UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Calpine Corporation, et al.	**)**	**Docket Nos. EL16-49-000**
	)	
PJM Interconnection, L.L.C.	**)**	**ER18-1314-000**
	)	**ER18-1314-001**
	)	
PJM Interconnection, L.L.C.	**)**	**EL18-178-000**
	)	**(Consolidated)**

REQUEST FOR REHEARING OR, IN THE ALTERNATIVE, EXTENSION OF TIME OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR THE DISTRICT OF COLUMBIA, CITIZENS UTILITY BOARD, MARYLAND OFFICE OF PEOPLE'S COUNSEL, AND KENTUCKY OFFICE OF THE ATTORNEY GENERAL, OFFICE OF RATE INTERVENTION

Pursuant to Section 313 of the Federal Power Act ("FPA"), 16 U.S.C. § 825l(a), and Rule 713 of the Federal Energy Regulatory Commission ("FERC" or "Commission)" Rules of Practice and Procedure, 18 C.F.R § 385.713, the Office of the People's Counsel for the District of Columbia, Citizens Utility Board, Maryland Office of People's Counsel, and Kentucky Office of the Attorney General, Office of Rate Intervention (collectively the "Joint Consumer Advocates" or "JCA") respectfully request rehearing of the Commission's June 29, 2018 Order ("Capacity Order" or "Order") in the above-captioned proceedings.[1] The Capacity Order errs in multiple ways, each of which harms the ratepayers and consumers that our Offices and Organizations are statutorily required to protect.

[1] *Calpine Corp.*, 163 FERC ¶ 61,236 (2018).

Specifically, the Capacity Order's finding that PJM Interconnection L.L.C. ("PJM")'s tariff is unjust and unreasonable is not grounded in sound economic theory and not supported by the evidentiary record. By targeting only those resources that receive state support, the Order oversteps the FPA jurisdictional divide and creates a discriminatory regime for deciding which resources will be winners and which will be losers in the PJM capacity market. Neither the Order nor PJM's Capacity Filing[2] appear to have considered that just and reasonable rates require the balancing of both investor and ratepayer interests, which means that the cost impacts of any decision must be considered.

The Capacity Order relies on assertions of theoretical harm to its market. Assuming *arguendo,* there exists a price suppression issue to be remedied, the Commission's method for doing so – i.e. creating a new set of market concepts and setting those concepts to paper hearing – eviscerates the due process protections of the PJM stakeholder process. Both of the concepts forwarded by the Commission – an expanded Minimum Offer Price Rule ("MOPR") and a resource-specific version of the Fixed Resource Requirement ("FRR") Alternative – are significantly under-developed. The necessary work to develop a finished and workable proposal cannot take place under the limited review and time frame that the Order prescribes.

The Commission should grant the JCA request for rehearing and direct PJM to reconvene stakeholders to develop a market design that will meet their needs. Until the Commission decides on this and other requests for rehearing, the Commission should grant a six-month extension of

[2] Capacity Repricing or in the Alternative MOPR-EX Proposal: Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market (April 9, 2018), eLibrary No. 20180409-5056, *revised* (April 16, 2018), eLibrary No. 20180416-5098 (collectively "Capacity Filing").

time to allow PJM and the parties to develop and vet a market redesign through PJM's existing stakeholder process. Such an extension of time is in line with other "sweeping changes"[3] that have been made by FERC in the past and will not harm the market as there has been no showing that immediate action is needed. Additionally, the Commission should provide for a transition period to allow state legislative and regulatory bodies to undertake the necessary, but time-consuming, work to prepare for this new capacity market construct. Failure to provide adequate time for both the development and implementation of the Commission's proposals add to the arbitrary and capricious nature of the Order.

I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

The Capacity Order errs in the following ways:

1) The Capacity Order's conclusion that PJM's existing tariff is unjust and unreasonable is arbitrary and capricious. It is not based on record evidence, and does not examine the potential cost impacts of its decision. Moreover, the Capacity Order describes general concepts, not specific market changes, as the Commission is traditionally asked to do.
2) The Capacity Order impermissibly oversteps the FPA's cooperative federalism scheme and intrudes on the states' rights to set their own generation policy. In doing so, it interferes with the states' ability to address environmental externalities through policies championing certain forms of generation.

[3] 163 FERC at ¶ 61,236 (LaFleur, Comm'r, dissenting) ("Comm'r LaFleur Dissent").

3) The Capacity Order discriminates between out-of-market payments made by states and other non-market payments generation resources may receive.

4) The Capacity Order's paper hearing process undercuts the well-established importance of the stakeholder process.

5) The Capacity Order requires the stakeholders to develop new capacity market tariffs in a time frame that is arbitrary and capricious and wholly unreasonable for the task at hand.

6) The Capacity Order does not provide for an adequate transition mechanism to ensure that states have the time and ability to align their policies with a new market construct.

II. BACKGROUND

On April 9, 2018, PJM submitted pursuant to FPA Section 205 its Capacity Filing which presented the Commission with a "jump-ball" between two mutually exclusive options to address the possible impact of state-sponsored out-of-market payments to certain resources.[4] Option one, Capacity Repricing, proposed to replace the current capacity market auction with an untested, two-stage Base Residual Auction ("BRA") that separated the natural market relationship between what resources are selected and the price paid for those resources.

The second option, MOPR-Ex, proposed to expand PJM's existing MOPR to cover both new and existing resources receiving material subsidies – defined by PJM as "material payments, concessions, rebates, or subsidies directly or indirectly from any governmental entity connected to

[4] Capacity Filing at 6.

the construction, development, operation, or clearing in any RPM Auction, of the Capacity Resource."[5] MOPR-Ex included several significant exemptions to the expanded MOPR, most notably for state-sponsored Renewable Portfolio Standards ("RPS"). Numerous comments and protests, including by parties to this Rehearing Request, were filed in response to the Capacity Filing.[6]

The Capacity Order rejected both of PJM's proposals.[7] In rejecting Capacity Repricing, the Commission found it "unjust and unreasonable to separate the determination of price and quantity for the sole purpose of facilitating the market participation of resources that receive out-of-market support."[8] It further found that PJM's Capacity Repricing proposal "artificially inflates the capacity market clearing price to compensate for the participation of resources receiving out-of-market support" while "send[ing] incorrect signals, leading to greater uncertainty with respect to entry and exit decisions."[9] The Commission also held that Capacity Repricing will allow "a resource receiving out-of-market payments to benefit from its participation in the PJM capacity

