

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

**Calpine Corporation, Dynegy Inc., Eastern)
Generation, LLC, Homer City Generation,)
L.P., NRG Power Marketing LLC, GenOn)
Energy Management, LLC, Carroll County)
Energy LLC, C.P. Crane LLC, Essential)
Power, LLC, Essential Power OPP, LLC,)
Essential Power Rock Springs, LLC,)
Lakewood Cogeneration, L.P., GDF SUEZ)
Energy Marketing NA, Inc., Oregon Clean)
Energy, LLC and Panda Power Generation)
Infrastructure Fund, LLC,)
)
Complainants,)
)
v.)
)
PJM Interconnection, L.L.C.,)
)
Respondent.)**

Docket No. EL16-49-000

MOTION FOR LEAVE TO ANSWER AND ANSWER

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission” or “FERC”),¹ the Electric Power Supply Association (“EPSA”)² and the Indicated Complainants³ (collectively, “Movants”) hereby

¹ 18 C.F.R. §§ 385.212, 385.213 (2016).

² Celebrating its 20th anniversary in 2017, 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 For purposes of this pleading, the Indicated Complainants include all of the original complainants in the above-captioned proceeding, except for GDF SUEZ Energy Marketing NA, Inc.

respectfully request leave to answer⁴ and answer certain pleadings filed in response to Movants' proposed amendment to the March 21, 2016 complaint in the above-captioned proceeding.⁵ As discussed below, there is no merit to the procedural or substantive objections raised by certain intervenors and the Commission should grant the Complaint, as amended, without further delay.

It is essential that the Commission act decisively and expeditiously to address the existential threat to the PJM Interconnection, L.L.C. ("PJM") Reliability Pricing Model ("RPM")⁶ market from subsidized existing resources, including those that will receive "zero emission credits" under legislation (the "ZECs Legislation")⁷ recently enacted by the State of Illinois. As explained in the Amendment, the ZECs Legislation shows that the threat to the RPM market has increased dramatically since the Complaint was filed in March 2016, and there is growing evidence that other States in the PJM footprint are ready to award similar subsidies to prevent the retirement of uneconomic existing resources within their borders.⁸ As the Independent Market Monitor for PJM (the "IMM") warns, there is a very real danger that, absent

⁴ Although the Commission's procedural rules do not allow for answers to protests and answers as a matter of right, the Commission regularly accepts otherwise impermissible answers where, as here, they will assist the Commission's understanding of the record and its decision-making. *See, e.g., PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 at P 12 (2017); *Big Rivers Elec. Corp. v. Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,132 at P 28 (2017); *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,152 at P 17 (2016); *Arizona Pub. Serv. Co.*, 153 FERC ¶ 61,157 at P 26 (2015).

⁵ *See* Complaint Requesting Fast Track Processing, Docket No. EL16-49-000 (filed Mar. 21, 2016) (the "Complaint"); Motion to Amend, and Amendment to, Complaint and Request for Expedited Action on Amended Complaint, Docket No. EL16-49-000 (filed Jan. 9, 2017) (the "Amendment"). Movants have deliberately attempted to limit the scope of this answer as much as possible. Their decision not to address particular assertions or arguments should not be construed as acceptance of, or agreement with, such arguments or assertions.

⁶ This and other capitalized terms not otherwise defined herein have the meaning set forth in the PJM Open Access Transmission Tariff (the "Tariff").

⁷ Illinois 99th Gen. Assembly, S.B. 2814 (Dec. 7, 2016). A copy of the ZECs Legislation was provided in Attachment A to the Amendment.

⁸ *See* Ted Caddell, *Exelon's Crane Reports 'Monumental Year'*, RTO Insider (Feb. 8, 2017) ("*Monumental Year*"), <https://www.rtoinsider.com/exelon-zec-nuclear-generation-38376/>.

Commission action, “[c]ompetition in the markets could be replaced by competition to receive subsidies.”⁹

I.

