UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

State Policies and Wholesale Markets Operated by ISO New England, Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.	**)))))**	**Docket No. AD17-11-000**

POST-CONFERENCE COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

The Electric Power Supply Association ("EPSA")[1] respectfully submits the following comments[2] on the technical conference[3] held by the Federal Energy Regulatory Commission ("FERC" or "Commission") to discuss the interplay between state policy goals and the wholesale markets operated by ISO New England, Inc. ("ISO New England"), New York Independent System Operator, Inc. ("NYISO"), and PJM Interconnection, L.L.C. ("PJM"). The Commission invited comments[4] on the topics discussed during the technical conference and in response to questions listed in the April 28, 2017 Supplemental Notice[5] issued before the conference. Notably, the May 23 Notice Inviting Post-Technical Conference Comments ("Post-Conference Notice") laid out five potential paths forward with respect to the issues discussed at the public conference, inviting comment on those paths

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[1] 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.

[2] 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] *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Notice of Technical Conference, Docket No. AD17-11-000 (Mar. 3, 2017).

[4] *Supra,* Notice Inviting Post-Technical Conference Comments, Docket No. AD17-11-000 (May 23, 2017).

[5] *Supra,* Supplemental Notice of Technical Conference, Docket No. AD17-11-000 (Apr 28, 2017).

or alternative suggestions. Additionally, the Post-Conference Notice raised several questions as to timing, guiding principles and objectives, feasibility of implementation, sustainability of proposed paths forward, and the Commission's role or process to reconcile the competitive wholesale framework and state interest in the resource preferences.

Above all, the guiding principle of the national electricity system at this critical juncture must be for the Commission to defend and protect its jurisdictional wholesale markets in order to ensure safe, reliable and efficient delivery of electricity at the lowest reasonable cost. These principles were first envisioned by Congress[6] and have been overseen by FERC on a bipartisan basis for decades. To protect these markets and the resultant market-based solutions, investments and innovations, the Commission must act immediately to insulate them from current distortive state actions while all stakeholders collaborate on identifying market structures that help address defined public policy goals.

I. OVERVIEW

EPSA members are among the largest competitive suppliers in the three Eastern ISOs/RTOs, having invested billions of dollars in these markets based on strong investment signals that have been present in robust competitive wholesale markets. As attested to at the conference by numerous panelists and state representatives, competitive regional markets have brought extensive market efficiency and benefits to states and consumers alike, and remain reliable, efficient and low cost.[7] Even in the face of growing interest by

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[6] For legislative history of competitive wholesale electricity markets, *See Statement of John E. Shelk, President and CEO of Electric Power Supply Association*, United States Department of Energy Hearing on Quadrennial Energy Review, Second Installment "Electricity: Generation to End Use," (February 4, 2016), pp. 3-6, https://epsa.org/wp-content/uploads/2017/06/EPSA-Shelk-QER-1.pdf.

[7] "And let's face it PJM has gone through a significant transition. We have lost probably at least 20,000 megawatts of only…coal-fired plants and the market essentially has replaced that with competitive investment. We depend upon that market integrity in order to preserve [reliability]. We will be sitting here in a much different spot had all of those investors not come in, put their capital at risk, taken on that risk for themselves on behalf of PJM and all customers if you will to put forth that investment and then essentially replaced with very little fanfare, a significant amount of retiring generation. That's what we are trying to make sure we can preserve, that confidence that the investors have the market will in fact be equitable in the fair shot." (Direct

some states to now tip the scales toward certain preferred resources or resource attributes, the ISO/RTO markets remain the preferred vehicle to ensure reliable and cost efficient electricity delivery.[8] Starting from that premise, discussion at the technical conference tended to evoke a Utopian vision in which competitive ISO/RTO markets can continue to function in light of or in tandem with significant state actions or out of market arrangements undertaken to attain specific resource entry or maintenance.[9] This vision is not realistic, and the Commission should clearly and firmly communicate to the states that they cannot have it both ways. State efforts to subsidize certain uneconomic resources must be mitigated to protect the integrity of the wholesale markets and their role in ensuring resource adequacy in the long term.

