

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

PJM Interconnection, L.L.C. ) Docket No. ER15-852-000

**PROTEST**  
**OF THE PJM POWER PROVIDERS GROUP**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"), 18 C.F.R. § 385.211 (2015), the PJM Power Providers Group ("P3")<sup>1</sup> respectfully submits this protest regarding the January 14, 2015, filing by PJM Interconnection, L.L.C. ("PJM"), pursuant to Section 205 of the Federal Power Act ("FPA")<sup>2</sup> that proposes revisions to Attachments DD, DD-1, and Q of the PJM Open Access Transmission Tariff ("Tariff"); and to Schedules 6 and 8 of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region ("RAA"). PJM's proposed changes modify PJM's rules addressing participation by demand response ("DR") in PJM's capacity market, the Reliability Pricing Model ("RPM") ("PJM DR Stop-Gap Filing").<sup>3</sup> PJM seeks to implement the revisions only in the event the United States Supreme Court denies the United States Solicitor General's petition for *certiorari* filed on behalf of FERC, (and other parties petitions for *certiorari*) seeking review of *Electric Power Supply Ass'n v. FERC* ("EPSA").<sup>4</sup> PJM proposes to implement these changes for the next Base Residual Auction ("BRA"), which is scheduled for

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<sup>1</sup> P3 is a nonprofit corporation dedicated to promoting policies that will allow the PJM region to fulfill the promise of its competitive wholesale electricity markets. For more information on P3 visit [www.p3powergroup.com](http://www.p3powergroup.com).

<sup>2</sup> 16 U.S.C. §824d.

<sup>3</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-852-000, January 14, 2015 ("PJM DR Stop-Gap Filing").

<sup>4</sup> 753 F.3d 216 (D.C. Cir. 2014) ("EPSA").

May 2015, and which will procure capacity for the 2018/2019 Delivery Year. To allow implementation of these rules for the 2015 BRA, PJM proposes an effective date of April 1, 2015.

The Commission initially established a deadline for interventions, comments, and protests for PJM's DR Stop-Gap Filing as February 4, 2015. However, on January 29, 2015, the Commission issued a Notice of Extension of Time, setting February 13, 2015, as the deadline to file comments, interventions and protests.

On January 15, 2015, pursuant to Rule 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214 (2015), P3 submitted a doc-less motion to intervene.

P3 respectfully submits this protest, as more fully described herein, opposing the PJM DR Stop-Gap Filing.<sup>5</sup>

## **I. PROTEST**

### **A. The PJM DR Stop-Gap Filing is a Missed Opportunity to Properly Establish Demand Response as a Demand Side Resource consistent with *EPSA v. FERC*.**

P3 understands that PJM is in a difficult position with a quickly approaching BRA and appreciates PJM trying to find a solution for this auction in light of ongoing litigation. While P3 applauds PJM's willingness to address the tariff changes that are required by the *EPSA* decision, its proposed solution falls short of its intended goals and ultimately should be rejected. P3 believes that the market, particularly for the May 2015 BRA, will be better served by existing market rules rather than PJM's rushed and flawed attempt to apply legacy, supply side demand response thinking to a new legal paradigm.

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<sup>5</sup> The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

As an initial matter, P3 agrees with PJM that *EPSA* requires that demand response be removed as a capacity resource in RPM auctions. In vacating FERC Order 745, the D.C. Circuit ruled that FERC does not have jurisdiction to regulate demand response in any form – including as a capacity resource. As the Court succinctly stated, “[d]emand response – simply put – is part of the retail market. It involves *retail* customers, their decision whether to purchase *at retail*, and the levels of *retail* electricity consumption.”<sup>6</sup> The Court went on to explain that FERC may “not directly regulat[e] a matter subject to state control, such as the retail market.”<sup>7</sup> Given the Court’s unequivocal stance, P3 agrees that the only viable path forward for PJM is to structure its markets in a manner that transitions demand response to a demand side product in a manner that is consistent with the law and properly recognizes the valuable role load reductions can play in a properly functioning market.

Unfortunately, as proposed, PJM’s DR Stop-Gap fails to appropriately transition demand response to a demand side resource in a manner that is sustainable. PJM’s proposal falls short in many critical ways and ultimately ignores the most obvious and legally-sound solution. P3 firmly believes a robust and responsive demand side is essential to the proper functioning of the PJM market. Willing buyers and willing sellers of electricity should adjust their actions based on market signals and rational, efficient decision. Unfortunately, PJM’s DR Stop-Gap Filing fails to transition to that market and instead perpetuates older policies on legally susceptible grounds.

Furthermore, the PJM DR Stop-Gap has many hallmarks of a filing that was hastily put together and not properly vetted through the PJM stakeholder process. Although PJM issued a

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<sup>6</sup> *EPSA* at 223.

