

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

<b>Calpine Corporation</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL16-49-000</b>
	)	
<b>PJM Interconnection, L.L.C.</b>	)	
	)	
<b>PJM Interconnection, L.L.C.</b>	)	<b>Docket No. ER18-1314-000</b>
	)	<b>Docket No. ER18-1314-001</b>
<b>PJM Interconnection, L.L.C.</b>	)	<b>Docket No. EL18-178-000</b>
	)	
		<b>(Consolidated)</b>

**ANSWER OF  
THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),<sup>1</sup> the Electric Power Supply Association (“EPSA”)<sup>2</sup> hereby answers the April 10, 2019 motion<sup>3</sup> of PJM Interconnection, L.L.C. (“PJM”) for clarification of the Commission’s June 29, 2019 order in the above-captioned proceedings.<sup>4</sup> As discussed below, EPSA agrees that PJM should run the Base Residual

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<sup>1</sup> 18 C.F.R. § 385.213 (2018).

<sup>2</sup> Launched over 20 years ago, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>3</sup> Motion for Supplemental Clarification of PJM Interconnection, L.L.C., Docket Nos. EL16-49-000, *et al.* (filed Apr. 10, 2019) (the “Motion”).

<sup>4</sup> See *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (the “June 29 Order”), *reh’g pending*.

Auction<sup>5</sup> for the 2022/2023 Delivery Year (the “2022/2023 BRA”) in August 2019, as currently scheduled,<sup>6</sup> even if the Commission has yet to fix a replacement rate as contemplated by the June 29 Order,<sup>7</sup> and that the 2022/2023 BRA should not be re-run or re-settled based on any replacement rate that might be thereafter established. PJM’s requested clarification is consistent with Commission precedent and would provide much needed certainty to market participants.

At the outset, EPSA continues to believe that the “first best” solution would be for the Commission to take decisive action to protect the Reliability Pricing Model (“RPM”) market from “the price suppressive effect of resources receiving out-of-market support”<sup>8</sup> **before the 2022/2023 BRA**. Indeed, it is imperative that the Commission take such action as soon as possible, if not in time for the 2022/2023 BRA then in time for the Base Residual Auction for the 2023/2024 Delivery Year, and thereby ensure that the RPM auctions produce just and reasonable rates. But if, as appears increasingly likely, the Commission will not be able to act in time for the 2022/2023 BRA, the clear “second best” solution is for the Commission (1) to let PJM run the 2022/2023 BRA in August 2019 under the existing RPM rules and (2) to confirm that the Commission will not disturb the results of that auction based on any modifications to the RPM rules that may later be ordered in these proceedings.

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<sup>5</sup> This and other capitalized terms used and not otherwise defined herein have the meanings given them in the PJM Open Access Transmission Tariff.

<sup>6</sup> See *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,153 (2018) (the “August 30 Order”).

<sup>7</sup> See June 29 Order, 163 FERC ¶ 61,236 at P 172.

<sup>8</sup> *Id.* at P 5.

PJM's stated intention to run the 2022/2023 BRA under the existing RPM rules unless the Commission has put a replacement rate in place will provide much needed certainty and preserve, to the maximum extent possible, the forward period that is an integral part of the RPM market design. When PJM sought waiver to delay the 2022/2023 BRA until August 2019, it emphasized that it was seeking "a short, one-time delay."<sup>9</sup> PJM also stated its belief, which no party challenged, that reducing the three-year forward period by approximately three months would not have "major consequences" for developers and others.<sup>10</sup> PJM's assertion was consistent with the Commission's conclusion that an outer limit of mid-August on the delay in running the Base Residual Auction for the 2018/2019 Delivery Year, granted in connection with the implementation of PJM's "Capacity Performance" reforms, was important in "mitigat[ing] the potential impacts on market participants . . . ."<sup>11</sup> Delaying the 2022/2023 BRA beyond August 2019 could have serious impacts on market participants, particularly if, as certain parties have proposed, the auction were delayed until April 2020,<sup>12</sup> which would lop almost a full year off the three-year forward period.

To be clear, while EPSA would strongly prefer that a just and reasonable replacement rate be in place before the 2022/2023 BRA is conducted in August 2019, there is nothing novel or problematic about the idea that PJM would conduct this one

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<sup>9</sup> Request of PJM Interconnection, L.L.C. for Grant of Tariff Waiver at 3, Docket No. ER18-2222-000 (filed Aug. 13, 2018), *granted*, August 30 Order, 164 FERC ¶ 61,153.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067 at P 28 (2015).

<sup>12</sup> See Letter from American Municipal Power, Inc., *et al.* to Andy Ott and the PJM Board of Managers (Mar. 29, 2019), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20190401-multiple-members-letter-re-2022-2023-base-residual-auction.ashx?la=en>.

auction under the existing rules if a replacement rate has not been fixed by then. Like any other public utility, PJM must continue to apply the rates, terms or conditions on file with the Commission while the Commission works to fashion a just and reasonable replacement rate. Indeed, the general rule under Section 206 of the FPA is that “any action of the Commission must be prospective from the date on which the Commission establishes the rate ‘to be thereafter observed and enforced.’”<sup>13</sup> Even where the exception to this rule created by the Regulatory Fairness Act of 1988<sup>14</sup> and set forth in Section 206(b) of the FPA applies, that exception only carves out a 15-month refund period.<sup>15</sup> After this period runs, the unjust and unreasonable rate is effectively reinstated until such time as the Commission fixes a replacement rate.<sup>16</sup>

While EPSA wholeheartedly agrees with the Commission’s conclusion that the existing RPM rules are unjust and unreasonable,<sup>17</sup> it also supports PJM’s request for clarification that the results of the 2022/2023 BRA will not be disturbed to give effect to a replacement rate that is fixed after the auction has already been run.<sup>18</sup> As PJM suggests,<sup>19</sup> it is not clear whether a replacement rate directed at the price suppression

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<sup>13</sup> *Louisiana Pub. Serv. Comm’n v. Entergy Corp.*, 156 FERC ¶¶ 61,221 at P 71 (2016) (citation omitted), *aff’d sub nom. Louisiana Pub. Serv. Comm’n v. FERC*, 883 F.3d 929 (D.C. Cir. 2018).

