

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

<b>LS Power Development, LLC and Doswell Limited Partnership</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL21-72-000</b>
	)	
<b>PJM Interconnection, L.L.C.</b>	)	

**COMMENTS IN SUPPORT OF COMPLAINT**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2020), the Electric Power Supply Association (“EPSA”)<sup>1</sup> respectfully submits these comments in support of the *Complaint Seeking Emergency Relief and Request for Shortened Comment Period and Fast Track Processing* from LS Power Development and Doswell Limited Partnership (“Complainants”) against PJM Interconnection, L.L.C. (“PJM”).<sup>2</sup> Complainants request an order from FERC on or before May 17, 2021, finding that PJM violated the Reliability Assurance Agreement (“RAA”) among Load Serving Entities in the PJM region by approving Fixed Resource Requirement (“FRR”) Alternative elections by entities whose FRR Capacity Plans did not demonstrate the commitment of capacity

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<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. EPSA submitted a timely document-less motion to intervene in this proceeding on May 12, 2021.

<sup>2</sup> *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.*, Docket No. EL21-72-000, (filed May 7, 2021)(“Complaint”).

resources to meet their capacity obligations for the full term of the FRR election (i.e., five years). The expedited action by FERC is needed to enforce a core requirement of the FRR Alternative rules before the PJM Base Residual Auction (BRA) for the 2022/2023 Delivery Year commences on May 19, 2021.

## **I. COMMENTS**

EPSA supports the Complaint and urges the Commission to approve the relief requested by Complainants without impacting the timing of the upcoming PJM 2022/2023 BRA scheduled for May 19, 2021. The centralized capacity market sends sustainable signals for entry and exit to meet future goals while maintaining reliability – priority number one for PJM to serve customers. The Commission should not lose sight of that primary objective while working to address surrounding market issues. It is therefore imperative that the upcoming PJM 2022/2023 BRA proceed without further delay as has been emphasized by EPSA, PJM, PJM's Independent Market Monitor ("IMM"), and other market participants in various proceedings and venues. At the same time, FERC must enforce the requirements of the PJM Tariff, and the Commission should act expeditiously to remedy this significant tariff violation and do so in a manner that allows the BRA to go forward as scheduled.

Specifically, the Complaint explains that the 2022/2023 FRR Capacity Plans submitted by Dominion addresses Capacity Plans for the 2022/2023 Delivery Year only. This results in a non-compliant FRR Election from Dominion as it is a direct violation of PJM's RAA and therefore a violation of the filed rate doctrine.<sup>3</sup> Further, the Complaint details the requirement that an FRR Capacity Plan be a "long-term plan," not just a plan

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<sup>3</sup> Complaint, pp. 8-12.

covering a single Delivery Year, was a core element of the FRR Alternative from the beginning and was, among other things, the basis for the Commission's requirement that FRR Entities be given a special phase-in for the PJM Capacity Performance ("CP") rules<sup>4</sup> and other concessions.

It is essential for reliability and resource adequacy in the region that PJM strictly adhere to the *existing* protections *currently* within its tariff surrounding FRR – and the Commission must act in response to the Complaint to enforce this requirement – and these tariff protections should *remain* stringent so that FRR can offer capacity market exit *without impacting* that market for all other market participants, states, and consumers. EPSA addressed these points in detail in Reply Comments submitted this week in response to the Commission's Notice Inviting Comments following the technical conference on *Resource Adequacy in the Evolving Electricity Sector*; accordingly, EPSA incorporates by reference its Reply Comments filed in this docket.<sup>5</sup>

In particular, the availability of the FRR in PJM was created when RPM was implemented to both facilitate the self-supply of and contain the exit of one utility from PJM's capacity market.<sup>6</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

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<sup>4</sup> Complaint, pp. 6-7, 13.

<sup>5</sup> See *generally* Reply Comments of the Electric Power Supply Association, Post-Technical Conference Comments on Resource Adequacy in the Evolving Electricity Sector, *Modernizing Electricity Market Design*, Docket No. AD21-10-000, (filed May 10, 2021) available here <https://epsa.org/wp-content/uploads/2021/05/EPSA-Reply-Comments-re-AD21-10.pdf>.

<sup>6</sup> *PJM Interconnection, L.L.C.*, Order Denying Rehearing and Approving Settlement Subject to Conditions, 117 FERC ¶ 61,331 (December 22, 2006).

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 market participants, states, and consumers. An important element of FRR that ensures it functions in this manner is the requirement for a five-year election term<sup>7</sup> which includes the submission of a five-year Capacity Plan per PJM's Tariff as approved by the Commission.

It should also be emphasized that as a sophisticated market participant (Dominion) with a long history of participating in PJM markets, failing to comply with the basic requirements of the PJM Tariff should not negatively impact all other market participants, but any negative outcomes from a plain failure to comply with the tariff requirements should rest *solely* with the party making such filing in conflict with tariff requirements. Any outcome that negatively impacts other market participants, including jeopardizing reliability with further delays of the already long-delayed BRA, is simply inappropriate and frustrates FERC's obligation to ensure reliability.

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<sup>7</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 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.)

## II. CONCLUSION

**WHEREFORE**, EPSA supports the Complaint and urges the Commission to expeditiously approve the Complaint and to do so in a manner that does not further delay the PJM BRA scheduled for May 19, 2021. As discussed herein, PJM should be required to strictly adhere to the existing FRR requirements currently contained in its tariff to ensure reliability and the existing tariff protections surrounding FRR should remain stringent so that it remains a tool that offers capacity market exit *without impacting* that market for all other market participants, states and consumers.

Respectfully submitted,

***/s/ Nancy Bagot***

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Dated: May 13, 2021

**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, D.C., this 13<sup>th</sup> day of May, 2021.

***/s/ Sharon Theodore***

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Sharon Theodore, Sr. Director