

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

Calpine Corporation, Dynegy Inc., Eastern)	Docket Nos. EL16-49-000
Generation, LLC, Homer City Generation,)	
L.P., NRG Power Marketing LLC, GenOn)	
Energy Management, LLC, Carroll County)	
Energy LLC, C.P. Crane LLC, Essential)	
Power, LLC, Essential Power OPP, LLC,)	
Essential Power Rock Springs, LLC,)	
Lakewood Cogeneration, L.P., GDF SUEZ)	
Energy Marketing NA, Inc., Oregon Clean)	
Energy, LLC and Panda Power Generation)	
Infrastructure Fund, LLC)	
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
)	
PJM Interconnection, L.L.C.)	ER18-1314-000
)	ER18-1314-001
)	
PJM Interconnection, L.L.C.)	EL18-178-000
)	(Consolidated)

**REPLY COMMENTS OF THE
PJM CONSUMER REPRESENTATIVES**

On June 29, 2018, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued its “Order Rejecting Proposed Tariff Revisions, Granting in Part and Denying in Part Complaint, and Instituting Proceeding Under Section 206 of the Federal Power Act” (“June 29 Order” or “Order”) in the above-referenced proceeding.¹ Recognizing that its

¹ See *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (hereinafter “June 29 Order” or “Order”). The Commission recommended that PJM should (1) expand the MOPR to cover out-of-market support to all new and existing resources regardless of resource type and (2) implement a resource-specific Fixed Resource Requirement (“RSFRR”) Alternative option to accommodate resources that receive out-of-market support by allowing the resource to remain on the system and satisfy capacity performance obligations, but without clearing in the PJM-administered capacity auctions. June 29 Order at P 157.

recommendations for a new capacity market construct in the PJM Interconnection, L.L.C. (“PJM”) region required more detail and discussion, the Commission in the June 29 Order raised various questions for parties to address in a paper hearing.² The Commission invited interested parties to comment within 60 days of the June 29 Order and to provide reply comments within 30 days after the due date for initial comments.³ The Commission subsequently extended these deadlines to October 2, 2018 and November 6, 2018. On October 2, 2018, the PJM Consumer Representatives and various other parties submitted initial comments.⁴ Herein, the PJM Consumer Representatives submit these reply comments that are narrowly tailored to address select issues and certain ideas raised by other parties.

For purposes of these reply comments, the PJM Consumer Representatives are comprised of the PJM Industrial Customer Coalition (“PJMICC”), Illinois Industrial Energy Consumers (“IIEC”), the Electricity Consumers Resource Council (“ELCON”), Industrial Energy Consumers of America (“IECA”), the Pennsylvania Energy Consumer Alliance (“PECA”), the Industrial Energy Consumers of Pennsylvania (“IECPA”), and Ohio Manufacturers’ Association Energy Group (“OMA-EG”). The PJM Consumer Representatives share the Commission’s goal of ensuring just and reasonable prices in both the short-term and the long-term through proper and sustainable operation of the capacity market.

I. REPLY COMMENTS

The PJM Consumer Representatives submit the following reply comments.

² See June 29 Order at PP 164-172.

³ *Id.* at P 172.

⁴ See Comments of the PJM Consumer Representatives, Docket No. EL18-178; *see generally* Docket No. ER18-178 (initial comments/briefs filed between October 2 and October 4, 2018).

A. Response to Certain PJM Proposals

1. The Extended Resource Carve Out Proposal Should Be Rejected

PJM proposed both an expanded Minimum Offer Price Rule (“MOPR”) and an Extended Resource Carve Out (“RCO”). The Extended RCO would apply only to those resources subject to the MOPR and receiving a state subsidy.⁵ PJM explains that the Extended RCO adds a mechanism, like PJM’s Capacity Repricing framework, to the RCO to restore the residual market clearing price closer to “the economically correct one” and to provide compensation to economic resources that are crowded out by RCO.⁶ The Extended RCO should be rejected because it seeks to implement essentially the same Capacity Repricing proposal that the Commission rejected in the June 29 Order. Specifically, the Commission held that Capacity Repricing constituted “an unjust and unreasonable cost shift to loads who should not be required to underwrite, through capacity payments, the generation preferences that other regulatory jurisdictions have elected to impose on their own constituents.”⁷ The Extended RCO suffers the same fatal flaw.

