

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

<b>Modernizing Electricity</b>	)	
	)	<b>Docket No. AD21-10-000</b>
<b>Market Design</b>	)	
	)	

**REPLY COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association (“EPSA”)<sup>1</sup> respectfully submits these reply comments as outlined in the Notice Inviting Post-Conference Comments (“Notice”)<sup>2</sup> issued on April 5, 2021, by the Federal Energy Regulatory Commission (“FERC” or “Commission”) in the above-referenced docket. EPSA submitted initial comments on April 26, 2021, to address certain topics discussed at the March 23, 2021 Technical Conference on *Resource Adequacy in the Evolving Electricity Sector*,<sup>3</sup> and herein provides reply comments to address discussion in initial post-conference comments regarding the utilization of the Fixed Resource Requirement (“FRR”) in PJM to allow a utility to exit the centralized capacity market, the Reliability Pricing Model (“RPM”).

**I. BACKGROUND**

As highlighted throughout this proceeding, the competitive wholesale ISO/RTO markets are increasingly challenged by a proliferation of state policies that address

---

<sup>1</sup> EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. 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.

<sup>2</sup> Notice Inviting Post-Technical Conference Comments, *Modernizing Electricity Market Design*, Docket AD21-10-000, (issued April 5, 2021) (“Notice” or “Notice Inviting Comments”).

<sup>3</sup> Supplemental Notice of Technical Conference on Resource Adequacy in the Evolving Electricity Sector, *Modernizing Electricity Market Design*, Docket AD21-10-000, (Issued Mar 16, 2021) (“Second Supplemental Notice”).

climate and other policy issues within their state borders in the absence of regional or federal emissions policies. While nondiscriminatory wholesale markets can and should be designed to allow all resources to compete to supply power as well as to reduce carbon or other harmful emissions on a technology neutral basis, the Commission is calling for changes to accommodate these state policies in the short-term while more fulsome market design revisions are considered.

In particular, the Commission focused its questions to commenters on the role and purpose of PJM's centralized capacity market and its Expanded Minimum Offer Price Rule ("Expanded MOPR"). While the Expanded MOPR may be narrowed or even eliminated, EPSA explained in initial comments how important an effective mitigation replacement will be to protecting the integrity of the markets for all parties. EPSA's comments generally focused on the critical importance, effectiveness, and reliability of the fundamental three-market construct—energy, capacity, and ancillary services—of the New York, New England, and PJM markets. Even among the array of views and recommendations offered to the Commission in the April 26 post-conference comments, the benefits of well-functioning competitive markets were extolled in numerous submissions<sup>4</sup> and continue to require support and protection from the Commission pursuant to its responsibilities under the Federal Power Act.

---

<sup>4</sup> See e.g., initial post-conference comments filed in this proceeding: Comments of Advanced Energy Buyers Group, (filed April 26, 2021), p. 2 and fn 2, "For more information on why AEBG supports the preservation and expansion of organized, competitive wholesale markets, see Advanced Energy Buyers Group, *Organized Wholesale Markets and Corporate Advanced Energy Procurement: How competitive markets help commercial and industrial buyers meet their sustainability goals, and how they can be improved* (Jan. 2021), available at <https://www.aee.net/aee-reports/organized-wholesale-marketsand-corporate-advanced-energy-procurement>."

Initial Comments of the PJM Industrial Customer Coalition, (filed April 26, 2021), p.2, "As PJM accommodates state resource adequacy policies and decisions into its capacity market, the Commission must direct PJM to maintain at the forefront PJM's guiding principle: reliability at the lowest cost. PJM

## II. COMMENTS

An issue addressed by several commenters which warrants a response is the availability of the FRR in PJM, which was created when RPM was implemented to both allow and contain the exit of one utility from PJM's capacity market.<sup>5</sup> The containment aspect is crucial in the design of FRR, as it was structured to facilitate the self-supply of a previously vertically integrated utility as it transitioned to full participation in and reliance on all of the PJM markets. That facilitation was not – and cannot now – be allowed to negatively impact the market for all other participants. It is essential for reliability that the existing tariff protections surrounding FRR remain stringent to protect market participants and consumers as they were developed to do. If the FRR option is to stay viable, it must remain a mechanism that offers capacity market exit *without impacting* that market for all other states and consumers. For example, a state or utility should not be allowed to “toggle” in and out of the market.<sup>6</sup>

---

must preserve the consumer and price-disciplining benefits of competitive wholesale markets even as PJM accommodates state resource adequacy decisions.”