ANSWER

A. **There Is No Merit To Intervenors’ Substantive Objections**

Significantly, PJM, the regional transmission organization whose market rules are at issue and the respondent in this proceeding, agrees with Movants that “Sell Offers in RPM Auctions submitted by Capacity Market Sellers of Existing Generation Capacity Resources could result in unjust and unreasonable rates when such resources are subsidized by state-approved out-of-market payments.”¹⁰ Similarly, the IMM agrees with Movants’ assessment of the threat to the markets and further agrees that the ZECs Legislation and “similar threats to competitive markets . . . enhance the urgency of creating an effective rule to maintain competitive markets by modifying market rules to address these subsidies.”¹¹ The Commission can and should give substantial weight to the views of PJM and the IMM, neither of which has a financial or political stake in the outcome of this proceeding, and the record in this proceeding provides ample support for a finding that the Tariff is unjust and unreasonable and must be reformed.

A number of intervenors would have the Commission refrain from acting on the theory that protecting the wholesale market would frustrate State policies.¹² As explained in the

⁹ Answer of the Independent Market Monitor for PJM at 4, Docket No. EL16-49-000 (filed Jan. 30, 2017) (“IMM Answer”).

¹⁰ Answer to Amended Complaint of PJM Interconnection, L.L.C. at 2-3, Docket No. EL16-49-000 (filed Jan. 30, 2017) (“PJM Answer”). *See also id.* at 3 (“PJM believes that the Complainants have identified an issue which is sufficient for the Commission to consider pursuant to section 206 of the [FPA].”).

¹¹ IMM Answer at 4.

¹² *See, e.g.*, Answer of the Environmental Defense Fund, Natural Resources Defense Council, and Sustainable FERC Project at 19, Docket No. EL16-49-000 (filed Jan. 30, 2017) (“EDF Answer”) (“Rather

Amendment, the Commission need not and should not decide, in this proceeding, whether federal law (the Federal Power Act (the “FPA”)), preempts State action (the ZECs Legislation), in this instance.¹³ At the same time, however, the Commission cannot allow State action to preempt the exercise of its duties under federal law, and it must, therefore, resist calls to abdicate its duty to ensure that wholesale rates are just and reasonable in the name of accommodating State policies. As the Commission has previously made clear: “While the Commission acknowledges the rights of states to pursue legitimate policy interests . . . , it is our duty under the FPA to assure just and reasonable rates in wholesale markets.”¹⁴ The Commission’s duty in this regard does not vary based on the legitimacy or illegitimacy of the State’s policy interests or the extent to which the State is or is not acting within its jurisdiction. In other words, the Commission’s duty to protect the wholesale markets is no different when Illinois is subsidizing nuclear power plants than it is when Ohio is subsidizing coal-fired power plants.

than applying special scrutiny to resources supported by state policies, the MOPR should instead be designed with special care to avoid mitigating such resources where possible.”); Motion to File Comments Out of Time and Comments of the Illinois Commerce Commission at 6, Docket No. EL16-49-000 (filed Feb. 3, 2017) (“ICC Comments”) (suggesting that it would be “ironic” if the Commission were “to impose a policy like MOPR in the capacity market context that would fail to respect legitimate state public policy”); Protest of Exelon Corporation at 19, Docket No. EL16-49-000 (filed Jan. 30, 2017) (“Exelon Protest”) (asserting that granting the amended Complaint would “frustrate state policies the Commission has recognized as legitimate”); Motion to Intervene Out-of-Time and Comments of the American Wind Energy Association at 8-9, Docket No. EL16-49-000 (filed Feb. 9, 2017) (“Applying a MOPR to mitigate environmental attribute revenues could place states in the untenable position of either abandoning legitimate state environmental policies that the Commission has long respected.”).

¹³ See Amendment at 11 n.46.

¹⁴ *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at P 143, *on reh’g*, 135 FERC ¶ 61,228, *on reh’g*, 137 FERC ¶ 61,145 (2011), *on reh’g*, 138 FERC ¶ 61,194 (2012), *aff’d sub nom. New Jersey Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3rd Cir. 2014). See also, e.g., *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066 at P 34 (2015) (“*PJM II*”) (citation omitted) (finding that “subjecting state-sponsored resources to the MOPR does not prevent the states from pursuing their own public policy requirements” and is, instead, “intended to ensure that whatever subsidy is received does not discriminatorily affect the outcome of the PJM auction.”); *ISO New England Inc.*, 158 FERC ¶ 61,138 at P 7 (2017) (“*ISO-NE II*”) (citation omitted) (“The Commission has acknowledged the right of states to pursue their own policy interests but must be mindful of state regulatory actions that impinge on FERC-jurisdictional market mechanisms to set price.”).