Quite simply, ***it is critical*** that regional wholesale markets are not distorted or subverted by state actions, rendering wholesale electric rates no longer just and reasonable and threatening the reliability and efficiency of these expansive interstate markets which serve millions of customers. We find ourselves amid an evolution, and we must work together to find a reasonable, fair and functional way forward. As discussed during the technical conference, there remain many open questions as to how that future system will

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from transcript, which includes some typos), Andrew Ott, President and Chief Executive Officer, PJM Interconnection, L.L.C., *See May 1 Transcript* at page 240, lines 24-25; page 241, lines 1-13.

[8] "And I guess Massachusetts has demonstrated its commitment to markets from the very beginning. We were all in on competition, one of the first states to do that and I am here to tell you that the administration in Massachusetts is still very much committed to that….The devil is in the details but we are exciting [sic] about rolling up our sleeves with our fellow states in figuring out if that's something that we can do that will still allow the markets to function as they should and they have provided tremendous benefit." Angela M. O'Connor, Chairman, Department of Public Utilities of Massachusetts, *See May 1 Transcript*, page 30, lines 3-7; page 31, lines 5-9.

[9] "So there are multiple things in our policy framework that we try to solve for and I think that's very critical to understand from the state perspective. So the economic efficiency of the wholesale power market is one piece of our energy equation, we view it as a very important piece of the equation in addition to these other elements that we are trying to solve for….[G]iven that none of us can predict the future we believe it is very important for states to have the ability to develop the policies in collaboration with the local markets with customer preference in mind, with stakeholders to meet the policy objectives as well as the system requirements. So we do see wholesale markets as a critical part of this but one part of our integrated energy policy framework." Janet Joseph, Vice President for Innovation and Strategy, New York State Energy Research and Development Authority, *See May 1 Transcript*, page 131, Lines 8 – 14; page 132, lines 3 – 11.

develop, and what new or additional technologies may become integral over time. That noted, it will be a drastic and irreversible mistake to allow uncompetitive policies or rules to interfere with the FERC-jurisdictional wholesale energy and capacity markets. Without decisive action to protect competitive prices in the wholesale markets, state actions to select significant, individual resources will pave the way for the long-term erosion and dissolution of the wholesale markets.[10] Without proper wholesale energy and capacity price formation, market participant incentives are distorted and the investment of private capital – the bedrock advantage of competitive markets – becomes too risky to bear. This upends the very mission and benefit of competitive wholesale markets, and at that point the toothpaste can't be forced back into the tube. This is a real risk, and the loss to consumers may not be fully felt or realized until it is too late to turn back. Therefore, addressing the array of issues discussed at the technical conference requires the Commission, market operators, market participants, and stakeholders to develop and implement multiple mechanisms and reforms that address certain identified goals while maintaining the healthy operation of competitive regional wholesale markets.

II. COMMENTS

A. Immediate Action Is Needed to Protect Wholesale Markets

Out-of-market, price distortive state actions have been taken and more are currently under consideration in certain states in the three Eastern ISOs/RTOs. Therefore, EPSA

10 "[W]hile artificial price suppression through out-of-market subsidies may provide a short-term "benefit" to buyers of electricity (as does any exercise of buyer market power), it deprives ratepayers of the benefits of competitive wholesale markets in the medium- and long-term. Ratepayers benefit from efficient market exit and entry, as this provides investment, innovation, competitive prices, and lower costs over time. Since the ZEC program artificially distorts market exit and entry decisions, ratepayers in all the affected wholesale markets will ultimately bear the long-term cost of these distortions." *Declaration of David W. DeRamus, PH.D.,* Electric Power Supply Association et. Al. v. Anthony M. Star, et. al, U.S. District Court for the Northern District of Illinois, Eastern Division, Case No. 17-cv-01164, ¶ 94, (submitted March 31, 2017), available at https://epsa.org/wp-content/uploads/2017/06/Ex-A_DeRamus-Declaration_38-3.pdf.