[5] Capacity Filing, Attachment D § 1, Definitions L-M-N (Option B).
[6] *See, e.g.*, Protest of Office of the People's Counsel for the District of Columbia, Maryland Office of People's Counsel, and the New Jersey Division of the Rate Counsel (May 7, 2018), eLibrary No. 20180508-5130 ("DC-MD-NJ Consumer Coalition Protest"); Protest of Joint Consumer Advocates (May 7, 2018), eLibrary No. 20180507-5212 ("Joint Consumer Advocates Protest"); (together, "Consumer Protests"). Each of the parties to the Consumer Protests opposed Capacity Repricing as unjust and unreasonable. The DC-MD-NJ Consumer Coalition Protest argued that MOPR-Ex, appropriately limited in scope and application, could be just and reasonable while the Joint Consumer Advocates Protest took the position that neither of PJM's proposals was just and reasonable. Irrespective of their previous positions, each of the signatories to this Rehearing Request agrees with the arguments stated herein.
[7] Capacity Order at PP 34, 73.
[8] *Id.* at P 64.
[9] *Id.*

market, by not competing on a comparable basis with competitive resources."[10] Finally, the Commission found that Capacity Repricing "represents an unjust and unreasonable cost shift to loads who should not be required to underwrite, through capacity payments, the generation preferences that other regulatory jurisdictions have elected to impose on their own constituents."[11]

The Commission rejected MOPR-Ex because PJM failed to provide a "valid reason" for the disparity between resources that would not be exempt from MOPR-Ex and those that would be exempt even though they received out-of-market support through RPS programs.[12] The Commission further found that PJM failed to show that exempted resources have a different impact on the capacity market than those which are not exempted, and as a result, why PJM's proposed criteria was not unduly discriminatory.[13]

Having rejected both of the PJM's Section 205 proposals, the Capacity Order held that PJM's current tariff is unjust and unreasonable based on its finding that "out-of-market" support to "non-natural gas-fired resources" will cause unreasonable price distortions, thereby compromising "market integrity."[14] The Commission *sua sponte* commenced a section 206 proceeding that consolidated the records of the previous dockets while establishing a paper hearing regarding a just and reasonable replacement rate.[15] The Commission further directed PJM and its

[10] *Id.* at P 66.
[11] *Id.* at P 67.
[12] *Id.* at P 100.
[13] *Id.* at P 105.
[14] *Id.* at PP 149–50. The Commission's finding relied, in part, on a complaint filed by Calpine Corporation and others. *See* Complaint Requesting Fast Track Processing (Mar. 21, 2016) eLibrary No. 20160321-5234, *amended* (Jan. 9, 2017), eLibrary No. 20170109-5113 (collectively, "Calpine Complaint").
[15] Capacity Order at PP 149–50.

stakeholders to: (i) develop an expanded MOPR for resources receiving a material subsidy that wish to participate in the capacity market; and (ii) simultaneously proposing an alternative to the existing FRR that would allow a resource receiving an out-of-market payment to be removed from the capacity market, along with a commensurate amount of load, while still being eligible to participate in the energy and ancillary services market ("FRR-Alternative").[16] The Commission "preliminarily" found that such a concept, while significantly under-developed, "*may* produce a just and reasonable rate."[17]

III. ARGUMENT

A. The holding that PJM's Tariff is unjust and unreasonable is arbitrary and capricious.

To invoke its FPA section 206, 16 U.S.C. § 824e, powers "to suggest modifications that result in an 'entirely different rate design' than [PJM's] proposal,"[18] the Commission "bears 'the burden of [first] proving that the existing rate is *unlawful*.'"[19] It must find that the existing tariff is unjust, unreasonable, or unduly discriminatory and that finding must be backed by substantial evidence.[20] The Capacity Order fails to clear these bars.

As a preliminary matter, the Capacity Order does not "demonstrate that the existing rates are 'entirely outside the zone of reasonableness.'"[21] As PJM itself explained, the RPM Auction has "facilitated robust competition for capacity supply obligations."[22] Indeed, the most recent

[16] *Id.* at P 157.
[17] *Id.* (emphasis added).
[18] *NRG Power Mktg., LLC v FERC*, 862 F.3d 108, 115 (D.C. Cir. 2017) ("*NRG*").
[19] *Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017).
[20] 16 USC § 825l.
[21] *NRG*, 862 F.3d at 114 n.2 (cited by Capacity Order at P 149 n.273).
[22] Capacity Filing at 3.

BRA was characterized by high prices, high reserve margins, and "strong new entry despite relatively flat demand."[23] For example the "Rest of RTO" price for the 2021/2022 Delivery Year was $140.00/MW-day, up from the previous delivery year's price of $76.53/MW-day, and the third highest in the history of PJM's BRA.[24] Reserve margins also continued to be strong, with the 2021/2022 Delivery Year maintain a 21.5% reserve margin, well in excess of PJM's stated goal of 15.8% .[25] The capacity market continues to attract new generation with 1,401 MWs of new generation clearing PJM's most recent auction, and tens of thousands of MWs of capacity under development in the region. The Independent Market Monitor's State of the Market Reports for PJM document the growth in new capacity resources. In December, 2013, there were 67,299 MW in generation request queues for construction.[26] By December, 2017, that number was 99,453 MW, and it continued to grow to 100,179 MW by March, 2018.[27] The record also shows that resource adequacy should "continue to remain strong in coming years."[28] The continued development of existing and new capacity resources in PJM stands in clear juxtaposition to the

[23] DC-MD-NJ Consumer Coalition Protest at 2–3; *see also* Capacity Order at P 125 n.144; *Calpine Corporation et al.*, 163 FERC ¶ 61,236 (Glick, Comm'r, dissenting) (2018) ("Comm'r Glick Dissent") ("PJM's capacity market has resulted in capacity surplus that is well in excess of the level required to reliably meet the region's electricity demands, suggesting that, if anything, the prices in PJM's capacity markets are too high, not too low.").