In addition to discriminating against customers that are captive to states that are subsidizing resources, the Extended RCO is likely to produce pricing outcomes that cannot be defended as being just and reasonable. PJM’s Independent Market Monitor (“IMM”) determined that PJM’s “revised repricing proposal” would lead to a large capacity cost increase for customers based on the IMM’s scenario analysis of capacity auction prices for the 2021/2022 Base Residual Auction (“BRA”).⁸ The Organization for PJM States, Inc. (“OPSI”) further determined that PJM’s two-

⁵ PJM Comments at 8-9.

⁶ *Id.* at 10.

⁷ June 29 Order at P 67.

⁸ *See* IMM Comments at 24-26, Attachment A (scenarios analyzing the impact PJM’s proposed two stage RSFRR approach).

stage capacity repricing proposal should be rejected because it would lead to large increases in capacity market clearing prices.⁹ In its initial comments, PJM fails to demonstrate that the Extended RCO's proposed rules would produce pricing outcomes that are necessarily, and in all instances, just and reasonable.¹⁰ Therefore, the Extended RCO proposal should be rejected.

2. Marginal Units That Offer and Do Not Clear Should Not Receive a Rent/Uplift Payment

In its proposed Tariff changes for the Extended RCO, PJM proposes that a marginal unit (that is a non-RCO source) that submits an offer but does not clear shall be entitled to receive an infra-marginal rent payment because the marginal unit is “crowded out” by the capacity commitment awarded to subsidized, RCO resources.¹¹ PJM explains that such marginal units will be paid the difference between their offer and the clearing price.¹² PJM attempts to justify this infra-marginal rent payment on the grounds of economic theory and price signals.¹³ However, PJM fails to acknowledge or evaluate the adverse rate impact on customers. The purported need for an infra-marginal rent payment also further highlights the fundamental problems that exist with PJM's Extended RCO proposal.

Even if the cost responsibility for the infra-marginal rent payment remains with the subsidized unit and the payment is *de minimus* from some market participants' perspectives, the market and customers may still be materially impacted. PJM itself, in response to the IMM's 2017 State of the Market Report, affirmed that the “fundamental principles of energy market

⁹ OPSI Comments at 10-11.

¹⁰ See June 29 Order at PP 63-64.

¹¹ PJM Comments at 71, Attachment A, Section 1 (proposed definition of infra-marginal rent payment).

¹² PJM Comments at 71.

¹³ See *Id.* at 71-75 (citing the affidavit of Dr. Chao).

pricing” must “transparently reflect the cost of serving demand while minimizing the need for out-of-market uplift payments.”¹⁴ PJM’s proposal to pay *uncleared* resources that have *no performance obligation* contradicts all fundamental notions of fairness.

In its initial comments, Direct Energy correctly asserted that PJM should not provide “lost opportunity” uplift payments to marginal units that do not receive capacity commitments through the BRA.¹⁵ Marginal units that offer and do not clear are not incurring any additional costs or obligations by merely making an offer. Thus, marginal units should not receive any kind of rent or uplift payment. Infra-marginal rent payments to marginal units detrimentally impact customers, and such payments have not been demonstrated to be just and reasonable or even necessary. Such uplift payments to generation units are not just and reasonable because “[l]oad should not be required to pay for resources that do not receive a capacity award or otherwise provide a benefit to the system.”¹⁶ Accordingly, the Commission should reject the Extended RCO and PJM’s proposal of an infra-marginal rent payment to uncleared resources.