urges the Commission to immediately approve comprehensive buyer side mitigation mechanisms (a.k.a., Minimum Offer Price Rule, or "MOPR") to insulate the wholesale markets in the face of those out-of-market actions. This is Path 5 from the technical conference discussion: "an approach that would minimize the impact of state-subsidized resources on wholesale market prices by expanding the existing scope of the minimum offer price rule to apply to both new and existing capacity resources that participate in the capacity market and receive state support."[11] In order to address the out-of-market actions contemplated in several states, an adequate MOPR must set minimum bids for all existing and new resources that receive targeted or discriminatory revenue or revenue certainty from sources outside of the ISO/RTO markets. Application of a comprehensive MOPR would be appropriate to ensure just and reasonable rates and is entirely within FERC's authority.

Rather than "near-term" and "long-term" approaches, as referenced in the Post-Conference Notice, EPSA urges the Commission to act forthwith on outstanding MOPR amendments and mechanisms. In its MOPR orders FERC should provide guidance and directives for the development of farther reaching energy and capacity market rule reforms that incorporate into the wholesale capacity and/or energy market price particular attributes that are identified and deemed valuable by each Eastern ISO/RTO. These proceedings should be utilized to initiate the development of regional market reforms on an expedited basis.

Quite simply, it is FERC's responsibility to ensure that any state actions neither affect (much less distort) the competitive wholesale markets, nor how resources enter and can participate in those markets.[12] While several state representatives said that they would like

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11 Post-Conference Notice, page 2.

12 *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145 at P 3 (2011) ("Our intent is not to pass judgment on state and local policies and objectives with regard to the development of new capacity resources, or

to make decisions regarding resource choices, the Commission is under no obligation to allow state subsidized resources to participate, unmitigated, in the wholesale capacity markets. The states must accept that when they make resource decisions independent of their regional competitive wholesale market, those decisions may carry with them additional costs or obligations as they relate to FERC-jurisdictional wholesale markets.

However, developing and strengthening a comprehensive MOPR mechanism is not limited to Path 5. The same MOPR is instrumental as a mechanism which implements Path 2 by ensuring state-supported resources that participate in the wholesale markets are "subject to adjustments necessary to maintain certain wholesale market prices consistent with the market results that would have been produced had those resources not been state-supported."[13]

Importantly, the Commission can act on these mechanisms quickly as there are proceedings currently awaiting action from the Commission, calling for amended MOPR or buyer-side mitigation mechanisms for both the PJM[14] and NYISO[15] markets. Notably, these are both markets which have had significant price-distorting out-of-market actions approved

unreasonably interfere with those objectives. We are forced to act, however, when subsidized entry supported by one state's or locality's policies has the effect of disrupting the competitive price signals that PJM's RPM is designed to produce, and that PJM as a whole, including other states, rely on to attract sufficient capacity."); *ISO New England, Inc.*, 135 FERC ¶ 61,029 at P 170 (2011) (acknowledging that States have the right "to pursue policy interests within their jurisdiction," but stating that the Commission must act "where pursuit of those policy interests allows uneconomic entry of [out-of-market] capacity into the capacity market that is subject to our jurisdiction, with the effect of suppressing capacity prices in those markets"); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at P 143 (2011) ("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…. Because below-cost entry suppresses capacity prices and because the Commission has exclusive jurisdiction over wholesale rates, the deterrence of uneconomic entry falls within the Commission's jurisdiction, and we are statutorily mandated to protect the [capacity market] against the effects of such entry.").