[24] PJM Interconnection, L.L.C., *2021/2022 RPM Base Residual Auction Results* (May 23, 2018), http://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2021-2022/2021-2022-base-residual-auction-report.ashx.

[25] *Id.*

[26] Monitoring Analytics, LLC, *State of the Market Report for PJM – 2013* at 345 (2014).

[27] Monitoring Analytics, LLC, *State of the Market Report for PJM – 2017* at 537 (2017); Monitoring Analytics, LLC, *Quarterly State of the Market Report for PJM – 2018* at 548 (2018).

[28] DC-MD-NJ Consumer Coalition Protest at 3 (citing Affidavit of James F. Wilson at ¶ 19 ("Wilson Affidavit")); Joint Consumer Advocates Protest at 12 (citing the same); *see also* Wilson Affidavit at ¶ 9 ("Resource adequacy has been easily achieved in the PJM footprint in recent years with large amounts of excess capacity cleared through RPM despite numerous retirements.").

Commission's conclusion that state policy decisions "compromise the market, because investors cannot predict whether their capital will be competing against resources that are offering into the market based on actual costs or on state subsidies."[29] In other words, the market is doing exactly what it was designed to do.[30]

Instead of looking at the actual rates and investments produced by the RPM as it stands now, the Order instead finds that the Tariff is unjust, unreasonable, and unduly discriminatory based onsuppositions that: (i) out-of-market support cause "unreasonable price distortions and costs shifts"; (ii) the alleged price distortions "compromise the capacity market's integrity," and (iii) "investors cannot predict whether their capital will be competing against resources that are offering in the market based on actual costs or state subsidies."[31] These conclusions do not hold together when viewed in light of the evidentiary record and basic economic theory.

The Capacity Order's fundamental flaw is that it fails to demonstrate that actual or projected increased participation in PJM's market of resources that either receive, or will receive, state-sponsored support or that are constructed or operated to meet state policy goals result in "unreasonable price distortions."[32] The Order makes much of state efforts to increase renewable energy production through renewable portfolio standards, citing exclusively to Calpine and PJM's comments about the increased renewable energy capacity that will be needed to meet state RPS

[29] Capacity Order at P 150.
[30] *See also* Comm'r Glick Dissent at 1–2.
[31] Capacity Order at P 150.
[32] *See, e.g.*, *Maine*, 854 F.3d at 27 (noting that although courts "defer to FERC's expertise in ratemaking cases, the Commission's decision must actually be the result of reasoned decision-making to receive that deference. Without further explanation, a bare conclusion that an existing rate is 'unjust and unreasonable' is nothing more than 'a talismanic phrase that does not advance reasoned decision making.'") (internal citations omitted).

standards in the PJM region.[33] However, as discussed further below, the FPA grants states the right to oversee generation resources. There is nothing wrong or unlawful about the states' actions.[34]

Because basic economic theory counsels that any action "that increases or decreases the number or the type of generation facilities will, through the law of supply and demand, inevitably affect wholesale rates,"[35] any state subsidy or policy that impacts the number of facilities will by its very nature impact the rate.[36] The Commission's authority to remedy rates does not extend broadly to addressing *any* impact on market pricing; it only extends to those rates that are explicitly found to be *un*just, *un*reasonable, and *un*duly discriminatory.[37] The mere fact that renewable supply or that of another preferred generation source in the PJM region may increase as the result of state supported out-of-market payments, does not, in and of itself, render resulting capacity market prices unjust and unreasonable.

Contrary to what the Capacity Order implies, there is no substantial evidence that existing or new resources that receive out-of-market support would be uneconomic without such

[33] *See, e.g.*, Capacity Order at PP 151–52.
[34] *Accord* Comm'r Glick Dissent; *see also* PJM Capacity Filing, Affidavit of Anthony Giacomoni, Att. F at ¶ 23) ("In simple terms, the RPS programs in the PJM Region are doing what they were intended to do, i.e., increase the share of state loads' energy needs that is met by renewable resources, and generally bring forth more renewable resources in the PJM Region than would have developed absent the programs.") ("Giacomoni Aff.").
[35] Comm'r Glick Dissent at 3.
[36] *See, e.g.*, *Conn. Dep't. of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (2009)("*Conn. DPU*") ("Of course, [state and municipal] choices affect the pool of bidders in the Forward Market, which in turn affects the market clearing price for capacity. . .But this is all quite natural.").
[37] *NRG*, 862 F.3d at 114–15.

subsidies.[38] Rather, PJM's witness Dr. Giaconomi, on whose comments the Commission relies in finding that the existing tariff is unjust and unreasonable, testifies that:

> To be clear, not all of these resources may depend on the state subsidies to be economic. Some existing resources, for example, may have avoidable costs that are low enough to be met with other PJM market revenues.[39]

Dr. Giaconomi further "point[s] out" that while some RECs and Solar REC (S-RECs) payments (which he has termed "subsidies") are above market clearing prices and

> are quite substantial, the size of the subsidy does not, by itself, dictate whether a resource would be economic in PJM's market without the subsidy. Depending on the resource's costs, and the revenue the resource receives in the PJM energy and ancillary service markets, the subsidy payments could effectively be surplus.[40]

Similarly, neither the record nor economic theory support the Commission's conclusions that out-of-market payments threaten the integrity of the market or undermine investor confidence. Notwithstanding that the Order does not define what constitutes the "integrity of the market," the Wilson affidavit already explained why these conclusions are wrong. Mr. Wilson explains, among other things, that:

> • "There has been substantial entry and exit each year, large amounts of cleared resources, and more and more offers at prices close to clearing prices (the supply curves are becoming more gently sloped). This means that RPM has substantial ability to absorb new resources of all types, while maintaining clearing prices within a range that balances entry and retirements."[41]

[38] *See, e.g.*, Capacity Order at PP 151–55.
[39] Giacomoni Aff. at ¶ 30.
[40] *Id.* at ¶ 36.
[41] Wilson Aff. at ¶ 9.