<sup>7</sup> *Id* at 222.

whitepaper in October 2014 on the evolution of Demand Response,<sup>8</sup> the PJM Stop-Gap Filing is substantially different from the whitepaper, and stakeholders never reviewed or discussed the PJM DR Stop-Gap proposal. The PJM DR Stop-Gap proposal is not a fleshed out or well-vetted proposal and several issues remain vague and ambiguous. For example, there are technical details that need to be clarified such as the mechanics of how PJM will clear the BRA with the Wholesale Load Reductions (“WLR”) as adjustments to the demand curve. PJM’s DR Stop-Gap Filing is complex and has open issues that will lead to inadvertent errors.

**B. PJM’s DR Stop-Gap Filing is Unjust and Unreasonable**

P3 has concerns with several elements of the PJM DR Stop-Gap Filing that if adopted could decrease reliability and have negative impacts on the market.

**1. The PJM Proposal is Not Just and Reasonable Because it Does Not Contain Adequate Protection Against Buyer-Side Market Power Price Suppression Risk.**

Since the introduction of RPM, the Commission has realized the damage that can be done to a market by manipulation from the buy side. As the Commission succinctly stated in 2011, “... uneconomic entry can produce unjust and unreasonable wholesale rates by artificially depressing capacity prices. . . .”<sup>9</sup> To prevent such damage, the Commission has consistently supported the notion that in certain circumstances new generation facilities should be required to offer their capacity at a threshold or minimum price.<sup>10</sup> P3 has supported the Commission’s

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<sup>8</sup> The Evolution of Demand Response in the PJM Wholesale Market, PJM Interconnection, October 7, 2014 (“PJM Whitepaper”).

<sup>9</sup> *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011) at P 141.

<sup>10</sup> See, 143 FERC ¶ 61,090 (May 2, 2013).

pursuit of adequate market protections in this regard and maintained that these measures are fundamental to any wholesale market design.

Unfortunately, the PJM DR Stop-Gap proposal provides a new avenue for buyers of capacity to artificially depress capacity prices that must be addressed if PJM's market is going to function properly. The PJM proposal fundamentally transforms the market dynamic in PJM such that the Load Serving Entities ("LSEs") will both purchase capacity and procure demand response. The ability and temptation to manipulate the market from such a unique market position will be real and significant. LSEs and their regulators will readily see the impact that purchasing wholesale load reductions – even at prices well above market – will have on their capacity price. PJM's DR Stop-Gap Filing practically encourages such an outcome by offering that, "each Wholesale Load Reduction will broadly benefit all capacity buyers" and encouraging LSEs and state regulators to "monetize" this "benefit" through retail rate proceedings.<sup>11</sup>

Moreover, because of the LSEs' unique position, they will have access to market sensitive buy-side and sell-side information that merits consideration by FERC and perhaps the Office of Enforcement. LSEs will have a great sense of the price of capacity in their service territory and know specifically how modifications to the demand curve will impact costs to them and their consumers.

Clearly, market protections need to be built into the market in order to prevent manipulative behavior. PJM's measurement and verification screens must be rigorous and their ability to reject wholesale load reductions must be unambiguous. If wholesale load reductions are being offered that are not capable of delivering or based on manipulative intent, they should be rejected and not used as a basis for determining the demand curve. The PJM DR Stop-Gap Filing

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<sup>11</sup> PJM DR Stop-Gap Filing at p.20.

contains no standards by which PJM may reject wholesale load reductions and, it appears, leaves those decisions solely to the LSE. This result is not a just and reasonable market structure and will certainly lead to both negative reliability and economic consequences if approved without this issue being addressed.

**2. PJM’s DR Stop-Gap Filing is Not Just and Reasonable because it Will Encourage Speculative Activity by LSEs.**

A little less than a year ago, PJM stated to the Commission, “...through RPM, PJM is procuring on behalf of load commitments for delivery of sufficient physical resources to meet important adequacy objectives. That reliability purpose is not one that lends itself to speculation; and the RPM construct is not, cannot, and should not be designed to accommodate speculation.”<sup>12</sup> Unfortunately, the PJM DR Stop-Gap proposal creates the same problem that PJM was seeking to avoid in March of 2014.

