

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

Calpine Corporation, Dynegy Inc., Eastern)
Generation, LLC, Homer City Generation,)
L.P., NRG Power Marketing LLC, GenOn)
Energy Management, LLC, Carroll County)
Energy LLC, C.P. Crane LLC, Essential)
Power, LLC, Essential Power OPP, LLC,)
Essential Power Rock Springs, LLC,)
Lakewood Cogeneration, L.P., GDF SUEZ)
Energy Marketing NA, Inc., Oregon Clean)
Energy, LLC and Panda Power Generation)
Infrastructure Fund, LLC,)
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)
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v.)
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PJM Interconnection, L.L.C.,)
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Docket No. EL16-49-000

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

Pursuant to Rules 211, 212, 213 and 215 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission")¹, and the Notice of Filing issued on January 10, 2017, setting January 30, 2017, as the Comment Date in this proceeding, the Illinois Commerce Commission ("ICC") respectfully submits this Motion to File Comments Out of Time and these comments regarding the Motion for Leave to Amend, and Amendment filed by the Electric Power Supply Association ("EPSA") and the Indicated Complainants (collectively,

¹ 18 C.F.R. §385.211, §385.212, §385.213, and §385.215.

“Movants”) in the above-captioned proceeding on January 9, 2017 (“Amendment”).² The ICC filed timely a Notice of Intervention on January 24, 2017, and, therefore, is a party to this proceeding.

I. MOTION TO FILE COMMENTS OUT OF TIME

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,³ the ICC does hereby respectfully move to file comments out of time. As noted, the ICC filed timely a Notice of Intervention on January 24, 2017, and, therefore, is a party to this proceeding. Given the ICC’s administrative process, it was unable to meet the January 30, 2017, comment date for substantive comments. The ICC does not wish to disrupt the proceeding with these comments. Rather, the ICC merely seeks to clarify the record. Because the outcome of this proceeding could have impacts in Illinois, the ICC believes that its comments on the matters at issue here would help the Commission in its deliberations and would be in the public interest. Therefore, good cause exists to grant this motion.⁴

II. BACKGROUND

On January 9, 2017, the Movants filed a Motion for Leave to Amend, and Amendment to the March 21, 2016 complaint in the above-captioned docket.⁵ The March 21, 2016 complaint sought a Commission order requiring PJM Interconnection LLC (“PJM”) to modify its market rules applicable to the 2016 reliability pricing model (RPM”) auction to expand PJM’s minimum

² For this pleading, the “Movants” are comprised of the original Complainants in the above-captioned proceeding (except GDF SUEZ Energy Marketing NA, Inc.) plus the Electric Power Supply Association. The original Complainants include Calpine Corporation, Dynegy Inc., Eastern Generation, LLC, Homer City Generation, L.P., the NRG Companies, Carroll County Energy LLC, C.P. Crane LLC, the Essential Power PJM Companies, GDF SUEZ Energy Marketing NA, Inc., Oregon Clean Energy, LLC and Panda Power Generation Infrastructure Fund, LLC.

³ 18 C.F.R. §385.212.

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

⁵ See, *Motion to Amend and Amendment to March 21, 2016 Complaint of Calpine Corporation, et. al. and Request for Expedited Action on Amended Complaint*, Docket No. EL16-49. (“Amendment”).

offer price rule (“MOPR”) to “address the imminent threat to the RPM market from the Affiliate PPAs”⁶ then being considered by the Ohio Public utilities Commission for resources owned by subsidiaries of American Electric Power Company, Inc. (“AEP”) and FirstEnergy Corporation (“FirstEnergy”). Complainants argued that those power purchase agreements would interfere with economic signals for entry and exit and that a MOPR would be necessary to ensure a more level playing field for the entry and exit of existing generation.⁷

In support of the filed Amendment, the Movants point to the recent Future Energy Jobs Bill that the State of Illinois enacted on December 7, 2016.⁸ The Future Energy Jobs Bill, among other things, lays out a process to achieve Illinois' environmental objectives and reduce the adverse impact of emitted air pollutants on the health and welfare of the citizens of Illinois through the establishment of a zero emission standard.⁹ The zero emission standard requires the Illinois Power Agency (“IPA”) to contract for zero emission credits (“ZECs”) from resources capable of cost-effectively generating ZECs. The IPA will select these resources on, among other things, the resources’ ability to minimize pollutants such as CO₂, SO_x and NO_x. The IPA’s procurement is capped so that resulting retail rates cannot rise more than 1.65 percent and costs will be recovered from all customers taking delivery services from the utilities through a non-bypassable charge. Finally, the value of the ZECs are based on the Social Cost of Carbon¹⁰ and can be reduced if there are projected future increases in energy and capacity prices.