- "New entry generally offers at low prices, whether or not they receive state policy support, and all new entry at low prices has the same potential impact on RPM resources."[42]

- The state "policies, which generally either support entry over time by new zero carbon resources, or further retention of zero carbon resources that have been in the market for decades, typically result from lengthy, transparent regulatory processes. The new zero carbon resources will typically be added to the market at a steady pace that is known to the market well in advance, and can easily be absorbed (especially since these resources are typically assigned capacity values well below their installed capacity ratings). The existing zero carbon resources that may be retained by such programs are already in the market so generally do not need to be absorbed."[43]

- "As market participants plan their entry and exit choices, they take into account the anticipated supply/demand balance and the anticipated actions of other market participants that affect that balance. As a result, despite entry and exit each year, the RPM supply curves end up being quite similar year to year."[44]

In sum, any alleged price distortion caused by state supported resources would not affect the "integrity" of the market nor would it affect investor expectations. The Capacity Order fails to account for these economic realities.[45]

Indeed, it is the constantly changing market rules and Capacity Order itself that contribute to investor uncertainty. Since 2011, PJM had requested multiple changes to its tariff with the commensurate multiple orders and appellate litigation. Contrary to state regulatory and legislative efforts, which as Mr. Wilson explained generally have long lead times, the Commission's orders

[42] *Id.* at ¶ 10
[43] *Id.* at 35.
[44] *Id.*
[45] *Universal Camera Corp. v. Nat'l Labor Relations Bd.*, 340 U.S. 474, 488 (1951) ("The substantiality of evidence must take into account whatever in the record fairly detracts from its weight").

have required changes to be implemented by the next BRA following the issuance of an order approving a change in tariff language. Auctions have been run while litigation is still pending. With each successive round of changes, it becomes more and more difficult for market participant to plan "their entry/exit choices" as there is no clarity as to which resources will be allowed to participate in the next auction and under what conditions.

Moreover, "the fixing of 'just and reasonable' rates" does not depend only on the investors' confidence in the market, rather it "involves a balancing of the investor and the consumer interests."[46] The Commission must, thus, balance the benefits of proposed tariff revisions against the costs of increasing rates.[47] Not only did PJM's Capacity Filing fail to provide cost estimates for either proposal, the Capacity Order does not attempt to consider costs when it found PJM's existing market is unjust and unreasonable.[48]

> ***While Courts defer to the Commission's judgment in weighing various considerations, including costs,[49] "[t]he Commission is required to make [] a candid, common-sense assessment as to the consistency of a***

[46] *See, e.g. Federal Power Com. v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).
[47] *AEMA*, 860 F.3d at 660–61 (citing *Blumenthal v. FERC*, 552 F.3d 875, 885 (D.C. Cir. 2009)).
[48] The U.S. Supreme Court has found that an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made'" and consider "the relevant factors" prescribed by Congress in the governing statute. *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962); citing *Bowman Transp. v. Ark..-Best Freight Sys.*, 419 U.S. 281, 285 (1974); *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971)). As part of this inquiry, the FPA requires the Commission consider a proposal's costs in determining whether to approve it. *See, e.g., Advanced Energy Mgmt. Alliance*, 860 F.3d 656, 662 (D.C. Cir. 2017) (citing *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2014)); *TransCanada Power Mktg.*, 811 F.3d 1, 11–12 (D.C. Cir. 2015)); *Process Gas Consumers Grp.*, 866 F.2d 470, 476–77 (D.C. Cir. 1989).
[49] *AEMA*, 860 F.3d at 662 (citing *Md. Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1286 (D.C. Cir. 2011).

project's objectives with the interests of the ratepayers providing the financing."[50] It did not do so here.[51]

B. The Commission overstepped its authority under the FPA by targeting legitimate state actions and in doing so, creates a discriminatory regime and undermines the integrity of the competitive markets.

The Capacity Order targets state policies, taxes, and other practices which have already been integrated into the competitive wholesale market. While RPS and associated RECs are the most prominent examples, other state preferences, such as the decision to allow utilities to remain vertically integrated entities, have been present in the PJM capacity construct since the beginning. In fact, a broad array of state and federal policies, taxes and practices have permeated the economy and the energy markets for years.[52] The Commission provides no rationale in distinguishing between some of these long-integrated resources from others, particularly as to type of resource or by state policy.[53]

In doing so, the Capacity Order oversteps the Commission's FPA authority. The law is clear that the states, not the Commission, are the entities responsible for shaping the generation mix.[54] Although the FPA provides the Commission with jurisdiction over wholesale sales of

---

[50] *Process Gas Consumers Grp.*, 866 F.2d at 477.

[51] A system in which *every* state decision that influences the resource mix leads to consumers paying twice for capacity cannot be said to be just and reasonable. *C.f.* Capacity Order at PP 69, 159. Such a result would require all ratepayers to foot the bill for investment in unwanted resources, potentially leading to long-term stranded costs.

[52] Comm'r Glick Dissent at 6 (citing Molly Sherlock, Cong. Research Serv., *Energy Tax Policy: Historical Perspectives on and Current Status of Energy Tax Expenditures* 2–3 (2011), https://fas.org/sgp/crs/misc/R41227.pdf (Energy Tax Policy)).

[53] Commissioner Glick discusses examples of policies, including those focused on domestic energy production and support for resources owned within vertically-integrated states. *See* Comm'r Glick Dissent at 6–8.

[54] *Id.* at 2.

electricity as well as rates and practices affecting those wholesale sales, Congress expressly precluded the Commission from regulating "facilities used for the generation of electric energy," instead vesting the states with exclusive jurisdiction over those facilities.[55] The Supreme Court has explained that "regulation of utilities is one of the most important of the functions traditionally associated with the police power of the states."[56] This authority to craft policies protecting public health and the environment has been repeatedly recognized.[57]

---

[55] 16 U.S.C. § 824(b)(1) (2012); *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016) (describing the jurisdictional divide set forth in the FPA); *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 767 (2016) (*EPSA*) (explaining that "the [FPA] also limits FERC's regulatory reach, and thereby maintains a zone of exclusive state jurisdiction"); *see also Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205 (1983) (recognizing that issues including the "[n]eed for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States"). Although these cases deal with the question of preemption, which is, of course, different from the question of whether a rate is just and reasonable under the FPA, the Supreme Court's discussion of the respective roles of the Commission and the states remains instructive when it comes to evaluating how the application of a minimum offer price rule (MOPR) squares with the Commission's role under the FPA.