3. The Expanded MOPR Should Not Apply to CHP or REC Programs

PJM explains that its proposed MOPR/RCO applies only to a material resource that receives a material subsidy. PJM explains that a material resource does not include a resource having an unforced capacity value of less than 20 Megawatts (“MWs”) or a resource that does not exist primarily to produce electricity, such as a “waste to energy” or a combined heat and power

¹⁴ See PJM Interconnection, L.L.C. Response to the 2017 State of the Market Report at 2 (May 11, 2018), available at <https://www.pjm.com/-/media/library/reports-notice/state-of-the-market/20180511-pjms-response-to-the-2017-state-of-the-market-report.ashx?la=en> (last accessed Oct. 31, 2018).

¹⁵ Direct Energy Comments at 3, 11.

¹⁶ See *id.* at 11.

(“CHP”) facility.¹⁷ PJM explains that its definition of material subsidy does not apply to renewable energy credit (“REC”) programs.¹⁸ The PJM Consumer Representatives support the exclusion of CHP resources and REC programs from the expanded MOPR. The exclusion of those facilities and programs from the MOPR would limit market distortions that could result from aggressively subsidizing and repricing offers from various generators. The exclusion of RECs and CHP is also consistent with the definition of *Actionable Subsidy* in the initial comments of the PJM Consumer Representatives.¹⁹ RECs and Renewable Portfolio Standards (“RPS”) do not involve state requirements for dollar transfers from electricity consumers to certain generators.²⁰ Many other commenters recommended exclusion of RECs and RPS from application of the MOPR, and the PJM Consumer Representatives support those proposed exclusions.²¹

4. The Duration of the RSFRR Arrangement Should be Determined by States, Not By PJM

In its initial comments, PJM contends that the RCO (*i.e.*, RSFRR arrangement) should continue “for the life of the subsidy.”²² Such an application of the carve-out is too rigid and could interfere with a state’s regulatory authority and jurisdiction over generation resources.

¹⁷ PJM Comments at 12.

¹⁸ *Id.*

¹⁹ *See* PJM Consumer Representatives’ Comments at 19, Attachment A (Actionable Subsidy Flowchart).

²⁰ *See id.*

²¹ *See, e.g.*, Comments of Clean Energy Advocates Separately Addressing the Scope of the Expanded MORP at pp. 34-35; Comments of American Council on Renewable Energy (“ACORE”) at p. 2; Comments of Advanced Energy Economy at pp. 3-4, 10-16; Comments of Advanced Energy Buyers Group at pp. 6, 8-9; Initial Brief of Brookfield Energy Marketing LP at pp. 8-9; Comments of American Wind *et al* at pp. 3, 5-7, 13-14; Arguments of the Public Service Commission of the District of Columbia at pp. 6-8; Comments of the Institute for Policy Integrity at the New York University Law School at pp. 27, 33-35.

²² PJM Comments at 10.

The duration of the RSFRR arrangement should be flexible based on the circumstances and is better determined by the impacted state regulatory authority instead of by PJM. In their initial comments, the PJM Consumer Representatives deferred to the states regarding whether an RSFRR arrangement should apply, primarily because the state's involvement will be necessary for the administration of the RSFRR.²³ Thus, the duration of the RSFRR arrangement should be determined by the states, not by PJM.

B. Response to Comments of Exelon and the Joint Stakeholders Regarding the Structure of the RSFRR Alternative

1. The RSFRR Alternative Structure Must Include a Mechanism That Allocates the RSFRR Capacity Credit Proportionally to Customers Based On Each Customer's Cost Responsibility for the Underlying Subsidy

In initial comments, Exelon Corporation ("Exelon") and the Joint Stakeholders argue that a properly designed RSFRR Alternative must be flexible and accommodate a wide range of options for matching customer load with state-supported resources or should allow a unilateral designation of the corresponding load to be removed from the auction by the RSFRR resource.²⁴ Such proposals should be rejected because they could lead to scenarios where large industrial customers (or other customers) would continue to pay for state-sponsored generation subsidies while the entire benefit of the capacity credit associated with the RSFRR arrangement goes to other retail customer segments in the state or to customers located outside the state. To ensure that customer load is matched to the RSFRR capacity in an equitable way, the RSFRR capacity must be allocated to load in a manner that is proportionate to the contribution of retail loads to the subsidies that the

²³ See PJM Consumer Representatives Comments at 23-24.

