA design, over the "long term," will be a "more costly system, because efficient new entry was turned aside as a result of the subsidy."[80] PJM states that, "[o]ther potential new entrants that need a market that values their capacity based only on their project's cost efficiencies may be deterred from offering into a market whose results are significantly affected by selective state subsidies."[81] To the extent that state policy initiatives lead to the retention of resources which PJM's capacity auction would not otherwise select, there may be less room in the market for new entry, depending on the business decisions of existing resources at the high cost end of the supply stack. This outcome, however, does not undermine the competitive market design for ever-increasing resource cost efficiencies, it simply reflects the fact, as demonstrated by states' willingness to bear costs for desirable resource attributes, that cost efficiency is not the only legitimate objective of resource selection processes. PJM also laments that "subsidies beget subsidies".[82] Such an argument ignores the fact that PJM's auction design has failed to incorporate market mechanisms that value positive

[79] April 9 Filing, at 11.
[80] April 9 Filing, at 32.
[81] April 9 Filing, at 32.
[82] April 9 Filing, at 34.

environmental attributes and address the inefficient clearing prices that proceed from that failure. By ignoring negative externalities, PJM has failed to reasonably respond to changing customer preferences and has effectively forced the states to step in. States have, and will continue to undertake initiatives that improve economic efficiency and serve the expectations of their citizens. PJM refers pejoratively to this good governance as "subsidies begetting subsidies."

The state legislation and policies adopted by restructured states and the portfolios selected through integrated resource planning in traditionally regulated states[83] illustrate the kinds of resource attributes that state legislators and policy-makers want, based on the desires of their citizens, to have included in the resource portfolios for their state. These are the resources and resource attributes which states are willing to levy costs on their citizens to obtain or retain. PJM should respect the attainment of state objectives and those resource attributes, rather than trying to deter or thwart them through punitive measures. PJM fails to recognize that its BRA design, which values capacity based <u>only</u> on the resource's cost (as determined by PJM), is both the issue that state legislators and policy-makers have been trying to get around and the problem that PJM should already have addressed.

### D. PJM's Current Auction Design Does Not Account For Environmental Externalities and the April 9 Filing Represents an Attempt By PJM to Undo or Counter-Act States' Attempts to Address that Market Flaw.

PJM's current auction design does not account for environmental externalities and the April 9 Filing represents an attempt by PJM to undo or counter-act states' attempts to address that market flaw. Emission of air pollutants and other environmental and public health hazards constitute a textbook case of market failure. Absent market intervention, these pollutants can impose costs on society that are not borne by the generation resources responsible for them.

[83] Giacomoni Affidavit, at P 5-17.

When production decisions are made absent consideration of such externalities, market outcomes based upon such production decisions are not economically efficient. PJM's underlying BRA design does not account for or internalize these externalities and its proposed revisions do nothing to fix that flaw. Absent such an accounting, the resulting auction clearing prices are not economically efficient. Specifically, by failing to account for environmental externalities, PJM's markets rely too much on "dirty" and too little on "clean" generation resources.

In arguing that state statutes like RPS and ZES distort its market, PJM is effectively arguing that failing to address environmental externalities produces an efficient market outcome and that state policies which address such environmental externalities must be countermanded. PJM's proposals fail on the fundamental application of economic principles regarding externalities and the Commission should reject it on that basis. State laws and policies which attempt to account for environmental and public health externalities nudge resource compensation *closer* to the economically efficient level. . On the other hand, PJM's proposal would continue to over-compensate resources with undesirable attributes and impose negative externalities on society.

State and federal programs like the Mercury and Air Toxics Standards that address pollutants and other environmental programs have caused generating companies to make substantial investments in equipment necessary to scrub pollutants from their emissions and have caused others to simply exit the generation business. Every price offer made (or perhaps not made) into PJM auctions by a coal plant recognizes the reality of the costs it must incur to comply with a myriad of environmental regulations. Because PJM permits these compliance costs to be reflected in unit offers, these kinds of environmental and public health laws have had,

and continue to have, an impact on PJM's auction clearing prices and on PJM's portfolio selection.

RPS and ZES statutes are also aimed at environmental and public health hazards. Rather than penalizing emitters for their impacts, however, these statutes compensate non-emitters for the valuable non-emission attributes they provide. The April 9 Filing effectively says that: (1) under the provisions of MOPR-Ex, these resources will not be permitted to reflect such compensation in their offers; or (2) under the provisions of Repricing, PJM will make administrative adjustments to produce a clearing price at a level which PJM asserts would have been produced had such compensation not been recognized. Raising costs for emitters and raising compensation for non-emitters are equally valid means for achieving public policy objectives and addressing the harm of negative externalities. Yet, PJM respects and facilitates the former approach and is proposing to counteract or prohibit the latter.

