UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

REQUEST FOR REHEARING OF THE PEOPLE OF THE STATE OF ILLINOIS

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's ("FERC" or "the Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2018), the People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("Illinois AG"), hereby request rehearing of 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, 163 FERC ¶ 61,236 ("June 29 Order") which denied PJM Interconnection, L.L.C.'s ("PJM") dual tariff amendment filing under Section 205 of the Federal Power Act, 16 U.S.C. § 824d (2012), filed on April 9, 2018, and docketed under FERC Docket Number ER18-1314-000 ("PJM Tariff Filings"), and granting in part and denying in part a complaint under section 206 of the FPA, 16 U.S.C. § 824e (2012), filed by Calpine Corporation ("Calpine") on March 21, 2016, and docketed under FERC Docket Number EL16-49-000 ("Calpine Complaint").

I. BACKGROUND & INTRODUCTION

The June 29 Order initiated a section 206 "paper hearing"[1] based fundamentally upon the finding that PJM's current Open Access Transmission Tariff ("OATT" or Tariff") does not produce just and reasonable rates for capacity procured via the PJM Reliability Pricing Model's ("RPM") auctions due to PJM's tariffs' failure to adequately address the effect that non-market subsidies, or out-of-market payments, has on the PJM capacity market. Citing conceptual threats to the capacity market's integrity that will drive down capacity prices, FERC reached the conclusion that PJM's current Minimum Offer Price Rule ("MOPR") is insufficient to protect the market from supposed price-suppressive influences because it cannot apply administratively-determined price adjustments to existing generation resources that participate in capacity auctions.

After declaring PJM's Tariff unjust and unreasonable in response to the Calpine and PJM Tariff Filings, FERC *sua sponte* initiated a Section 206 paper hearing proceeding and directed the parties to provide their position on numerous details of a new MOPR that "covers out-of-market support to all new and existing resources, regardless of resource type."[2] However the new MOPR is structured, it will, at minimum, apply to facilities receiving Illinois' Zero Emission Credits.[3] In addition, FERC stated that the new proceeding will address an alternative to PJM's Fixed Resource Requirement ("FRR Alternative"), as an additional way to address the effect of out-of-market payments on the capacity market. [4] FERC provided sixty days for initial filings and thirty days subsequent for replies.[5] FERC stated that it "would make every effort to issue an order establishing

[1] *Calpine Corporation, et al. v. PJM Interconnection, L.L.C., PJM Interconnection L.L.C.* (Consolidated), 163 FERC ¶ 61,236 at P 8 (2018) ("June 29 Order").
[2] *Id.* at 158.
[3] *Id.* at P 3, n.1.
[4] *Id.* at P 8.
[5] *Id.* at P 172.

a just and reasonable replacement rate no later than January 4, 2019," approximately 100 days after the close of the comment period.

As discussed further below, FERC is incorrect in concluding that PJM's rules governing its capacity market are unjust and unreasonable and that out-of-market payments are driving capacity prices to unjust and unreasonably low levels.

1. The June 29 Order is not supported by substantial evidence and lacks a reasoned basis for finding that out-of-market payments suppress PJM capacity prices;
2. The June 29 Order ignores arguments and evidence contrary to its conclusions;
3. The June 29 Order departs from established Commission policy without articulating a reasoned basis for the departure;
4. The June 29 Order is beyond the scope of the Commission's authority under the Federal Power Act because it unlawfully intrudes on the States' power to regulate generation resources within their borders;
5. The June 29 Order's adoption of a MOPR for new and existing resources with few if any exceptions and establishment of an alternative FRR are arbitrary and capricious and not supported by substantial evidence;
6. The June 29 Order is arbitrary and capricious because it provides an unworkable timeline to address the numerous issues and questions presented that are of significant import to stakeholder interests.