²⁴ Exelon Comments at 21-23; Comments of the Joint Stakeholders at 6-7. The Joint Stakeholders are comprised of consumer advocates, environmental organizations, generation companies, and load-serving entities.

RSFRR resource receives.²⁵ The structure of the RSFRR Alternative must include a mechanism that allocates the RSFRR capacity credit to retail load in proportion to a customer’s cost responsibility for the actionable/material subsidy “to ensure symmetry between those retail customers who are responsible for paying the actionable subsidy and those customers who will benefit from the capacity credit.”²⁶

In their initial comments, the PJM Consumer Representatives emphasized the need to avoid requiring customers to pay twice for capacity – once through a subsidy and again through capacity market payments.²⁷ The proposal from Exelon and Joint Stakeholders provides no safeguards against that adverse outcome. The PJM Consumer Representatives also emphasized that application of the RSFRR must not frustrate retail competition. Their Comments recognized that while “individual states will be responsible for ensuring that the correct retail arrangements are in place to facilitate the transfer of such value to individual end-use customers, the Commission can provide the necessary guidance to the states and affected stakeholders to ensure the portability of RSFRR capacity credits.”²⁸ Accordingly, the allocation of the capacity offset to loads must be performed at the individual customer level and must be portable with the customer in the retail customer choice context.

2. A State-Administered Centralized Capacity Procurement Process Should Be Rejected

The Joint Stakeholders and Exelon also argue that the RSFRR Alternative arrangements should allow for a state-administered, centralized process for the procurement of capacity.²⁹ Given

²⁵ See PJM Consumer Representatives Comments at 13-17.

²⁶ See *id.* at 17.

²⁷ See *id.* at 16-17.

²⁸ See *id.* at 17.

²⁹ Joint Stakeholder Comments at 6; Exelon Comments at 16.

that any state-directed procurement of capacity is subject to state jurisdiction, any state-directed capacity procurement need not be extended to retail customers who purchase power competitively in state jurisdictions that permit retail customer choice. As the PJM Consumer Representatives asserted in their initial comments, the capacity offsets associated with RSFRR Alternative arrangements can be allocated in a manner that is consistent with a retail customer choice market design.³⁰ Imposing a mandatory, centralized capacity procurement on retail choice customers to implement an RSFRR Alternative arrangement is inconsistent with the retail choice paradigm that permits customers to procure capacity and energy from competitive suppliers on a bilateral basis.

Because a state-administered, centralized capacity procurement process raises substantial jurisdictional, implementation, and workability issues, the Commission should dismiss the comments of the Exelon and the Joint Stakeholders calling for a centralized capacity procurement process.

C. The PJM IMM’s Sustainable Market Rule Should Be Rejected Because It Lacks Fundamental Details and is Inconsistent with the June 29 Order

In its initial comments, the PJM IMM proposed a Sustainable Market Rule (“SMR”) that would have three competitive wholesale market design structures: 1) state nonmarket revenues for renewable energy; 2) subjecting a significant level of generation to cost of service regulation; and 3) the proper structure for existing market-based generation.³¹ The IMM concluded that its SMR is preferable to the RSFRR.³² The SMR should be rejected because it 1) is inconsistent with the

³⁰ See PJM Consumer Representatives Comments at 16-18.

³¹ PJM IMM Comments at 9. On October 31, 2018, the PJM IMM served a brief summary document of the IMM’s position on the parties in this proceeding. The IMM explained that the purpose of the summary was “to clarify operational details of [the IMM’s] position in a very short and concise form.” See Summary of IMM Position re Capacity Market Investigation (Oct. 31, 2018) (hereinafter “IMM October 31 Summary Document”).

³² *Id.* at 21.

framework of the June 29 Order’s proposal surrounding the RSFRR, and 2) lacks detail and implementation procedures.

