

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

PJM Load Parties)	
)	
)	
Complainants,)	
)	
v.)	
)	
PJM Interconnection, L.L.C.)	Docket No. EL24-104-000
)	
Respondent.)	
)	
)	

**COMMENTS OF THE PJM POWER PROVIDERS GROUP
AND THE ELECTRIC POWER SUPPLY ASSOCIATION
IN OPPOSITION TO COMPLAINT**

Pursuant to the April 23, 2024, Combined Notice of Filings #1 issued by the Federal Energy Regulatory Commission (the “Commission” or “FERC”) in the above-captioned proceeding, The PJM Power Providers Group¹ (“P3”) and the Electric Power Supply Association² (“EPSA”) submit these comments in opposition to the April 22, 2024, complaint filed by the PJM Load Parties (“Load Parties”) against PJM Interconnection, L.L.C. (“PJM”).

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 Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 83,000 MWs of generation assets and produce enough power to supply over 63 million homes in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com.

² EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers.

The Load Parties Complaint concerns the capacity prices for the 2024/2025 Delivery Year. (“Complaint”).³ The Complaint is conditional based on FERC’s acceptance of PJM’s filing incorporating the recent decision of the United States Court of Appeals for the Third Circuit.⁴

On April 24, 2024, P3 filed a doc-less Motion to Intervene. On April 30, 2024, EPSA filed a doc-less Motion to Intervene. P3⁵ and EPSA⁶ respectively submit these comments in the above-captioned proceeding.

I. COMMENTS

P3 and EPSA oppose the Load Parties Complaint and urge the Commission to reject it. In December 2022, PJM filed and the Commission approved a proposal that was eventually judicially determined to be retroactive ratemaking in violation of the filed rate doctrine. In the fifteen months since PJM made its filing, there were countless hours spent litigating that decision while a cloud of uncertainty hung over capacity prices and obligations for the 2024/2025 Delivery Year that commences on June 1, 2024. Extensive protests were filed, detailed requests for rehearing were made and parties offered written and oral arguments to the Third Circuit while both suppliers and consumers wrestled with serious questions about future capacity pricing in PJM. Significant time and effort by the Commission and other parties was exerted in an effort to determine PJM’s legally binding capacity prices for the 2024/2025 Delivery Year.

³ *PJM Load Parties v. PJM Interconnection, L.L.C., Conditional Complaint and Request for Fast Track Processing and Shortened Response Time of PJM Load Parties*, Docket No. EL24-104-000 (April 22, 2024) (“Load Parties Complaint”).

⁴ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390 (3d Cir. 2024); See Slip Opinion Case: 23-1778 at <https://www.ferc.gov/media/pjm-power-providers-group-et-al-v-ferc-5> (“Third Circuit Opinion”).

⁵ The comments contained herein represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

⁶ This filing represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

Following this significant amount of time, effort and uncertainty, the Third Circuit delivered the Commission and PJM an unambiguous message. A judicial panel composed of appointees by Presidents Bush, Obama and Biden required only 52 days following oral argument to issue a strongly worded unanimous decision finding that PJM’s efforts to “alter[] the legal consequences attached to past actions”⁷ was retroactive and a violation of the filed rate doctrine.⁸ The judges offered very little wiggle room going forward explaining that “FERC’s position makes auction rules inherently unstable because, in its view, it can change auction rules any time before clearing prices are final and capacity commitments are awarded without running afoul of the filed rate doctrine.”⁹

Yet, despite this strong message from the court, the Load Parties come before the Commission asking it to do exactly what the Court said it cannot. The Load Parties Complaint represents a significant and dangerous path forward for the Commission. The Load Parties ask the Commission to essentially ignore the decision of the Third Circuit with an untested legal theory regarding capacity prices that is certain to provoke even more litigation and extend the market uncertainty even longer. Starting the delivery year with legally suspect capacity prices and obligations is a recipe for chaos that the Commission must avoid.

The Commission has an opportunity to put the events related to the 2024/2025 Delivery Year behind it and start the delivery year on June 1 with suppliers clearly understanding their obligations and consumers clearly understanding the cost of their capacity. PJM has put before

⁷ Third Circuit Opinion at p. 23.

⁸ Third Circuit Opinion at pp. 9 and 25.

⁹ Third Circuit Opinion at p. 27.

the Commission an appropriate means to move on.¹⁰ This is the path the Commission should choose.

The Load Parties proffer a theory that the filed rate doctrine can be overridden by FERC's obligation to produce just and reasonable rates. This is an ambiguous path that could lead to a world in which the Commission is routinely called upon to review tariff-produced rates when any party finds those rates offensive. This is not a role that the Commission should desire nor is it a role that Congress has legally provided to the Commission.

Moreover, the Third Circuit and other courts have made it clear that the filed rate doctrine "is unbending regardless of where the equities lie."¹¹ Yet, the Load Parties Complaint asks the Commission to accept virtually identical "it's just not fair" arguments that led to 15 months of litigation and market uncertainty. P3 and EPSA, like the courts, recognize some of the concerns raised by the Complaint, however, these concerns must give way to the long-term benefits to consumers and suppliers of fidelity to the filed rate doctrine.

Finally, the Commission cannot lose sight of the reality of June 1, 2024. The date will arrive, and consumers will want power on that day and suppliers will want to get paid for providing capacity. Accepting any aspects of the Load Parties Complaint will certainly spur litigation that will leave a pall over the market when June 1, 2024, arrives.

P3 and EPSA urge the Commission to forge a path forward that restores certainty for capacity prices and obligations for the 2024/2025 Delivery Year. PJM has offered the Commission a reasonable path to do so, and the Load Parties have offered the Commission a complaint that will completely upend that goal. P3 and EPSA implore the Commission to move

¹⁰ *Petition Under Rule 207 of PJM Interconnection, L.L.C. for Order Confirming 2024/2025 Delivery Year Capacity Commitment Rules, Request for Order by May 6, 2024, and Request for Shortened 10-Day Comment Period*, Docket No. ER23-729-002 (Mar. 29, 2024) ("PJM Petition").

¹¹ Third Circuit Opinion at p. 10.

forward with the legally durable path PJM has offered and not inject even more chaos into what has been an extremely unsettled and disruptive process for securing capacity for consumers from June 1, 2024 to May 31, 2025.

II. CONCLUSION

P3 and EPSA oppose the Complaint and urge the Commission to reject it.

Respectfully submitted,

On behalf of The PJM Power Providers Group

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Dated: May 1, 2024

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 1st day of May, 2024.

On behalf of The PJM Power Providers Group

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