

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

Potomac Economics, Ltd.)	
)	
Complainant)	Docket No. EL17-62-000
)	
v.)	
PJM Interconnection, L.L.C.)	
)	
Respondent)	

**PROTEST OF THE PJM POWER PROVIDERS GROUP
AND THE ELECTRIC POWER SUPPLY ASSOCIATION**

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 (2017), the PJM Power Providers Group (“P3”)¹ and the Electric Power Supply Association (“EPSA”)² respectfully submit this protest regarding the April 5, 2017 complaint by Potomac Economics, Ltd., the Independent Market Monitor for the Midcontinent Independent System Operator, Inc.

¹ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly signed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3/EPSA members own over 84,000 MWs of generation assets, produce enough power to supply over 20 million homes and employ over 40,000 people in the PJM region covering 13 states and the District of Columbia. For more information on P3/EPSA, visit www.P3/EPSPowergroup.com.

² Celebrating its 20th anniversary in 2017, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

("MISO IMM"), against the PJM Interconnection, L.L.C. ("PJM"), pursuant to Rule 206³ of the Commission's Rules of Practice and Procedure and Sections 206 and 306 of the Federal Power Act ("FPA"),⁴ in the above-captioned docket. The MISO IMM requests that the Commission eliminate PJM's pseudo-tie requirement and direct PJM to revise its Open Access Transmission Tariff ("Tariff") and Reliability Assurance Agreement among Load Serving Entities in the PJM Region ("RAA") and establish an alternative mechanism for addressing PJM's operational and reliability concerns due to its allegations that PJM's pseudo-tie requirement has proven unjust, unreasonable, and unduly discriminatory. ("MISO IMM Complaint" or "Complaint").⁵ Notably, P3/EPSA's members own generation assets in PJM, MISO and the NYISO and ask the Commission to reject the MISO IMM's Complaint, which seeks to eliminate the requirement that PJM capacity resources external to PJM be pseudo-tied to PJM and replace this requirement with an untenable construct.

The Commission issued a Notice of Complaint on April 7, 2017, setting May 8, 2017, as the deadline to file interventions or protests. On April 11 and 20, 2017, pursuant to Rule 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214 (2017), P3 and EPISA, respectively, submitted doc-less motions to intervene. P3/EPISA respectfully submit this protest in response to the MISO IMM's Complaint.⁶

³ 18 C.F.R. §385.206 (2016).

⁴ 16 U.S.C. §824e and 825e.

⁵ *Complaint of Potomac Economics, Ltd.*, Docket No. EL17-62-000, April 5, 2017 ("PJM Filing").

⁶ The comments contained in this filing represent the position of P3/EPISA as organizations, but not necessarily the views of any particular member of either organization with respect to any issue.

For the reasons more fully explained herein, P3/EPISA protest the MISO IMM's Complaint. *First*, in that the Complaint requests that the Commission eliminate PJM's pseudo-tie requirement and direct PJM to establish an alternative mechanism, it is a collateral attack of the Commission's settled orders approving the pseudo-tie requirement.⁷ *Second*, a core tenet of PJM's Commission-approved Capacity Performance construct is that Capacity Performance resources must be able to perform in PJM's markets regardless of location. PJM's "no excuse" Capacity Performance rules and tariffs should not be watered down for resources that are not physically located in PJM. The MISO IMM's proposal to replace pseudo-ties with the "Capacity Delivery Procedures" requirement does not allow PJM to dispatch external resources and fails to hold external resources to the Capacity Performance requirements that internal PJM capacity resources shoulder. *Finally*, the MISO IMM's attention would be better spent on revising the ineffective MISO capacity market. The exports from MISO to PJM would not be so much of an issue if the MISO market was not clearing at \$1.50 MW/Day, while the PJM capacity market is clearing above \$100 MW/Day. For all of these reasons, the MISO IMM's Complaint should be rejected.