Traditional environmental and public health statutes are aimed at reducing environmental and public health impacts, so are statutes like RPS and ZES. These goals are achieved through increasing emitter's costs, thereby making decreased production of emissions more likely. Under ZES and RPS, the goal is achieved by compensating the non-emission attribute of generation, thereby making the production (or continued production) of electricity from non-emitting generation more likely, and because, in every interval, the total demand for electricity is fixed, production of electricity from emitting generation less likely. This path does not result in resource deficiency as PJM suggests, but under the current BRA design is likely to lead to the selection of non-emitting resources over emitting resources. Even if the premise that out-of-PJM market compensation for non-emitting resources leads to lower BRA clearing prices for emitting generators is correct, it serves as the mechanism to discourage production from emitting

resources, thereby addressing the negative externality. The more PJM's auction design addresses negative externality costs, the more economically efficient the auction clearing price and the closer to optimal the selected resource portfolio will be.

On some level, PJM recognizes these negative externality concepts. For example, PJM states:

> The theoretical ideal market approach to that issue would be to unbundle the currently unvalued attributes and enable resources to compete to provide those attributes, for example, through a carbon emissions objective embedded in the wholesale market clearing mechanism if the states were so inclined to pursue that objective.[84]

However, no sooner than PJM raises this issue, PJM rejects it as impractical. For example, PJM suggests that states may have different ideas about what are beneficial and detrimental resource attributes or the magnitude of benefits and detriments. PJM then dismisses the "theoretical ideal market approach" stating "there are a daunting number of practical, legal, and political obstacles that lie between the market's current state and any such theoretical approach that may (or may not) arise in the future." [85]

The contrast is sharp between what PJM considers to be the "theoretical ideal market approach" and the approach PJM proposes in the April 9 Filing. While RPS and ZES statutes "unbundle the currently unvalued attributes" just as PJM's ideal would have it, the April 9 Filing argues strongly that any compensation paid for these beneficial attributes would result in economically inefficient prices. PJM makes no attempt to reconcile the inconsistencies in its statements.

PJM also fails to explain why the positive steps that states have taken <u>in the direction of</u> the ideal market design merit countermanding or prohibition or why PJM seeks to stop additional

[84] April 9 Filing, at 54-55.
[85] April 9 Filing, at 55.

state policy steps toward recognizing the inefficient effects of negative externalities. Nor does PJM defend its refusal to exert effort toward achieving the theoretical ideal wholesale market. Adoption of either Repricing or MOPR-Ex would preserve and encourage resources that cause negative externalities by increasing the auction clearing price through Repricing or the effective banishment from capacity revenues for non-emitting resources through MOPR-Ex.

**E. PJM's Proposal Neither Accommodates Nor Respects State Laws and Policies.**

PJM starts its April 9 filing by announcing that it is submitting revisions to its Tariff "to establish the appropriate federal and regional transmission organization response to address supply-side state subsidies." The ICC believes that the term "subsidies" is pejorative and illustrates PJM's fundamental mischaracterization of state laws and programs which provide due compensation for output produced by resources having beneficial environmental and public health characteristics. As noted above, the purpose of such state initiatives is not to subsidize, rather it is to compensate the provision of valuable attributes that are uncompensated in PJM's flawed market design. PJM implies that state policies produce negative consequence that fall on other states, and that PJM needs to mount a response. But, as noted, PJM hasn't demonstrated a negative consequence and no state is complaining about another state's State Policy Revenues. If there is a role for PJM to play with respect to this issue, it should be to work collegially with the states to reach a consensus solution and not challenge and confrontation as represented by the April 9 Filing.

Throughout the April 9 Filing, PJM impugns the motives of state legislatures and executives, fundamentally mischaracterizing the state laws and policies it targets. For example, PJM makes such statements as, "an emerging trend in PJM is for owners of these legacy assets to seek out-of-market support from states to forestall retirement and defeat the design objective of

PJM's market, at the expense of their competitors and wholesale consumers."[86] PJM mischaracterizes Illinois' ZES statute, as well as other states' laws[87] as examples of attempts to "defeat the design objective of PJM's market, at the expense of their competitors and wholesale consumers."

PJM ignores the legislative findings expressed directly in state statutes. For example, with respect to ZES, Illinois' statute states:

> The General Assembly therefore finds that it is necessary to establish and implement a zero emission standard, which will increase the State's reliance on zero emission energy through the procurement of zero emission credits from zero emission facilities, in order to achieve the State's environmental objectives and reduce the adverse impact of emitted air pollutants on the health and welfare of the State's citizens.[88]

This statement of legislative finding does not say anything about owners of "legacy assets" seeking "out-of-market support" or intent to "defeat the design objective of PJM's market". Nor do any of the other state statutes cited by PJM.