Notwithstanding its substantive errors in declaring PJM's tariff unjust and unreasonable and in the limited parameters provided for a replacement rate under section 206, FERC has directed the conduct of the instant proceeding in a manner that is procedurally deficient and therefore arbitrary and capricious. The amount of time provided to the parties by the June 29 Order is vastly insufficient to allow the opportunity to properly respond to the myriad issues presented. Similarly, the paper hearing procedure selected by the Commission, with very limited and unclear opportunities for discovery and no opportunity for cross-examination, is lacking in procedural rigor for changes of the magnitude contemplated by the June 29 Order. Sixty days to address over sixteen distinct questions regarding the MOPR and FRR Alternative are unworkable and therefore arbitrary and capricious. In addition, a mere thirty days to reply to the inevitably numerous, and likely independently voluminous, initial responses of the dozens of other parties to proceedings

independently rises to the level of being arbitrary and capricious. Taken together, the ninety-day overall time frame provided by the Commission for this proceeding substantially exacerbates the arbitrary and capricious nature of the June 29 Order's conclusions and procedural timeline and framework.

The People of the State of Illinois accordingly request rehearing of the June 29 Order for the reasons set forth in greater detail below.

II. IDENTIFICATION OF ERRORS AND STATEMENT OF ISSUES

Pursuant to Rule 203(a)(7) and Rule 713 of the Commission's Rules of Practice and Procedure, §§ 385.203(a)(7) and 385.713 (2018), respectively, the People of the State of Illinois present the following identification of errors and statement of issues.

The Commission's June 29 Order violates the Federal Power Act and the Administrative Procedure Act in finding that PJM's existing Tariff is unjust and unreasonable and unduly discriminatory or preferential. Specifically:

1. The Commission's June 29 Order is arbitrary and capricious and unsupported by substantial evidence because it did not offer a reasoned basis for its conclusion that the PJM Tariff is currently unjust and unreasonable and instead reached that conclusion in direct contradiction to the clear economic realities of the PJM capacity market. The Commission's June 29 Order does not, and cannot, support or demonstrate that out-of-market state support, in any form, has caused actual price-suppression in the PJM capacity market and instead relies upon hypothetical, conceptual threats to the market to justify its conclusion.

2. The Commission's June 29 Order is arbitrary and capricious because it ignored arguments and evidence contrary to its conclusion that the PJM Tariff is currently unjust and unreasonable without addressing such evidence.

3. The Commission's June 29 Order is arbitrary and capricious because it departs from established Commission policy without articulating a reasoned basis for the departure, including why the Commission does not address in the Order the reason it is no longer

seeking to implement the "first principles" of capacity markets from the recent Commission Order on ISO New England's capacity market.[6]

4. The Commission's June 29 Order is beyond the scope of the Commission's authority under the Federal Power Act because it unlawfully intrudes on the States' clearly-delineated power to regulate generation resources within their borders. The June 29 Order also does not follow the requirement under section 206 that FERC find a current rate, rule, or practice unjust and unreasonable *prior* to directing a replacement rate.

5. The Commission's June 29 Order is arbitrary and capricious and not supported by substantial evidence in its conclusion that PJM should address the issue of out-of-market payments by adopting a MOPR for new and existing resources with few if any exceptions and by designing an alternative FRR, and excluding other potential remedies or approaches to address the effects of out-of-market payments on PJM's capacity market.

6. The Commission's June 29 Order is arbitrary and capricious because it provides an unworkable timeline to address the numerous issues and questions presented that are of significant import to stakeholder interests.

III. ARGUMENT

1. The Commission's June 29 Order is arbitrary and capricious because it did not offer a reasoned basis for its conclusion that the PJM Tariff is currently unjust and unreasonable and instead reached that conclusion in direct contradiction to the clear economic realities of the PJM capacity market. The Commission does not, and cannot, demonstrate that out-of-market state support, in any form, has caused actual price-suppression in the PJM capacity market and instead relies upon hypothetical, conceptual threats to the market to justify its conclusion.

The Administrative Procedure Act[7] obligates the Commission to "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made**"**[8] in its decision-making, especially so when it reaches a conclusion that the PJM capacity market rules and capacity prices are currently unjust and unreasonable. The June 29 Order contains 158 paragraphs. Yet only *six* address the finding that PJM's current capacity market construct is

[6] *ISO New England Inc.*, 162 FERC ¶ 61,205 at P 21 (2018) ("CASPR Order").
[7] 5 U.S.C. § 706 *et seq.*
[8] *Motor Veh. Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

unjust and unreasonable.[9] That construct, PJM's RPM, produced over $9 billion in capacity commitments to generators whose bids cleared the auction in the most recent Base Residual Auction for delivery years 2021 and 2022.[10] It is difficult to discern why the Commission has instituted sweeping, vaguely-defined, fundamental re-workings of the financial outcomes of the capacity market with so little explanation for the bases for the changes it directs. Stakeholders, especially consumers whose money undergird the PJM capacity market, deserve a more reasoned, fleshed-out explanation for drastic changes that will likely increase the clearing price of the RPM.