I. PROTEST

A. The MISO IMM Complaint Should Be Rejected as an Impermissible Collateral Attack on Prior Commission Orders.

In 2015, the Commission approved PJM's Capacity Performance construct, which required external generation units to be pseudo-tied into PJM to qualify as Capacity Performance Resources.⁸ PJM argued in the Capacity Performance filing that the pseudo-tie requirement, as

⁷ See PJM Interconnection, L.L.C., 151 FERC ¶ 61,208 (the "June 2015 Order"), on reh'g, 152 FERC ¶ 61,064 (2015), on reh'g, 155 FERC ¶ 61,157 (2016), reh'g pending ("CP Order").

⁸ See *id.*

part of its Capacity Performance construct, "is appropriate because it will ensure that external resources are on equal footing with internal resources."⁹ The MISO IMM's Complaint, itself, recognizes that "FERC ultimately found that the pseudo-tie requirement in the capacity performance design to be just and reasonable."¹⁰ To this end, the Commission stated, in part, that:¹¹

Notwithstanding the above finding, we find merit in PJM's proposal that External Generation Capacity Resources be required to meet the criteria for obtaining an exception to PJM's Capacity Import Limit (including the requirement that such resources be pseudo-tied to PJM by the relevant delivery year) to be eligible to submit a Capacity Performance Resource offer. PJM proposes this requirement as a seller representation, but we interpret it as an eligibility requirement for External Generation Capacity Resources. The Illinois Commission and Joint Protestors assert that PJM has not shown why the required three conditions to receive an exception to the Capacity Import Limit (i.e., pseudo-tie, firm transmission service, and must-offer) must be made mandatory for all external resources to qualify as Capacity Performance. However, we agree with the clarification PJM provides in its Deficiency Letter Response and find that this requirement is necessary to ensure that external resources are accountable for their individual performance when PJM's system is experiencing Emergency Actions.

To the extent that the Complaint seeks to "eliminate" the pseudo-tie requirement, or "establish an alternative mechanism" for it in this proceeding, the Complaint must be barred by the doctrine of collateral estoppel. Collateral estoppel is an efficiency rule that is meant to save judicial or administrative resources by avoiding the relitigation of issues of fact that have already been litigated. Indeed, this Commission has held that "[I]n the absence of new or changed

⁹ CP Order, P 79.

¹⁰ Complaint, at. P.7.

¹¹ *Id.* at P 96.

circumstances requiring a different result, it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined.”¹² The claims set forth in the Complaint should be barred as a collateral attack due to the fact that: (1) the claims presented relate to the same, essential issues that were decided on the merits in the Commission's Capacity Performance Order, and (2) the Complaint has presented no new evidence or new circumstances that would justify relitigation of the same claims.¹³

The Complaint suggests that there “was very little evidence on the record in the capacity performance proceeding to support PJM’s assertions that pseudo-ties were necessary” and now there is extensive evidence demonstrating economic and operational concerns caused by an increasing number of pseudo-ties.¹⁴ Even if the information presented by the MISO IMM is new information, the Complaint fails to provide context for the arguments that the alleged new market-to-market constraints will reach a tipping point.

Further, the MISO IMM's Complaint is replete with allegations that PJM's current (and, presumably, any future) pseudo-tie requirement is costly for MISO's generation resources, which allegedly outweigh any of the requirement's offsetting benefits. It should be noted that this cost-benefit argument, both to PJM's Capacity Performance construct in general, and to its pseudo-tie

¹² San Diego Gas and Elec. Co. v. Pub. Serv. Co. of N.M., 86 FERC ¶ 61,253 (1999); see also Pac. Gas & Elec. Co., 121 FERC ¶ 61,065, at P 38 (2007); Alamito Co., 41 FERC ¶ 61,312, at 61,829 (1987), order on reh'g, 43 FERC ¶ 61,274 (1988), (citing Cent. Kansas Power Co., Inc., 5 FERC ¶ 61,291, at 61,621 (1978), “Central Kansas Power”).

¹³ American Electric Power Service Corp., 122 FERC ¶61,083 at P 68 (2008).