Concerns that granting the Complaint, as amended, will threaten renewable energy credits (“RECs”) and other State-sponsored renewables programs¹⁵ are baseless. While it is easy to understand why opposing parties would wish to obfuscate matters by wrapping subsidies for nuclear power plants in the renewables mantle, the fact is that Movants are not seeking, in this proceeding, to apply the Minimum Offer Price Rule (“MOPR”) to existing or new renewable resources that receive RECs.¹⁶ The Commission should remain focused on the issue at hand, uneconomic retention, and reject efforts to confuse and politicize matters by falsely claiming that this case is about RECs.

Similarly misplaced are claims that exemptions from buyer-side mitigation for new renewable resources somehow justify leaving uneconomic existing resources subsidized through zero emissions credits unmitigated.¹⁷ As an initial matter, the Commission’s acceptance of PJM’s proposal to limit the applicability of the current MOPR (for new resources) to combustion turbine and combined cycle resources and to exclude renewable and other resources was not premised on the excluded resources’ environmental attributes or any stated intent to accommodate State environmental policies. Rather, the Commission was focused on the fact that combustion turbine and combined cycle resources have relatively low costs of construction and are thus deemed more “likely to raise price suppression concerns” than the excluded resources.¹⁸ Entirely different cost considerations apply where retention of uneconomic resources is involved, because, as Exelon Corporation (“Exelon”) notes with respect to nuclear resources, “[t]heir cost

¹⁵ See Exelon Protest at 2; EDF Answer at 18-20; ICC Answer at 5-6.

¹⁶ Indeed, the proposed definition of “Existing MOPR Screened Generation Resource” expressly excludes Intermittent Resources. See Complaint at 34.

¹⁷ See, e.g., Exelon Protest at 19-20; ICC Comments at 5-6; EDF Comments at 12-14.

¹⁸ *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 166 (2013), *on reh’g*, *PJM II*, 153 FERC ¶ 61,066.

of construction is sunk”¹⁹ As a result, the Commission’s stated rationale for the categorical exclusion of certain resources from the MOPR for *new* resources does not carry over to a MOPR for subsidized *existing* resources.

It is true enough that the Commission acknowledged State environmental programs in approving specific exemptions from buyer-side mitigation in the New York and New England capacity markets.²⁰ But these orders provide no basis for a blanket exclusion of low or zero emissions resources generally. First, these exemptions were restricted to intermittent renewable resources and did not cover nuclear resources.²¹ Second, these exemptions were subject to megawatt caps intended “to further limit any risk that the[] exempted resources will impact [capacity] market prices.”²² These megawatt caps, 200 MW in New England²³ and proposed to be 1,000 MW in New York,²⁴ would be inadequate to accommodate either of the resources being subsidized under the ZECs Legislation.

Finally, the Commission should reject claims by Exelon and others that allowing resources subsidized under the ZECs Legislation to suppress clearing prices in the RPM Auction

¹⁹ Exelon Protest at 18.

²⁰ See *ISO New England Inc.*, 147 FERC ¶ 61,173 at PP 81-88 (2014) (“*ISO-NE I*”), *on reh’g*, 150 FERC ¶ 61,065 (2015); *New York Pub. Serv. Comm’n v. New York Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022 at PP 36, 47-51 (2015) (“*NYPSC*”), *on reh’g*, 154 FERC ¶ 61,088 at P 12 (2016). Interestingly, the Commission approved the New England exemption over objections from Exelon, which now takes a very different position. See *ISO-NE I*, 147 FERC ¶ 61,173 at P 71.

²¹ See *NYPSC*, 153 FERC ¶ 61,022 at P 51 (stating that the renewable resource exemption “should be limited to renewable resources that are both purely intermittent and that have relatively low capacity factors and high development costs”); *ISO-NE II*, 158 FERC ¶ 61,138 at P 10.

²² *NYPSC*, 153 FERC ¶ 61,022 at P 51 See also *ISO-NE I*, 147 FERC ¶ 61,173 at P 63 (stating that the purpose of the cap is to act as “a backstop to prevent systematic downward pressure on prices”).