Even worse, the proposed MOPR's expanded reach could easily lead to consumers in certain targeted states paying twice for capacity—a reality the Commission itself acknowledges.[11] Conclusory statements that State actions are "price suppressive," without examples of this purported effect, or an explanation in reasonable detail showing how the out-of-market actions will have such results, are legally insufficient.[12] Because the June 29 Order lacks a rational connection between the facts in evidence and the decision made, the Commission should grant rehearing.

2. The Commission's June 29 Order is arbitrary and capricious because it ignored arguments and evidence to the contrary of its conclusion that the PJM Tariff is currently unjust and unreasonable without addressing such evidence.

The proceedings that were concluded by the June 29 Order,[13] the records of which were incorporated into the section 206 paper hearing, contained a wealth of evidence and arguments that PJM's current capacity market is functional, efficient, and fully capable of incorporating the

[9] June 29 Order at PP 100-106.
[10] S*ee* PJM Interconnection, L.L.C., 2021/2022 RPM Base Residual Auction Results, *available at* http://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2021-2022/2021-2022-base-residual-auction-report.ashx ("2021/2022 BRA Results").
[11] June 29 Order at PP 159.
[12] *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 13 (D.C. Cir. 2015) ("talismanic" description of a program as "competitive" without further explanation "does not advance reasoned decision making").
[13] PJM Tariff Filings and Calpine Complaint.

immense range of price drivers that are present in the electric generation industry.[14] Numerous stakeholders, including entities engaged in the generation of electricity that could stand to benefit from increased capacity prices, explained that the competitive market for capacity that PJM administers is *not* under threat from State policies that encourage or support certain generation resources.[15] The economic reality of the PJM markets is that "out-of-market support" as the Commission defines it is pervasive and has been a part of the energy industry since the inception of the RPM.

For example, the Commission did not address the observation that capacity market clearing prices in the Commonwealth Edison ("ComEd") Locational Deliverability Area ("LDA") have exceeded the "rest of RTO" price by as much as 100% for the delivery years starting 2019/2020 despite the adoption of the Illinois Zero Emission Credit ("Illinois ZEC") program that provides monetary support to the Quad Cities Nuclear Generating Station located within the ComEd LDA. The capacity prices in the ComEd zone for 2018/19 jumped considerably and have been substantially above the "rest of RTO" capacity prices[16] since that auction (held in 2014) notwithstanding the extended discussion and final passage of the Future Jobs Energy Act that contained the zero emission credit (ZEC) program in December, 2016.[17] In the last PJM capacity auction held in May, 2018, after the ZEC program began operations, the ComEd zone cleared close to 40% higher than the "rest of RTO" price (compare $195.55 to $140 per megawatt-day).[18] The

[14] Protest of Joint Consumer Advocates at 11 ("JCA Protest"), Wilson Aff. At 6; Motion to Dismiss and Protest of the Illinois Commerce Commission at 5 ("ICC MTD and Protest"); Protest of Exelon Corporation ("Exelon Protest"), Willig Aff. at P 58; Limited Protest of PJM Industrial Consumer Coalition at 17 ("PJM ICC Limited Protest") in FERC Docket No. ER 18-1314-000.
[15] *Id.*
[16] 2021/2022 BRA Results at 16; PJM Interconnection, L.L.C., 2020/2021 RPM Base Residual Auction Results at 1, available at https://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/2020-2021-base-residual-auction-report.ashx; PJM Interconnection, L.L.C., 2019/2020 RPM Base Residual Auction Results at 2, available at https://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/2019-2020-base-residual-auction.-report.ashx
[17] Illinois Public Act 099-0906 (20 ILCS 3855/1-75).
[18] 2021/2022 BRA Results at 1.