13 Post-Conference Notice, page 1.

14 *Motion to Amend and Amendment to March 21, 2016 Complaint of Calpine Corporation, et. al. and Request for Expedited Action on Amended Complaint*, filed by the Electric Power Supply Association, et. al., Docket No. ER16-49-000, (filed January 9, 2017), ("Motion to Amend PJM MOPR Complaint").

15 *Request for Expedited Action to May 10, 2013 Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc.,* filed by the Electric Power Supply Association, Docket No. EL13-62-002 (filed January 9, 2017).

by states within their respective regions[16] and therefore need protective action from the Commission on an expedited basis. As stated in the PJM MOPR complaint proceeding,

> In Movants' view, State-approved subsidies that, by design, interfere with economic signals for entry and exit represent an existential threat to the organized wholesale markets, and it is, therefore, imperative that the Commission act promptly and decisively to address this threat.[17]

It should come as no surprise that the MOPR complaint amendment, and the underlying MOPR complaint[18] filed over a year ago, rest on the same concerns that were raised at the FERC technical conference regarding the imminent threat to the wholesale markets by significant state-sponsored out-of-market subsidy payments or arrangements. As a first and immediate step, the Commission must approve comprehensive MOPR mechanisms to ensure such subsidies to favored new or existing resources do not artificially suppress prices in the wholesale capacity auctions.[19]

B. Mechanisms to Ensure Viability of Wholesale Markets

Consideration of the five paths discussed at the technical conference is useful, but it must be noted that no *one* path represents a solution to all the concerns and issues facing

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[16] New York Public Service Commission ("NYPSC"), *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard at 119, Case Nos. 15-E-0302, *et al.* (Aug. 1, 2016).

Also, see Illinois 99th Gen. Assemb., S.B. 2814 (Dec. 7, 2016) (Zero Emissions Credit or "ZECs" Legislation). The Governor of Illinois signed the ZECs Legislation on December 7, 2016. *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.

[17] Motion to Amend PJM MOPR Complaint, page 2.

[18] Complaint Requesting Fast Track Processing, *Calpine Corporation Et al. Complainants v. PJM Interconnection, L.L.C., Respondent,* Docket No. EL16-49-000 (filed Mar. 21, 2016).

[19] "The current proposals for subsidies demonstrate that the markets need protection against subsidized, noncompetitive offers from existing as well as new resources. The current minimum offer price rule (MOPR) only addresses subsidies for new entry. The MOPR should be expanded to address subsidies for existing units, and this should be done expeditiously. This issue will not become moot unless and until the MOPR is reformed. Action is needed to correct the MOPR immediately. An existing unit MOPR is the best means to defend the PJM markets from the threat posed by subsidies intended to forestall retirement of financially distressed assets." 2017: Quarterly State of the Market Report for PJM: January through March (issued May 11, 2017), by Monitoring Analytics, LLC., *Introduction: 2017 Q1 In Review*, p. 2 available at http://monitoringanalytics.com/reports/PJM_State_of_the_Market/2017.shtml.

the markets – either short-term or long-term. While implementation of a comprehensive MOPR mechanism is a necessary immediate fix, more is needed to protect the integrity of the Eastern ISO/RTO markets today and going forward. Broader reforms to both the capacity market structures and energy market design must be considered. States are acting, and may consider additional action, outside of the FERC-jurisdictional markets in order to address a myriad of policy objectives (or requests from individual market resources) such as those discussed at the May 1 and 2 technical conference. Any accommodation of state actions in FERC's markets must ensure that the cost of such actions is not forced on other sellers in the markets, but is borne by the consumers on whose behalf the subsidy is undertaken.