¹⁴ Complaint at 6-7.

requirement more specifically, was rejected by this Commission in its Capacity Performance Order. In this regard, the Commission stated, in part, that:¹⁵

As to intervenors' arguments that PJM's proposal lacks the supportive findings of a cost-benefit analysis, we note, as a threshold matter, that the Commission does not generally require the mathematical specificity of a cost-benefit analysis to support a market rule change. Rather, the Commission considers the proposal in light of the currently effective tariff and comments in support and opposition to reach its determination. Here, on balance and in light of other changes on which we condition our acceptance, we find the proposal to be just and reasonable.

As the cost-benefit allegation for both the Capacity Performance construct and the pseudo-tie requirement has been previously decided by this Commission, the complainant should be estopped from attempting to do so again in this venue. Therefore, for all of these reasons, the Complaint should be dismissed as a collateral attack on previous Commission orders.

B. External Capacity Resources Must Be Required To Meet The Same Technical Standards and Requirements For Deliverability to PJM Load As Generators in the PJM Region.

The MISO IMM's proposed alternative ignores the core tenants of the Capacity Performance construct and does not place market participants in PJM and external regions on equal footing. P3 and EPSA have consistently maintained that capacity should be able to move freely across RTO borders, provided that the capacity is deliverable to load and on terms comparable to internal capacity resources.¹⁶ P3 and EPSA have noted their concerns with market rules that treat external resources differently than internal ones and have asked the

¹⁵ CP Order, at P 49.

¹⁶ See *PJM Interconnection, L.L.C.*, Comments of the PJM Power Providers Group, Docket No. ER14-503-000, December 20, 2013, pp 2-3. Also, see Comments of the Electric Power Suppliers Group, ER14-503-000, December 20, 2013, pp 2-4.

Commission to address such discrepancies.¹⁷ Different rules for external and internal capacity resources impact the prices offered into the market, and result in unjust and unreasonable and unduly discriminatory rates.¹⁸ Moreover, in order for Capacity Performance to meet its intended objective, PJM must be able to treat all capacity resources, whether located in PJM or external to PJM, as available at all times to meet the needs of PJM’s system. Capacity resources committed to PJM’s market must be available and accountable to PJM’s market lest the entire premise of Capacity Performance be eroded.¹⁹ In the Order approving the pseudo-tie requirement, the Commission explained PJM’s rationale for requiring pseudo-ties:²⁰

PJM contends that the fact that external interchange transactions are not unit specific, and therefore cannot be tied to any specific external resource, is one of the reasons underlying the PJM proposal to require that external units be pseudo-tied into PJM to qualify as Capacity Performance Resources. PJM argues that without the benefit of the pseudo-tie, PJM cannot accurately determine whether an external capacity resource owner met its commitment to deliver energy to PJM from the specific resource committed as a Capacity Performance Resource. PJM contends that this information is critical to ensure that the performance assessment evaluations are completed accurately and that any Non-Performance Charges are applied correctly.

The MISO IMM’s alternative proposal to put in place “Capacity Delivery Procedures” in lieu of the pseudo-ties will not allow PJM to tie transactions to the “specific external resource” and, as such, is not a feasible alternative. The “Capacity Delivery Procedures” approach eliminates the ability of PJM to dispatch external resources and largely takes a slice-of-system

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The complaint proposes that PJM capacity commitments from external resource be fulfilled by any combination of resources from the host RTO, virtually eliminating the notion that individual unit owners will be accountable for performance.