Commission's failure to address these price effects demonstrates that its June 29 Order is not supported by substantial evidence and its conclusions about the price suppressive effect of ZECs is arbitrary and capricious.

The Commission also did not address the evidence that long-standing Renewable Energy Credit ("REC") programs run by the majority of PJM states with generating resources that participate in the PJM capacity auctions do not depress capacity clearing prices, particularly after the adoption of PJM's Capacity Performance rules.[19] The effect of the REC programs and state renewable portfolio standard requirements have been incorporated into the capacity market since its inception, and cannot reasonably be considered to have unduly suppressed prices. This is particularly true given the limited capacity contributions of variable renewable resources such as wind and solar, which can bid only a small portion of their nameplate capacity into PJM's capacity market.[20]

The capacity market has provided progressively more of the overall revenue streams received by generators that participate in PJM's competitive markets as energy prices have dropped.[21] The implied argument that clearing high prices should have been even higher to provide proper investment signals for additional generation is contradicted by further unaddressed evidence in the record that PJM is currently over-supplied with generation resources and will

[19] Motion to Dismiss and Protest of the Illinois Commerce Commission at 14; *see* 20 ILCS 3855/1-75(c)(enacted 2017).
[20] *See* PJM Interconnection L.L.C., Manual 21, Rules and Procedures for Determination of Generating Capability, Revision 11 (March 5, 2014), *available at* https://www.pjm.com/-/media/documents/manuals/archive/m21/m21v11-rules-and-procedures-for-determination-of-generating-capability-03-05-2014.ashx.
[21] PJM Interconnection L.L.C., Response to the 2017 State of the Market Report at 4 (May 11, 2018), *available at* http://www.pjm.com/-/media/library/reports-notices/state-of-the-market/20180511-pjms-response-to-the-2017-state-of-the-market-report.ashx?la=en.

remain so for the foreseeable future.[22] FERC also ignored evidence and arguments illuminating the fact that PJM has a massive quantity of natural gas resources in its generation interconnection queue that are at advanced stages of construction or development, indicating that greater supply can be expected to push down prices.[23] Despite these economic realities held up to the Commission, it leaves them unaddressed and instead furthers an alternative narrative of distorted investment signals, disorderly entry and exit of generation resources, and future calamity in the PJM competitive capacity markets.[24] Because the June 29 Order ignores, without explanation, a raft of arguments and evidence counter to its conclusion, it is arbitrary and capricious. The Commission should therefore grant rehearing.

3. The Commission's June 29 Order is arbitrary and capricious because it departs from established Commission policy without articulating a reasoned basis for the departure, including why the Commission does not address in the Order the reason it is no longer seeking to implement the "first principles" of capacity markets from the recent Commission Order on ISO New England's capacity market.

The Commission issued the CASPR Order 112 days prior to the June 29 Order. The CASPR Order provided a clear enunciation of the purposes of competitive capacity markets, generally, as it currently sees them.[25] Out of six principles, FERC manages to frustrate all of them with the directives provided by the June 29 Order:

First, the new capacity market regime will not facilitate "robust competition for capacity obligations" because the expanded MOPR would be designed to drive up capacity bids for an ill-

[22] PJM Interconnection, L.L.C, 2017 PJM Reserve Requirement Study at 15 (October 12, 2017), *available at* http://www.pjm.com/-/media/committees-groups/committees/pc/20171012/20171012-item-03a-2017-pjm-reserve-requirement-study.ashx.
[23] *Id.*; *see* 2021/2022 BRA Results; PJM ICC Limited Protest at 17.
[24] *See, e.g.*, June 29 Order at P 5.
[25] CASPR Order at P 21.

defined but expanded group of resources that receive some out-of-market support and potentially push resources that are currently participating in the auctions into the FRR Alternative.[26]

Second, it will not "send clear price signals for orderly entry and exit" because the expanded MOPR will be an *administratively-determined adjustment to a price signals* and may send further signals for over-build-out of generation resources by driving up prices.[27]

Third, "the selection of least-cost resources that possess attributes sought by the market" cannot be obtained within the parameters outlined by the June 29 Order because it will unnecessarily increase prices in an over-supplied market and remove resources that are clearly desired by the market in light of State action that values their attributes.[28]

Fourth, "price transparency" is eviscerated by an unpredictable, opaque, administrative-determination-based structure such as a MOPR that reaches numerous new and existing resources without a clear framework to identify, select, and re-price the disfavored resources.

