

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Act 129 Energy Efficiency Program – Phase III ) Docket No. M-2014-2424864**

**REPLY COMMENTS  
OF THE PJM POWER PROVIDERS GROUP  
TO ACT 129 PHASE III TENTATIVE IMPLEMENTATION ORDER**

On March 11, 2015, the Pennsylvania Public Utility Commission (the “Commission” or “PUC”) adopted and released for comment a Tentative Implementation Order (“Tentative Order”)<sup>1</sup> to begin the process of potentially establishing a Phase III or the Act 129 Energy and Efficiency Conservation (“EE&C”) Program. Pursuant to the Notice in the Pennsylvania Bulletin dated March 28, 2015, and the May 1, 2015 Secretary Letter, issued in the above-captioned proceeding, extending the reply comment deadline to May 15, 2015, the PJM Power Providers Group (“P3”)<sup>2</sup> respectfully submits these reply comments to the Tentative Order.

**I. REPLY COMMENTS**

The PJM Power Providers Group (“P3”) is a non-profit organization made up of power providers whose mission it is to promote properly designed and well-functioning competitive wholesale electricity markets in the 13-state region and the District of Columbia served by PJM

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<sup>1</sup> Pennsylvania Public Utility Commission, Act 129 Energy Efficiency and Conservation Program Phase III; Doc. No. M-2014-2424864, March 11, 2015 (“Tentative Order”).

<sup>2</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. For more information on P3, visit [www.p3powergroup.com](http://www.p3powergroup.com)

Interconnection, L.L.C. (“PJM”). Combined, P3 members own more than 87,000 megawatts of generation assets in PJM and over 51,000 miles of transmission lines, and serve nearly 12.2 million customers and employ over 55,000 people. P3 believes that well-functioning competitive wholesale electricity markets are the most effective means of ensuring a reliable supply of power to the 13 Mid-Atlantic and Midwestern states and the District of Columbia in the PJM service territory.

While P3 has not been an active participant in this docket to date, the organization applauds the Commission’s leadership in tackling the tough issues associated with energy efficiency and conservation pursuant to Act 129. For purposes of these reply comments, P3 will focus only on the demand response program set forth in the Tentative Order.

P3 believes that demand side participation is a healthy part of a well-functioning market. A properly designed and well-functioning market allows consumers to actively participate in the market – adjusting consumption (either up or down) in response to price signals. In order for competition to flourish, all resources should be able to fairly compete based on transparent market signals.

While there may be benefits offered by properly structured state level demand response programs, P3 cautions the Commission against aggressively moving forward with significant changes to Pennsylvania’s EE&C program and including a demand response program at this time. Given the legal and market uncertainty surrounding demand response as a market resource, prudence suggests a cautious approach rather than a rush to get something place in by this summer. Moving forward in in light of the current uncertainty could lead to significant wasting of both Commission and utility resources.

**A. The PA PUC Should Hold in Abeyance the Implementation and Design of the Demand Response Program in Phase III of Act 129**

On Monday, May 4, 2015, after the April 27, 2015 Comment deadline in this docket, the United States Supreme Court granted certiorari<sup>3</sup> in the matter of *EPSA v FERC*.<sup>4</sup> As the Commission is aware, the United States Court of Appeals (DC Circuit) held in *EPSA v. FERC* that demand response is not a wholesale electricity transaction subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission (“FERC”), but rather a retail energy transaction subject to the regulatory jurisdiction of state public utility commissions. The United States Supreme Court will likely be briefed and hear arguments on the merits of this case late this year.