²⁰ CP Order at P 88.

approach under which “the host RTO would be obligated to deliver energy associated with capacity resources.”²¹ By making the host RTO the intermediary between the external resource and PJM, the proposal fails to meet the fundamental building block of Capacity Performance – that performance and penalties can be tied back to the individual generating unit and that the unit has an obligation to perform regardless of what may be occurring on the system. If the external resource with a Capacity Performance obligation is available, but there is a problem on MISO’s system and MISO cannot deliver a sufficient quantity of capacity to PJM, it is unclear how PJM receives that capacity and which entity faces the substantial penalty for non-performance. The MISO IMM’s approach is unworkable in a Capacity Performance world and holds external generators to different standards than internal generators. The need to place external generators on equal footing when participating in the PJM capacity market was the impetus for P3 and EPSA supporting PJM’s External Capacity Enhancements filing, wherein PJM proposes to add more stringent requirements for Pseudo-Tie arrangements and transmission service, which will increase the comparability of the rules applicable to external and internal resources and put these resources on “comparable footing.”²² The MISO IMM Complaint is remarkably silent on the issue of PJM’s need to require appropriate pseudo-ties in order to continue to best address the enhanced capacity performance reliability requirements for its markets. PJM’s IMM has agreed with these reliability requirements, stating that:²³

The rules for pseudo ties apply to external resources that choose to export capacity to PJM and sell as capacity resources in the PJM capacity market. A pseudo tie is the minimum requirement necessary to ensure that external capacity resources can serve as an

²¹ MISO IMM Complaint at 38.

²² PJM Interconnection, L.L.C., Docket No. ER17-1138, filed March 9, 2017 at p. 12 (“PJM External Capacity Enhancements filing”).

²³ PJM IMM comments, PJM External Capacity Enhancements, *supra*, at p.2

economic substitute for the internal capacity resources that they would displace and to ensure that PJM customers receive the full value of capacity that they pay for.

A resource that cannot meet PJM's requirements, even for reasons outside of their immediate control, cannot sell capacity resources in the PJM capacity market.

In focusing only on the impact on the market in which the resource is *not a* committed capacity resource, the Complaint fails to rebut "PJM's substantial responsibility for the reliable delivery of energy to load."²⁴ As noted by PJM's IMM, the external resources that the Complaint envisions "displacing" PJM's internal resources should not be allowed to do so in a discriminatory manner. Because of the disparity the Complaint's proposed "Capacity Delivery Procedures" would create between internal and external generators, the Complaint should be rejected.

C. MISO's Market Rules Encourage Capacity Exports To PJM.

Fundamentally, the Complaint fails to recognize that if MISO capacity market was not structured so as to continuously clear at prices near zero, market participants would not be incented to sell their power to PJM as their preferred economic option. Elements of MISO's capacity construct unfairly skew the playing field in favor of load-serving entities and against independent generators. Specifically, (i) MISO has no three year forward capacity construct; (ii) the capacity auction requires sellers to participate in the auction while letting buyers "opt out" at will; (iii) the market does not restrain buyers from suppressing prices in the auction by subsidizing uneconomic new generation; and (iv) MISO still uses a "vertical demand curve" to set prices in the auction, which produces inaccurate and unstable prices. The result of the

²⁴ PJM External Capacity Enhancements filing at p. 3.

capacity market design failure has created near zero prices in MISO. The current MISO capacity auction for the 2017-18 delivery year cleared at \$1.50 MW/Day,²⁵ while the PJM capacity auction for this same delivery year cleared at \$120 MW/Day for the RTO zone,²⁶ which is the zone that imports are priced by.

Simply put, the growing price disparity between what generators in MISO can recover for their operations may continue to grow, but that is not the fault of the PJM market, nor the rules and requirements surrounding its Capacity Performance construct. Rather, both MISO and the MISO IMM may need to examine the MISO capacity market construct, both in terms of its operations and resulting capacity payments to its generators. Attempting the elimination or substantial denigration of PJM's resource adequacy rules should not be the vehicle to address issues that more clearly reside within MISO's market itself.

II. CONCLUSION

WHEREFORE, P3 and EPSA request that the Commission dismiss the MISO IMM's Complaint for the reasons stated herein.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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²⁵ <https://www.misoenergy.org/Library/Repository/Report/Resource%20Adequacy/AuctionResults/2017-2018%20PRA%20Summary.pdf>

²⁶ <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2017-2018-base-residual-auction-report.ashx>

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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 eighth day of May 2017.

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