In the June 29 Order, the Commission proposed the RSFRR to accommodate resources that receive out-of-market support by allowing the resource to remain on the system outside of PJM’s capacity market.³³ The Commission explained that the FRR Alternative option would create a bifurcated capacity construct wherein resources receiving out-of-market support and a corresponding amount of load would be outside the PJM capacity market, thereby “increasing the integrity of the PJM capacity market for competitive resources and load.”³⁴ Challenging the RSFRR framework proposed in the June 29 Order would be appropriate in a request for rehearing of the June 29 order; however, it is not appropriate in comments responding to the Commission’s request for detail on how to best implement the RSFRR Alternative.³⁵

The IMM’s SMR proposal should also be rejected because it lacks specificity on many key details, including how nonmarket revenue would be addressed in constructing net Avoidable Cost Rate competitive offers. Furthermore, the SMR proposal would remove any alternative to the application of the MOPR to subsidized resources (*e.g.*, potential application of an RSFRR) and would therefore eliminate any available Commission remedy to address the double payment problem for retail customers in states with subsidized generation.

³³ June 29 Order at PP 157-160.

³⁴ *Id.* at P 161.

³⁵ In the IMM October 31 Summary Document, the IMM asserted that the existing FRR design could remain an option for utilities with revenues based on cost of service rates. However, in the summary document, the IMM did not provide any position or information on how to best implement the RSFRR Alternative. *See* IMM October 31 Summary Document at p. 3.

D. Exelon’s Broadly Expansive MOPR Proposal Should Be Rejected

In comments, Exelon argues that the expanded MOPR should be broadly applied to all types of subsidies (including plant development incentives).³⁶ Exelon also argues that the Commission should not exempt self-supply or vertically integrated utilities from the application of the MOPR.³⁷ Exelon’s proposed approach is too expansive and would result in applying the MOPR to large industrial customers with “behind the meter” generation that is primarily used to serve on-site load. Broadening the application of the MOPR to resources receiving plant development incentives would likely lead to an overly broad application of the MOPR and exacerbate market distortions resulting from the MOPR’s application. Furthermore, the self-supply exemption is consistent with Commission precedent and received continued support from numerous parties in their initial comments.³⁸

Accordingly, Exelon has failed to demonstrate that such a broad application of the MOPR is necessary and would not cause unjust and unreasonable market distortions.

E. The Commission Should Determine a Unit’s MOPR Price Per the Recommendations of the PJM Consumer Representatives in Their Initial Comments; In the Alternative, the Commission Should Use a Unit-Specific Avoidable Cost Rate to Establish a Unit’s MOPR Price

In its comments, the Illinois Attorney General emphasized that any MOPR requirement must allow state governmental entities to receive the bidding data in any auction to ensure

³⁶ Exelon Comments at 5.

³⁷ *Id.* at 18.

³⁸ *See, e.g.*, Comments of Allegheny Electric Cooperative at p. 7; American Electric Power (“AEP”) Service Corp. and Duke Energy at pp. 3, 7-8; American Public Power Association at pp. 17-22, 24-25; East Kentucky Power Cooperative, Inc. at pp. 2, 6-10, 16; Kentucky Public Service Commission at pp. 3-4; Northern Virginia Electric Cooperative, Inc. at pp. 7-8, 10; Old Dominion Electric Cooperative at pp. 6-12, 16-21, 25; Southern Maryland Electric Cooperative, Inc. at pp. 4-5, 9; and Virginia State Corporation Commission at pp. 2-3.

transparency and “to guard against the exercise of market power.”³⁹ Concerned that high MOPR prices facilitate market power issues, the Illinois Attorney General’s comments focused on competition between subsidized and unsubsidized resources clearing the lowest cost net Avoided Cost Rate (“ACR”) for particular resources.⁴⁰ The Illinois Attorney General explained that if a unit-specific ACR calculation is permitted for the purpose of establishing a subsidized unit’s MOPR price then the ACR calculation should account for both PJM market revenues and out-of-market revenues (*i.e.*, state subsidies) to determine the revenues still needed for the unit to cover costs and continue operations as a capacity resource.⁴¹

