UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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

REPLY COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

The Office of the Attorney General for the District of Columbia ("DC OAG") hereby files these Reply Comments pursuant to the Commission's June 29, 2018 Order Rejecting Proposed Tariff Revisions, Granting in Part and Denying in Part Complaint, and Instituting Proceeding Under Section 206 of the Federal Power Act ("Order").[1]

I. INTRODUCTION

As described in the DC OAG's initial comments, the public interest of the District of Columbia ("District") is served by increasing the percentage of renewable energy

[1] These Reply Comments are submitted pursuant to *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236, at p.172 ¶ F (June 28, 2018) ["Order"] and Notice of Extension of Time, Docket Nos. EL 16-49-000, ER18-1314-000, ER-18-001, EL 18-17800 (Aug. 22, 2018) (extending the deadline for filing initial testimony, evidence, and/or argument in this proceeding to October 2, 2018 and the deadline for filing reply testimony, evidence, and/or argument in this proceeding to November 6, 2018).

resources sold within the District.[2] The District's Renewable Portfolio Standard ("RPS") advances the District's commitment to achieving a carbon-free energy supply and increasing renewable energy resources. The Order incorrectly construes renewable energy credits ("REC") created pursuant to State RPS programs as out of market subsidies that distort capacity market prices but directs that a replacement rate should accommodate resources receiving this alleged out-of-market support.[3] In the Initial Submission of PJM Interconnection, L.L.C. ("PJM") PJM, however, arbitrarily and capriciously proposes a tariff that unduly discriminates against RECs, and violates the Federal Power Act, 16 U.S.C. § 791a et seq., ("FPA") by requiring consumers to pay for capacity without actually receiving capacity commitments.

As argued in DC OAG's initial comments, the existing tariff is not unjust and unreasonable.[4] However, if the Commission nonetheless revises the tariff, it should reject PJM's proposed definition of "material resource" and proposed Extended Resource Carve-Out ("RCO") and instead adopt a capacity market redesign reflecting the principles endorsed in DC OAG's initial comments.[5] Any capacity market redesign should not overreach the Commission's authority under the FPA and should not use the

[2] Comments of the Attorney General for the District of Columbia, Docket Nos. EL 16-49-000, ER18-1314-000, ER-18-001, EL 18-17800 (consolidated) (Oct. 2, 2018) ["DC OAG Initial Comments"].
[3] *See* Order; Initial Submission of PJM Interconnection, L.L.C., Docket Nos. EL16-49-000, ER18-1314-000, ER18-1314-001, EL18-178-000 (consolidated) at P160 (Oct. 2, 2018) ["PJM Initial Submission"].
[4] DC OAG Initial Comments at 7-8.
[5] These principles include certain principles enumerated in the document *Shared Principles: Resource-Specific FRR* that is endorsed by a variety of stakeholders including American Wind Energy Association, Exelon Corporation and Office of People's Counsel for the District of Columbia. DC OAG Initial Comments at 10.

Commission's authority over wholesale energy markets to improperly blunt the outcomes of states' programs intended to increase clean energy, as PJM's proposed tariff does here.

II. DISCUSSION

A. PJM's Proposed Definition of "Material Subsidy" Is Unduly Discriminatory

PJM's proposed definition of "material subsidy" is arbitrary and capricious and unduly discriminatory against State RPS programs. PJM proposes defining a "material subsidy" to include RECs issued pursuant to State RPS programs regardless of whether they actually have a price suppressive effect, but exclude other credits such as economic development grants and tax credits.[6] Since resources receiving a material subsidy will be subject to the Minimum Offer Price Rule ("MOPR"), this definition effectively excludes renewable energy resources from the capacity auction while allowing fossil fuel generating resources receiving comparable, if not more, state-provided financial support to freely bid into the auction.[7]

PJM argues that these excluded economic development subsidies are not material to the resource's effect on the capacity market because "they are not provided on the basis of the recipients' business model to produce electricity, but rather are aimed at incentivizing local development in an area."[8] PJM provides no justification for basing the application of the MOPR on the intent of the state support instead of on resources' price suppressive effect. PJM provides no evidence that state support intended for economic

[6] PJM Initial Submission at 23-25.
[7] *See id.* at 12.
[8] *Id.* at 24.

development has less of a price suppressive effect on a resource's capacity market bids than the price suppressive effects alleged from RECs.

It is well-established that the Commission should not determine a rate to be unjust or unreasonable based on intent. "FERC long and repeatedly has held that '[t]he language in Sections 205(b) and 206 does not contain any reference to intent . . . . [T]he Commission is to be concerned with anticompetitive *effects*, not motives.'"[9] Applying a MOPR to certain economic supports by states for energy generation resources and not others based upon whether the support *intends* to increase renewable energy or local economic development is unduly discriminatory against renewable energy. As the resources receiving state support are otherwise similarly situated, and PJM has not provided evidence of different effects from the subsidies, adopting this exclusion from the definition of material subsidy while adopting a MOPR that applies to all state-supported RECs would also be arbitrary and capricious in violation of the Administrative Procedures Act, 5 U.S.C. § 551 et seq.

B. PJM's Proposed Extended RCO Violates the FPA by Requiring Compensation for Resources That Do Not Provide Capacity

PJM's proposed Extended RCO violates the FPA by requiring compensation for resources that do not provide capacity. PJM's RCO would count the capacity of resources subject to the MOPR toward meeting region-wide capacity requirements.[10] In its Extended RCO proposal, PJM then proposes a means to compensate resources, largely fossil fuel generators, that bid into the capacity market but do not clear the

[9] *MPS Merch. Servs. v. FERC*, 836 F.3d 1155, 1170 (9th Cir. 2016) (quoting *In re Missouri Power & Light Co.*, 5 FERC ¶ 61,086, 61,140 (1978)).
[10] PJM Initial Submission at 57.

market and receive capacity payments because of the capacity provided by carved out resources for their losing bids. That is, for resources that submit infra-marginal offers—offers that would otherwise clear the market and receive capacity commitments, but do not clear because clean energy RCO resources that are excluded from the capacity auction are awarded capacity—the Load Serving Entity ("LSE") buying the capacity commitment is required to pay the difference between those resources' offers and the clearing price.[11]

The proposal violates the Commission's Order to accommodate states' right to pursue valid policy goals.[12] As argued by the Joint Consumer Advocates, it is unjust and unreasonable to require consumers to make capacity payments without receiving any capacity commitment in return.[13] The Commission should not require consumers to pay for capacity that they will not receive, and do not need. It is likewise unduly discriminatory against renewable energy resources to direct such payments primarily to fossil fuel generators, the resources overwhelmingly likely to make infra-marginal offers in the extended RCO, when no such advantage is being directed at clean energy generators.

[11] *Id.* at 71.
[12] *See* Order at PP 159-60.
[13] Reply Comments of Joint Consumer Advocates, Docket Nos. EL 16-49-000, ER18-1314-000, ER-18-001, EL 18-17800 (consolidated) (Nov. 6, 2018); *See NAACP v. FPC*, 425 U.S. 662, 663 (1976) ("[T]he Commission may allow only such rates as will prevent consumers from being charged with any unnecessary or illegal costs").

III. CONCLUSION

WHEREFORE, DC OAG respectfully requests that the Commission take these concerns into account.

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Dated: November 6, 2018

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, DC, this 6th day of November, 2018.

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