UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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| PJM Power Providers Group | ) | |
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| v. | ) | Docket No. EL11-20-000 |
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| PJM Interconnection, L.L.C. | ) | |
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| PJM Interconnection, L.L.C. | ) | Docket No. ER11-2875-000 |

*ANSWER TO REQUESTS FOR CLARIFICATION*

The PJM Power Providers Group ("P3")[1] hereby answers certain requests for clarification of the Commission's Order of April 12, 2011 in the above-captioned dockets, published at 135 FERC ¶ 61,022 (2011).

## *I. IF THE STAKEHOLDER PROCESS ADDRESSES SELF-SUPPLY, THAT PROCESS CANNOT BE ALLOWED TO UNDERMINE THE ORDER*

PJM seeks clarification that three issues are within the scope of the stakeholder process approved by the Order. PJM Clarification at 1-2. One of them involves self-supply, which has proven to be a highly contentious issue in this case.

We have no objection to self-supply issues being discussed during the stakeholder process, but we are concerned that some participants in that process may seek to use it to reverse the record-based decision the Commission reached in the Order, which is *not* to exempt self-supply from mitigation. *See* Order at PP 183-97. For all of the reasons both we and PJM presented earlier in this case, and the reasons given in the Order, an exemption for self-supply

[1] P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM region. Combined, P3's twelve member companies own over 87,000 megawatts of power and over 51,000 miles of transmission lines in the PJM region, serve nearly 12.2 million customers and employ over 55,000 people in the 13-state and District of Columbia PJM region. The content of this pleading represents the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, please visit www.p3powergroup.com.

would be profoundly counter-productive, essentially returning the Minimum Offer Price Rule to its prior status as a dead letter. The Commission should stand by the Order's holdings to this effect and should not permit the stakeholder process to become a venue for collaterally attacking the Order.

Nor is there any "hardship" reason to reopen this issue. Any entity interested in building self-supply capacity can avoid any adverse mitigation outcome by taking one of two courses of action:

*First*, the self-supply proponent can simply offer its resource when new entry is, in fact, needed and the resource can clear in the auction at its actual costs. In that event, it will not be repriced upward and will clear.

*Second*, we repeatedly have stated that the self-supply proponent can simply hold an open-source procurement, allowing existing resources to compete head to head with new resources, including its potential self-supply option. If self-supply is the most economic option, then it will be chosen and no mitigation is appropriate. If it is *not* the most economic option, then presumably the winning, lower-priced resource will be chosen, and the self-supply option will wait until some future time when it is economic.

If a self-supply proponent were to refuse either of these options, that would raise prominent red flags showing that mitigation absolutely *is* appropriate. For then we would have a market participant building capacity that is not needed, given its costs, when existing resources are ready, willing and able to provide the same capacity support for less. In that circumstance, the prospect of artificial capacity price suppression is very real. And the objections to undergoing mitigation are not well founded.

The other two issues PJM proposes to address during the stakeholder process involve factoring day-ahead prices into the energy and ancillary services offset calculations and adopting what we have called a "no-subsidy off-ramp." We have raised both of these issues on rehearing. If the Commission does not grant rehearing outright, it should clarify that these issues are open for consideration in the stakeholder process. In particular, our no-subsidy off-ramp proposal includes our recommendation that resources fairly chosen in an open-source procurement process should not be subject to mitigation. *See* Complaint and Request for Clarification Requesting Fast Track Processing at 34-36 (Feb. 1, 2011); Answer to Motions to Dismiss and Other Pleadings at 9-10 (Mar. 18, 2011). By adopting that proposal, the Commission can appropriately accommodate the many (unfounded) objections to the Order's treatment of self-supply.

## *II. THE HESS AND NCEMC FILINGS CONFUSE CURRENTLY EXISTING RESOURCES WITH "EXISTING GENERATION CAPACITY RESOURCES" AS DEFINED IN THE TARIFF*

We also briefly address requests for clarification or rehearing filed by Hess Corporation and the North Carolina Electric Membership Corporation ("NCEMC"). These parties each address what resources should be considered "existing," and thus not subject to mitigation. To eliminate the risk of semantic confusion, it helps to start with the Order.

One of the key points of the Order was to extend mitigation for new resources beyond one year. Order at PP 158-78. As the Commission explained:

> Under PJM's existing MOPR, mitigation is applied for one auction, i.e., for the first delivery year in which the resource qualifies as a Planned Generation Capacity Resource,[82] regardless of whether the resource clears.
>
> [82] A Planned Generation Capacity Resource is a resource that is participating in the interconnection process. Once a resource begins to receive interconnection service, it is no longer classified as a Planned Generation Capacity Resource.

*Id.* at P 158 & n.82 (other footnote omitted). The Commission rightly concluded that:

> PJM's existing tariff provides that the MOPR is applied only once—namely, to the offer made in the base residual auction for the first delivery year in which the resource qualifies as a capacity resource. Such a provision, however, still permits a resource to submit a less than competitive bid in the second auction that results in an unjust and unreasonable reduction in price. For this reason, we conclude that the existing MOPR provision that limits the application of an offer floor to one auction is not reasonable.