The MOPR price is intended to be a proxy for a competitive offer and should therefore be free of subsidies. The Illinois Attorney General’s proposal to include state subsidies in the ACR calculation appears to be consistent with this objective and is geared toward mitigating the concern that retail customers will be required to pay twice for subsidies under the expanded MOPR construct. Consumers must not be required to pay twice for a subsidized resource through the state-level subsidy and then through the MOPR’s “correction” in the PJM capacity market.

In contrast to the ACR calculation proposal of the Illinois Attorney General, the PJM Consumer Representatives in their initial comments proposed an entirely different approach to determine the MOPR price based on an average of historical offers from like resources that cleared the auction, rather than based on avoided going forward costs.⁴² The PJM Consumer Representatives proposed an alternative proxy for the MOPR price if (and only if) the number of

³⁹ See Initial Brief of Illinois Attorney General at 4.

⁴⁰ See *id.* at 5-14, Affidavit of Robert McCullough.

⁴¹ See *id.* at 12.

⁴² PJM Consumer Representatives Comments at 11-13, Attachment A (Actionable Subsidy Flowchart).

“like resources” that cleared in the BRA over the past three years is less than 10 units total. In that case, the PJM Consumer Representatives explained that the MOPR would be the lower of: (a) 50% of Net CONE⁴³ x B or (b) the average of the subsidized resource’s actual cleared offers in the three BRAs that were conducted before it began receiving a material, actionable subsidy.⁴⁴ The PJM Consumer Representatives prefer the approach outlined in their initial comments because it looks to objective sources that directly represent competitive offers.⁴⁵

However, if the Commission decides to accept default offers not based on actual offers or on a technology-specific basis, then the Commission should use net ACR as a proxy to establish a unit’s MOPR price, for the reasons identified by the PJM IMM in its Initial Comments.

In summary, the Commission should determine a unit’s MOPR price under the approach recommended by the PJM Consumer Representatives in their initial comments. In the alternative, the Commission should use net ACR as a proxy to establish a unit’s MOPR price as recommended by the Illinois Attorney General.

F. PJM Consumer Representatives Support The States’ Request For A Reasonable Transition Period Prior to Implementation of the RSFRR Alternative

In its comments, OPSI asserted that a transition period is needed prior to implementation of an expanded MOPR to provide states with the necessary time to implement the RSFRR Alternative.⁴⁶ The Joint Consumer Advocates requested a delay in the application of the expanded MOPR until after the BRA for the 2022/2023 Delivery Year or, in the alternative, to

⁴³ CONE = Cost of New Entry.

⁴⁴ PJM Consumer Representatives Comments at 12-13.

⁴⁵ *See id.*

⁴⁶ OPSI Comments at 4-5; *see also* Comments of the Illinois Commerce Commission Comments at 6 (a transition mechanism is needed prior to full implementation of the expanded MOPR to give the states time to adopt the necessary provisions to implement the RSFRR Alternative).

allow a state-specific for-cause waiver where the state has not implemented the required regulatory/legislative changes to effectuate the RSFRR alternative.⁴⁷ The PJM Consumer Representatives support these requests of OPSI and the Joint Consumer Advocates because an effective transition period can provide states with more time to implement the necessary changes and provide stakeholders with the time needed to address issues before commencement of the BRA for the 2022/2023 Delivery Year.

Because states differ in their policies, laws, and regulatory landscapes (*e.g.*, restructured states vs. non-restructured states), some states may need more time than other states to accommodate and implement the RSFRR Alternative. In its comments, the Illinois Commerce Commission (“ICC”) suggests that the implementation of the RSFRR Alternative may require Illinois to revisit some of the fundamental principles underlying its electric industry restructuring legislation.⁴⁸ Importantly, the RSFRR Alternative implementation framework set forth in the initial comments of the PJM Consumer Representatives can accommodate retail customer choice by ensuring that individual retail loads receive a capacity offset that is proportionate to the contribution of such loads to the payment of subsidies for the RSFRR units.⁴⁹ If these capacity offsets are assigned to individual retail customers and are designed to be portable as the customer switches retail suppliers, the RSFRR approach would be compatible with a retail customer choice construct.