Under PJM’s proposed DR Stop-Gap measure, LSEs will have every incentive to over-estimate the amount of WLR they can provide knowing that additional capacity can be purchased in subsequent incremental auctions. Indeed, the BRA price suppression “benefit” might even justify paying a higher price for capacity in the incremental auctions than in the base residual auctions. Nothing in PJM’s DR Stop-Gap proposal will prevent such speculative behavior and, indeed, the end result, particularly if capacity performance is approved, will be to encourage such behavior.<sup>13</sup>

Offering wholesale load reductions in the BRA that the LSE unreasonably assumes will exist, or that the seller never even intends to develop because it assumes it will rely on the incremental

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<sup>12</sup> *PJM Interconnection, L.L.C.*, Docket No. ER14-1461, March 14, 2014 at p 10.

<sup>13</sup> See PJM DR Stop-Gap Filing, Proposed RAA, Schedule 6.2, Section J(2) (Options A & B).

auctions, adversely affects both short-term and long-term reliability. Creating for BRA offer purposes load reductions that do not presently exist and that are not reasonably expected to exist will shift the auction's supply curve in such a manner to reduce the clearing price below the level offered solely by resources that presently exist or that are intended to achieve physical delivery by the Delivery Year. Given the steepness of the Variable Resource Requirement ("VRR") Curve, a relatively small amount of WLR can result in a substantial decrease in the RPM clearing price. In the short run, this can directly displace marginal resources for which RPM capacity payments may make the difference between remaining in service or retiring.

Such a market construct is untenable and should not be accepted by the Commission. PJM argued vociferously against such a construct less than a year ago, yet seeks to replicate such a construct in this filing. Accordingly, the Commission should reject PJM's DR Stop-Gap Filing or, at minimum, condition its approval upon the filing of tariff rules to address speculative behavior.

### **3. P3 Does Not Support PJM's Proposal to Retain Limited Demand Resource Products.**

In addition to the problems articulated above, the PJM DR Stop-Gap Filing perpetuates the problems associated with capacity resources with only limited obligations to the market participating in a manner that undercuts those resources with obligations that extend beyond just a few hours a year. In the PJM DR Stop-Gap Filing, PJM states that "[s]hould the Option B tariff records be implemented, PJM proposes to retain [Limited Demand] resources as a demand-side product, to be called Limited WLR."<sup>14</sup> Furthermore, PJM states that it "proposes, as part of the Option B tariff revisions, different types of WLR with different availability rules that exactly

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<sup>14</sup> PJM DR Stop-Gap Filing at p 15.

match the availability rules previously approved for Limited Demand Resource, Extended Summer Demand Resource, and Annual Demand Resource.<sup>15</sup>

In the PJM DR Stop-Gap Filing, it appears that PJM is attempting to recreate aspects of its Capacity Performance proposal that preserve the role of limited demand response products as a supply-side resource.<sup>16</sup> As P3 commented in the PJM Capacity Performance docket, the presence of limited demand response resources undercuts market fundamentals and should be removed from the capacity construct. As P3 has previously noted, the limited demand response products that currently exist in the PJM market, and remain in PJM's Capacity Performance proposal, are an anathema to the market that need to be removed from the market.<sup>17</sup>

Additionally, the PJM Independent Market Monitor ("IMM") has articulated many times, and most recently reported in November 2014, that, "[b]oth the Limited and the Extended Summer DR products should be eliminated in order to ensure that the DR product has the same unlimited obligation to provide capacity year round as generation capacity resources. (Priority: High. First reported 2013)."<sup>18</sup> In addition, the IMM has clearly stated the damage caused by the continued presence of limited demand response product. "A number of capacity market design elements have resulted in a substantial suppression of capacity market prices for multiple years. The impact of continued inclusion of limited DR products in the capacity market was \$2.2 billion in the 2017/2018 Base Residual Auction, a price reduction of 22.9 percent, holding everything else constant. The impact of the 2.5 percent offset to demand was \$2.4 billion, a price reduction

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<sup>15</sup> PJM DR Stop-Gap Filing at p 16.

<sup>16</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-623-000, December 12, 2014, at p 35.

<sup>17</sup> *PJM Interconnection, L.L.C.*, Docket No. ER14-504-000, Comments of PJM Power Providers Group, December 20, 2013.

<sup>18</sup> 2014 Quarterly State of the Market Report for PJM:, January through September , Posted November 11, 2014, at Section I, p.25, available at [http://monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2014.shtml](http://monitoringanalytics.com/reports/PJM_State_of_the_Market/2014.shtml)



of 24.5 percent, holding everything else constant. The impact of continued inclusion of limited DR products combined with the impact of the 2.5 percent offset to demand, was \$3.4 billion, a price reduction of 31.3 percent, holding everything else constant.”<sup>19</sup>

In light of these numbers and the clear adverse consequences associated with limited demand response products, PJM should not be allowed to continue the policy of treating limited demand response on similar terms as annual resources (as proposed in both the PJM DR Stop-Gap Filing and the Capacity Performance filing). Whether on the supply side or demand side, the participation of limited products results in a flawed market structure that is not just and reasonable and the Commission should reject the concept in both filings.