If the DC Circuit court decision is upheld, PJM’s demand response programs will likely be considered null and void. PJM acknowledged this interpretation of the decision in its demand response “stop-gap” proposal filed at FERC on January 14, 2015. In that filing, PJM stated that it “recognizes that, should the *EPSA* mandate issue, parties likely will seek to litigate whether the holding of *EPSA* reaches organized capacity markets like RPM. . . . . [and also] recognizing that determining the overall future of demand response in both energy and capacity markets, should *EPSA* stand, may require [FERC] action of nationwide scope.”<sup>5</sup> On March 31, 2015, FERC rejected PJM’s demand response stop-gap filing as premature. In doing so, FERC stated that, “While we recognize that PJM’s goal is to reduce uncertainty surrounding demand response participation in its

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<sup>3</sup> On January 15, 2015, the United States Solicitor General on behalf of the Federal Energy Regulatory Commission filed a Petition for a Writ of Certiorari in the Supreme Court of the United States seeking review of the United States Court of Appeals for the District of Columbia Circuit’s *EPSA v FERC* decision, vacating and remanding FERC’S Order 745 on Demand Response compensation. On January 15, 2015, EnerNoc, In., *et al.*, also filed a Petition for a Writ for Certiorari in the Supreme Court of the United States in the same matter.

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

<sup>5</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-852-000, January 14 2015, at p 12.

upcoming BRA, in the present circumstances, it is unavoidable that some uncertainty is inherent in the current stance of the *EPSA* case. Moreover, we are concerned that PJM's proposal introduces uncertainties that may exceed those it seeks to avoid, particularly with respect to potential unanticipated spillover effects on state programs and private sector arrangements."<sup>6</sup>

With the legal status of PJM-administered wholesale demand response uncertain at this time, the proper course of action for the PUC is to hold the implementation and design of the demand response program of the Phase III of Act 129 in abeyance. EDC resources should not be wasted, and under the Tentative Order, EDCs will be spending significant time and resources implementing the Phase III Act 129 demand response program. Although the Commission stated in the Tentative Order that the demand response program is separate and apart from the PJM program, depending on the outcome of the United States Supreme Court's decision in *EPSA v. FERC*, Pennsylvania's Act 129 program may become the sole demand response program rather than a program that is structured to be complimentary to PJM's demand response program. Depending on the outcome of the United States Supreme Court decision, the Commission may realistically and in a short period of time, find itself in a position necessitating revisiting and potentially substantially reworking its demand response program. Therefore, prudence dictates that the Commission holds the demand response program implementation and design in abeyance for a relatively short period of time pending the outcome of *EPSA v. FERC*.

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<sup>6</sup> 150 FERC ¶ 61,251 (2015), at P 32.

**B. The Tentative Order Correctly Disallows Participation in PJM ELRP Program for Act 129 Phase III DR Program**

While P3 strongly urges the Commission to await implementation and design of the demand response program until the final determination of the United States Supreme Court in *EPSA v. FERC*, if the Commission does move forward with implementing the demand response program at this time, it is important that Pennsylvania’s demand response program not be degraded to a mere supplement for resources *already* being compensated by PJM’s demand response program.

In the Tentative Order the Commission clearly establishes that customers participating in PJM’s Emergency Load Response Program (“ELRP”) are not eligible to participate in the demand response program for Phase III.<sup>7</sup> As the PUC correctly states, this “prevents the payment of Act 129 EE&C Program funds to a customer for an event during which the customer was already curtailing due to signals from PJM (and subsequently receiving payment from PJM).”<sup>8</sup> Further, customers participating in PJM’s ELRP are excluded “to prevent a scenario in which a customer is compensated by both PJM and an EDC for the same curtailment hour(s).”<sup>9</sup> P3 applauds the Commission for the important disallowance of customers’ ability to double dip. As the Commission previously stated in its Final Order for the SWE to move forward with its demand response study:

[T]he Commission has concerns with directing the EDCs to implement, and the ratepayers to fund, a program that may offer no additional capacity to the system or provide any incremental benefit over the existing PJM DR programs. Therefore, the Commission will direct the SWE to perform the Demand Response

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<sup>7</sup> Tentative Order p. 38.

<sup>8</sup> Tentative Order p. 38.

<sup>9</sup> Tentative Order p. 25.