Initial Comments of Pennsylvania Office of Consumer Advocate, (filed April 26, 2021) (“PA Consumer Advocate Comments”), p. 5, “Pennsylvania’s 1996 electricity restructuring legislation contemplated the state’s reliance on competitive wholesale markets to deliver reasonably priced electricity for use by end use customers. Over the course of 25 years, that reliance has proven to be well-placed. Whether customers receive their electricity through their electric distribution company through default service or through a competitive retail supplier, the wholesale energy and capacity markets have delivered electricity at reasonable prices. A key part of that has been the regionalization of these markets, including the great diversity of resources available across the PJM footprint. PA OCA understands that in a regional market there must be give and take among the various participants in order to reap the overall benefits of regionalization.”

Comments of Advanced Energy Economy, (filed April 26, 2021), p. 3, “[Considering reforms to the regional market constructs] is hard work, but it is work worth doing: addressing these challenges through regional market constructs will result in more competitive, reliable, and cost-effective outcomes that will be best for advanced energy developers and consumers alike, while helping states and consumers accelerate their goals to shift to new low and zero-carbon resources.”

<sup>5</sup> *PJM Interconnection, L.L.C.*, Order Denying Rehearing and Approving Settlement Subject to Conditions, 117 FERC ¶ 61,331 (December 22, 2006).

<sup>6</sup> See e.g., Statement of Andrew L. Ott on Behalf of PJM Interconnection, L.L.C., *PJM Interconnection, LLC*, ER11-2875-001, 002, and *PJM Power Providers v. PJM Interconnection, L.L.C.*, Docket No. EL11-20-001, EL11-20-001, (filed July 22, 2011), pp. 9-10, “PJM cautions...that some

The initial purpose for the FRR option was to allow a utility to self-supply outside of the PJM capacity market. Several public power, municipal power and similarly situated publicly owned utilities raised concerns that the Expanded MOPR impinges on their business model as publicly owned utilities. EPSA has maintained through multiple MOPR proceedings before the Commission that self-supply for these utilities should be facilitated by the PJM markets – early versions of the MOPR included an exemption for self-supply by public power entities. The FRR was not designed to facilitate what seems to be emerging as a secondary capacity mechanism for certain states who wish to procure designated resources outside of the regional capacity auction – in theory at least. What several states are finding in initial considerations to pull the trigger on FRR in light of the December 2019 Expanded MOPR order is that it is not cost-effective, efficient, or reliable to go it alone using FRR. The PJM Independent Market Monitor (“IMM”) states directly, “States may choose the FRR option, but the FRR option is generally higher cost, less efficient and prone to exposing states to the exercise of market power.”<sup>7</sup>

---

fundamental aspects of the FRR alternative must remain in any alternative in order to ensure the viability and performance of the RPM construct and ensure long term resource adequacy in the PJM region. The FRR construct is intended to serve as an alternative to RPM where individual load serving entities will accept the responsibility to ensure long term resource adequacy for all load in their territory instead of depending on the PJM market. While stakeholders could productively consider whether the current five-year minimum FRR commitment period still strikes the right balance, *there must be some substantial minimum time period associated with that election, to deter market participants from switching between RPM and the FRR alternative simply to take advantage of differences in price trends between the two capacity constructs or to manipulate the market by circumventing the long term reliability and resource adequacy requirements by switching their load repeatedly between the two alternatives.*” (Emphasis added.) This fundamental view of FRR remains true to ensure resource adequacy and reliability in PJM.