<sup>14</sup> Pub. L. No. 100-473, 102 Stat. 2299 (1988).

<sup>15</sup> See 16 U.S.C. § 824e(b) (2018).

<sup>16</sup> See *Tenaska Ala. II Partners, L.P. v. Alabama Power Co.*, 118 FERC ¶¶ 61,037 at P 24, *on reh’g*, 119 FERC ¶¶ 61,315 at P 19 (2007).

<sup>17</sup> See June 29 Order, 163 FERC ¶¶ 61,236 at PP 150-56.

<sup>18</sup> See Motion at 9-10.

<sup>19</sup> See *id.* at 8-9.

problem identified in the June 29 Order<sup>20</sup> even could be given retroactive effect pursuant to Section 206(b), which only authorizes *refunds*.<sup>21</sup>

In any event, irrespective of the extent of the Commission’s authority to require that the 2022/2023 BRA be re-run, the Commission indisputably has the discretion to refrain from doing so.<sup>22</sup> And PJM’s request for clarification that the Commission will let the 2022/2023 BRA results stand is in perfect accord with a long line of Commission precedent declining to require re-running or re-settlement of auctions “when doing so would create uncertainty and undermine confidence in the markets, and when customers cannot revisit their past economic decisions.”<sup>23</sup> The Commission has likewise recognized that re-running or re-settling RPM auctions conducted “in accordance with existing tariff provisions on which parties have relied would defeat the purpose of the forward binding commitment, and undo the incentives for new capacity resources.”<sup>24</sup> Indeed, the

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<sup>20</sup> See June 29 Order, 163 FERC ¶ 61,236 at PP 5-6 (finding PJM’s existing tariff to be unjust and unreasonable because it fails adequately “to address the price suppressive impact of resources receiving out-of-market support”).

<sup>21</sup> See 16 U.S.C. § 824e(b) (2018) (authorizing the Commission to “order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate . . . which the Commission orders to be thereafter observed and in force”). See also *City of Anaheim v. FERC*, 558 F.3d 521, 524 (D.C. Cir. 2009) (stating that “§ 206(b) authorizes only retroactive refunds (rate decreases), not retroactive rate increases”).

<sup>22</sup> See Motion at 10 n.25 (citing cases).

<sup>23</sup> *California Indep. Sys. Operator Corp.*, 151 FERC ¶ 61,247 at n.46 (2015) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184 at PP 128-129 (2010); *New York Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,073 at 61,307 (2000), *on reh’g*, 97 FERC ¶ 61,154 (2001); *Towns of Concord v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992)).

<sup>24</sup> *Maryland Pub. Serv. Comm’n v. PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,276 at P 23 (2008) (“*Maryland PSC*”) (dismissing complaint challenging auction results based on a finding that “no party violated PJM’s tariff and the prices determined during the auctions were in accord with the tariff provisions governing the auctions”), *on reh’g*, 127 FERC ¶ 61,276 (2009), *aff’d sub nom. Maryland Pub. Serv. Comm’n v. FERC*, 632 F.3d 1283 (D.C. Cir. 2011).

Commission has exercised its discretion not to require re-running or re-settling of auctions even where an independent system operator (“ISO”) unlawfully deviated from the Commission-approved, just and reasonable market rules.<sup>25</sup> There is no reason why the Commission should take a different approach if PJM lawfully follows the existing market rules in administering the 2022/2023 BRA, notwithstanding the Commission’s correct conclusion that those rules are unjust and unreasonable.<sup>26</sup>

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<sup>25</sup> See *Astoria Generating Co. L.P. v. New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189 at P 141 (2012) (“*Astoria*”) (“[W]e will not require [the ISO] to re-run the auctions occurring in the past based on . . . offer floors [required under its tariff]. Re-running past auctions would create market uncertainty for market participants and require resolving complex questions.”), *on reh’g*, 151 FERC ¶ 61,044, *on reh’g*, 153 FERC ¶ 61,274 (2015).

<sup>26</sup> EPSA is not suggesting that *Astoria* would compel the Commission to let the 2022/2023 BRA results stand if PJM failed to apply the applicable market rules and a challenge were brought before the 2022/2023 Delivery Year. Cf. *Maryland PSC*, 124 FERC ¶ 61,276 at P 23 (2008) (dismissing complaint challenging auction results based on a finding that “no party violated PJM’s tariff and the prices determined during the auctions were in accord with the tariff provisions governing the auctions”).

**CONCLUSION**

**WHEREFORE**, for the reasons set forth herein, EPSA respectfully requests that the Commission grant the relief requested in the Motion.

Respectfully submitted,

**ELECTRIC POWER SUPPLY ASSOCIATION**

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On behalf of the  
**Electric Power Supply Association**

Dated: April 25, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 25<sup>th</sup> day of April, 2019.

/s/ Stephanie S. Lim

Stephanie S. Lim