



and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”) in response to the Commission’s April 18, 2019 Order on Paper Hearing<sup>5</sup> concerning the pricing of fast-start resources in PJM’s energy Market (“April 18 Order”). For the reasons stated herein, P3 and EPSA generally support PJM’s Compliance Filing and urge the Commission to accept PJM’s suggested fast-start rule changes in its Tariff and Operating Agreement and require PJM to implement these needed market reforms no later than January 2020.

## I. COMMENTS

P3 and EPSA have been active, interested parties to the Commission’s proceeding affecting fast-start resources and have consistently cited energy price formation (including the pricing of fast-start resources) as an area where market reforms are long overdue. As P3 and EPSA have stated, after a nearly three-year process to correct an identified and serious market shortcoming, the much-needed market reforms related to fast-start pricing should be swiftly implemented.<sup>6</sup> Fast-start pricing issues within the context of the broader evaluation of necessary energy price reforms highlight the importance of these reforms because reflecting all resources which have fast-start capability in energy and operating reserve real-time pricing is a *fundamental concept* which should be implemented expeditiously. Until PJM implements fast-start pricing,

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<sup>5</sup> *PJM Interconnection, L.L.C.*, 167 FERC 61,058 (2019) (“April 18 Order”).

<sup>6</sup> P3 incorporates by reference its comments; reply brief; answer, and comments in response to PJM’s motion for extension of time, filed on February 12, 2018; March 14, 2018; April 30, 2018, and July 15, 2019, in Docket No. EL18-34-000, respectively, as well as its comments it previously made to fast-start pricing in AD14-14-000 and RM17-3-000. *See also, e.g.*, EPSA initial comments, reply brief, and comments in response to PJM’s motion for extension of time, filed on February 12, 2018, March 14, 2018, and July 15, 2019, respectively, in PJM’s Docket No. EL18-34-000, as well as comments it previously made to fast-start pricing in Docket Nos. AD14-14-000 and RM17-3-000.

energy prices do not reflect the marginal cost of serving load and are unjust and unreasonable.

P3 and EPSA are concerned about any additional slippage to the implementation date for the long overdue and already delayed market reforms associated with PJM’s fast-start pricing practices. In December of 2017, the Commission determined that PJM’s fast-start pricing practices “may be unjust and unreasonable because the practices do not allow prices to reflect the marginal cost of serving load, and the Commission identified changes to PJM’s Tariff that, upon initial review, would result in rates that are just and reasonable.”<sup>7</sup> The December 2017 Order followed a Notice of Proposed Rulemaking that was issued a year before in December 2016, questioning whether certain RTO practices related to fast-start pricing were just and reasonable. In other words, the Commission identified a potential problem in 2016, determined there was an actual problem in 2017, and yet it will likely be 2020 before these much-needed market reforms are implemented. It is well beyond time to bring this matter to a close.

PJM acknowledges that the Commission’s April 18 Order found that “PJM’s fast-start pricing practices are unjust and unreasonable because the practices do not allow prices to reflect the marginal cost of serving load” and directed PJM to make specified changes to its Tariff.”<sup>8</sup> PJM’s Compliance Filing proposes five broad changes to its market rules in the Tariff and parallel provisions of its Operating Agreement in order to appropriately address the eight specified directives in the Commission’s April 18 Order. Therefore, as more fully explained in its Compliance Filing, PJM states that it will:

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<sup>7</sup> <https://www.ferc.gov/whats-new/comm-meet/2019/041819/E-3.pdf> at 1, citing PJM Interconnection, L.L.C., 161 FERC ¶ 61,295 (2017) (“December 2017 Order”).

<sup>8</sup> Compliance Filing, p. 2.

- 1) Apply Fast-Start Pricing to All Eligible Fast-Start Resources as Specified in the April 18 Order.
- 2) Alter Its Energy Market Clearing Processes to Allow Eligible Fast-Start Resources to Set LMP in a Manner that is Consistent with Minimizing Production Costs.
- 3) Provide Lost Opportunity Cost Credits in Order to Ensure Resources Follow PJM's Dispatch Instructions.
- 4) Modify the Day-ahead Make Whole Payment Calculation to Prevent Double Recovery of Commitment Costs in the Day-ahead and Real-time Markets.
- 5) Verify the Reasonableness of Composite Energy Offers Greater Than \$1,000/MWh and Applying the \$2,000/MWh Offer Cap to Composite Energy Offers.

P3 and EPSA are supportive of these suggested fast-start changes, agreeing that they are responsive to the Commission's eight required tariff and rule revisions as outlined in its April 18 Order.<sup>9</sup> However, while PJM understandably states that it will await further Commission action on accepting the fast-start rule changes before implementing them, it fails to express any urgency for Commission action. It has been nearly three years since the Commission opened its Section 206 investigation into PJM's fast-start policies, and nearly two years since the Commission found, in the December 21, 2017 Order, that the current market rules in PJM for fast-start resources are unjust and unreasonable. Thus, for the past several years, PJM's rules affecting energy market prices do not reflect the marginal cost of serving load, as they do not consider fast-start resources. The Commission should act expeditiously to remedy the situation.