Fifth, price-ratcheting measures associated with an expanded MOPR will unfairly shift risk associated with out-of-market payments from investors to customers. The competitive market is based on investors bearing the risks associated with energy and associated prices. The June 25 Order would shift the price risk to consumers despite the lack of evidence that investors and generation owners are unable to manage the risks they currently face in the PJM capacity market.[29] The capacity market exists to ensure resource adequacy at least cost for consumers who buy electricity at market prices, not for generator profits. The Commission has cited to no

[26] JCA Protest at 16-19.
[27] June 29 Order at P 158.
[28] June 29 Order, Glick, Comm'r, Dissenting at 2 ("Comm'r Glick Dissent").
[29] The large quantity of megawatts ("MWs") in the interconnection queue does not suggest that whatever risks present in the capacity market have deterred investors whatsoever. *See* 2021/2022 RPM Base Residual Auction Results, available at http://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2021-2022/2021-2022-base-residual-auction-report.ashx; PJM ICC Limited Protest at 17.

demonstrable need to transfer the wealth of consumers to generators by adopting rules to administratively raise prices through a generally applicable MOPR.

Finally, the notion that either the expanded MOPR or the FRR Alternative will mitigate market power is erroneous. Pushing resources to a FRR Alternative or excluding them from the capacity market altogether, has the potential for existing market power to be exacerbated by reducing participating supply options.[30]

Each of these departures from very recent precedent and statements of policy, while clearly presented by stakeholders participating in the PJM Tariff Filings,[31] were unexplained and unaddressed by the Commission in the June 29 Order. FERC also did not provide a reasoned explanation for its apparent decision to ignore unchanged facts that supported its prior policies. This is in clear violation of FERC's obligation under the APA to explain departures from existing policies.[32] These departures alone provide a sufficient basis for the Commission to grant rehearing.

More broadly, the Commission has a rich history of orders and rules addressing the participation of resources that it now seeks to target and price-out of the PJM capacity market with an expanded MOPR. For example, FERC has repeatedly declared that RECs do not pose a price-suppressive threat to capacity markets.[33] In declaring them a target of the expanded MOPR, the Commission does not provide a reason why RECs are *now* a threat to the PJM capacity market.[34] Stakeholders participating in the prior proceedings reminded FERC repeatedly of its recent

[30] Comm'r Glick Dissent at 16.
[31] JCA Protest at 16-19.
[32] *FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009).
[33] *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61022 at P 153 (Apr. 12, 2011) ("2011 PJM MOPR Order").
[34] June 29 Order at 3, n.1.

proclamations on the subject,[35] yet the Commission does not utter a word on why its views and policies have done an about-face. Again, FERC is under an obligation to at least explain *why* it is changing its policies.[36] Its failure to do so is an additional reason why the June 29 Order was arbitrary and capricious.

4. The Commission's June 29 Order is beyond the scope of the Commission's authority under the Federal Power Act because it unlawfully intrudes on the States' clearly-delineated power to regulate generation resources within their borders.

The June 29 Order embraces expansion of PJM's MOPR to existing resources and places a bulls-eye on ZECs and RECs. While it is unclear the extent to which the MOPR will affect the disfavored, state-supported resources identified in the June 29 Order, the purpose is reasonably clear: prevent the participation of the resources by administratively modifying their offer bids into the RPM.[37] This amounts to a directive to the States and the customers who pay capacity charges set by the PJM capacity auction, that they will pay a stiff penalty for providing support to certain resources.[38] Under the Federal Power Act, generation resources and retail rates are the clear, explicit purview of the States.[39] By giving States a lose-lose binary choice, the Commission is effectively forcing their hands in policy. Action that is tantamount to regulating the generation resource decisions of the States renders the Commission's June 29 Order outside the scope of its authority.[40]