[56] *Ark. Elec. Co-Op. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983); *see Exxon Mobil Corp. v. U.S. EPA*, 217 F. 3d 1246, 1255 (9th Cir. 2000).

[57] *See Wheelabrator Lisbon, Inc. v. Conn. Dep't of Pub. Util. Control*, 531 F.3d 183, 186 (2d Cir. 2008) (recognizing that "RECs are inventions of state property law" and a valid exercise of state authority); *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 733 F.3d 393, 417 (2d Cir. 2013) (recognizing that "traditional state authority includes the ability to "direct the planning and resource decisions of utilities"); *Conn. DPU*, 569 F.3d at 481 (recognizing that states may require existing generators to meet a variety of actions). *See also S. Cal. Edison Co.*, 71 FERC ¶ 61,269, 62,076 (1995) (recognizing that states can "diversify their generation mix to meet environmental goals"). *In re S. Cal. Edison Co.*, 70 FERC ¶ 61,215, 61,676 (1995) (recognizing that states may "favor particular generation technologies over others"); s*ee also, In re Cal. Pub. Utils. Comm'n*, 134 FERC ¶ 61,044, 61,160 (2011) (acknowledging "the reality that states have the authority to dictate the generation resources from which utilities may procure electric energy"); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 66 (D.C. Cir. 2014) (noting that Order 1000 responded to "the failure of current transmission planning processes to account for transmission needs driven by public policy requirements); *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 442 (1960).

Indeed, there is "a strong presumption against finding" that the "powers traditionally exercised by states" have been superseded under the FPA.[58] In no manner did states give up their authority to regulate the environmental effects of generation by restructuring and joining PJM. To the contrary, the D.C. Circuit has held that restructured states "retain the right to forbid new entrants from providing new capacity, to require retirement of existing generators, to limit new construction to more expensive, environmentally-friendly units, or to take any other action in their role as regulators of generation facilities."[59]

The Organization of PJM States ("OPSI") has previously stated that "FERC should expect, and require, that PJM respect the resource choices of state policy-makers unless there is a legal determination that a state policy impermissibly intrudes into matters properly reserved for federal oversight."[60] These state commissions protested PJM's proposed tariff revision because PJM offered only brief simulations of potential scenarios affidavits that contribute little or nothing to justify the immediate need for action against state policies.[61]

The FPA's model of cooperative federalism preserves federal authority over the wholesale competitive market but respects state choices regarding the structure of retail utilities. Inherent in this model is the fact that one state's exercise of its sovereign authority will affect matters subject to the other sovereign's exclusive jurisdiction.[62] Commission Glick noted that any state regulation

---

[58] *Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 94 (2d Cir. 2012).
[59] *Conn. DPU v. FERC*, 569 F.3d at 481.
[60] Comments of the Organization of PJM States, Inc. (May 7, 2018), eLibrary No. 20180507-5180 at 2 ("OPSI Comments").
[61] OPSI Comments at 3, 7.
[62] *FERC v. Electric Power Supply Ass'n*, 136 S. Ct. 760, 776 (2016) (explaining that under the FPA, the federal and state spheres of jurisdiction are "not hermetically sealed from each other").

that increases or decreases the number or type of generation facilities inevitably affects wholesale rates which is allowed by the FPA so long as neither the states nor the Commission exercise their authority in a manner that "targets" or "aims at" the other sovereign's exclusive jurisdiction.[63]

The states' rights to address environmental externalities is at the core of the authority over "generation facilities" that Congress gave to the states when it enacted the FPA. Accordingly, the Commission should, consistent with the federalist design of the FPA, accommodate and facilitate those state efforts.[64] In years past, this authority has been expressly recognized by this Commission, including when states enact REC and ZEC programs such as those identified by PJM as the basis for its Section 205 proposal in the first place.

State REC and ZEC programs are "not payments for, or otherwise bundled with, sales of energy or capacity at wholesale."[65] The Commission in fact just filed an amicus brief in federal

---

[63] Comm'r Glick Dissent at 3 (citing *Hughes*, 136 S. Ct. at 1300 (Sotomayor, J., concurring) (quoting *Nw. Cent. Pipeline Corp. v. State Corp. Comm'n of Kan.*, 489 U.S. 493, 518 (1989)); *id.* ("recogniz[ing] the importance of protecting the States' ability to contribute, within their regulatory domain, to the Federal Power Act's goal of ensuring a sustainable supply of efficient and price-effective energy"); *EPSA*, 136 S. Ct. at 776 (emphasizing the importance of "'the *target* at which [a] law *aims*'") (citing *Oneok v. Learjet, Inc.*, 135 S. Ct. 1591, 1600 (2015)); *Oneok*, 135 S. Ct. at 1600 (recognizing "the distinction between 'measures *aimed directly at* interstate purchasers and wholesales for resale, and those aimed at' subjects left to the States to regulate") (quoting *N. Nat. Gas Co. v. State Corp. Comm'n of Kan.*, 372 U.S. 84, 94 (1963)); *see also Coal. for Competitive Elec. v. Zibelman*, 272 F. Supp. 3d 554, 576 (S.D.N.Y. 2017) ("[W]hen the State is legitimately regulating a matter of state concern, 'FERC's exercise of its authority must accommodate' that state regulation '[u]nless clear damage to federal goals would result.'") (quoting *Nw. Cent. Pipeline Corp.*, 489 U.S. 493, 522 (1989))).

[64] *Id.* at 4 (citing *Cf.* Ari Peskoe, *Easing Jurisdictional Tensions by Integrating Public Policy in Wholesale Markets*, 38 ENERGY L.J. 1, 38–40 (2017) (discussing the potential for the Commission to address these issues by designing capacity market rules to accommodate or reflect state policies)).