Potential Study to determine if its alternative DR methodology provides incremental benefit over that provided by the PJM markets. We agree with those parties that aver that a customer's dual participation in both Act 129 and PJM DR programs adds no additional capacity to the grid, which is the intent of DR programs. While we understand that, from a customer perspective, two revenue streams are enticing. However, the intent of the Act 129 programs is to realize actual energy consumption and peak demand reductions in Pennsylvania. We believe that allowing a customer to receive ratepayer money from the Act 129 DR programs when that customer would already have been curtailing load through PJM DR programs does not provide any additional actual demand reductions. As such, we direct the SWE to disallow dual participation when it performs its LC analysis as part of its Demand Response Potential Study.<sup>10</sup>

The same concerns that the Commission expressed over a year ago remain valid today.

Dual participation in both programs effectively provides a second revenue stream for demand response that is not necessary in order for that demand response to provide benefits for the EDC and PJM. Over 97% of the revenue to demand response stems from the PJM capacity market, which is a 3-year forward commitment.<sup>11</sup> In other words, demand response in the PJM capacity market has already made a commitment to serve as a capacity resource at a price that is compensatory three years in advance of when the demand response could be called. Whether that demand response received additional compensation from the state should be irrelevant to whether that demand response will be provided since the PJM compensation was sufficient for the demand response resource to make the commitment.

By stating in their Comments to the Tentative Order that the PJM demand response program and the Act 129 demand response program have "different fundamental purposes,"<sup>12</sup> the

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<sup>10</sup> Pennsylvania Public Utility Commission, Final Order Docket Nos , M-2012-2289411 and M-2008-2069887, February 20, 2014, pp 56-57.

<sup>11</sup> 2014 State of the Market Report for PJM:, Posted March 12, 2015, at Section 6, p.222, available at [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2014/2014-som-pjm-volume2-sec6.pdf](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2014/2014-som-pjm-volume2-sec6.pdf)

<sup>12</sup> *Comments of the Demand Response Supporters on Tentative Implementation Order*, Before the Pennsylvania Public Utility Commission, Act 129 Energy Efficiency and Conservation Program Phase III; Doc. No. M-2014-2424864, March 11, 2015, at p. 11.

Demand Response Supporters terribly confuse the entire concept of demand response. A factory that is willing to reduce its consumption by 5 MW in response to a price signal will have the same practical effect on the EDC's ability to peak shave as it will on the PJM wholesale markets. Five MWs of power leaving the system is 5 MWs of power regardless of who compensates that factory. Whether it is a state level demand response program or a PJM program that compensates the demand response, both PJM and the EDC can know about and account for that factory's ability to leave the grid under certain circumstances.

If the Commission decided to change course at this point and allow demand response to participate in the utility demand response programs, the Pennsylvania program would most likely be reduced to a "nice bonus" for resources that are already committed to and compensated for participating in the PJM demand response programs. Why would not that factory that can reduce consumption by 5 MW seek to receive a payment from both PJM and a Pennsylvania utility for doing the same thing? That factory has every incentive to do so and, in the end, degrade the Pennsylvania program into nothing more than a nice gratuity complements of the ratepayers of the Commonwealth of Pennsylvania.

**C. The Proposed Requirements to Participate in the Utility-Sponsored Demand Response Program Will Likely Be of Little Value to PJM.**

In the Tentative Order, the Commission proposes a demand response program design that requires:

- Curtailment events shall be limited to the months of June through September.
- Curtailment events shall be called for the first six days that the peak hour of PJM's day-ahead forecast for an EDC is greater than 96% of the EDC's PJM summer peak demand forecast for the months of June through September each year of the program.

- Each curtailment event shall last four hours.
- Each curtailment event shall be called such that it will occur during the day's forecasted peak hours.
- Once six curtailment events have been called in a program year, the peak demand reduction program shall be suspended for that program year.
- Compliance will be determined based on the average MW performance across all event hours in a given program year.<sup>13</sup>

While these program elements may have value to the Commission and Pennsylvania utilities, they are very inconsistent with PJM's current market rules and demand response programs, and perhaps future demand side resource programs suggesting that the demand response procured under this state program will be of limited value (if any) to PJM – particularly if *EPSA v. FERC* is upheld by the United States Supreme Court. If the demand response acquired by Pennsylvania's demand response program is not of significant enough quality that it allows PJM to adjust its load forecast or reserve margin, then Pennsylvania's utility consumers will be spending a lot of money with very little benefit in return.