*Id.* at P 173. The Commission also expressed concern that:

> [o]nce a resource begins to receive interconnection service, it is no longer classified as a Planned Generation Capacity Resource, and thus, . . . [a] resource could lose its status as a Planned Generation Capacity Resource before the resource has cleared a capacity auction, thereby enabling an uneconomic resource to bypass the MOPR and successfully artificially suppress capacity prices.

*Id.* at P 174. Instead, the Commission required each new resource to be mitigated "until the resource demonstrates that its capacity is needed by the market at a price near its full entry cost—by clearing." *Id.* at P 176.

Hess argues that the Commission exceeded its authority by directing PJM to continue to mitigate a new resource until the resource would have cleared had it offered competitively. According to Hess, this directive results in mitigation in perpetuity, and could mitigate resources that meet PJM's current definition of an Existing Generation Capacity Resource. These contentions are mistaken.

The Commission's mitigation regime does *not* impose mitigation in perpetuity; mitigation will, instead, apply for as long as it takes for the resource to clear in an RPM auction at offer levels reflecting actual, competitive cost. That could be as little as one year, or it could be more, depending on how uneconomically "out of market" the actual cost of the resource is. We have argued for a more rigorous duration; by no rational measure can the Commission's approach be deemed too lengthy.

Hess's contentions would, moreover, directly contradict the Commission's well-founded concern that resources could completely evade mitigation by initiating interconnection service

and then offering into an RPM auction for the first time. Simply because a new resource meets the current definition of an Existing Generation Capacity Resource does not mean that the resource is competitively offered. It easily could, instead, mean—as the Commission observed—that the resource was built "early" in order to trigger status as an Existing Generation Capacity Resource before offering into any RPM auction.

The Commission should reject Hess's invitation to reopen a loophole the Order consciously and properly closed. Mitigation cannot properly be circumvented simply by bringing a unit on-line prior to offering it into an RPM auction. The potential for gaming is manifest. The Commission took care in the Order to create an effective buyer-side market power mitigation scheme. The Hess argument would, if adopted, in one fell swoop undo that substantial effort.

Hess's argument that it relied heavily on the tariff language proposed in PJM's February 11, 2011 filing, including its application to Planned Generation Capacity Resources, illustrates that every word of the mitigation rules matter, and that the Commission's concern about attempts to evade mitigation is well-founded. The Commission should not indulge arguments that hinge on semantics when the success of the PJM capacity market depends critically on the adoption of comprehensive buyer market power mitigation measures.

The NCEMC Filing likewise argues that mitigation should not apply to resources that meet the current definition of Existing Generation Capacity Resources. NCEMC argues that it owns existing resources in an external control area that are in full commercial operation today. Viewed from this perspective, if the question is whether a power plant built, for example, 10 years ago, outside of the PJM footprint, and that has never offered into any prior RPM auction, is "existing" and thus not subject to mitigation—which may be what NCEMC is asking—then, in

that specific context, we agree.[2] At times, however, the NCEMC pleading appears to make arguments similar to Hess's. For the same reasons just given, the Commission should not adopt that reasoning.[3]

Respectfully submitted,

/s/


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[2] We note that this is a distinctly different fact pattern than has occurred in the New England and New York capacity markets, where uneconomic capacity resources within the RTO were built without being mitigated, raising the question whether new and improved mitigation measures should be applied to them.

[3] We also note that the rehearing request filed by the New Jersey Division of Rate Counsel attaches a new expert affidavit. At this stage, proffer of new evidence is contrary to Commission rules, precedent and practice. *See, e.g.*, *Westar Energy*, 134 FERC ¶ 61,176 at PP 1, 23 (2011); *Am. Elec. Power Serv.*, 106 FERC ¶ 61,020 at P 91 (2004). There can be no claim of unfair surprise as the availability of the FRR option—the sole subject of the affidavit—was extensively and timely discussed by several parties, including P3. *See, e.g.*, Complaint and Request for Clarification Requesting Fast Track Processing at 10, 51-52 (Feb. 1, 2011); P3 Exhibit 1 to Complaint, Testimony of Roy J. Shanker, Ph.D. at 32:15–33:4; Answer to Motions to Dismiss and Other Pleadings at 4, 33-34 (Mar. 18, 2011); P3 Exhibit 8 to Answer, Testimony of Roy J. Shanker, Ph.D. at 19:15-19, 28:8-9. The Commission therefore should not accept this belated effort to enlarge the record.

*CERTIFICATE OF SERVICE*

I hereby certify that I have this day caused to be served copies of the foregoing document upon each person designated on the official service list as compiled by the Office of the Secretary in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C., this 27th day of May, 2011.

/s/ Carl Edman

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