²³ See *ISO-NE I*, 147 FERC ¶ 61,173 at P 83.

²⁴ Compliance Filing and Request for Commission Action within Sixty Days, Transmittal Letter at 10, Docket No. ER16-1404-000 (filed Apr. 13, 2016).

will “promote[] efficient market outcomes” by accounting for environmental externalities.²⁵ At the outset, it is worth noting that, when the subsidy was on the other foot, Exelon took a very different position, strenuously (and rightly) opposing an exemption from buyer-side market power mitigation for renewable resources that, it said, would “undermine market fundamentals, shake investor confidence in the markets, and threaten the viability of baseload resources, ultimately undermining the long-term sustainability of the [region’s] markets.”²⁶ It went on to argue that “the MOPR exemption for renewable resources will significantly suppress market prices, resulting in price discrimination in violation of the FPA.”²⁷

For its part, the Commission has rejected the proposition that it should tolerate price suppression resulting from State mandates on efficiency grounds.²⁸ Indeed, the Commission has expressly rejected such an *ad hoc* approach to accounting for factors other than reliability in the RPM market, explaining that:

RPM itself . . . has no feature to explicitly recognize, for example, environmental or technological goals, nor does it contemplate reliability concerns beyond a three-year forecast. If PJM market participants agree that RPM should account for resource attributes that reflect broader objectives than three-year forward reliability, then PJM and its stakeholders should begin a process to consider how to incorporate these features into RPM’s market design. In this way, all capacity resource suppliers will be able to receive a non-discriminatory market clearing price that reflects these values in addition to reliability. But allowing selected new projects to bid into RPM as price-takers because they are state-mandated would undermine the objective of RPM to procure the least-cost,

²⁵ Exelon Protest at 29. *See also* EDF Answer at 1; ICC Comments at 7; AWEA Comments at 5-9.

²⁶ Joint Comments in Support and Limited Protest of Entergy Nuclear Power Marketing, LLC, and Exelon Corporation at 5, Docket No. ER14-1639-000 (filed Apr. 22, 2014).

²⁷ Limited Request for Rehearing of Exelon Corporation and Entergy Nuclear Power Marketing, LLC at 4, Docket No. ER14-1639-001 (filed June 30, 2014).

²⁸ The notion that the Commission should accept State-mandated subsidies as a tool for improving the efficiency of FERC-regulated wholesale markets would also appear to raise significant jurisdictional issues. As noted, however, Movants are not asking the Commission to opine on whether the ZECs legislation is preempted.

competitively-priced combination of resources necessary to meet the region's reliability objectives on a three-year forward basis.²⁹

The ZECs Legislation provides a perfect example of why any attempt to account for environmental or other attributes besides reliability in the RPM market must be made on a non-discriminatory, market-wide basis and not on an inherently discriminatory State-by-State basis. Even making the counterfactual assumption that nuclear resources are uniquely capable of advancing carbon reduction goals, there are nuclear resources outside Illinois that are just as capable of providing the same benefits as the Illinois nuclear resources that will receive zero emission credits.

Movants would be the first to agree that wholesale market prices are “depressed,” in no small measure due to “market distortions” and preferential treatment afforded to certain resources, including demand response resources.³⁰ But that does not mean that any and all nuclear retirements are “premature[]”³¹ such that the Commission ought to tolerate further market distortions that result from subsidies paid to prevent their retirement. Indeed, the Commission recently reached the exactly opposite conclusion with respect to generator retirements in New England, finding that “[t]he main reason why resources, primarily nuclear, coal, and oil-fired units, are retiring is because they have become uneconomic due to market factors, including the low price of natural gas, and environmental regulations that increase the cost of operating fossil fuel generation.”³²

²⁹ *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145 at P 90 (2011).

³⁰ See Motion to Intervene and Comments of the Nuclear Energy Institute at 8, Docket No. EL16-49-000 (filed Jan. 30, 2017).

³¹ *Id.*

³² *ISO-NE II*, 158 FERC ¶ 61,138 at P 78 (footnote omitted).