Movants argue that the Illinois Act subsidizes certain nuclear plants in Illinois that would otherwise exit the market and seeks to have the MOPR applied to existing resources.¹¹ Movants

⁶ See, *Complaint of Calpine Corporation, et. al. and Requesting Fast Track Processing of Calpine Corporation, et. al.*, Docket No. EL16-49. (“Initial Complaint”), at 5.

⁷ Initial Complaint, at 2-4.

⁸ Illinois Pub. Act 99-0906 (eff. June 1, 2017) (*hereinafter*, “Illinois Act”).

⁹ See, Illinois SB 2814 (available at <http://www.ilga.gov/legislation/99/SB/PDF/09900SB2814enr.pdf>)

¹⁰ The U.S. Interagency Working Group will determine the “Social Cost of Carbon”.

¹¹ Amendment, at 1-2.

seek the MOPR revisions to be applicable to the upcoming RPM auction scheduled for May of 2017, and request expedited action.¹²

III. ICC COMMENTS

Movants seek to expand the application of PJM's MOPR to resources that produce zero emissions credits because they contend that the payments received effectively constitute unfair subsidies and will suppress capacity prices in RPM auctions. The Commission should reject the Movants' pleading because it is procedurally deficient as explained below. In addition, Movants' arguments fail to show that PJM's existing MOPR rules (which apply only to certain new resource types) are unjust and unreasonable. That failure warrants rejection of Movants' pleading. Even if PJM's existing capacity auction rules were unjust and unreasonable, expanding the application of the MOPR to existing resources, including those that produce ZECs, would not be a just and reasonable response.

A. PJM's Existing MOPR is Not Unjust and Unreasonable and Therefore, Does Not Need to Be Expanded.

PJM's MOPR does not currently apply to existing resources.¹³ Rather it applies to a small subset of new resources that the Commission has determined to be most likely to raise concerns regarding buyer market power in forward capacity markets.¹⁴ Movants have provided little evidence and no testimony with their amended complaint to support their assertions of improper price suppression resources providing ZECs.

PJM's MOPR does not apply to any renewable resource¹⁵ even if that resource receives out-of-market revenues pursuant to a state or federal public policy preference. Renewable

¹² Amendment, at 2-3.

¹³ PJM Open Access Transmission Tariff, Attachment DD.5.14(h)(2)

¹⁴ *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013), at P 166-168.

¹⁵ PJM Open Access Transmission Tariff, Attachment DD.5.14(h)(2)

resources are often developed as part of a legitimate state or federal environmental policy. The Commission has concluded that renewable resources are a poor choice if a developer's primary purpose is to suppress capacity market prices.¹⁶

The creation and procurement of ZECs are part of a legitimate state environmental policy goal to support low-carbon resources, the beneficial environmental attributes of which are currently uncompensated by the RPM capacity construct. Specifically, the Illinois Legislature determined:

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.¹⁷

The ZECs are similar to renewable energy credits and other state-supported environmental attribute payments that the Commission has determined should not be included in the going-forward costs that make-up a resource's capacity offer.¹⁸ Moreover, the Commission has recognized that the payments reflect the value of the services provided to customers and should not provide a basis for a MOPR.¹⁹

Payments received by low-carbon resources for the production of ZECs are not subsidies intended to suppress capacity auction prices in PJM. Rather, the zero emission standard achieves Illinois' environmental objective by recognizing the value of reduced carbon emissions produced by participating low-carbon resources and monetizing those environmental benefits – completely separate from energy and capacity markets.

¹⁶ *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013), at P 166-168.

¹⁷ Illinois Act, Section 1.5(8)

¹⁸ *Independent Power Producers of New York v. NYISO, Inc.*, 150 FERC ¶ 61,214 (2015), at P 66.