Assuming any response to state energy policy initiatives is in order, neither Repricing nor MOPR-Ex constitute a reasonable or appropriate response and appear on their face to be unduly discriminatory against states valid laws and policy choices, and the resources subject thereto.

### F. Product Definition and Market Design Determine What is "Economic," "Competitive" and "Efficient".

PJM speaks about resources that "the market does not regard as economic" and resources "the market does regard as economic." Specifically, PJM states,

> But regardless of the state's specific policy motivation, retaining or compelling the entry of resources that the market *does not* regard as economic, suppresses prices for resources the market *does* regard as economic. This in turn suppresses

[86] April 9 Filing, at 14.
[87] April 9 Filing, at 25.
[88] P.A. 99–906, § 1–5 (eff. June 1, 2017).

> revenues for resources that depend on these prices to support their continued operation or their economic new entry.[89]

PJM cites its own research paper finding that PJM markets adequately compensate legacy units such that economically viable generators are not being forced into premature retirement.[90] Specifically PJM states that, "the PJM markets are producing prices that appropriately signal the exit of uneconomic legacy resources and the entry of efficient new resources."[91] PJM states that "policymakers face difficult choices between the efficient market outcomes of the PJM markets and other policy objectives that may be thwarted by these outcomes."[92]

PJM uses the term "efficient" to describe either offers submitted into its BRA or the clearing price which results from offers submitted pursuant to PJM's definition of efficient.[93] Similarly, PJM uses the term "competitive" to describe either offers submitted into its BRA or the clearing price which results from offers submitted pursuant to PJM's definition of competitive.[94]

Results judged as "economic," "competitive," or "efficient" do not derive from universally applicable theorems. Rather, product definition and market design determine what is "economic," "competitive," or "efficient." A resource offer, or auction outcome, is not economically efficient based on the product definition and market design. PJM's April 9 Filing targets resources that PJM asserts are not economically efficient, given PJM's product definition and market design, but if PJM modified its capacity product definition to account for negative societal externalities like air emission pollutants, and modified its BRA design to value capacity

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[89] April 9 Filing, at 14.
[90] April 9 Filing, at 38, citing PJM's *Resource Investment Whitepaper* at i.
[91] *Id*.
[92] *Id*.
[93] *See, e.g.*, April 9 Filing, at 22 and 25.
[94] *See, e.g.*, April 9 Filing, at 46 and 60.

resources that do not emit air pollutants over those that do, the resource set that would be selected in PJM's capacity auction would likely be quite different from the resources and clearing prices that PJM now declares to be "economic," "competitive," and "efficient".

PJM is, apparently, satisfied with its current capacity product definition despite societal dissatisfaction regarding the portfolio of capacity resources that PJM's BRA design procures. While state policy and society clearly value certain resource attributes, PJM's capacity product definition and auction clearing design do not reflect these same values.

### G. Perfect Competition and Perfect Regulation are not Operating Expectations, but Rather Opposite Ends of a Spectrum.

PJM states that, "Many states in the current PJM Region chose, approximately twenty years ago, to restructure electric service in their states and introduce greater reliance on competition."[95] Although this statement is true, the operative word is "greater". PJM argues that states which chose to introduce greater reliance on competition, 'effectively gave-up the type of resource adequacy planning authority that exists in . . . other [regulatory] models,' and therefore instead rely on 'a separate FERC jurisdictional capacity market construct'"[96] PJM is simply wrong. States gave up no jurisdictional ground to regulate generation within their geographic boundaries. The part of the Federal Power Act that reserves to the states jurisdiction over "facilities used for the generation of electricity" remains in full force and effect.[97] All states, both those practicing traditional retail regulation and those retail restructured states, rely on a mix of competitive and regulatory tools to ensure just and reasonable outcomes for electricity consumers.

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[95] April 9 Filing, at 21.
[96] April 9 Filing, at 24, citing Tony Clark, Regulation and Markets: Ideas for Solving the Identity Crisis, Wilkinson, Barker, Knauer, 5 (July 14, 2017).
[97] 16 U.S.C.§ 824(b).

Regulation is a means to obtain desirable societal outcomes. So are markets. The use of these different tools is not mutually exclusive. PJM asserts that "restructured states in the PJM region elected to rely on competitive markets as the means to select resources needed to serve loads"[98] and "there is a growing trend among the PJM region states that elected to rely on competition for resource adequacy to intervene in resource selection."[99] PJM suggests there is something wrong with this construct, but as shown above, it is the shortcomings of PJM's capacity construct that have forced the states' hand. It is entirely reasonable to expect states to exercise their jurisdictional authority to protect society's preferences for certain resource attributes and changing concerns regarding environmental impacts.