⁴⁷ Joint Consumer Advocates Comments at 16. The Joint Consumer Advocates are comprised of the Illinois Citizens Utility Board, West Virginia Consumer Advocate Division, Delaware Division of the Public Advocate, the Maryland Office of People’s Counsel, and the Office of the People’s Counsel for the District of Columbia.

⁴⁸ Illinois Commerce Commission Comments at 5; *see also* Maryland Public Service Commission Comments at 13 (requesting more time for its legislature to consider any necessary legislation).

⁴⁹ *See* PJM Consumer Representatives Comments at 13-17.

For the foregoing reasons, the Commission should implement a transition period of reasonable duration prior to implementation of the RSFRR Alternative.

G. The Proposed Capacity Performance with Sponsored Supply (“CaPSS”) Framework Should Be Rejected

Vistra Energy Corp. (“Vistra”) and Dynegy Marketing and Trade, LLC (“Dynegy”) request that the Commission direct PJM to adopt Tariff revisions to implement an entirely new proposal called Capacity Performance with Sponsored Supply (“CaPSS”).⁵⁰ The Commission should reject this proposal. While Vistra and Dynegy argue that their CaPSS proposal is based in part on ISO-NE’s Competitive Auctions with Sponsored Policy Resources (“CASPR”) market structure, the CaPSS proposal has not previously been discussed or vetted in the PJM context and is outside the scope of the June 29 Order. An expedited Commission compliance docket, such as this one, is not the proper forum to consider this new proposal and its potentially complex and unknown ramifications for the PJM capacity market. The Commission should not endorse the CaPSS proposal without thorough vetting through the stakeholder process.

Furthermore, the CaPSS proposal should be rejected on substantive grounds. First, the proposal violates the June 29 Order by seeking to eliminate the RSFRR Alternative.⁵¹ By eliminating the RSFRR Alternative, the CaPSS proposal would also remove the only viable option under the June 29 Order’s bifurcated capacity market construct for addressing the double payment concern for retail customers who would be required to pay both state subsidies and higher capacity auction prices due to the operation of the MOPR. Second, the proposed Substitution Auction in the CaPSS proposal is purely voluntary and relies on the willingness of resources that received a

⁵⁰ Vistra and Dynegy Comments at 26.

⁵¹ See *id.* at 7 (arguing that the RSFRR Alternative would not meet the Commission’s objectives and would not produce just and reasonable rates); June 29 Order at PP 157-160 (proposing the RSFRR Alternative).

capacity award in the Primary Auction to voluntarily offer their capacity into the secondary market, permanently retire, and then exit the PJM capacity market.⁵² Given these restrictions, it is unlikely that the Substitution Auction would be sufficiently liquid to generate efficient market outcomes in the secondary auction or that it would provide a meaningful avenue for subsidized resources to receive capacity awards through the secondary auction. Even if subsidized resources were able to receive a capacity award through the Substitution Auction, it is not clear how the CaPSS proposal would ensure that retail customers paying state subsidies to such resources would receive an appropriate offset against their capacity obligations to mitigate the double payment problem associated with these resources – this is because the CaPSS proposal lacks a clear mechanism to appropriately allocate such capacity offsets to retail customers. Under such circumstances, it appears that any capacity award to subsidized resources in the secondary auction would result in a windfall to generators without providing any concrete benefit to retail customers.

Therefore, for the foregoing reasons, the CaPSS proposal should be rejected.