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<sup>9</sup> Compliance Filing, p. 7, citing April 18 Order at P 17.

Significantly, P3 and EPSA note that no interested party sought rehearing of the Commission's April 18 Order, including the Independent Market Monitor for PJM ("Market Monitor"). As a result, the Commission, PJM and market participants understand that upon the Commission's acceptance of PJM's Compliance Filing, just and reasonable fast-start pricing tariffs will be instilled in PJM. The Commission should ensure that the focus of this final stage of this proceeding remains on PJM's satisfaction of the Commission's April 18 Order requirements via its Compliance Filing, and any attempts to relitigate underlying issues in the fast-start proceeding in Docket No. EL18-34-000 that have already been settled by the Commission should be rejected.

As an example, the Market Monitor raises seven issues with PJM's Compliance Filing that it asserts are inconsistent with the April 18 Order, and thus allegedly require rejection of PJM's Compliance Filing.<sup>10</sup> The Market Monitor's arguments, however, although styled as commentary to PJM's Compliance Filing, are in many respects an attempt at a late-submitted request for rehearing and/or clarification of the April 18 Order that should be deemed barred by the Commission's rules.<sup>11</sup>

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<sup>10</sup> P3 and EPSA are concerned that the Comments of the Independent Market Monitor for PJM, Docket No. ER19-2722-000, Dated September 17, 2019 ("Comments of the Market Monitor"), raise an array of concerns with PJM's Compliance Filing that are, in fact, collateral attacks on findings in the FERC Section 206 Order directing PJM to implement fast-start pricing. The Commission has consistently made clear that "the purpose of a compliance proceeding is to ensure that a compliance filing adheres to the directives of the underlying order," and that it will reject "requests to alter a compliance filing in a manner that differs from the order requiring the compliance filing" as "a collateral attack on the order requiring the compliance filing." *ISO New England Inc.*, 132 FERC ¶ 61,098 at P 12 (2010). *See also PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,124 at P 17 (2017) (rejecting a protest that challenged the order imposing the compliance requirement "untimely request for rehearing" of the earlier order). P3 and EPSA reserve the right to file comments in response to those issues in accordance with the Commission's applicable rules and regulations, and note that there may be issues related to the implementation of fast-start pricing as a compliance matter which should be addressed by an order on this filing. However, any concerns based on opposition to the findings in the Section 206 Order cannot be litigated here or be the cause for further delay of this fundamental pricing reform.

<sup>11</sup> 16 U.S.C. § 8251(a) (2012); *see also* 18 C.F.R. § 385.713(b) (2018).

For instance, the Market Monitor argues that “the tariff should not provide for PJM discretion in defining fast start resources.”<sup>12</sup> The Market Monitor then states what it believes to be “a just and reasonable” definition of fast-start pricing.<sup>13</sup> Yet the April 18 Order did, in fact, direct PJM “to include *in its definition of fast-start resources*” certain requirements.<sup>14</sup> The Commission clearly intended for PJM to define fast-start resources. The Market Monitor may disagree with PJM’s definition, but the argument that the Tariff should not provide PJM with that discretion should have been raised with the Commission through a timely-filed rehearing request.

One reason that the Commission requires timely-filed requests for rehearing is that allowing parties to constantly relitigate or raise new issues in a proceeding is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.<sup>15</sup> The Commission should not allow the these kinds of arguments to further delay an over three-year process for obtaining just and reasonable fast-start pricing practices in PJM by filing what is essentially a late-styled request for rehearing.

## **II. CONCLUSION**

P3 and EPSA support the PJM Compliance Filing and believe it to be consistent with the Commission’s April 18 Order. As with any tariff rules, if challenges emerge during implementation of those rules, PJM and/or any PJM market participant have the

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<sup>12</sup> Comments of the Market Monitor, p. 11.

<sup>13</sup> *Id.*

<sup>14</sup> April 18 Order at P 106. (Emphasis added).

<sup>15</sup> *Tenaska Power Servs. Co. v. Southwest Power Pool, Inc.*, 102 FERC ¶ 61,140, at 61,377 (2003); *Tennessee Gas Pipeline Co., LLC*, 142 FERC ¶ 61,025, at P 38 (2013); *SFPP, L.P.*, Opinion No. 522-A, 150 FERC ¶ 61,097, at P 30 (2015).

ability to bring such issues to the Commission. However, in the matter currently before the Commission, the question is whether PJM has complied with the Commission's April 18 Order. P3 and EPSA believe it has, and accordingly, P3 and EPSA respectfully request that the Commission approve PJM's compliance filing and direct PJM to implement the fast-start pricing reforms no later than January 2020.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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**CERTIFICATE OF SERVICE**

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

Dated at Washington, D.C. this 20th day of September 2019.

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