

000 and EL18-178-000.⁵ As discussed in greater detail below, EPSA greatly appreciates the steps taken by the Commission in the December 2019 Order and related orders to expand the Minimum Offer Price Rule (the “MOPR”) in order to prevent further harm to the Reliability Pricing Model (“RPM”) market from out-of-market subsidies, and believes that, for the most part, PJM has complied with the Commission’s directives in the Compliance Filing. EPSA also commends the Commission for having moved swiftly to provide further guidance to PJM and stakeholders through its recent issuance of the Rehearing Orders. Consistent with those efforts, EPSA urges the Commission to act expeditiously on the Compliance Filing and to press PJM to conduct the Base Residual Auction (“BRA”) for the 2022/2023 Delivery Year (the “2022/2023 BRA”) as soon as possible.

I. COMMENTS

As indicated by its prior filings in Docket Nos. EL16-49-000 and EL18-178-000, EPSA strongly supports the Commission’s efforts through the June 2018 and December 2019 Orders, as well as the Rehearing Orders, to expand and strengthen the MOPR in order to ensure that all resources are able to compete on a level playing field, thereby “support[ing] the capacity market’s core objective of maintaining resource adequacy at just and reasonable rates”⁶ While EPSA acknowledges that there are elements of the Compliance Filing that may warrant additional attention, PJM has, by and large, faithfully complied with the requirements of the December 2019 Order. For its part,

⁵ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (the “December 2019 Order”), *on reh’g*, 171 FERC ¶ 61,035 (2020) (the “Remedy Rehearing Order” and, together with the Complaint Rehearing Order, the “Rehearing Orders”).

⁶ *Id.* at P 139.

EPSA is deliberately refraining from wading into the details of the Compliance Filing in order to focus on the importance of conducting the 2022/2023 BRA as soon as possible.

In the Compliance Filing, PJM proposes to complete pre-auction activities and commence the 2022/2023 BRA “within six and a half months after the date of the Commission’s acceptance of PJM’s compliance filing.”⁷ Under this schedule, PJM explains, “if the Commission were to issue its order on the compliance filing by mid-May, PJM would conduct the delayed [2022/2023] BRA no later than December of this year.”⁸ With the comment date on the Compliance Filing having been extended until May 15, 2020,⁹ the Commission will obviously be unable to issue an order by mid-May. Moreover, PJM now has a further filing in compliance with the Remedy Rehearing Order due June 1, 2020,¹⁰ and PJM has made clear that its six-and-a-half-month period from a Commission order for conducting the 2022/2023 BRA does not start running until both compliance filings have been accepted.¹¹ Realistically, even assuming a shortened comment period for the second compliance filing and a lightning quick turnaround on the Commission’s part, it is hard to see the Commission issuing an order earlier than July 1, 2020, which, under PJM’s schedule, would have the 2022/2023 BRA being conducted in mid-January

⁷ Compliance Filing at 84. See also *id.* (proposing that “the date for the next BRA Auction be tied to the date of the Commission’s order on this compliance filing”).

⁸ *Id.* at 85.

⁹ See March 31 Notice, Docket Nos. ER18-1314-003, *et al.*

¹⁰ Remedy Rehearing Order, 171 FERC ¶ 61,035 at Ordering Para. (C) (directing PJM “to submit a compliance filing within 45 days of the date of this order”).

¹¹ See, e.g., PJM, Inside Lines, PJM Engages Stakeholders on Next MOPR Filing (May 1, 2020) (“PJM still proposes to run the 2022/2023 Delivery Year auction approximately six months after FERC approves its compliance filings.”), <https://insidelines.pjm.com/pjm-engages-stakeholders-on-next-mopr-filing/>.

2021. The Compliance Filing also contemplates that PJM could further delay the 2022/2023 BRA until as late as March 31, 2021 – only 14 months before the commencement of the 2022/2023 Delivery Year – upon the request of a state commission “in the event that legislation directly applicable to new elections of the [Fixed Resource Requirement (“FRR”)] alternative is enacted before June 1, 2020”¹² The upshot is that, in the best case scenario, the 2022/2023 BRA will have a forward period of less than 16 months.