¹⁹ *Id.*

In other contexts, the Commission has shown great respect and deference for State public policy initiatives. For example, in Order No. 1000, the Commission stated that,

As part of our reforms, we also require that the regional transmission planning process, as well as the underlying local transmission planning processes of public utility transmission providers, provide an opportunity to consider transmission needs driven by Public Policy Requirements. We conclude that requiring each local and regional transmission planning process to provide this opportunity is necessary to ensure that the transmission planning processes identify and evaluate transmission needs driven by relevant Public Policy Requirements, and support more efficient and cost-effective achievement of those requirements.”²⁰

In Order No. 1000, the Commission went to great lengths not only to require that RTOs respect state public policy initiatives, but, additionally, to require RTOs to ensure that the achievement of those state public policy initiatives be made possible through mandatory regional transmission planning. How ironic, indeed, it would be for the Commission to impose a policy like MOPR in the capacity market context that would fail to respect legitimate state public policy and, potentially, thwart the achievement of the same types of state public policies which the Commission chose to support through Order No. 1000.

B. Applying a MOPR to Existing Resources that Produce Zero-Emission Credits would not be a Just and Reasonable Response.

Assuming, against the ICC recommendation, that the Commission determines that PJM’s current capacity auction rules require some modification to address a state’s public policy preference for zero emitting resources, PJM’s MOPR would not be a just and reasonable application.

²⁰ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, (“Order No. 1000”), FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014). Order No. 1000, at P 6. The Commission defined “Public Policy Requirements” as state or federal laws passed by the legislature and signed by the executive or regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level. Order No. 1000, at P 2. The Commission defined “local transmission planning process” as the transmission planning process that a public utility transmission provider performs for its individual retail distribution service territory or footprint. Order No. 1000, at P 68.

Applying PJM's MOPR to the resources participating in the zero emission standard would frustrate Illinois' efforts to support the environmental attributes provided by those resources. This is because subjecting these resources to a MOPR that fails to account for their environmental attributes means that the resources would be less likely to clear the RPM than resources with significant environmental costs that are not accounted for in the current RPM construct. Explicitly excluding the value of the beneficial environmental attributes of these resources makes it more likely that these resources will not be properly compensated for their capacity value and therefore more likely that they will be unable to profitably continue operations. Even if the resources would be able to continue operations, consumers in Illinois may effectively be required to pay twice for capacity - once for capacity procured through the PJM auction and again for the beneficial environmental attributes supplied by the low-carbon generation that did not clear the auction. Such an outcome would be inefficient, in that it results in the over-procurement of capacity. Either outcome of applying PJM's MOPR to the resources participating in the zero emission standard would be unduly discriminatory toward Illinois' efforts to support the beneficial environmental attributes provided by those resources. Accordingly, the Commission should reject the Movants' request to impose a MOPR on resources participating in the zero emission standard.

C. Even If Movants' Concerns Had Merit, the Matter is not yet Ripe for Commission Action.

Movants indicate that they are amending the Initial Complaint in light of the Illinois Act that they allege subsidizes certain existing nuclear-powered generation units, raising concerns that those subsidies are poised to disrupt the May PJM BRA.²¹ The ICC supports the People of

²¹ Amendment, at 2 (alleging that it is an example of state-approved subsidies that, "by design, interfere with economic signals for entry and exist" and "represent an existential threat" to the organized wholesale markets).

the State of Illinois' assessment that this concern is premature.²² The Illinois Act that authorizes the purchase of ZECs does not become effective until June 1, 2017, which is after the BRA is scheduled to occur. Moreover, the relief sought in the Amendment, if granted, could actually be disruptive to the PJM BRA. Indeed, as pointed out by the Pennsylvania Public Utility Commission, reforming and implementing new provisions to the PJM RPM process only two months before the next auction may outweigh the benefits of proceeding with the 2017 BRA as planned.²³ Accordingly, a more deliberative process would be preferred to prematurely addressing any unsubstantiated concerns or perceived threats to the PJM capacity market.

D. Movants Failed to Support the Amendment with Required Evidence or Affidavits.

Movants' filing is procedurally deficient. Rather than comport with the Commission's requirements of a complaint pursuant to Rule 206, Movants seek to rope a new and separate complaint against PJM into an existing complaint in the form of a Rule 215 Amendment, a rule generally reserved for curing deficient pleadings.²⁴ Amendments must conform to the requirements applicable to the pleading to be amended,²⁵ yet the Amendment presented fails to meet the Rule 206 requirements. In particular, Movants "urge the Commission to put measures in place to mitigate impacts on the RPM market in time for the 2020/2021 BRA"²⁶ of a legislative measure that will not even become effective until after that May auction.

²² Opposition and Comments of the People of the State of Illinois to the Amended Complaint and Support of the Motion to Dismiss Filed by Dayton Power and Light et al., filed January 30, 2017, at 5 (*hereinafter*, "People of Illinois").