5. *The Commission's June 29 Order is arbitrary and capricious and not supported by substantial evidence in its conclusion that PJM should address the issue of out-of-market payments by adopting a MOPR for new and existing resources with few if any exceptions and by designing an alternative FRR, and excluding other potential remedies or approaches to address the issue of out-of-market payments.*

[35] *See, e.g.*, Exelon Protest, Willig Aff. at P 15.
[36] *FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009).
[37] Comm'r Glick Dissent at 2-9.
[38] *Id.*
[39] *Id.*
[40] *Id.*

The Commission's June 29 Order lays out a roadmap to the new section 206 paper hearing. Specifically, the Commission directs the parties to address numerous details of its expanded MOPR and to develop FRR Alternative tariff changes.[41] The tariff changes FERC describes and adopts are not supported by record evidence and unreasonably restrict stakeholders' responses in the new paper hearing. By spelling out only two avenues to develop new capacity market rules, the Commission excludes other possible approaches to addressing out-of-market payments and making changes to PJM's rules that the Commission has deemed necessary.

As explained throughout this Request for Rehearing, the Commission's finding that major changes in PJM's tariffs and specifically in the scope of the MOPR are necessary is in error. Assuming, *arguendo*, that the Commission is correct in finding a need for change, it is still in error in constraining stakeholders' potential positions because the selected remedies are not supported by substantial evidence. No party suggested the FRR Alternative and the Commission did not sufficiently support the proposed remedy as independently justified.[42]

The Commission has sufficient grounds to grant rehearing on the issues of remedy. Furthermore, the Commission's policy choices inherent in the limited remedies on which the Commission invited comment go against the evidence presented by the parties that a new, expanded MOPR is necessary and therefore is arbitrary and capricious.[43] Accordingly, based

[41] June 29 Order at PP 157-71.
[42] *See Frontier Fishing Corp. v. Pritzker*, 770 F.3d 58, 62 (1st Cir. 2014) ("Under the substantial evidence test, the agency's decision is presumed valid. [I]t requires not the degree of evidence which satisfies the *court* that the requisite fact exists, but merely the degree that *could* satisfy a reasonable factfinder." (internal quotation marks and citation omitted)). No reasonable factfinder could find on the record that the FRR Alternative was necessary.
[43] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 43 ("[A]n agency rule would be arbitrary and capricious if the agency . . . offered an explanation for its decision that runs counter to the evidence before the agency.").

upon these two separate, independently-sufficient bases, the Commission should grant rehearing of the June 29 Order.

6. The Commission's June 29 Order is arbitrary and capricious because it provides an unworkable timeline to address the numerous issues and questions presented that are of significant financial import to stakeholders.

After finding that the current PJM Tariff was not just or reasonable, the Commission's Order *sua sponte* initiated a Section 206 paper hearing proceeding to determine the proper replacement rate.[44] In doing so, however, it set a completely unrealistic timeline for the parties to provide comment on the Commission's proposed revised MOPR and FRR Alternative—only sixty days for initial comment and thirty days for reply.[45] The Commission's Order setting this expedited timeline is arbitrary and capricious because it fails to provide sufficient time for the parties to comment on the proposed replacement MOPR and FRR Alternative.[46]

The Commission's timeline is too short for the parties to meaningfully comment on the proposed replacement rate for several reasons. First, the sixty-day initial comment period is facially insufficient when compared to the number of issues the parties must address in their filings. In its Order, the Commission only preliminarily found that an expanded MOPR and FRR Alternative would be a proposed replacement rate.[47] The Order contained no details on the contours of the expanded MOPR or FRR Alternative, and instead explicitly requested that the parties address:

1. Which resources that receive out-of-market support are subject to the expanded MOPR and FRR Alternative? (Order at P 165)

[44] June 29 Order at P 157.
[45] June 29 Order at P 172.
[46] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 43 (("[A]n agency rule would be arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem.").

[47] June 29 Order at P 157.