As the Commission knows, a BRA would ordinarily be conducted at least three years in advance of the applicable Delivery Year, and, accordingly, the 2022/2023 BRA was originally scheduled to be conducted in May 2019. This three-year forward element is an integral part of the RPM market design, as it “ensure[s] stability for both capacity buyers and capacity sellers.”¹³ To be sure, a key purpose of the three-year forward period is to facilitate participation in the RPM auctions by providing potential new entrants with time to come on-line to meet any capacity commitment assumed by clearing an auction.¹⁴ But the forward period also provides important benefits to other capacity suppliers, capacity buyers and other stakeholders that are lost when a BRA is delayed. Owners of existing capacity resources, for example, rely on forward price information from the RPM auctions to inform decisions about whether to deactivate, particularly where continued

¹² Compliance Filing at 86 (footnote omitted).

¹³ *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318 at P 2, *on reh’g*, 121 FERC ¶ 61,173 (2007).

¹⁴ *See, e.g., Duquesne Light Co. v. PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,295 at P 9 (2007) (stating that, “[a]ccording to PJM, one of the most important features of its new RPM program is the three-year-forward procurement mechanism, under which PJM procures capacity on behalf of its LSE members three years in advance,” and that “PJM states that this feature encourages investment by suppliers and improves the competitiveness of the markets by stimulating new entry”).

operation would require additional investments to improve operational performance or to comply with environmental regulations. Similarly, competitive retail suppliers look to RPM auction prices to inform decisions about their own forward contract offerings to customers, and, in turn, large commercial and industrial decisions may depend on those forward contracts in budgeting for their future operations.

The forward period for the 2022/2023 BRA has already been substantially truncated. The Commission initially granted PJM's request for waiver to delay the 2022/2023 BRA for a short period from May 2019 to August 2019,¹⁵ but subsequently directed PJM not to proceed with the auction until a just and reasonable replacement rate had been determined.¹⁶ In the July 2019 Order, the Commission "recognize[d] the importance of sending price signals sufficiently in advance of delivery to allow for resource investment decisions," but found that "in the circumstances presented here, on balance, delaying the auction until the Commission establishes a replacement rate will provide greater certainty to the market than conducting the auction under the existing rules."¹⁷

In EPSA's view, the balance between the importance of the forward period and improvements to the MOPR has shifted significantly since the Commission issued the July 2019 Order. On the one hand, the forward period for the 2022/2023 BRA is unlikely to be more than 14-16 months, less than half the forward period provided by the RPM design. On the other hand, thanks to the Commission's December 2019 Order and PJM's efforts to comply with that order, the MOPR has been substantially expanded and

¹⁵ See *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,153 (2018).

¹⁶ See *Calpine Corp. v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,051 (2019) (the "July 2019 Order").

¹⁷ *Id.* at P 14.

strengthened. Under the circumstances, EPSA submits that conducting the 2022/2023 BRA under the now substantially improved rules should be the top priority.

EPSA strongly objects to PJM's proposal that it should be free to delay the 2022/2023 BRA until as late as March 31, 2021 based upon a single state's decision to use the FRR. Not only does this proposal threaten further delay in conducting the 2022/2023 BRA; it also introduces additional uncertainty as to when PJM will actually conduct that auction. Over and above the need to minimize further delay, market participants and investors need certainty as to *when* the 2022/2023 BRA will be conducted, so they, in turn, can plan critical investment and commercial decisions around the auction. EPSA's understanding is that the lack of certainty about when the 2022/2023 BRA will be conducted is, in fact, already negatively impacting investors and hindering investment.

PJM has failed to explain why this allegedly "limited, conditional extension" is necessary for it "to conduct an orderly auction schedule that takes such a material change into account" ¹⁸ The PJM Reliability Assurance Agreement already sets forth deadlines for FRR elections that are presumably sufficient to ensure that such elections can be taken into account without disrupting the BRA schedule, and PJM has not claimed, much less demonstrated, why those deadlines are uniquely inadequate where the 2022/2023 BRA is concerned. Nor is it appropriate that a single state's FRR election should be allowed to result in further delay in running an auction that is of vital importance to stakeholders in the entire PJM footprint, which includes all or part of 13 states and the District of Columbia. Ironically, PJM's proposal would have it delaying the 2022/2023

¹⁸ Compliance Filing at 86.