Ironically, PJM's BRA design is far from a pure market. While it employs some market concepts and market principles, many fundamental aspects of PJM's BRA design—like the shape and position of the variable resource requirement curve—are administratively determined and the product of negotiation. Similarly, making determinations about permissible and impermissible avoided costs, for example, and imposing those decisions on resource offers where no hint of market power exercise is involved, are regulatory acts, not market outcomes.

The Commission can (and should) reject out of hand PJM's suggestion that imposing Repricing or MOPR-Ex is somehow warranted, or that restructured states deserve this treatment as a consequence of their pro-competition initiatives launched a generation ago.

### H. PJM's Reliability Argument is Unpersuasive.

PJM states, "In executing PJM's responsibility to ensure reliability and robust competitive markets, PJM has assessed the need for these [April 9] market rule changes."[100]

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[98] April 9 Filing, at 21.
[99] April 9 Filing, at 24.
[100] April 9 Filing, at 17.

PJM states that it will "not be able to produce the needed investment to serve load and reliability if a subset of suppliers is allowed to bid noncompetitively,"[101] implying that offers submitted by renewable generators and nuclear generators, for example, are not competitive and do not bid competitively and that such behavior will lead to system unreliability. PJM asserts that, "a part subsidized/part competitive market cannot carry out the critical function of ensuring reliability."[102] PJM asserts that the source of this reliability threat comes from generators that do not submit price offers in the BRA equal to "their true net costs (allowing for wholesale market revenues)."[103] PJM states that such offers lead to suppression of the BRA price[104] which leads to lower capacity payments to cleared resources,[105] which leads to lobbying for more "subsidies,"[106] or, failing that, Reliability Must Run arrangements[107] or disorderly incumbent exit.[108] It's a long path from the initial premise to the last conclusion, and, PJM has not provided any actual evidence for any of those steps, particularly the allegations concerning reliability. In short, PJM has not demonstrated a reasonable basis for its reliability concerns.

PJM takes issue with state policies that help bring resources like renewables into the market that might not have otherwise entered based on PJM's wholesale market signals or retained resources like nuclear generation in the market that might otherwise have exited because PJM's market prices do not account for negative externalities like air emissions. Typically, more resources are a good thing because it leads to more competition, lower prices and increased reliability. Yet, in this case, PJM is arguing that resources brought into the market, or

[101] April 9 Filing, at 19.
[102] April 9 Filing, at 33.
[103] April 9 Filing, at 34.
[104] April 9 Filing, at 4.
[105] April 9 Filing, at 33.
[106] April 9 Filing, at 34.
[107] April 9 Filing, at 14.
[108] April 9 Filing, at 46.

maintained in the market, harm competition and threaten reliability. PJM has not reconciled this contradiction, and eve, if the contradiction could be reconciled, PJM has not explained how its April 9 proposal to raise capacity prices in response is a reasonable solution. In particular, PJM has not supported its allegation regarding reliability.

### I. Mitigation Measures Like MOPR Should be Reserved for Attempts to Exercise Market Power, and Reactionary Measures Like Repricing Should Not Be Applied Absent Demonstration of Actual Market Harm.

PJM states that its tariff currently has no "means to address the adverse effects" [109] of the following state policies and programs:

- Zero-emission credit ("ZEC") payments to a select PJM Region nuclear plant in Illinois;
- Pending New Jersey legislation that would provide similar payments to potentially nuclear plants in that state;
- Off-shore wind procurement programs under existing law in Maryland and New Jersey that appear similar to the programs in New England that prompted the ISO New England capacity market changes approved in the CASPR Order; and
- Renewable Portfolio Standard ("RPS") programs in various PJM Region states that require Load Serving Entities ("LSEs") to meet a certain percentage of their load with RPS eligible facilities, or buy renewable energy certificates ("RECs") from such facilities.

PJM is not asserting any attempt to exercise market power to lower prices or any attempted market manipulation, or any intent to manipulate the market or any benefit gained by a resource submitting an allegedly "suppressed" offer. Rather, PJM is only charging "adverse impacts," and even for that, PJM has provided no evidence.[110] MOPR is a far more powerful tool than is necessary to address the "adverse" impacts purported by PJM, even if those impacts were demonstrated. MOPR should be reserved for addressing the serious market violations that it

[109] April 9 Filing, at 35.
[110] April 9 Filing, at 5.

was first aimed at preventing and mitigating, specifically, exercises of monopsony power or attempts to exercise monopsony power.