2. How should the Tariff address (procedurally and substantively) the need for resources that elect the FRR Alternative to cover their Avoidable Cost Rate. (*Id*.).
3. How to identify load that will be removed from the capacity market if a resource elects to join the FRR Alternative. (*Id.* at P 166)
4. Can a resource only partially participate in the FRR Alternative. (*Id*.)
5. How the MOPR and the FRR Alternative should address resources with split ownership. (*Id*.)
6. What exemptions should be included for expanded MOPR. (*Id.* at P 167)
7. If a resource falls under an exemption to the expanded MOPR, whether it be eligible for the FRR Alternative. (*Id*.)
8. The length of time a resource that chooses the FRR Alternative must stay out of the capacity market. (*Id.* at P 168)
9. How the FRR Alternative would accommodate "required reserves" for the load removed from the PJM capacity market. (*Id.* at P 169)
10. Whether any changes to the demand curve would be necessary to accommodate the FRR Alternative. (*Id.*)
11. The best approach to ensure locational resource adequacy needs are met after removing load associated with the FRR Alternative. (*Id.*)
12. Whether the existing Capacity Performance construct for FRR resources can be applied to the new FRR. (*Id.*)
13. What scenarios the parties believe the new FRR would affect the competitiveness of the PJM capacity market clearing prices. (*Id.* at P 170)
14. Whether "mechanisms or other accommodations" are necessary to transition to the new system. (*Id.*)
15. Whether federal sources of out-of-market support should be included. (*Id.* at P 171)
16. How these reforms would interact with PJM's ongoing fuel security initiative. (*Id*.)
17. Whether to incorporate the administratively determined minimum offer prices from PJM's MOPR-Ex proposal or to establish different minimum offer prices. (*Id*.)

The Commission requested that the parties address these issues because, as the Commission acknowledged in its Order, the existing record contained insufficient evidence for it to determine the contours of the expanded MOPR and FRR Alternative.[48]

[48] June 29 Order at P 157.

Furthermore, the issues identified by the Commission understate the number of issues that the parties must address because many of the issues identified by the Commission beget other issues to address. For instance, parties that advocate for the inclusion of federal out-of-market payments in the expanded MOPR must also necessarily address which federal sources should be included.[49] This question is, in itself, an extraordinarily difficult question considering the scope and number of programs that could be considered "federal out-of-market payments" such as federal energy subsidies.[50] Commissioners LaFleur and Glick's dissents detail other open questions that the parties will need to address in their comments.

The end result of the Commission's Order is that parties are now tasked with providing comment and expert testimony on dozens of issues affecting every part of the complex PJM capacity market. The paper hearing procedure selected by the Commission, with very limited and unclear opportunities for discovery and no opportunity for cross-examination, is severely lacking in procedural rigor for changes of the magnitude contemplated by the June 29 Order. Sixty days is an unreasonable amount time for the parties to marshal the testimony, evidence, and arguments to flesh out an under-developed proposal to implement "the most sweeping changes" to the $9 billion[51] PJM capacity market "since the market's inception."[52]

Finally, the Commission's 30-day reply period is also insufficient. There are numerous interested parties[53] and each party must address numerous issues in their initial comments. Even if not every interested party files comments, the nature of the comment period necessarily means

[49] June 29 Order at P 171.
[50] Comm'r Glick Dissent at 6-7.
[51] In the last PJM capacity auction, generators made commitments to provide hundreds of thousands of MW-days of electricity worth more than $9 billion. *See* 2021/2022 RPM Base Residual Auction Results, available at http://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2021-2022/2021-2022-base-residual-auction-report.ashx.
[52] June 29 Order, LaFleur, Comm'r, Dissenting at 3.
[53] Approximately 70 individual entities filed interventions in the PJM Tariff Filings proceeding alone.

that the parties will likely be forced to respond to numerous other parties on nearly every issue. Thirty days is an insufficient amount of time for the parties to meaningfully respond to what will likely be a circular firing squad of arguments regarding the contours of the expanded MOPR and FRR Alternative.

In sum, the Commission's order provided only ninety days for the parties to address *every single implementation detail of the expanded MOPR and FRR Alternative*. Given the scope of what they must address, the parties cannot meaningfully comment on the Commission's proposal during either the sixty-day initial comment window or the thirty-day reply window. The schedule set by the Commission's Order is unworkable and unreasonable, and thus arbitrary and capricious.

IV. CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request rehearing of June 29 Order.

Respectfully submitted,

Dated: July 30, 2018 _____/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding,

Dated at Chicago, Illinois this 30th day of July, 2018.

_____/s/_____

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