[65] Comm'r Glick Dissent at 4 (citing Brief for the United States and the Federal Energy Regulatory Commission as Amici Curiae in Support of Defendants-Respondents and Affirmance at 10, *Vill. of Old Mill Creek v. Star*, Nos. 17-2433 and 17-2445 (consolidated) (7th Cir. May 29, 2018)

court disclaiming authority over such programs by noting that these public policies focus on the significant externalities associated with electricity generation by reflecting "the environmental attributes of a particular form of power generation."[66] FERC has specifically disclaimed jurisdiction over RECs sold independently from wholesale sales, stating that an "unbundled REC transaction does not affect wholesale electricity rates, and the charge for the unbundled RECs is not a charge in connection with a wholesale sale of electricity."[67] Action to subject certain resources to specific pricing rules impairs the states' ability to make a political decision regarding the generation mix within their borders – a decision that they are far better equipped to make than is the Commission.[68] Doing so interferes with state authority in a way that Congress did not intend.[69]

Nevertheless, the Capacity Order claims that the "integrity and effectiveness" of PJM's capacity market "have become untenably threatened by out-of-market payments provided or required by certain states for the purpose of supporting the entry or continued operation of preferred generation resources."[70] This unprecedented interference in competitive markets to blunt efforts by states to exercise their recognized authority over their generation resources violates the Commission's own principle that competitive markets "result in the selection of the least-cost set

(Seventh Circuit Brief)); *see also WSPP Inc.*, 139 FERC ¶ 61,061, at PP 18–26 (2012).
[66] *Id.*
[67] *W. Sys. Power Pool, Inc., 139 FERC* ¶ 61,061, 61,426 (2012).
[68] Comm'r Glick Dissent at 5 n.11.
[69] *Id.*
[70] *Id.* at 3–4 (citing Capacity Order at 1). In his dissent, Commissioner Glick explains that in the ISO-NE CASPR Order" the Commission set out a series of "first principles," the purpose of which the Commission stated was to ensure adequate "investor confidence" in the capacity market. *ISO New England Inc.*, 162 FERC ¶ 61,205 at PP 21, 24 (2018)("CASPR Order").

of resources that possess the attributes sought by the market."[71] PJM sought approval of proposed tariff revisions under FPA Section 205, which prohibits the granting of "any undue preference or advantage to any person or subject[ing] any person to any undue preference or disadvantage."[72] Subjecting some resources, but not all, to a MOPR would be unduly discriminatory by excluding certain resources from the capacity market while exempting other similarly situated resources from its MOPR.[73]

First, in finding a resource to have an "actionable subsidy," both the PJM Capacity Filing and the Capacity Order will have to distinguish between state policies, taxes, and practices that only affect select resources. Second, absent any out-of-market payments, the market would select based on only one attribute: the financial expenditures necessary to bring the resource to the market. Those states whose actions account for the most significance consequence of generating electricity – the unpriced externalities associated with climate change – have acted because the attributes of carbon-free generation are not being recognized by the wholesale market.[74] In attempting to mitigate price "suppression," the Capacity Order fails to recognize the cost of stymying state efforts to address environmental externalities, such as climate change.[75]

[71] CASPR Order at P 21.
[72] 16 U.S.C. § 824d(b).
[73] *See id.* (finding that discrimination is undue if disparately treated resources are "similarly situated") (citing *Sacramento Mun. Util. Dist.*, 474 F.3d 797, 802 (D.C. Cir. 2007)).
[74] Comm'r Glick Dissent at 6.
[75] *Id*. (citing Exelon Protest at 12, Sylwia Bialek & Burcin Unel, Inst. for Policy Integrity, *Capacity Markets and Externalities: Avoiding Unnecessary and Problematic Reforms* at 12 (2018)); Exelon Protest at 12 (estimating that the externalities associated with carbon dioxide alone amount to $12.1 billion to $17.7 billion annually across PJM).

Competitive wholesale markets meet their goals more efficiently when states are addressing environmental externalities and the Commission's markets can operate against the backdrop of such state environmental programs.[76] The Commission has long recognized that state command-and-control "environmental regulation … driv[es] significant changes in the mix of resources" by increasing costs of fossil-fuel generators, and "resulting in the early retirement of some coal-fired generation."[77] When private and social costs are better aligned, "competition" is more "robust," and the markets' "price signals" more accurately "guide the orderly entry and exit of capacity resources" to select the "set of resources" that is truly "least cost."[78]

In the past the Commission has elected to make its market rules "fuel-neutral,"[79] and has not attempted itself to redress the externalities described above but instead respected the traditional role of states.[80] When states have exercised their authority to incentivize clean generators, the Commission has affirmed that states may "encourage renewable or other types of resources" even when doing so "allow[s] states to affect the [wholesale] price" or makes clean generation "more competitive in a cost comparison with fossil-fueled generation."[81] The Order itself asks the parties to ponder whether federal subsidies should be considered actionable subsidies, receipt of which would subject resources to mitigation.[82] If in fact the issue for competitive markets is purely one

[76] *See ISO New England Inc*., 158 FERC ¶ 61,138 at P 58 (2017).
[77] *Transmission Planning & Cost Allocation*, 139 FERC ¶ 61,132 at P 5 (2012).
[78] CASPR Order at P 21.
[79] CASPR Order at P 26.
[80] *Cal. Ind. Sys. Operator Corp*., 116 FERC ¶ 61,274 at P 1112 (2006).
[81] *S. Cal. Edison Co.*, 71 FERC ¶ 61, 269, 62,080 (1995).
[82] Capacity Order at P 171.

of economic incentives for the entry and exit of generation, as the Order pretends, it should not matter who is making the out of market payment.

C. The Commission's paper hearing process intrudes on parties' due process rights.

The Commission has long "believe(d) that a robust stakeholder process … is important to the development of proposals"[83] In fact, it has specifically endorsed the importance of the stakeholder process at PJM and "PJM's approach of instituting a stakeholder review process to develop proposals."[84] Unfortunately, the Capacity Order undermines these plaudits by eliminating the usual process of stakeholder review and consideration. After finding PJM's two proposals unjust and unreasonable – proposals that underwent significant stakeholder vetting – the Order should have returned the issue to the stakeholders with limited guidance directed at addressing any issues in the capacity market. Instead the Order foisted a significantly under-developed concept on the stakeholders while providing them with an extremely limited number of avenues or amount of time to address numerous deficiencies and consider any alternatives.