<sup>7</sup> Comments of the Independent Market Monitor for PJM, (“IMM Comments”), p. 11 and fn. 26, citing numerous findings: “Potential Impacts of the Creation of a ComEd FRR,” (December 18, 2019); “Potential Impacts of the Creation of Maryland FRRs,” (April 16, 2020); “Potential Impacts of the Creation of New Jersey FRRs,” (May 13, 2020); “Potential Impacts of the Creation of Ohio FRRs,” (July 17, 2020).

PJM's IMM defends the FRR mechanism as structured, stating, "The Market Monitor's analyses have shown that FRR plans, almost without exception, would increase customer costs and reduce efficiency."<sup>8</sup> In fact, his recommendations for reform would strengthen the FRR rules in order to increase procurement requirements and strengthen performance incentives to ensure that FRR entities are meeting the system's reliability needs in the same manner as RPM resources. The IMM states, "Given that PJM provides reliability for the entire network as a whole, including FRR entities, such rules are discriminatory. All capacity resources should have the same obligations."<sup>9</sup>

The IMM has also identified that market power can be an issue with creation of an FRR; generators in FRR zones have no obligation to participate in FRR plans and there is no market power review by the IMM. For example, due to FRR rules that limit resource options, there will likely be instances where only a limited number of generators are available to serve load.<sup>10</sup> Such an outcome will remove competitive discipline from capacity pricing, a bad outcome for consumers. FRR will also likely inhibit innovation. The incumbent utility (or state agency) chooses the resources and technology it deems appropriate—to the exclusion of other, possibly cheaper, resources. A specified quantity of resources must be located within the FRR utility's footprint consistent with local deliverability rules, limiting the resource options and the pool of customers who pay for those resources. In the limited instances where FRR has been utilized, customers in FRR areas in Virginia have paid up to 4 times more than the

---

<sup>8</sup> IMM Comments, p. 2.

<sup>9</sup> IMM Comments, p. 8.

<sup>10</sup> IMM Maryland FRR Analysis, p. 4 (see fn 7 above).

rest of the customers in the PJM region for capacity with no additional benefit than that procured by RPM.<sup>11</sup> In essence, an FRR is functionally equivalent to a utility IRP and shifts investment risk from investors to consumers and undermines the value of participating in organized markets.

Question 15(a) of the Notice Inviting Comments invited comment on whether the FRR could be used as a tool to evade mitigation in RPM, which some commenters took to an extreme by urging that PJM change its Tariff to maximize FRR flexibility. In the Notice the Commission asks, “Should FRR or other self-supply options be modified in any way to make them more useful to states that wish to reclaim authority for resource adequacy in order to meet state policies?” In initial comments, the Public Interest Organizations took this bait, stating,

The FRR option should be made more flexible by allowing utilities to secure some supply through market mechanisms outside of the RPM, but still have the option to participate in the RPM as needed. This is functionally similar to making RPM a residual market, though there could be some differences in implementation.<sup>12</sup>

Largely, the FRR flexibility that commenters<sup>13</sup> seek is to eliminate the 5-year lock in to prevent entities from toggling back and forth between self-supply and the RPM market, and allowance to procure less than 100% of load. Seeking the ability to toggle in and out of PJM’s capacity market suggests that those who on the one hand would like to contract for preferred resources in state also see the value that RPM offers to ensure reliability, affordability, and emissions reductions. Thus, retaining access to that market

---

<sup>11</sup> FRR – LSE Capacity Rates, <https://www.pjm.com/markets-and-operations/billing-settlements-and-credit/fr-lsecapacity-rates.aspx>.

<sup>12</sup> Comments of Public Interest Organizations in Response to Notice Inviting Post-Technical Conference Comments, (“PIO Comments”), p. 14.

<sup>13</sup> See e.g., PIO Comments; Post-Technical Conference Comments of the National Rural Electric Cooperative Association and the American Public Power Association.

