



same day to reform the Reliability Pricing Model (“RPM”) and related rules in the PJM Tariff and Reliability Assurance Agreement Among Load Serving Entities (“RAA”) to better ensure that capacity resources will perform when called upon to meet the needs of the PJM Region (“PJM Capacity Performance Filing”). In comments on the Capacity Performance Filing, EPSA supports the proposal generally and in particular highlights the importance of the April 1, 2015 effective date in order to implement those changes for the next Base Residual Auction (“BRA”), which is scheduled for May 2015 to procure capacity for the 2018/2018 Delivery Year. Regarding the PJM Resource Performance Filing, EPSA urges that any changes that are required for this filing should not delay the implementation of the PJM Capacity Performance Filing.

## **I. BACKGROUND**

PJM is proposing to revise its Tariff and RAA pursuant to sections 205 and 206 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824d and 824e, noting that the need for the proposed revisions emerged during the RTO’s development of the Capacity Performance proposal to change the Reliability Pricing Model (“RPM”), PJM’s forward capacity market mechanism. PJM states,

In developing those capacity market design changes, PJM also has more broadly reviewed issues of resource performance, and excuses for resource performance, arising outside the PJM capacity market. Based on that review, PJM has identified four areas of its current energy market rules that enable, or could enable, unreasonable excuses for Market Participant performance in PJM’s markets.

The proposed changes include:

- (1) Changes to the parameter limits that Market Sellers specify in Energy Market Offers for their generation capacity resource so that the parameter limits are based on specific physical characteristics rather than economic or budgetary consideration allowed under the current rules;

- (2) Replacement of current force majeure provisions with a catastrophic force majeure definition which excuses market participant performance only in the most limited circumstances;
- (3) Limiting the discretion of Market Sellers to declare their generation capacity resources as a Maximum Emergency Offer during certain extreme weather alerts or other more severe emergencies; and,
- (4) Adding rules which allow PJM to withhold, withdraw or rescind prior approval of scheduled planned or maintenance generator outages during emergency conditions based on a 72 hour notice requiring a generator to return to normal operation.

As outlined in the PJM Filing, the Resource Performance revisions have been submitted concurrently with the Capacity Performance proposal. While PJM requests an April 1, 2015 effective date for both filings, the PJM Filing states that timing is “less critical”<sup>5</sup> for the energy markets in terms of the implementation of provisions of the Resource Performance Filing as the Capacity Performance Filing, because the Capacity Performance proposal is intended for implementation for the next annual forward capacity auction to held in May 2015, i.e., the Base Residual Auction (“BRA”) for the 2018/2019 Delivery Year. In contrast, PJM explains that energy market revisions can be implemented at any time, though PJM says it would be optimal to have changes made before the May 2015 BRA so that market participants have certainty regarding the energy market rules that would most likely be in effect for the 2018/2019 Delivery Year.

## **II. COMMENTS**

As a starting point, EPSA agrees with PJM that ideally the Resource Performance revisions and the Capacity Performance proposal would become effective on the same date. Changes in the Resource Performance filing clearly affect expectations, costs and requirements for the newly created Capacity Performance

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<sup>5</sup> PJM Resource Performance Filing at 3.

Resources (“CPR”). However, that said, it is of greater importance to grid reliability and well-functioning markets that the Capacity Performance proposal be approved and in effect in time for changes to be included in the May 2015 BRA. Therefore, while there are clarifications and changes required to the Resource Performance revisions as discussed below, addressing these cannot delay the timing of the Capacity Performance proposal.

The proposed Resource Performance revisions clearly relate to, but were not the focus of, the accelerated discussions in the Enhanced Liaison Committee (“ELC”) stakeholder process used to facilitate development of the proposal in the PJM Capacity Performance Filing. In other words, these proposed changes, if implemented, may have a significant impact on costs and risks borne by Capacity Performance Resources participating in RPM, yet received no stakeholder review or a stakeholder vote prior to filing. EPSC submits the PJM Resource Performance Filing requires additional details, particularly with regard to treatment of costs for certain changes, before it is approved.

For example, the ability for PJM to cancel PJM-approved Generator Planned Outages and Generator Maintenance Outages during emergency conditions, is overly broad regarding PJM’s authority, and requires additional clarification regarding process and treatment of costs. Specifically, some maintenance outages may not be simple (such as draining oil tanks for an inspection and then having to re-fill if notified the unit is required to run). Although PJM states the remaining hours that a unit continues on outage after 72 hours (for a Generator Maintenance Outage) will be classified as a Generator Forced Outage, EPSC submits some further consultative process is necessary so that the Market Seller and PJM can determine the appropriate time frame

for return in recognition of the complexity of certain outages. The justification for the selected time period and the ramifications for implementing it are unstudied and unknown. Further, there may be significant costs incurred with either type of outage in terms of manpower, equipment, materials, and other related items, and if there is a cancellation, treatment of these costs (which may be re-incurred for certain items when the outage is re-scheduled) should be clarified, given the additional risk imposed upon generators pursuant to the proposed new provisions.