As the Commission is well aware, PJM and its stakeholders have invested considerable time and effort into addressing the potential effects of out-of-market payments in the capacity market. In March 2017, stakeholders began examining the impact of out-of-market payment through PJM's Capacity Construct/Public Policy Senior Task Force ("CCPPSTF"). Over the course of the next nine months more than twenty separate meetings of the CCPPSTF were held

[83] *Midwest Ind. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61, 209 at P 231; *see also Midwest Ind. Transmission System Operator, Inc.*, 116 FERC ¶ 61,292 at P 46 ("We believe that a stakeholder process is important.").
[84] *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272 at P 43.

and stakeholders reviewed over a dozen different proposals and concepts. Each stakeholder offering a proposal was given time to present their proposal and receive feedback from other stakeholders. In November 2017 PJM conducted a poll of participants with MOPR-Ex, sponsored by the Independent Market Monitor, and Capacity Repricing receiving the most support – 63.03% and 26.10%, respectively.[85] In a non-binding poll, 64% of stakeholder supported retaining the status quo.[86]

PJM's deliberative process allowed stakeholders with differing interests and concerns to have their proposals equally considered and reviewed by fellow stakeholders.[87] This process insured that a diversity of opinions would be considered, that proposals would have an opportunity to be refined based on stakeholder feedback, and that the proposal chosen would likely both earn broad stakeholder support and best address the issue at hand.

---

[85] PJM Interconnection, L.L.C., *CCPPSTF Vote Results* (Nov. 21, 2017), http://www.pjm.com/-/media/committees-groups/task-forces/ccppstf/20171121/20171121-ccppstf-vote-results.ashx

[86] *Id.*

[87] The poll offered by PJM included proposals from transmission owners (Exelon Corp.), generators (LS Power and NRG), public power providers (American Municipal Power and Northern Virginia Electric Cooperative), and public interest groups (Natural Resources Defense Council – Sustainable FERC). In addition, two regularly scheduled sessions of the senior stakeholder committee, the Markets and Reliability Committee, included significant discussion of the MOPR-Ex proposal and an additional special session was devoted specifically to allowing for additional stakeholder input. *See*, PJM Interconnection, L.L.C., Markets and Reliability Committee Agenda (Dec. 7, 2017), http://www.pjm.com/-/media/committees-groups/committees/mrc/20171207/20171207-agenda.ashx; PJM Interconnection, L.L.C., Special MRC MOPR-Ex Agenda (Dec. 12, 2017), http://www.pjm.com/-/media/committees-groups/committees/mrc/20171212-special-mopr/20171212-agenda.ashx; PJM Interconnection, L.L.C., Markets and Reliability Committee Agenda (Dec. 21, 2017), http://www.pjm.com/-/media/committees-groups/committees/mrc/20171221/20171221-agenda.ashx.

The FRR-Alternative proposed by the Capacity Order was offered by one stakeholder, Dayton Power & Light ("DP&L").[88] After initial discussions, when it became clear the PJM stakeholders preferred to discuss other proposals, the FRR-Alternative was not discussed as thoroughly as other proposals were. In the responses to the Capacity Filing, DP&L again was the only stakeholder who addressed the FRR-Alternative in any substantial fashion.[89] This is not to argue that it is a "bad" proposal, but only to point out that it is significantly under-developed and that it did not receive the level of review that is normally incumbent in the stakeholder process that the Commission expects. As Commissioner LaFleur stated, "the expanded FRR proposal is currently little more than a rough concept, with major design elements left unresolved."[90]

Evidence that both a new and vastly expanded MOPR and an FRR-Alternative are concepts only and not fully-designed market options can be found in the numerous questions posed by the Capacity Order – including on such minor details as: (i) the scope of out-of-market payments to be mitigated; (ii) how to identify the load that is removed from the capacity market; (iii) what exemptions, if any, should apply to the expanded MOPR; (iv) how long resources entering into the FRR-Alternative must remain there; and (v) if changes to the demand curve are necessary to accommodate this new capacity construct.[91] If these questions were not enough, Commissioners LaFleur and Glick provides their own list of concerns.[92] Additionally, while the concept of an

---

[88] Dayton Power & Light, DPL Capacity Choice Presentation, (Aug. 2, 2017), http://www.pjm.com/-/media/committees-groups/task-forces/ccppstf/20170803/20170803-dpl-capacity-choice-presentation.ashx.

[89] *See Limited Protest and Comments of the Dayton Power & Light Company* (May 7, 2018), eLibrary No. 20180507-5190.

[90] Commn'r LaFleur Dissent at 4.

[91] *See id.*.

[92] Cmmn'r LaFleur Dissent at 4–5 n.7; Cmmn'r Glick Dissent at 14–17.

expanded MOPR has received more stakeholder support and attention, significant questions regarding its scope and implementation remain, particularly because PJM has never instituted a MOPR anywhere near as broad as what the Capacity Order envisions. All of these questions are helpful, insightful, and deserving of thoughtful responses by PJM and its stakeholders. However, the process envisioned by the Capacity Order will not permit this important deliberative process to take place.

Additionally, by declaring PJM's capacity market to be unjust and unreasonable, the Commission has closed off *ex parte* communication with stakeholders leaving it "hamstrung in its ability to openly and honestly engage with the [stakeholders] about whether this proposal will meet their needs, and how they might operate under this construct."[93] This limitation on open and constructive dialogue between the Commission and stakeholders comes at a time in the process when such interaction is most needed. A paper hearing, conducted over just 90 days, will be "without adequate stakeholder engagement"[94] to address the many questions posed by the Capacity Order alone – not to mention issues that stakeholders themselves may raise. It will not allow PJM to hold stakeholder meetings beyond cursory and conclusory forums that are more informational sessions then genuine exchanges of ideas that are at the heart of the stakeholder process. It will not allow stakeholders to develop their own FRR-Alternative proposals that may meet the Commission's goal or permit those proposals to benefit from the input of other stakeholders. It will not protect minority interests.[95] The process laid out by the Capacity Order violates the

[93] Comm'r LaFleur Dissent at 3.
[94] *Id.* at 1.
[95] *See* FERC Order No. 719, *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008) at P 508 (stating that RTO governance process must "provide for

Commission's long-held principals regarding the importance of a robust and inclusive stakeholder process, violates stakeholder's due process rights, and is unjust and unreasonable.

D. The timeline prescribed by the Capacity Order is both arbitrary and capricious and insufficient to fill in the details to the sweeping concepts.