Nowhere in the April 9 Filing did PJM assert, or even imply, that any of the owners of resources targeted by the filing would have anything to gain from lower BRA prices. In fact, the types of resources targeted by PJM's April 9 Filing, are likely to be held in portfolios whose owner would benefit from higher auction clearing prices. Application of MOPR to any market behavior short of exercises of market power or market manipulation or attempts to exercise market power or market manipulation, should be prohibited by the Commission as excessively punitive.

MOPR-Ex is especially disrespectful of state laws and state regulators and their FPA-authorized jurisdictional role with regard to generation. In its Notice of Technical Conference in AD17-11-000, the Commission specifically expressed a desire that "states or regions that restructured their retail electricity service" continue to be permitted to "select resources of interest to state policy makers" while "preserving the benefits of regional markets."[111] MOPR-Ex is designed to prevent the "resources of interest to state policy makers" from clearing in PJM's BRA. PJM acknowledges that MOPR-Ex has the potential impact of disqualifying state-subsidized resources from clearing as capacity, and will cause *other* resources to clear that do not reflect the attributes desired by state policy-makers.[112]

While Repricing is not as punitive as MOPR-Ex, the program amounts to a rebuke of state laws and regulations that have withstood legal challenges, all while imposing additional costs on electricity consumers for no purpose, and failings to address the "displacement"

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[111] *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, at 1 (Mar. 3, 2017).

[112] April 9 Filing, at 56.

problem that PJM asserts will result from the price offers submitted by resources receiving State Policy Revenues.[113] Beyond these failures to address the purported problem, PJM has yet to demonstrate that any such problem exists, let alone one that needs to be addressed. PJM states that, "[i]n every prior case where the Commission has been faced with evidence of such growing threats to competitive wholesale markets, it has taken action."[114] While this statement is not true,[115] PJM has not provided actual evidence of any threat, let alone a growing one.[116]

Finally, PJM's suggestion to the Commission that there are only two potential paths to consider in this case[117] is false. The Commission need not confine itself to capacity market options and, even if the Commission chose to so confine itself, "accommodate" or "mitigate" are not the only possible approaches that could be considered.

Since the inception of RPM in 2006, PJM has found itself engaged in a seemingly endless series of attempts to revise its capacity market design. With dozens of significant filings to modify PJM in the last decade, PJM and impacted stakeholders have expended untold hours and resources arguing over capacity market issues. In spite of all this effort, PJM's capacity market has, and always will have defects.

PJM's April 9 Filing targets State Policy Revenues that are more closely related to energy production. This is particularly true regarding REC and ZEC compensation. While the ICC does not have the data, it is likely that the resources targeted by PJM's April 9 Filing, make most of their revenues through energy payments, rather than capacity payments. It is not clear why capacity market solutions should be used to address problems that PJM purports to flow from

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[113] One positive aspect of PJM's Repricing approach l is that it eliminates the existing MOPR from the tariff.
[114] April 9 Filing, at 35.
[115] *See, e.g., Midcontinent Independent System Operator, Inc.*, 162 FERC ¶ 61,176 (2018).
[116] While state programs may be increasing, PJM has not demonstrated any increased harm to PJM markets as programs have increased.
[117] April 9 Filing, at 42, citing "accommodate" or "mitigate", both of which are capacity market approaches.

these state policies related to energy production. It is more likely that a productive path forward can be found after comprehensive examination of the purported problem and comprehensive consideration of potential solutions. The PJM process that produced the two-path capacity auction design approach in the April 9 Filing falls far short of this ideal.

### J. Impact of Repricing and MOPR-Ex.

#### 1. Repricing

The purpose of PJM's Repricing approach is to raise capacity prices. PJM's own illustrative examples in Figures 3 and 4 show that, in the case where the extra-marginal unit from Stage 1 sets the clearing price in Stage 2[118] and in Figures 5 and 6 where the re-priced unit sets the clearing price,[119] the clearing price rises from $35 to $40.

##### a. The Reference Price is Too High.

PJM's proposed reference price calculations and specifications are designed to result in very high reference prices for targeted units in the Stage 2 repricing. Indeed, for existing and planned generators, PJM will impose the higher of multiple calculations, and, failing that, impose the default market seller offer cap for a capacity resource as the minimum offer price for the repriced unit.

The reference prices are represented by the A and B bars in Figures 4 and 6. In Figure 6, if the reference price is set too high, the clearing price will be set too high. In Figure 4, if the reference price is set too high, the clearing price may be set too high. The reference price calculation is in proposed tariff Section 5.14(j)(4) which presents a different formula depending

[118] April 9 Filing, at 62 and 64.
[119] April 9 Filing, at 66 and 67.

on whether the resource with actionable subsidy is an existing generator, a planned generator, or demand response.