– even though it may disadvantage other market participants – can shield customers from the real-world impacts of their state’s out-of-market choices. This simply allows certain states to have the best of both worlds – procuring preferred resources outside of the market while leaning on the PJM regional market to ensure reliability, producing a higher cost to others.<sup>14</sup>

Further, the intent here from the PIOs is to marginalize RPM to a residual market more akin to the capacity construct in the Midcontinent ISO (MISO)<sup>15</sup> – this is a radical change to PJM’s markets which it attempts to accomplish in a roundabout manner by loosening FRR rules. This puts the FRR cart before the horse. Dr. Paul Sotkiewicz summarizes, “Overall, FRR is an inadequate tool to address the issues currently facing PJM and the Commission regarding buyer-side market power mitigation and accommodating state resource preferences,” supported by an extensive affidavit.<sup>16</sup>

EPSA recognizes that states have environmental policy goals and societal initiatives they wish to pursue, and these goals can best be achieved via a regional, market-based mechanism with appropriate market mitigation measures in place.<sup>17</sup> The innovation and resource diversity needed for a cleaner, reliable, and affordable system

---

<sup>14</sup> “As PJM and the Commission attempt to accommodate and reconcile various state policies, it is important that every effort be made to respect all states’ policies and that one state’s policies not be elevated over another. In doing this, PJM and the Commission’s focus must be on fashioning a competitive and workable market. If certain state policies are in direct conflict, PJM and the Commission should resolve the conflict by opting for the policy that best facilitates a functioning and competitive market. To the extent possible, PJM and the Commission should minimize the impacts of individual state policy decisions being exported to other states.” PA Consumer Advocate Comments, p. 5.

<sup>15</sup> “Transforming the capacity market from a mandatory, primary mechanism, to one that is voluntary would dramatically expand states’ abilities to procure needed capacity through innovative methods. A similar market design has served Midcontinent Independent System Operator (“MISO”) well for years.” PIOs Comments, p. 19.

<sup>16</sup> Comments of Paul M. Sotkiewicz, PH.D., President and Founder, E-Cubed Policy Associates, LLC, p. 12 and Attachment C.

<sup>17</sup> See *generally*, Comments of the Electric Power Supply Association, State of New Jersey Board of Public Utilities, *Investigation of Resource Adequacy Alternatives*, Docket No. EO20030203 (filed May 20, 2020) available here [https://epsa.org/wp-content/uploads/2020/05/EPSA\\_NJ-BPU-RA-Comments.pdf](https://epsa.org/wp-content/uploads/2020/05/EPSA_NJ-BPU-RA-Comments.pdf).

can only come through continued participation in regional competitive markets. Meeting these aggressive challenges is precisely when the value of competitive markets is at its height. While individual states are implementing aggressive clean energy standards or requirements, state actions and decisions are not contained within the boundaries of a single state, nor are the cost or reliability impacts contained within its borders. Most importantly, this approach dismisses the benefits that regional competitive markets have provided over many years and thus foregoes the opportunity for better outcomes. Experience has shown that states that opt to “go it alone” in an effort to meet environmental goals will likely fail to achieve their goals and raise costs to consumers.<sup>18</sup>

An additional and key consideration for this discussion is that the focus of this administrative proceeding is to find ways to alter, replace, narrow, or even eliminate the Expanded MOPR which gave rise to such grave concerns that have led to a focus on the FRR mechanism. But, if the mitigation tool used by PJM to protect its capacity market is weakened, that is surely not the time to also weaken the construct available for an entity to exit that market such that its exit does not harm those who remain reliant on RPM to maintain reliability for their customers. AEE expresses concerns with reliance on the FRR to escape Expanded MOPR, explaining,

Advanced energy companies are concerned that FRR-based responses to MOPR will erode the benefits of regional competition, limit access to a diverse array of advanced energy technologies on a regional basis, create new barriers to market participation, and increase the costs of meeting clean energy goals. Large, independently administered markets have historically opened up more