B. There Is No Merit To Intervenors' Procedural Objections

Various intervenors – but notably not the respondent, PJM – allege that, with the abandonment of subsidy schemes proposed by subsidiaries of American Electric Power Company, Inc. (“AEP”) and FirstEnergy Corp. (“FirstEnergy”), the Complaint is now moot³³ and that Movants are somehow attempting “to rope a new and separate complaint against PJM into an existing complaint”³⁴ Leaving aside the fact that these same parties would no doubt have urged that any new complaint be rejected as duplicative of the pending Complaint, these allegations rest on a fundamental misunderstanding – or, more likely, a deliberate mischaracterization – of the Complaint. As noted in the Amendment, the Complaint was directed from the outset at the threat to the RPM market from subsidized existing resources and the AEP and FirstEnergy schemes were cited as “‘examples of [this] serious and growing threat to the RPM market’”³⁵ The ZECs Legislation is a new example of this same threat. As the IMM put it, the ZECs Legislation thus “amplifies the concerns about the threat to competitive markets posed by subsidies designed to forestall retirements of uneconomic and uncompetitive generating units raised in the . . . Complaint” and “further justifies granting the [C]omplaint and reforming PJM’s [MOPR].”³⁶

³³ See Motion of the Dayton Power and Light Company, East Kentucky Power Cooperative, Inc. and FirstEnergy Service Company to Dismiss Complaint, to Oppose Acceptance of Motion to Amend Complaint and to Dismiss Amendment to the Complaint and Request for Expedited Action at 2, Docket No. EL16-49-000 (filed Jan. 30, 2017) (“DP&L Motion”); Exelon Protest at 2.

³⁴ ICC Comments at 8. See also Protest of Dominion Resources Services, Inc., American Municipal Power, Inc., American Public Power Association, Old Dominion Electric Cooperative, PJM Industrial Customer Coalition, National Rural Electric Cooperative Association and Public Power Association of New Jersey at 6, Docket No. EL16-49-000 (filed Jan. 30, 2017) (“Dominion Protest”) (characterizing the Amendment as “an entirely new complaint”); EDF Answer at 7 (arguing that the Amendment “is an attempt to inappropriately repurpose Movants’ prior claims . . . to address their new concerns”).

³⁵ Amendment at 4 (quoting Complaint at 5). See also, e.g., *id.* at 11 (“The ZECs Legislation provides further evidence that out-of-market subsidies to existing resources are out of control, not just in PJM but in other organized markets as well.”).

³⁶ IMM Answer at 2.

Notwithstanding various parties' best efforts to redefine the scope of this proceeding, the Complaint was never focused solely on the "narrow issue"³⁷ of the AEP and FirstEnergy schemes; rather, it was always focused on the broad issue of the growing threat to the PJM capacity market posed by subsidized existing resources. Certain intervenors suggest that Movants' "need to alter the relief sought [in the Complaint]" demonstrates that the Amendment is a new complaint.³⁸ But the only proposed alterations to the relief proposed relate to timing; the substantive relief requested remains unchanged. In fact, Movants are advocating exactly the same revisions to the Tariff, albeit in time for the Base Residual Auction for the 2020/2021 Delivery Year (the "2020/2021 BRA") rather than for that for the 2019/2020 Delivery Year, and the same referral back to the PJM stakeholder process to develop a longer-term solution, albeit in time for the Base Residual Auction for the 2021/2022 Delivery Year (the "2021/2022 BRA") rather than the 2020/2021 BRA. That the proposed Tariff revisions, while "narrowly-tailored" to subsidies like those proposed by AEP and FirstEnergy,³⁹ would be broad enough to cover zero emission credits is clear from Exelon's protest to the original Complaint, in which Exelon objected that the proposed tariff language "makes no accommodation whatsoever for state actions taken to reduce carbon emissions through the retention of zero emission nuclear facilities."⁴⁰

³⁷ Dominion Protest at 5.

³⁸ DP&L Motion at 12.

³⁹ Complaint at 4.

⁴⁰ Limited Protest of Exelon Corporation at 6, Docket No. EL16-49-000 (filed Apr. 11, 2016). *See also* EDF Answer at 3-4 (stating that the Complaint "proposed a very broad relief mechanism for the 2019/2020 delivery year that would subject a wide swath of generation resources to PJM's [MOPR] for the first time") (citation omitted).