To assess broader wholesale energy or capacity market reforms, there must be discussion determining which state policy objectives can be defined, first, and how to address those at the regional (wholesale) level, second. This discussion takes us down Path 4 from the Post-Conference Notice as we consider whether policy objectives can be priced in to the wholesale markets. The challenge will be to define those resource attributes (e.g., flexibility) or externalities (e.g., carbon emissions) that should be integrated into the wholesale market, and then to develop a mechanism to value those qualities in a resource-neutral manner. EPSA is confident that, if these objectives can be identified, the ISOs/RTOs and market stakeholders can establish workable and efficient means to integrate these objectives into competitive market structures. Notably, the Commission recognized as part of this path that certain state policy choices may not readily be valued and integrated into the wholesale markets, thereby requiring a strong MOPR and "accommodation mechanisms" (e.g., alternative capacity clearing mechanisms discussed below) to counter negative impacts to the wholesale market. Thus, any mechanisms associated with 'accommodating' state actions (Path 2) must be implemented as permanent features of the markets. Hopefully these systems will become dormant as states rely on the market-based approaches, but should be left in place to lessen the impact of future out-of-market actions should they occur.

While EPSA acknowledges that consideration of such attribute or externality valuation is worth pursuing, implementation of a comprehensive MOPR is needed urgently. Concurrently, regional markets are assessing alternative capacity market clearing mechanisms such as NRG's two-tiered capacity pricing proposal[20] or ISO New England's Competitive Auctions with Subsidized Policy Resources, ("CASPR").[21] PJM also has a 2-stage capacity market pricing proposal[22] which, with changes, could be an additional proposal for consideration for the PJM region. Notably, in each of these alternative clearing price proposals, the first step is a MOPR applied to all resources receiving targeted or discriminatory subsidies to screen whether and how resources participate in that region's capacity auction.

Importantly, however, each of these capacity market approaches is based largely on accommodating state policies or out-of-market resource subsidies while attempting to maintain competitive capacity prices for all other resources across the region. The goal is laudable but vigilance will be needed as an approach which allows or even encourages state subsidies could unwittingly abet a proliferation of such actions and the resultant

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20 Pre-technical Conference Statement of Peter D. Fuller, Vice President, Market & Regulatory Policy at NRG Energy, Inc., at pp. 3-5, *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.,* Docket No. AD17-11-000 (filed April 25, 2017).

21 ISO New England April 2017 Discussion Paper, *Competitive Auctions with Subsidized Policy Resources*, (April 14, 2017), available at https://www.iso-ne.com/static-assets/documents/2017/04/caspr_discussion_paper_april_14_2017.pdf.

22 See PJM Special Report, Context for PJM Market Design Proposals Responding to State Public Policy Initiatives, Working Paper 2: Capacity Market Repricing Proposal, (June 12, 2017), available at http://pjm.com/~/media/library/reports-notices/special-reports/20170612-context-for-pjm-market-design-proposals-responding-to-state-public-policy-initiatives.ashx.

chilling effect on private investment. As PJM's Independent Market Monitor Dr. Joseph Bowring has noted in numerous venues, subsidies are contagious as each artificially suppresses prices for all non-subsidized resources because certain uneconomic resources do not retire when prices send a signal to exit.[23] The reasonable next step is for more resources, facing increasingly suppressed prices, to enter the race for subsidized support.

While states that have access to competitive wholesale markets are acting against their individual and collective interests when they select individual resources, the FPA acknowledges their rights to do so. At the same time, the FPA gives FERC authority and an obligation to ensure just and reasonable rates for all generation suppliers. This obligation makes it imperative that FERC take steps to ensure that wholesale price formation is not harmed by state resource choices.