### **C. A Just and Reasonable Path Forward.**

P3 believes that instead of the complex, flawed, legally-suspect and un-vetted PJM DR Stop-Gap proposal, PJM should focus on existing tariff provisions regarding Price Responsive Demand (“PRD”). The Commission has an opportunity to permanently correct the flawed aspects of PJM’s legacy demand response programs on grounds that are within the bounds of the *EPISA* decision. The Commission should steer PJM in such a direction rather than encouraging them to hold on to the past as the PJM DR Stop-Gap Filing does.

PJM signaled a willingness to move in this direction over five years ago. PJM’s stated long-term vision of demand response was noted in the PJM Board’s June 26, 2009, statement: “PJM’s long-term vision is that ‘Price Responsive Demand,’ which allows more customers to

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<sup>19</sup> *Id.* at Section I, p.2.

respond directly to market prices and to voluntarily reduce their consumption when wholesale prices rise, is the ultimate solution to demand participation.”<sup>20</sup>

P3 believes that the move to PRD-based market structure in PJM is overdue and agrees with the comments echoed in the attached Affidavit of Mr. Judah L. Rose, Managing Director at ICF International (“Rose Affidavit”) that the ultimate goal for interruptible load in PJM “...is to treat interruptible load as a demand side response to prices where loads can either choose to purchase electrical energy at the price in the market or choose not to purchase power.”<sup>21</sup> Mr. Rose states that some of the advantages of this market structure are: market efficiency; capacity prices reflective of market conditions; simplification and minimization of errors; optimization of Advanced Metering Infrastructure (“AMI”) infrastructure; and the elimination of the need for changes to ensure compatibility with generation.<sup>22</sup> Over time, PJM and LSEs will be able to factor in the ability of demand to respond at certain prices and factor that into their capacity obligations – creating a more efficient market that avoids the measurement and verification challenges of WLR or existing demand response programs.

Mr. Rose recommends that FERC look to PJM’s existing PRD program for interruptible load as “a preferred path forward and not create and adopt a new Wholesale Load Reduction (“WLR”) program as suggested by the Stop-gap filing.”<sup>23</sup> He offers many advantages of PRD over the proposed WLR proposal and concludes “...PRD is better for moving in the direction of

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<sup>20</sup> Statement of Terry Boston, President and CEO, on behalf of the PJM Board of Managers Demand Response in the PJM Markets, June 26, 2009, available at: <http://pjm.com/~media/committees-groups/committees/mic/20100722/20100722-item-02b-statement-on-demand-response-in-the-pjm-markets.ashx>

<sup>21</sup> Affidavit of Judah L. Rose, February 13 2015 (“Rose Affidavit”) at p. 17.

<sup>22</sup> Rose Affidavit at pp. 17 – 21.

<sup>23</sup> Rose Affidavit at p. 21.

a more complete solution to the market problems associated with interruptible load.”<sup>24</sup>

Additionally, he recommends “PRD over WLR because WLR maintains multiple programs, which increases complexity and implementation risk, and more importantly, it maintains programs that have significant shortcomings.”<sup>25</sup>

Mr. Rose concludes: “Among its many problems, WLR provides for a continuation of the multiple product structure for demand resources that plagued the legacy supply side demand response program. Also, the treatment of interruptible load mirrors that of the Pre-*EPISA v. FERC* market, and thus, WLR represents a missed opportunity to eliminate artificial incentives that prevent the full realization of the PRD or similar structures and to avoid some of the complexity that has been attendant to the program thus far. Furthermore it is a lost opportunity to remove inefficient price signals, and instead utilize hour by hour and node by node pricing.”<sup>26</sup>

P3 agrees with Mr. Rose’s recommendation for “a more efficient, simplified and transparent structure that would allow for a more effective treatment of this valuable component of markets and avoid the types of implementation errors that have plagued interruptible load thus far.”<sup>27</sup> P3 echoes Mr. Rose that “PJM should move forward with the existing PRD program and not create and pursue the novel and flawed WLR proposal.”<sup>28</sup>

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<sup>24</sup> Rose Affidavit at pp. 21-23.

<sup>25</sup> Rose Affidavit at pp 22-23.

<sup>26</sup> Rose Affidavit at pp 24-25.

<sup>27</sup> Rose Affidavit at p 25.

<sup>28</sup> Rose Affidavit at p. 24.

## II. CONCLUSION

P3 respectfully requests that the Commission consider these comments and reject PJM's DR Stop-Gap Filing.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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February 13, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Official Service List compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 13th day of February, 2015.

On behalf of the PJM Power Providers Group

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