H. Consideration of Carbon Pricing Rules Is Not Appropriate

Eastern Generation argues that carbon pricing provides a long-term solution to address the price suppression problem identified in the June 29 Order while also accommodating state policies.⁵³ Exelon and Eastern Generation assert in their comments that the Commission should direct PJM to develop options for integrating carbon pricing into PJM's market rules.⁵⁴ Eastern Generation further argues the Commission's ratemaking jurisdiction is broad enough to encompass carbon pricing.⁵⁵ The Commission should not consider such carbon pricing proposals because

⁵² See *Vistra and Dynegy Comments* at 18-25.

⁵³ *Eastern Generation Comments* at 6-10.

⁵⁴ See *Exelon Comments* at 7; *Eastern Generation Comments* at 20.

⁵⁵ *Eastern Generation Comments* at 12-17.

they are well beyond the scope of the issues set for comment in the June 29 Order, and the concept of incorporating carbon pricing into PJM's market structures raises fundamental policy, technical, jurisdictional, and contractual issues that must be explored when considering such a concept. Because the Commission's statutory authority to adopt carbon pricing proposals is highly questionable, entertaining and adjudicating carbon pricing proposals would unduly complicate and unnecessarily extend this proceeding.

I. In Determining the Just and Reasonable Replacement Rate in the Capacity Market, the Commission Should Account for Existing Market Power Issues in PJM

In comments, the Illinois Attorney General highlighted the market power concerns for the capacity market in the Commonwealth Edison Zone.⁵⁶ The PJM Consumer Representatives agree with the Illinois Attorney General and pointed out in their initial comments that the capacity market, especially in import-constrained areas like Northern Illinois, is subject to excessive market power.⁵⁷ In reviewing the comments in this proceeding and determining the details of the bifurcated capacity market construct in PJM, the Commission should ensure that its final determination accounts for these concerns and does not exacerbate market power in the PJM region.

J. Additional Price Formation Reforms Should Not Be Considered In This Proceeding

The Illinois Commerce Commission contends that the Commission should direct PJM to develop energy price formation reforms in conjunction with the development of capacity market reforms in this proceeding.⁵⁸ The revenue streams currently generated by PJM's energy, ancillary

⁵⁶ Initial Brief of Illinois Attorney General at 5-9.

⁵⁷ PJM Consumer Representatives' Comments at 25-26 (citing 2018 State of the Market Report for PJM, *Monitoring Analytics LLC*, at p. 231 (2018) (regarding the need for mitigation to address market power)).

⁵⁸ Illinois Commerce Commission Comments at 8-11.

services, and capacity markets are already large enough to maintain resource adequacy, as evidenced by the ample capacity reserve margins in PJM. Therefore, there is no demonstrated need to impose additional price formation reforms on PJM’s energy and ancillary services markets for resource adequacy purposes, particularly if these reforms are driven by a desire to generate new revenue streams for existing, uneconomic generation. Such a proposal is also beyond the scope of the June 29 Order’s proposed bifurcated capacity market construct: the expanded MOPR and the RSFRR Alternative.

K. Maryland’s PSC’s Carve-Out Auction Proposal Is Worth Considering

The Maryland Public Service Commission (“Maryland PSC”) proposed a competitive “carve-out” auction per Maryland PSC’s Appendix A to provide a just, reasonable, open, and transparent method of pricing capacity from resources eligible to receive revenues outside PJM’s markets.⁵⁹ The Maryland PSC explains that the “carve-out” auction would enable a state to meet its environmental goals and will also limit the need to change the existing MOPR.⁶⁰ Maryland PSC’s proposal is worth considering because it seeks to implement the Commission’s competitive market/auction objectives in the June 29 Order and seeks to minimize changes to the existing MOPR.

⁵⁹ Maryland PSC Comments at 3.

⁶⁰ *Id.* at 9-11.

II. CONCLUSION

WHEREFORE, the PJM Consumer Representatives respectfully request that the Commission consider these Reply Comments and recommendations to improve and enhance the capacity market construct in PJM as the Commission considers implementation of a revised MOPR and a Resource-Specific Fixed Resource Requirement Alternative.

Respectfully submitted,

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Dated: November 6, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery, the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 6th day of November, 2018.

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