C. Energy Market Price Formation Remains a Priority

A clear and straightforward avenue for the Commission and each regional market in the country is to continue all efforts to reform ISO/RTO energy, ancillary services and operating reserve price formation policies and practices in both day-ahead and real-time energy markets to fully reflect the marginal cost of providing these services at each moment in time. This remains critical to establishing price signals that reflect actual system conditions and to support investment. Currently there are two pending NOPRs which must

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[23] "The proposed subsidy solutions in all cases ignore the opportunity cost of subsidizing uneconomic units, which is the displacement of resources and technologies that would otherwise be economic. A decision to subsidize uneconomic units that are a significant source of energy and capacity has direct and significant impacts on other sources of energy; the opportunity costs of subsidies are substantial. Such subsidies suppress energy and capacity market prices and therefore suppress incentives for investments in new, higher efficiency thermal plants but also suppress investment incentives for the next generation of energy supply technologies and energy efficiency technologies. These impacts are long lasting but difficult to quantify precisely. Subsidies are contagious. Competition in the markets could be replaced by competition to receive subsidies. PJM markets have no protection against this emergent threat. Accurate signals for entry and exit are necessary for well functioning and competitive markets. Competitive investors rely on accurate signals to make decisions." 2017: Quarterly State of the Market Report for PJM: January through March (issued May 11, 2017), by Monitoring Analytics, LLC., *Introduction: 2017 Q1 In Review*, p. 2, available at http://monitoringanalytics.com/reports/PJM_State_of_the_Market/2017.shtml.

be issued as final rules such that the ongoing initiative to improve price formation rules and mechanisms can continue. EPSA therefore urges the Commission to complete work on rules regarding Pricing of Fast Start Resources[24] and addressing Uplift Allocation and Transparency,[25] as well as the related proposed rule which examines Compensation for Primary Frequency Response and Other Essential Reliability Services.[26] As improvements are made, there may be additional issues related to scarcity pricing, treatment and pricing of operating reserves, and defining additional Essential Reliability Service products or services that will need to be addressed by the Commission as part of its price formation effort. Addressing the energy market is critical to the discussion of state policies and wholesale markets. With that in mind, the Commission should consider whether additional considerations should be included in its current price formation effort.[27]

Additionally, certain ISOs or RTOs may examine energy market pricing in the effort to address the evolving electric system, resource mix, and emergence of state policy considerations. For instance, on June 15, PJM issued a working paper entitled "Energy Price Formation and Valuing Flexibility"[28] which initiated a dialogue on energy market pricing reforms that would ensure that LMPs reflect the resources needed to serve load. Additionally, the paper raises the impacts of negatively priced energy offers. If based on fuel- and resource-neutral principles, these are precisely the types of reforms that individual

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[24] *Fast-Start Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Notice of Proposed Rulemaking, 157 FERC ¶ 61, 213 (2016).

[25] *Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Notice of Proposed Rulemaking, 158 FERC ¶ 61, 047 (2017).

[26] *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response,* Notice of Proposed Rulemaking, 157 FERC ¶ 61,122 (2016).

[27] *See generally*, Energy Price Formation webpage, https://www.ferc.gov/industries/electric/indus-act/rto/energy-price-formation.asp.

[28] *See* PJM Working Paper 3: Energy Price Formation and Valuing Flexibility, (June 15, 2017), available at http://www.pjm.com/~/media/library/reports-notices/special-reports/20170615-energy-market-price-formation.ashx.

ISOs/RTOs should be addressing and the Commission should direct, where necessary, to complement the price formation efforts currently underway at the Commission.

D. Valuing Attributes and Externalities in Wholesale Markets

Based on the actions taken by certain states to date, defining broad policy objectives that can be met on a resource-neutral basis through ISO/RTO markets may prove challenging. As Dr. Bowring's comments[29] on the pernicious effect of targeted and discriminatory subsidies on the markets highlight, current subsidies approved in Illinois and proposed in Ohio are intended to retain uneconomic units "by artificially making them look economic." These subsidies support *particular resources*, and while there may be attributes or externalities which are addressed by keeping these uneconomic units online, in each case the state has not approved or implemented a broad policy to accomplish specific overarching goals. Rather, payments have been approved for specific units and therefore artificially "resolve" market forces for some, while all other resources are impacted and, absent action by FERC, will bear the cost of these states' targeted resource actions.