The PJM Independent Market Monitor ("IMM") has spoken at length about the inferiority of resources that are only available for limited durations throughout the year as are the resources acquired by the proposed Act 129 demand response program. In fact, the PJM IMM has consistently called for the elimination of the Limited and Extended Summer Demand Response products from the PJM capacity market. As the IMM noted several years ago, "All products competing in the capacity market should be required to be available to perform when

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<sup>13</sup> Tentative Order pp. 37-38.



called for every hour of the year.”<sup>14</sup> The PJM IMM has articulated this many times, and most recently reported in March 2015, 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. Status: Not Adopted).”<sup>15</sup>

Moreover, PJM recognized the diminished value of demand response resources that are available for only a limited number of hours during certain, limited times of the year in its recent Capacity Performance filing in which PJM called for the transition away from this type of demand response capacity.<sup>16</sup> As PJM offered,

[t]he vast majority of Demand Resources (and all of the Energy Efficiency Resources) that have cleared RPM Auctions are obligated only to provide capacity during the summer peak season. And, even during those summer months, Limited Demand Resources are available for only 10 days and for a maximum of 6 hours a day. *Such significant limitations on availability preclude PJM from calling on the majority of Demand Resources to meet the region’s capacity needs outside of the summer months.* Accordingly and consistent with the overarching purpose of ensuring PJM load obtains from Capacity Resources what it pays for, PJM is proposing to transition from the current three Demand Resource products to a single Annual Demand Resource product that will meet the Capacity Performance Resource operational and performance requirements by the 2020/2021 Delivery Year.<sup>17</sup>

Ultimately, the Commission, before it commits Pennsylvania’s consumers to spending perhaps hundreds of millions of dollar a year, should be asking how its program will be

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<sup>14</sup> Monitoring Analytics, LLC, 2011 *State of the Market Report for PJM*, page 8, Section I, available at [http://monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2011.shtml](http://monitoringanalytics.com/reports/PJM_State_of_the_Market/2011.shtml)

<sup>15</sup> 2014 *State of the Market Report for PJM*:, Posted March 12, 2015, at Section I, p.28, available at [http://monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2014.shtml](http://monitoringanalytics.com/reports/PJM_State_of_the_Market/2014.shtml)

<sup>16</sup> If PJM’s capacity performance proposal is approved by the Federal Energy Regulatory Commission, only demand response that is available every day of the years and for an unlimited number of calls can be considered a capacity resource after 2020.

<sup>17</sup> *PJM Interconnection, L.L.C.*, ER15-623-000, December 12, 2014, pp 34-35 (emphasis added).

integrated by the PJM wholesale market. Admittedly, the answer could change depending on the outcome of *EPSA v. FERC* at the United States Supreme Court. However, whether *EPSA v. FERC* stands or is reversed, PJM is on record stating that demand response that is only available during certain months of the year, only for a certain number of hours at a time and only for a certain number of times each year, is of very little value. The Commission needs to understand exactly how little that value is before a fully reasoned decision can be made regarding the attributes of a state demand response program that the Commission is going to be asking consumers to pay for.

## **II. CONCLUSION**

For the foregoing reasons, P3 respectfully requests that the Commission consider these reply comments in deciding on the timing of the implementation and the design of the demand response program as set forth in the Tentative Order.

Respectfully submitted,

On behalf of the PJM Power Providers Group

By: /s/ Glen Thomas

Glen Thomas

Diane Slifer

GT Power Group

1060 First Avenue, Suite 400

King of Prussia, PA 19406

gthomas@gtpowergroup.com

610-768-8080

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