BRA for the benefit of stakeholders who have decided not to rely on the RPM construct to guide operational and investment decisions rather than running the auction in a timely fashion for the benefit of stakeholders that continue to rely on it. EPSA recognizes that PJM's request may be moot if no state enacts FRR-enabling legislation by the end of this month, but the Commission will undoubtedly be asked to extend the June 1, 2020 deadline or to deem it satisfied by something less than legislation "enacted" by that date.¹⁹ The Commission can and should reject any and all such requests and otherwise ensure that its issuance of an order on the Compliance Filing provides much needed certainty about the timing of the 2022/2023 BRA.

Moreover, it is not clear to EPSA why PJM requires six and a half months to conduct the 2022/2023 BRA and, more specifically, why four and a half months, as PJM proposes for the three succeeding BRAs, is not sufficient. PJM does not explain why it needs two additional months for the 2022/2023 BRA, and two months is a significant difference given how much the forward period for this BRA has already been truncated. And even if PJM needs the full six and a half months, it is neither necessary nor appropriate for PJM to tie the timing of the 2022/2023 BRA to a Commission order on its filing in compliance with the Remedy Rehearing Order, rather than a Commission order on the Compliance Filing. EPSA realizes that this point will also be moot if the Commission addresses both filings in the same order and appreciates that the Commission may be reluctant to second-guess PJM's judgment about when to conduct

¹⁹ *Id.* PJM explains that "[b]y 'enact,' PJM means that any such legislation is not only passed by the legislature, but also signed by the authorized state executive, no later than June 1, 2020." *Id.* at 86 n.272.

the BRAs.²⁰ Nonetheless, it is hard to accept the notion that the Commission's expeditious action on rehearing should be a cause for more, rather than less, delay in running the 2022/2023 BRA.

EPISA urges the Commission to press PJM to conduct the 2022/2023 BRA as soon as possible and certainly more expeditiously than PJM has proposed. As the timing of the 2022/2023 BRA is now, to some extent, tied to the timing of Commission action on one or both compliance filings, however, the most important thing the Commission can do is to process those filings expeditiously, as it did the requests for rehearing of the December 2019 Order. The Commission has more than enough information before it to act quickly on the Compliance Filing. The Commission's December 2019 Order and the recent Remedy Rehearing Order have already set forth the parameters of a just and reasonable replacement MOPR that remedies the principal flaws identified in the June 2018 Order. In addition, these orders should address many of the concerns that parties may raise regarding the Compliance Filing and permit the Commission to rule expeditiously on PJM's proposed Tariff modifications. In this respect, while it is foreseeable that parties may attempt to use their protests to the Compliance Filing to continue to challenge the Commission's determinations in the December 2019 Order, such challenges can and should be summarily rejected given that the Commission has already addressed requests for rehearing and/or clarification.

Admittedly, the Compliance Filing may not be perfect. There may very well be discrete flaws in PJM's effort to comply with the requirements of the December 2019

²⁰ Remedy Rehearing Order, 171 FERC ¶ 61,035 at P 373 (stating that "PJM is in the best position to propose timing").

Order that need to be addressed before the 2022/2023 BRA is conducted, and there may also be other implementation details that can be revisited after the auction. But regardless of how the Commission chooses to address these matters, EPSA urges it to do so expeditiously in light of the vital need to minimize any further delay in conducting the 2022/2023 BRA. Moreover, EPSA urges the Commission to ensure that PJM's compliance with the directives of the Remedy Rehearing Order does not result in any further delay.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, EPSA requests that the Commission expeditiously act on the Compliance Filing, as discussed herein.

Respectfully submitted,

ELECTRIC POWER SUPPLY ASSOCIATION

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Dated: May 15, 2020

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 15th day of May, 2020.

/s/ Stephanie S. Lim

Stephanie S. Lim