C. The Commission Should Grant The Relief Requested In The Amended Complaint

The Commission should grant the relief requested in the Complaint, as amended. Specifically, the Commission should (1) direct PJM to revise the Tariff as proposed in the Complaint or in some other manner that will address the threat from subsidized existing resources in time for the Base Residual Auction for the 2020/2021 BRA; and (2) establish concrete deadlines for PJM to conduct a stakeholder process and to propose a longer-term remedy for the problem of subsidized existing resources.

To be sure, PJM opposes Movants' request for summary relief in time for the 2020/2021 BRA, because it believes "material harm to the market is not likely to occur immediately but rather over the longer term."⁴¹ But the fact that PJM may think the immediate harm is small does not justify running the 2020/2021 BRA under rules that are, as PJM has conceded, unjust and unreasonable.⁴² Under the FPA, unjust and unreasonable rates are unlawful,⁴³ and "not even 'a little unlawfulness is permitted'"⁴⁴

Exelon and others claim that the requested relief for the 2020/2021 BRA is "premature," because "no recipients of [zero emission credits] payments have been selected, and the program has yet to have *any* effect on the market."⁴⁵ That the zero emission credits have not been awarded is of no moment when it has been crystal clear from the get-go that such credits will flow to only two plants: the Quad Cities Generating Station and the Clinton Power Station. The

⁴¹ PJM Answer at 3.

⁴² *Id.* at 2-3. *See also id.* at 3 ("PJM believes that the Complainants have identified an issue which is sufficient for the Commission to consider pursuant to section 206 of the [FPA].").

⁴³ *See* 16 U.S.C. § 824d(a) (2012); 16 U.S.C. § 824e(a) (2012).

⁴⁴ *Consumer Fed'n of Am. v. FPC*, 515 F.2d 347, 358 n.64 (D.C. Cir. 1975).

⁴⁵ Exelon Protest at 11 (emphasis in original). *See also* ICC Comments at 7-8; Opposition and Comments of the People of the State of Illinois to the Amended Complaint and Support of the Motion to Dismiss Filed by Dayton Power and Light et al. at 3-5, Docket No. EL16-49-000 (filed Jan. 30, 2017) ("Illinois Comments").

Governor of Illinois acknowledged as much when he signed the ZECs Legislation into law, touting the fact that the legislation “ensures the Clinton and Quad Cities power facilities remain open for another 10 years.”⁴⁶ Since then, Exelon has reversed its decision to retire the two plants.⁴⁷ For the PJM market, that means over 1,000 MW of subsidized, uneconomic generation will be offered into the 2020/2021 BRA that would otherwise have been retired. The impact on the auction will be no different than that of a subsidized new resource. Under the circumstances, assertions that the ZECs Legislation will not impact the 2020/2021 BRA simply do not pass the laugh test.

Even if the Commission does not find Movants’ proposed remedy for the 2020/2021 BRA to be just and reasonable, it must put some remedy in place if it agrees with Movants, PJM and the IMM that the existing rule is unjust and unreasonable. In this regard, the Commission should bear in mind that, notwithstanding certain intervenors’ assertions to the contrary, Movants do *not* bear a “dual burden under FPA Section 206 to demonstrate (1) that the current MOPR is unjust, unreasonable, unduly discriminatory or preferential, and (2) that their proposed remedy is just and reasonable.”⁴⁸ Rather, once an existing rate has been shown to be unjust and unreasonable or unduly discriminatory or preferential, the Commission has “ha[s] an obligation to fix the just and reasonable rate under section 206 of the FPA.”⁴⁹

⁴⁶ See Office of the Governor, Press Release, *Governor Signs Legislation to Protect Jobs, Ratepayers and Taxpayers* (Dec. 7, 2016), <https://www3.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=1&RecNum=13923>.

⁴⁷ See *Monumental Year*. See also PJM, *Withdrawn Deactivations (as of December 22, 2016)* (reflecting the withdrawal of the retirement notice for the Quad Cities Generating Station), <http://pjm.com/~media/planning/gen-retire/withdrawn-deactivation-requests.ashx>.

⁴⁸ Dominion Protest at 8 (citing *Blumenthal v. FERC*, 552 F.3d 875, 888 (D.C. Cir. 2009) (“*Blumenthal*”)).