As demonstrated by discussion over two days before the Commission in this proceeding, however, defining attributes and externalities to be valued in the wholesale markets should be a high priority for all stakeholders as a means to addressing state policy goals that are currently being pursued outside of markets. This must occur while also maintaining viable wholesale markets that produce prices for energy and capacity which reflect the true value and marginal cost of providing power to the grid, and therefore support the private investment and customer response needed to maintain reliability. The mere definition or expression of goals to be addressed is a critical discussion to undertake now, as environmental attributes are clearly valued in many states, but several state actions have

[29] *See* fns 19, 23 above.

been targeted quite narrowly, muddying the true intent of certain subsidies or out-of-market programs. As EPSA CEO and President John Shelk outlined in his pre-conference statement, the stated "legitimate state public interests" are not reflected in actions taken by states to date, and certainly must be closely and clearly assessed as they impact, and worse can undermine, wholesale markets.[30]

It is likely that an initial consideration will be whether and how to address carbon emissions on a regional basis through the wholesale markets. EPSA supports this effort, and will work with regional wholesale market operators and stakeholders to discuss options and possibilities.

Defining additional attributes may prove challenging based on the existing lexicon as several attributes or characteristics, e.g. "baseload" or "fuel diversity," have been utilized by proponents of subsidies to indicate certain *resource* preferences that include these attributes, rather than signaling a need for that attribute in any form and from any resource.[31] Therefore, a discussion which centers on defining such attributes must begin with a clean slate and acknowledge that states and stakeholders can and should define the desired characteristics such that markets will determine which particular technologies or

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[30] *See discussion listing purported public interest needs supporting proposed out-of-market actions in various states*. "Instead of broad public interests, States are being importuned by private interests to take preferential out-of-market actions to offset the impacts of wholesale market conditions. It should not go unrecognized that many of the entities seeking such actions have publicly stated their corporate futures are in cost-of-service regulated transmission and distribution utility operations, not in making the competitive-based generation investments on which the Commission's wholesale market structure depends. In one State, the proffered reason is that corporate earnings are negatively impacted by lower wholesale prices, including forward prices on which hedges are available. Yet that is true for all wholesale power suppliers. Similarly, some argue State intervention is justified because they may not be recovering their cost of capital from wholesale rates. Yet that is true for many other wholesale suppliers. Still others justify special relief because they want to exit the wholesale business and retreat to the safer confines of regulated earnings by making their current wholesale assets more valuable to sell. How can Commission-approved price signals determine entry and exit if the Commission's wholesale markets are not protected from such out-of-market payments? " Technical Conference Opening Statement of John E. Shelk, President & CEO, Electric Power Supply Association (filed April 25, 2017), at pp. 4-5, *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Docket No. AD17-11-000, available at http://www.ferc.gov/CalendarFiles/20170426150649-Shelk,%20EPSA.pdf.

[31] Id, page 4.

resources are selected. This may be the most challenging effort within this broader discussion, and for that reason is all the more urgent to begin.

III. CONCLUSION

WHEREFORE, EPSA urges the Commission to act immediately to protect and defend the competitive wholesale markets by exerting its exclusive jurisdiction over those markets. First, the Commission should approve comprehensive Minimum Offer Price Rules to take effect by the close of 2017 to protect against distortions caused by current and pending out-of-market state actions. Concurrently, the Commission should set firm deadlines for the Eastern ISOs/RTOs to develop strong additional measures to protect their markets and proper price formation, including additional measures to improve price formation in all their markets. Additionally, each ISO/RTO should comprehensively examine whether wholesale market rules properly value all necessary resources and the attributes that are important to grid reliability as well as societal objectives such as carbon emission reductions going forward to allow the ISOs/RTOs to continue to provide reliable service from environmentally-responsible facilities at competitive prices. This may entail efforts to define necessary resource attributes or external policy goals and develop wholesale market mechanisms to value those goals.

Respectfully submitted,

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