---

<sup>18</sup> In August 2019, the Illinois Power Agency reported that Illinois is only at 7% renewables and is currently projected to peak at around 10% through 2036—well short of its 25% RPS goal. Illinois Power Agency, Long Term Renewable Resources Procurement Plan, (August 15, 2020) at p. 68. Available at: <https://www2.illinois.gov/sites/ipa/Documents/Draft%20Revised%20Plan%20%20Summer%202019/Draft%20Revised%20LTRRPP%20%288-15-19%29.pdf>.

opportunities for advanced energy developers while lowering prices for customers.<sup>19</sup>

Proliferating the use of FRR and loosening the very rules that are in place to protect the rest of the market from its use by some will exacerbate this concern at the very time that states, ISOs/RTOs, and stakeholders are discussing and developing market reforms to better align wholesale market rules with state policy objectives.<sup>20</sup> It may be true, as several commenters claim, that FRR is neither a viable way to avoid the Expanded MOPR, nor is it a viable solution to accommodating state policies. For these reasons in part, PJM has a Critical Issue Fast-Path process in place to address its MOPR mechanism (Phase 1) *and* develop a long-term solution to address this emergent concern regarding state policies (Phase 2).<sup>21</sup>

If an individual state pursues an FRR, this would create new reliability challenges, reduce competition, and inhibit, not advance, the achievement of a state's policy goals, all while putting the risk of poor investments on the backs of consumers. Of critical importance as well is that a state's use of the FRR option does not distort or damage PJM's capacity market for the other millions of consumers that will continue to rely on that market to ensure reliability across numerous states. As such, EPSA urges

---

<sup>19</sup> *Leaving Markets is No Easy Answer to FERC Orders that Undercut State Clean Energy Commitments*, by Jeff Dennis, Prusha Hasan, Caitlin Marquis of Advanced Energy Efficiency (AEE) (Sept. 9, 2020).

<sup>20</sup> See e.g., Complaint Seeking Emergency Relief and Requests for Shortened Comment Period and Fast Track Processing, *LS Power Development, LLC, and Doswell Limited Partnership v. PJM Interconnection, L.L.C.*, (Not yet assigned docket number) (filed May 7, 2021).

<sup>21</sup> "MOPR CIFP Work Plan," (April 28, 2021), posted for *Critical Issue Fast Path - Minimum Offer Price Rule – Stage 1* meeting. Available here: <https://www.pjm.com/-/media/committees-groups/cifp-mopr/2021/20210428/20210428-work-plan.ashx>;

"Capacity Market Workshop #4 – Next Steps" presentation, (March 26, 2021), posted for *Capacity Market Workshops*, slides 21-31 for Phase 2 discussion. Available here: <https://www.pjm.com/-/media/committees-groups/committees/mic/2021/20210326-workshop-4/20210326-item-03-capacity-market-workshop-4-next-steps.ashx>.

the Commission not to direct or approve looser requirements around the FRR to protect market participants and consumers.

### III. CONCLUSION

**WHEREFORE**, EPSA respectfully submits these comments to respond to suggestions that the FRR Alternative in PJM should be modified in a manner that would adversely impact RPM for all other market participants. While the FRR Alternative was structured to facilitate the procurement of all needed capacity by a Load-Serving Entity outside of the PJM capacity market, fundamental aspects of its design must remain in place to ensure the viability and performance of RPM to provide long-term resource adequacy for all states in the PJM region. It is essential for reliability that the existing tariff protections surrounding FRR remain stringent so that it remains a tool that offers capacity market exit *without impacting* that market for all other states and consumers.

Respectfully submitted,

*N. E. Bagot*

---

Nancy Bagot  
Senior Vice President  
Sharon Theodore  
Senior Director, Regulatory Affairs  
Brian George  
Director, Strategic Policy & Government Affairs  
Bill Zuretti  
Director, Regulatory Affairs & Counsel  
Electric Power Supply Association  
1401 New York Avenue, NW, Suite 950  
Washington, DC 20005  
(202) 628-8200  
[nancyb@epsa.org](mailto:nancyb@epsa.org)

Dated: May 10, 2021