⁴⁹ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,216 at P 94 (2013), *on reh’g sub nom. Illinois Commerce Comm’n*, 756 F.3d 556 (7th Cir. 2014). See also *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014) (“*FirstEnergy*”); *Maryland Pub. Serv. Comm’n v. FERC*, 632 F.3d 1283, 1285

Regardless of whether the Commission modifies the MOPR in time for the 2020/2021 BRA, it should establish concrete deadlines for PJM to conduct a stakeholder process and to propose tariff revisions addressing the problem of subsidized existing resources. Movants appreciate PJM's having initiated a stakeholder process to consider the issue, but strongly disagree with suggestions that the Commission should simply allow that process "to run its course,"⁵⁰ with no concrete deadlines or guidance from the Commission. In its April 11, 2016 answer to the Complaint, PJM invited the Commission to require it to conduct a stakeholder process and make a filing in time for the 2020/2021 BRA.⁵¹ Nonetheless, PJM has only taken the most tentative steps towards initiating such a process in the ensuing 10 months.⁵² Under the circumstances, PJM's request, in response to the Amendment, that the Commission "direct [it] to submit a Tariff filing no later than December 1, 2017"⁵³ should be recognized as a cry for help from the Commission. The Commission should not ignore that cry.

n.1 (D.C. Cir. 2011) ("*Maryland PSC*"); *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 454 (D.C. Cir. 1988); *New England Power Generators Ass'n v. ISO New England Inc.*, 153 FERC ¶ 61,222 at P 35 (2015). In *Maryland PSC*, the U.S. Court of Appeals for the District of Columbia Circuit made clear that the "dual burden" language in *Blumenthal* cited in the Dominion Protest, *see supra* note 48, is not good law, stating that this language was "unnecessary to our holding and inaccurate insofar as it implied that a challenge to rates must propose alternative rates that are just and reasonable" *See Maryland PSC*, 632 F.3d at 1285 n.1. *See also FirstEnergy*, 758 F.3d at 353 ("[I]t is only FERC who is required to shoulder the "dual burden" when it institutes a section 206 proceeding.").

⁵⁰ Exelon Protest at 17. *See also* Dominion Protest at 14; Illinois Comments at 9-11.

⁵¹ Answer of PJM Interconnection, L.L.C. at 2-3, Docket No. EL16-49-000 (filed Apr. 11, 2016).

⁵² *See* PJM Answer at 5.

⁵³ *Id.* at 5 (internal footnote omitted). Movants had proposed that PJM be required to make a filing by November 1, 2017, *see* Amendment at 18, but do not object to PJM's proposed December 1, 2017 deadline.

II.

CONCLUSION

WHEREFORE, for the foregoing reasons, Movants respectfully request that the Commission accept this answer and issue an order granting the Complaint, as amended, in time for the 2020/2021 BRA.

Respectfully submitted,

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On behalf of **Oregon Clean
Energy, LLC**

C.P. CRANE LLC

By: /s/ Jennifer Phillips
Jennifer Phillips
Vice President
Asset Management – East
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570 Lake Cook Road, Suite 126
Deerfield, IL 60015

On behalf of **C.P. Crane LLC**

**ESSENTIAL POWER, LLC
ESSENTIAL POWER OPP, LLC
ESSENTIAL POWER ROCK SPRINGS, LLC
LAKEWOOD COGENERATION, L.P.**

By: /s/ Jacob Pollack
Jacob A. Pollack
Senior Vice President &
General Counsel
Cogentrix Energy Power
Management, LLC
9405 Arrowpoint Blvd.
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Counsel for the **Essential Power
PJM Companies**

**PANDA POWER GENERATION
INFRASTRUCTURE FUND, LLC**

By: /s/ Robert P. O’Connell
Robert P. O’Connell
Director, Regulatory Affairs
Panda Power Generation
Infrastructure Fund, LLC
5001 Spring Valley, Suite 1150 West
Dallas, TX 75244

On behalf of **Panda Power
Generation Infrastructure Fund,
LLC**

Dated: February 14, 2017

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 14th day of February, 2017.

/s/ Stephanie S. Lim
Stephanie S. Lim