- For existing generators, the reference price will be set as the higher of the opportunity cost established in Section 5.14(j)(4)(a)(i)(A) and either the unit specific avoided cost as calculated in Section 5.14(j)(4)(a)(i)(B)(1) or the resource class avoided cost as calculated in Section 5.14(j)(4)(a)(i)(B)(2). If the methods described in Section 5.14(j)(4)(a)(i)(B)(1) or Section 5.14(j)(4)(a)(i)(B)(2) are not applicable for an existing generator, then the reference price will be set at Net CONE x B.

- For planned generators, the reference price shall be the higher of the opportunity cost calculated in Section 5.14(j)(4)(b)(i)(A) and a unit specific offer price calculated taking into account the specifications in Sections 5.14(j)(4)(b)(i)(B)(A), 5.14(j)(4)(b)(i)(B)(B), and 5.14(j)(4)(b)(i)(B)(C.). If the information required for the calculations in Sections 5.14(j)(4)(b)(i)(B) is not applicable, then the reference price for a planned generator will be Net CONE x B.

- For a demand response resource, the reference price will be Net CONE x B

These calculations and specifications are designed to result in very high reference prices. Indeed, for existing and planned generators, PJM will impose the higher of multiple calculations, and, failing that, impose the default market seller offer cap for a capacity resource as the minimum offer price for the repriced unit. While the reference price concept is conceptually intended to represent an administratively calculated proxy for the price at which the unit with actionable subsidy would have offered into the base residual auction absent receipt of out-of-PJM market revenues, PJM makes no attempt to justify its proposed reference prices in those terms. Rather, PJM merely asserts that its proposed referenced price levels are representative of a "competitive" offer price which is a price that, from PJM's perspective, constitutes a theoretically ideal offer. PJM imposes this theoretical ideal standard only on targeted units and PJM holds no other resource price offer to that standard.

Basically, PJM would be imposing on minimum price offers from targeted units the maximum price offer level requirement that PJM imposes on all other units. It is not reasonable

to believe that the price offer method designed to prevent up-side market power exercise would also be appropriate to address the purported low-price offer submission incentives PJM argues are present for resources receiving out-of-PJM market revenues. If the lowest permissible low-side offer is not permitted to be any lower than the highest permitted high-side offer, then something is not right. It represents a degree of forced offer price precision which is not imposed on any other resource offer. Resources targeted for repricing have neither upside offer flexibility not downside offer flexibility.

High minimum offer reference prices imposed in Stage 2 will lead to higher auction clearing prices and lead to higher costs for electricity consumers.

**b. The Quantity Procured is Too High.**

PJM's two-stage proposal results in procuring excess quantity. If PJM's theory is correct that resources receiving out-of-PJM market revenues submit lower offers in the base residual auction than would have been the case had those resources not received out-of-PJM market revenues, then, because the VRR curve is downward sloping, PJM's Stage 2 fails to restore the quantity procured back to what it would have been absent the allegedly low-price offers submitted in Stage 1 by the targeted resources. For example, PJM's Figures 3 and 4 hold the cleared capacity artificially constant at 1,000 MW, while raising the price between Stages 1 and 2 from $35 to $40. If offer prices had been submitted in Stage 1 at the price levels PJM has determined to be correct for Stage 2, then Stage 1 would have cleared a lower quantity than it does with the lower offers purportedly submitted by the targeted resources. In other words, if PJM's two-stage clearing proposal is intended to result in both the clearing price and clearing quantity that would have resulted without any actionable subsidies (and the purported lower

submitted offer prices), then PJM's proposal misses the mark because PJM will be clearing more quantity than would have occurred absent the purported price offer impact of the actionable subsidies. In this way, Repricing would additionally raises consumer costs, both by raising the clearing price in Stage 2 and maintaining the inflated cleared quantity that was established in Stage 1.

**c. Specific LDAs are Targeted for Disproportionate Treatment**.

Proposed tariff Section 5.14(j)(1)(b) appears to mean that, if modeled $LDA_1$ trips the 3.5% LDA threshold, $LDA_1$'s internal resources with actionable subsidies will be repriced. If $LDA_1$ also bound in Stage 1 on a PJM-monitored constraint, no other LDA (except $LDA_1$) will be impacted by the repricing in $LDA_1$. On the other hand, if modeled $LDA_1$ trips the 3.5% LDA threshold and $LDA_1$ and didn't bind on a PJM-monitored constraint in Stage 1, then the price impact of repricing in $LDA_1$ can be spread to any or all other LDAs that didn't bind in Stage 1. Like $LDA_1$, any LDA that binds in Stage 1 is insulated from repricing in any other LDA.