Commissioner LaFleur correctly describes the Capacity Order as proposing "the most sweeping changes to the PJM capacity construct since the market's inception more than a decade ago." Past precedent when the Commission makes similar significant changes to the energy markets is to allow a commensurate amount of time for both the development of the proposal and its implementation. For example, in its docket addressing the impact of the Polar Vortex on the Capacity Market, the Commission granted the RTOs 90 days to file reports on their efforts to address fuel assurance.[96] Similarly, in its request for information on price formation the Commission requested that the RTOs respond to questions on a variety of issues in 75 days, followed by additional time for public comment.[97]

In both of these examples not only did the Commission provide for greater time for initial responses – 90 or 75 days as compared to 60 – but what the Commission was asking for was far less demanding. These were essentially requests for information that would then lead to further Commission and RTO action. In the Capacity Order, the request is for PJM to submit a completely new market design within 60 days and for stakeholders to thoroughly review and comment on this new design – plus any additional proposals from other stakeholders – in a mere 30 days.

---

appropriate consideration of minority interests").

[96] *See Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators*, 149 FERC ¶ 61,145 (2014).

[97] *See Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, 153 FERC ¶ 61,221 (2015).

The Administrative Procedures Act typically allows minimum of 60 days, while Executive Order No. 12,866 recommends "significant regulatory action" – like the redesign of an RTO's capacity market – be given additional time of up to 180 days or more.[98] While the Capacity Order is not technically a rulemaking, its effect on PJM and its stakeholders will be no less significant. This truncated timeline will not only likely lead to a "solution" that fails to address the Commission's concerns but will harm stakeholders and will be unjust and unreasonable.

What is unfortunate about the Capacity Order is that this extreme timeline is completely unnecessary. It is premised on the faulty assumption that the PJM capacity market needs immediate reform. As previously demonstrated in this Rehearing Request, PJM's capacity markets remain healthy and robust – attracting new investment and maintaining reserve quantities well in excess of PJM's stated goals. In other words, if changes need to be made, time is on our side in making them and there is no need to rush an under-developed proposal through without adequate RTO, stakeholder, and yes, Commission understanding and review. Moreover, as Commissioner LaFluer points out there were several other approaches the Capacity Order could have taken to develop the expanded MOPR and FRR-Alternative.[99] These additional options could have included an administrative docket with a longer and more robust comment period, a technical conference on the new concepts, or a Commission-directed settlement conference. All of these options would have provided for a more just and reasonable and likely better policy outcome then the truncated process laid out in the Capacity Order.

[98] *See* Executive Order No. 12,866, *Regulatory Planning and Review*, 58 Fed. Reg. 51,735 (Sept. 30, 1993).
[99] Comm'r LaFleur Dissent at 3 n.3.

Finally, by not clearly articulating a transition period or process and by expecting many of the reforms to be in place by the May 2019 BRA, the Capacity Order sets almost any solution up for near certain failure and significant market disruption. The reforms envisioned by the Capacity Order will effect states in multiple ways, particularly their RPS programs, and states will need time to adjust. This adjustment may include new legislation or regulations passed or promulgated by state legislatures and regulatory bodies. It should be plainly obvious that states cannot be expected to thoughtfully act on a final rule issued in January for an auction that occurs in May. Any action by the Commission must include provisions for a lengthy and incremental transition. Potential options should include everything from a MOPR-Ex like proposals with exemptions becoming more limited over several years to delaying the BRA. Failure to provide this transition will likely lead to severe market shocks that will undermine investor confidence in the capacity market – the very thing the capacity market is designed to mitigate against. Abrupt changes may also leave states will no other choice but to re-regulate or leave PJM altogether.[100] None of these outcomes are desired by PJM, its stakeholders, or the Commission but they are the potential outcomes when significant capacity market designs are instituted without the appropriate opportunity for input or incremental transition.

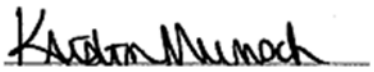
IV. CONCLUSION

For the reasons set forth in this Rehearing Request the JCA respectfully request that the Commission reconsider the Capacity Order, or, in the alternative, grant a six month extension of time; require that PJM reconvene the stakeholder process and, with the Commission's guidance,

[100] *See* Rory D. Sweeney, *NJ Regulator Threatens to Exit PJM Amid States' Complaints,* RTO INSIDER (July 2, 2018), https://www.rtoinsider.com/pjm-joe-fiordaliso-95702.

develop a capacity market construct that meets their needs; and, provide for an appropriate mechanism and timeline to allow for the transition from the current capacity market design to a new one.

Respectfully submitted,



Kristin Munsch
Deputy Director
Eric DeBellis
Attorney & Policy Analyst
Citizens Utility Board
309 W. Washington St., Suite 800
Chicago, IL 60606
(312) 263-4282
kmunsh@citizensutilityboard.org
edebellis@citizensutilityboard.org

/s/ Paula M. Carmody
Paula M. Carmody
People's Counsel
Theresa V. Czarski
Deputy People's Counsel
William F. Fields
Senior Assistant People's Counsel
Maryland Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8150
william.fields@maryland.gov

/s/ *Sandra Mattavous-Frye*
Sandra Mattavous-Frye
People's Counsel for the District of Columbi
Karen R. Sistrunk
Deputy People's Counsel
Anjali G. Patel
Frederick (Erik) Heinle III
Assistant People's Counsel
Office of the People's Counsel for the District of Columbia
1133 15th Street, N.W., Suite 500
Washington, DC 20005-2710
202-261-1182
fheinle@opc-dc.gov

/s/ Rebecca W. Goodman
Rebecca W. Goodman
Executive Director
Kent A. Chandler
Lawrence W. Cook
Assistant Attorneys General
Kentucky Office of the Attorney General
Office of Rate Intervention
700 Capital Ave., Suite 20
Frankfort, KY. 40601
(502)696-5453
Rebecca.Goodman@ky.gov
Kent.Chandler@ky.gov
Larry.Cook@ky.gov

Dated: July 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each party designated on the official service list compiled by the Secretary in this proceeding, by email.

/s/ Frederick (Erik) Heinle III
Frederick (Erik) Heinle III
Assistant People's Counsel
Office of the People's Counsel for the District of Columbia
1133 15th Street, N.W., Suite 500
Washington, DC 20005-2710
202-261-1182
fheinle@opc-dc.gov

Dated: July 30, 2018