Also, EPSA has concerns with PJM's Catastrophic Force Majeure proposal, which has significantly narrower protections than traditional force majeure provisions. As proposed, it would "apply to all Market Participants and market transactions, including [CPR]"<sup>6</sup> to excuse PJM Market Participant performance *only* when there are widespread, systemic events precluding performance by all or most Market Participants in the region (and PJM will be responsible for determining whether such an event has occurred), but the Market Participant cannot be excused from individual or more localized risks that are more appropriately managed by the facility facing that risk. EPSA submits that the drastically narrowed definition would improperly assign risk without appropriate compensation, on a retroactive basis, to Market Participants. Of note, the Commission has determined in previous circumstances involving natural disasters over which Market Participants have no control that it may be appropriate to

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<sup>6</sup> PJM Resource Performance Filing at 18. (Catastrophic Force Majeure...will apply only where there has been a systemic failure of either (i) the transmission system, or (ii) the fuel delivery network in all or substantially all of the PJM area.")

avoid effectuating Tariff provisions that may operate in a punitive fashion in light of the circumstances.<sup>7</sup>

As noted, this proposed change represents a significant risk as PJM, either intentionally or unintentionally, seeks to apply this provision to Market Participants *on a retroactive basis*. Although it may be arguable that a Market Participant could somehow plan for this type of risk and recover the associated costs of such risk in its Capacity Performance bid offer, that opportunity is not available for non-Capacity Performance products such as the capacity that cleared in the 2011 through 2014 BRAs for the 2014/2015 through 2017/2018 Delivery Years, respectively, as well as future Base Capacity. By requesting an April 1, 2015 effective date, PJM's proposed new Tariff and Operating Agreement would assign substantial risk to Market Participants who participated in previous BRAs without the benefit of having been able to properly account for the risk in their bids. Specifically, the risk of more limited force majeure was not included in bids offered, or the prices cleared, in the May 2011 through 2014 BRAs for the 2014/2015 through 2017/2018 Delivery Years. If these force majeure provisions become effective on April 1, 2015, as requested by PJM, Market Participants who now have obligations via cleared offers for the intervening Delivery Years would be exposed to additional risk without compensation as of April 1, 2015.<sup>8</sup> PJM should clarify that the

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<sup>7</sup> For example, in *California Independent System Operator Corporation*, the Commission considered the instance of a major fire affecting Southern California and parts of Arizona (but not the entire CAISO region), when tripped generators and load alike physically were unable to meet their obligations to perform in accordance with their day-ahead schedules. The Commission determined that, absent relief, the deviation charges that would be assessed to reflect the differences in real time performance when compared to the day-ahead obligations of market participants "would effectively penalize generators for failing to perform to their day-ahead schedules" despite their lack of responsibility for the inability to deliver that was caused by the fire, and it therefore took action to avoid "such inequitable outcome." See 139 FERC ¶ 61,207 (2012) at P 65.

<sup>8</sup> It also appears that Base Capacity for the 2018/2019 Delivery Years and thereafter would not be allowed to recover a risk premium to account for force majeure risk.

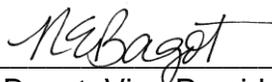
proposed new Catastrophic Force Majeure provision (1) will only be implemented on a prospective basis; and, (2) would only apply to Capacity Performance Resources.

These are the sorts of considerations — complex interactions between the energy and capacity markets, and related rules and operating agreements – that benefit from stakeholder review prior to a PJM filing. While EPSA appreciates the unique circumstances of the ELC process and the need to address Capacity Performance in RPM on a timely basis, there are clarifications and considerations necessary to the Resource Performance proposal that may have been resolved through stakeholder review and input prior to submission to the Commission.

### **III. CONCLUSION**

**WHEREFORE**, for the foregoing reasons, EPSA respectfully requests that the Commission consider these comments in developing its Order on the PJM Resource Performance Filing. EPSA requests that the additional clarification required for the PJM Resource Filing not impact the Commission’s action on the PJM Capacity Performance Filing, which should be implemented for the May 2015 BRA.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., January 20, 2015.



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