If PJM's theory is correct that resources receiving out-of-PJM market revenues submit lower offers in the base residual auction, then an LDA with resources receiving out-of-PJM market revenues is less likely to bind than it would have been had those resources not offered at a lowered price.[120] The reason is that, all other things equal, an LDA is less likely to bind when intra-LDA resource offer prices are low. Since the impact spread of LDA repricing depends on LDA binding, correct triggering of binding in the two-stage process is important. PJM has provided no simulations of its proposed two-stage auction clearing process to ensure correct constraint triggering.[121]

[120] We assume that PJM will determine binding in Stage 1, not in Stage 2. We make this assumption because PJM has not explained this aspect of Repricing .

[121] The ICC notes that this "binding" issue was brought to PJM's attention in OPSI's February 7, 2018 letter (page 6), so PJM had opportunity to address it in the April 9 Filing,, but chose not to. That PJM choice is telling.

### 2. MOPR-Ex

While PJM did not provide an illustration of the workings of MOPR-Ex, the illustration would not look much different from Figures 3 and 4 or 5 and 6 which PJM uses to illustrate repricing. The clearing price under either Repricing or MOPR-Ex can only be equal to, or greater than the clearing price that would be set under current *status quo* auction rules.

#### a. The MOPR Floor Offer Price is Too High.

MOPR-Ex suffers the same tendency as Repricing to over-shoot its clearing price objective. For MOPR-Ex, this can be attributed to the establishment of the proposed MOPR Floor Offer Price as well as the unit specific cost exception calculations and specifications.

Section 5.14(h)(4) sets the MOPR Floor Offer Price equal to the offer ceiling cap for the targeted resource and all other resource offers, specifically,

> the product of the Net Cost of New Entry (applicable for the Delivery Year and Locational Deliverability Area for which such Capacity Performance Resource is offered) times the average of the Balancing Ratios during the Performance Assessment Hours in the three consecutive calendar years that precede the Base Residual Auction for such Delivery Year.[122]

Like the minimum reference price level used in repricing, this MOPR Floor Offer Price level is not a reasonable proxy for the price offer that would have been submitted had a resource receiving out-of-PJM market revenues not received such out-of-PJM market revenues. PJM proposes four paths for exemption from the MOPR Floor Offer Price: (1) self-supply exemption; (2) competitive exemption; (3) public entity exemption; and (4) RPS exemption. For any unit that doesn't qualify for one of these exemptions, the only recourse from application of the MOPR Floor Offer Price is through the unit-specific exception process. This process is similar to that which PJM proposes to use to calculate the reference price, which was described above,

[122] Option B, proposed Section 5.14(h)(4).

for existing and new generators. The same critique the ICC provided above in the repricing section applies to the unit-specific exception price offer calculation for MOPR-Ex. In short, the calculation does not produce a reasonable proxy for the price offer that would be submitted had a resource receiving out-of-PJM market revenues not received such out-of-PJM market revenues, and produces unreasonably high minimum offer price levels. Unreasonably high offer price levels will lead to unreasonably high auction clearing prices, and consequently, unreasonably high costs for consumers.

**b. The MOPR-Ex Exemptions Are Unduly Discriminatory.**

The four proposed exemptions are unduly discriminatory because they don't draw reasonable distinctions between exempted resources and not exempted resources. Exemption criteria should be based on whether or not a resource offer impacts a base residual auction clearing price (which PJM must demonstrate, and not merely presume) and whether or not that impact is reasonable or unreasonable from the perspective of the state's policy advancing the resource. Resources that are advanced to account for obvious wholesale market flaws, like failure to account for negative environmental externalities, merit exemption. Similarly, resources reflecting other positive attributes valued by the citizens represented by state legislators and policy-makers, but which PJM's auction design does not take into account, also merit exemption. Indeed, the only units that should not be exempted from MOPR are units whose owners are exercising market power or attempting to exercise market power. The submission of a low offer is not necessarily an exercise of market power or an attempt to exercise market power.

