

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

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

**ANSWER TO CROSS-MOTION 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”),¹ the Electric Power Supply Association (“EPSA”)² hereby protests the “cross-motion” filed by American Municipal Power, Inc, Dominion Energy Services, Inc., Exelon Corporation, EDP Renewables North America LLC, FirstEnergy Utility Companies, and the Talen PJM Companies (collectively, “Movants”) on April 25, 2019, in the above-captioned proceedings.³ EPSA strongly

¹ 18 C.F.R. § 385.213 (2018).

² 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.

³ Answer to PJM Interconnection L.L.C.’s Motion for Supplemental Clarification and Cross-Motion for Further Modification of Capacity Auction Schedule, Docket Nos. EL16-49-000, *et al.* (filed Apr. 25, 2019) (the “Cross-Motion”).

encourages the Commission to issue an order in these proceedings as soon as possible establishing a replacement rate for the existing PJM Interconnection, L.L.C. (“PJM”)⁴ market rules that the Commission correctly found to be unjust and unreasonable.⁵ Nonetheless, the fact that the Commission has not yet issued such an order does not justify Movants’ request to further delay the Base Residual Auction for the 2022/2023 Delivery Year (the “2022/2023 BRA”). To the contrary, Movants’ request must be rejected because it is procedurally defective and would only serve to inject further uncertainty into the market.

In August 2018, PJM filed a request in Docket No. ER18-2222-000 for waiver of the Tariff provisions governing the scheduling of PJM’s Base Residual Auctions (“BRAs”), in order to effectuate “a short, one-time delay” in the 2022/2023 BRA.⁶ The Commission granted PJM’s request, thereby allowing the 2022/2023 BRA to be delayed until August 2019.⁷ On April 10, 2019, PJM filed a motion stating that, although the Commission has not yet fixed a replacement rate in these proceedings as it previously contemplated,⁸ PJM plans to hold the 2022/2023 BRA in August 2019, as authorized by the August 30 Order.⁹ PJM further asked the Commission to clarify that the 2022/2023 BRA will not be re-run or

⁴ Capitalized terms not otherwise defined herein have the meaning set forth in PJM’s Open Access Transmission Tariff (the “Tariff”).

⁵ See *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (the “June 29 Order”), *reh’g pending*.

⁶ Request of PJM Interconnection, L.L.C. for Grant of Tariff Waiver at 3, Docket No. ER18-2222-000 (filed Aug. 13, 2018) (the “PJM Waiver Request”).

⁷ See *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,153 at P 1 (2018) (the “August 30 Order”).

⁸ See June 29 Order, 163 FERC ¶ 61,236 at P 172.

⁹ See Motion for Supplemental Clarification of PJM Interconnection, L.L.C. at 2, Docket Nos. EL16-49-000, *et al.* (filed Apr. 10, 2019) (the “PJM Motion”).

re-settled based on any replacement rate that might be thereafter established.¹⁰

While appearing to support PJM's request for clarification concerning the finality of the 2022/2023 BRA results,¹¹ Movants urge that the 2022/2023 BRA be further delayed until April 2020. This request is procedurally defective and must be rejected. The proper procedural vehicle for seeking a further delay would be a separately docketed request for waiver, like the PJM Waiver Request. Despite PJM and the Commission having provided Movants with a clear roadmap in this regard, Movants nonetheless seek further delay through a "cross-motion" packaged with their answer to the PJM Motion. Their approach is procedurally improper and fundamentally unfair.¹² The Cross-Motion is analogous to situations where parties have attempted to combine complaints or petitions for declaratory order with other types of filings, which the Commission has consistently rejected because such filings are not noticed and therefore fail to provide adequate notice and opportunity for comment.¹³ The same is true in this case.

The procedural defect described above would be reason enough to dismiss the

¹⁰ See *id.*

¹¹ See Cross-Motion at 3 ("[Movants] agree with PJM about the importance of certainty regarding auction results, and the damage to market confidence that could result if auction results were disturbed after the fact based on new rules not in place when the auction is run.").

¹² See *Consolidated Edison Co. of New York, Inc.*, 97 FERC ¶ 61,241 at 62,092 (2001) ("The Commission denies ConEd's October 5 motion because it is improper to request a revision of tariff sheets, including the expiration date of tariff provisions, through a motion. Rather, the appropriate section 205 or 206 filing is required.").

¹³ See, e.g., *Arizona Pub. Serv. Co.*, 143 FERC ¶ 61,280 at n.13 (2013); *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,116, at P 16 & n.22 (2009), *on reh'g*, 131 FERC ¶ 61,058, *on reh'g*, 132 FERC ¶ 61,255 (2010); *Golden Spread Elec. Coop. Inc. v. Southwestern Pub. Serv. Co.*, 115 FERC ¶ 61,136 at P 4 & n.3 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,248 at P 5 (2004); *Consumers Power Co.*, 58 FERC ¶ 61,323 at 62,046 (1992); *Entergy Servs. Inc.*, 52 FERC ¶ 61,317 at 62,270 (1990); *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040 at 61,062-63 (1990).

Cross-Motion. Even leaving this fatal procedural defect aside, however, there is no merit to the Cross-Motion. To the contrary, as EPSA stated in its earlier answer to the PJM Motion,¹⁴ PJM's planned course of action is consistent with Commission precedent and the structure of Section 206 of the Federal Power Act.¹⁵ Indeed, although the Cross-Motion argues that the 2022/2023 BRA must be delayed in order to avoid uncertainty,¹⁶ the Commission has clear authority to grant PJM's request for clarification that the 2022/2023 BRA will not be re-run or resettled,¹⁷ which would resolve any uncertainty on this front. Similarly, Movants acknowledge that "the Commission's remedial authority is sufficiently flexible for it to decline to require a rerun of the 2022/[20]23 BRA if that auction is held under the existing auction rules prior to establishment of a replacement rate in this proceeding."¹⁸ In fact, it is Movants' request to further delay the 2022/2023 BRA that would result in uncertainty, because market participants would not know if Movants or others will push for additional delays in the future if the Commission has not yet issued an order on a replacement rate. For that reason, although EPSA continues to believe that the Commission should issue an order setting forth a just and reasonable replacement rate as soon as possible, PJM's plan to run the 2022/2023 BRA in August 2019 as currently scheduled is necessary to provide certainty to market participants.

¹⁴ See Answer of the Electric Power Supply Association, Docket Nos. EL16-49-000, *et al.* (filed Apr. 25, 2019) (the "EPSA Answer").

¹⁵ 16 U.S.C. § 824e (2018).

¹⁶ See Cross-Motion at 4. There is a certain irony to the fact that Movants include entities, such as Exelon Corporation, whose subsidized resources created the threat to the RPM Auctions that any lawful replacement rate adopting in these proceedings will necessarily need to address. See June 29 Order, 163 FERC ¶ 61,236 at PP 150-56. In essence, these entities are asking the Commission to delay the 2022/2023 BRA until it can fix the problem they have created.

¹⁷ See EPSA Answer at 5.

¹⁸ Cross-Motion at 3.

CONCLUSION

WHEREFORE, for the reasons set forth herein, EPSA respectfully requests that the Commission deny the Cross-Motion.

Respectfully submitted,

ELECTRIC POWER SUPPLY ASSOCIATION

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On behalf of the
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Dated: May 9, 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 9th day of May, 2019.

/s/ Stephanie S. Lim

Stephanie S. Lim