²³ Comments of the Pennsylvania Public Utility Commission, filed January 30, 2017, at 4.

²⁴ *See Central Vermont Public Service Corp.*, 25 FERC ¶ 61,183 (1983).

²⁵ *Green Mountain Power Corp.*, 48 FERC ¶61,315 (1989).

²⁶ Amendment, at 9.

Movants indicate that they “incorporate by reference the information required pursuant to Rule 206(b) that was provided”²⁷ in the underlying Complaint. Neither that information, nor the Amendment itself, meet the Rule 206 obligations with respect to any concerns raised by the Illinois Act. Movants have not made any good faith effort to quantify the financial impact or burden created by the action or inaction (here, presumably, the lack of a PJM MOPR that would apply to the existing generation units at issue), or included documentation that support their claims in the “complaint” such as data, contracts or affidavits.

As Dominion Resources and others have pointed out, the Amendment raises essentially what amounts to a new complaint.²⁸ The issue in the underlying complaint regarding ratepayer funded subsidies for existing resources owned by unregulated subsidiaries of Ohio utilities AEP and FirstEnergy, is separate and apart from the Illinois Act which establishes ZECs based on the social cost of carbon, not the energy or capacity prices paid directly to the units receiving ZEC payments. The procurement of ZECs are part of a legitimate state environmental policy goal to support low-carbon resources, the environmental attributes of which are not currently compensated by the PJM RPM capacity auction construct. Movants have presented no evidence that this would result in market manipulation or pose a barrier to entry or exit from the PJM auctions as would be required by a complaint filed pursuant to Section 206.²⁹

²⁷ *Id.*, at 10.

²⁸ Protest of Dominion Resources Services, Inc., American Municipal Power, Inc., American Public Power Association, Old Dominion Electric Cooperative, PJM Industrial Customer Coalition, National Rural Electric Cooperative Association and Public Power Association of New Jersey, filed January 30, 2017, at 4.

²⁹ 18 C.F.R. §385.206.

E. If a Stakeholder Process is Ordered, It Should Not Infringe on State Prerogatives.

Movants have requested that the Commission direct PJM to conduct a stakeholder process and to propose a longer-term remedy that can be put in place beginning with the 2021/2022 BRA, with tariff revisions implementing that to be submitted no later than November 1, 2017.³⁰ As PJM pointed out, it has embarked on an assessment of RPM to ensure potential state public policy initiatives and RPM obligations are not at odds to the extent possible.³¹ PJM expects proposed tariff changes may be filed by the fourth quarter of 2017 for implementation of any rule changes in the May 2018 BRA.³² If the Commission orders such a PJM stakeholder process, or to the extent that it is being undertaken, such a process should continue to recognize state prerogatives in this area.

The ICC has long supported the development of robust competitive wholesale capacity and energy markets. The ICC recognizes the complexities of the need to balance appropriate market design rules with the need to recognize valid state action to promote selected social, political and environmental policy objectives. As noted above, the Commission requires that transmission planning processes identify and evaluate transmission needs driven by relevant public policy requirements of states.³³ Such considerations are just as valid here. Any process addressing market design mitigation measures going forward, therefore, should be mindful not to overstep into state jurisdictional matters.³⁴

³⁰ Amendment, at 18.

³¹ Answer to Amended Complaint of PJM Interconnection, L.L.C., filed January 30, 2017, at 5.

³² *Id.*

³³ Order 1000, at P 2.

³⁴ While the Movants' have not shown any actual affect on wholesale rates here, even if there were found down the road to be some incidental impact, it should not be overlooked that the United States Supreme Court has recognized that "states may regulate within their assigned domain even when their laws incidentally affect areas within FERC's domain." *Hughes, Chairman, Maryland Public Service Commission, et al. v. Talen Energy Marketing, LLC et al.*, 136 S.Ct. 1288 (2016) ("neither Maryland nor other States are foreclosed from encouraging

IV. CONCLUSION

WHEREFORE, the Illinois Commerce Commission requests that the Commission accept and consider these comments in its deliberations, and reject Movants' amended complaint. The Illinois Commerce Commission further requests any and all other appropriate relief.

Respectfully submitted,

/s/Christine F. Ericson

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production of new or clean generation through measures that do not condition payment of funds on capacity clearing the auction.”), at 1290.

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 3rd day of February, 2017.

/s/ Christine F. Ericson

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