**K. Order 1000 and State Public Policies.**

In Order 1000, the Commission adopted reforms to the RTO transmission planning process intended to require transmission expansion planning to include the consideration of

transmission needs driven by public policy requirements.[123] These reforms were intended to ensure that the local and regional transmission planning processes support the development of more efficient or cost-effective transmission facilities to meet the transmission needs driven by public policy requirements, which will help ensure that the rates, terms and conditions of jurisdictional service are just and reasonable.[124] As the Commission correctly noted, without having procedures in place to both identify and evaluate transmission needs driven by public policy requirements, the needs of the RTO's customers may not be accurately identified.[125] The Commission also reaffirmed the role that states play with respect to transmission planning and its expectation that all transmission providers will respect states' concerns when engaging in the regional transmission planning process.[126] The intent of the public policy provisions of Order 1000 was to facilitate the fulfilment of state renewable portfolio standards (and other state public policies) and promote identification (and construction) of necessary transmission facilities to achieve states' public policy requirements and objectives. The Commission found that the majority of commenters recognized and supported the need to reform the transmission planning process to respect state or federal laws that may drive transmission needs.[127]

The contrast is stark between the Commission's Order 1000 directives to RTOs like PJM with regard to respecting and facilitating state public policies like RPS and the description and proposed treatment of those same types of policies in PJM's April 9 Filing. Repricing and MOPR-Ex specifically target state RPS policies and laws and question the legitimacy of those laws and policies. PJM negatively describes state laws and policies such as RPS and ZES as

[123] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 136 FERC ¶ 61,051 (2011), ("Order 1000"), at P 203.
[124] Order 1000, at P 203.
[125] Order 1000, at P 204-205.
[126] Order 1000, at P 212, *citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 574.
[127] Order 1000, at P 169.

interventions in "resource selection with targeted subsidies"[128] and "state programs that provide subsidies of concern."[129]

In the April 9 Filing, PJM proposes to judge the legitimacy of state public policy programs. Many resources procured pursuant to state RPS programs will likely fall within PJM's proposed definition of "Capacity Resource with Actionable Subsidy." Under the MOPR-Ex, for example, PJM would impose a long list of requirements on state RPS programs for resources procured after December 31, 2018, or procured after December 31, 2018 provided that an RFP was not issued prior to December 31, 2018.[130] PJM proposes to exempt from MOPR-Ex renewable resources selected pursuant to state RPS programs prior to December 31, 2018, but included in the April 9 Filing, a "Notice under Federal Power Act Section 205 that PJM is willing to accept a MOPR-Ex proposal that does not include an RPS Exemption."[131] If the RPS Exemption is excluded, PJM would be put in the position not just of reviewing and judging state RPS programs and resources procured pursuant to those state programs after December 31, 2018, but any renewable resources procured at any time in the past. PJM acknowledges that MOPR-Ex "has the potential impact of disqualifying state-subsidized resources."[132]

This is not the kind of treatment of, state public policy objectives and laws that the Commission required of RTOs in Order 1000 with respect to transmission planning. Indeed just the opposite. The Commission's standard for respect and facilitation of resource planning laws and public policies should rightfully be even higher than the Commission's Order 1000 standard for transmission planning, given states' FPA-recognized authority with regard to generation.

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[128] April 9 Filing, at 24.
[129] April 9 Filing, at 25.
[130] Proposed Tariff Section 5.14(h)(10)
[131] April 9 Filing, at 114.
[132] April 9 Filing, at 56. Despite this acknowledgment that PJM's proposal aims at negating state public policy laws and thwarting state renewable programs, PJM speculates, without support, that "loss of capacity revenues likely will not induce retirement of the subsidized resource.")

The Commission should reject PJM's April 9 Filing, and its explicit and implicit encroachment on states' legitimate role with respect to resource procurement.

## V. CONCLUSION

WHEREFORE, for all the reasons set forth above, the Commission should dismiss or reject PJM's April 9 Filing in its entirety. If, despite the ICC's recommendation, the Commission finds that Option A or Option B has some merit worthy of consideration, the ICC requests that the Commission set the matter for hearing, permit discovery, and require PJM to demonstrate that its proposal is just and reasonable and is not unduly discriminatory.

Respectfully submitted,

*/s/Christine F. Ericson*

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ILLINOIS COMMERCE COMMISSION

Dated: May 7, 2018

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

| | | |
|---|---|---|
| PJM Interconnection, L.L.C. | ) | Docket No. ER18-1314-000 |
| | ) | ER18-1314-001 |

**VERIFICATION**

**STATE OF ILLINOIS** _____)
**COUNTY OF COOK** _____)

I, Torsten Clausen, being duly sworn upon oath, attest that I am the Director of the Policy Division in the Public Utilities Bureau of the Illinois Commerce Commission, and that I have authority to verify the foregoing document. I have read the foregoing document and I affirm that the facts, representations, and statements set forth therein are true and correct to the best of my knowledge, information, and belief.

Torsten Clausen
Director
Policy Division
Public Utilities Bureau
Illinois Commerce Commission

Subscribed and sworn before me
This 7th day of May, 2018

Esperanza De Los Santos
Notary Public

My commission expires on Aug 25, 2019

OFFICIAL SEAL
ESPERANZA DE LOS SANTOS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:08/25/19

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 7th day of May, 2018.

*/s/ Christine F. Ericson*

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