THE P3 GROUP

epsa

Electric Power Supply Association

Advocating the power of competition

September 20, 2016

Ms. Ingrid Ferrell
Executive Secretary
West Virginia Public Service Commission
P.O. Box 812
Charleston, West Virginia 25323

Re: CASE NO. 16-1074-E-P, PETITION OF COMMISSION STAFF AND THE CONSUMER ADVOCATE DIVISION REQUIRING MONONGAHELA POWER AND THE POTOMAC EDISON COMPANY TO SHOW CAUSE WHY THEY SHOULD NOT BE REQUIRED TO FILE REQUESTS FOR PROPOSALS FOR ALL FUTURE CAPACITY AND ENERGY REQUIREMENTS ABOVE 100 MW

Dear Ms. Ferrell:

The PJM Power Providers Group ("P3")[1] and the Electric Power Supply Association ("EPSA")[2] respectfully submit this letter in support of the Petition of Commission Staff ("Staff") and the Consumer Advocate Division ("CAD") Requiring Monongahela Power Company and The Potomac Edison Company ("Companies") to Show Cause Why They Should not be Required to File Requests for Proposals for All Future Capacity and Energy Requirements Above 100 MW, filed on August 5, 2016, in Case No. 16-1074-E-P ("Show Cause Petition").

In its Show Cause Petition, Staff and CAD express serious concerns with the Companies' apparent plans to purchase yet another coal plant, or portion thereof, from

[1] P3 is a non-profit organization whose members are energy providers in the PJM Interconnection LLC ("PJM") region, conduct business in the PJM balancing authority area, and are signatories to various PJM agreements. Altogether, P3 members own over 84,000 megawatts ("MWs") of generation assets, produce enough power to supply over 20 million homes, and employ over 40,000 people in the PJM region, representing 13 states and the District of Columbia. These comments do not necessarily reflect the specific views of any particular member of P3 with respect to any argument or issue, but collectively presents P3's positions. For more information on P3 see www.p3powergroup.com.

[2] EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. These comments do not necessarily reflect the specific views of any particular member of EPSA with respect to any argument or issue, but collectively presents EPSA's positions. For more information on EPSA, visit www.epsa.org.

one of its subsidiaries, contrary to the settlement agreement parties made in the prior case involving a coal plant purchase from one of its affiliates in 2013,[3] and the statutory provisions pertaining to an Integrated Resource Plan ("IRP").

On September 6, 2016, the Companies filed a Response and Motion to Dismiss the Show Cause Petition, alleging, in part, that the settlement agreement at issue has not been triggered, that the Commission should not prescribe any particular manner for a utility's procurement of capacity and energy, and that the Commission allegedly lacks authority to issue Requests for Proposals ("RFP" or "RFPs") because such issuances are characterized as a "management" decision.[4]

P3/EPSA believe that this Commission has the requisite statutory authority to require the issuance of RFPs by the Companies in order to procure any amount of capacity. Such an RFP would satisfy both the statutory requirements for the Commission to consider all "supply side" resources, as well as to ensure the "reasonable balance of cost" for West Virginia customers.

As competitive energy suppliers that collectively own over 84,000 megawatts of generation assets in the PJM Interconnection, LLC ("PJM") region, P3 and EPSA members are best suited to offer competitively-priced generation options that would meet West Virginia's reliability needs in a least cost manner. The best and most appropriate manner for this Commission to fully examine potential supply options would be with the use of a broad, competitively neutral RFP in which multiple suppliers could actively compete to meet the needs of West Virginia consumers. This would ensure that all available supply-side and demand-side resources are transparently reviewed in accordance with the state's applicable rules and laws.

Specifically, W. Va. Code §24-2-19 states:

> (d) The Commission may consider both supply-side and demand-side resources when developing the requirements for the integrated resource plans. The plan shall compare projected peak demands with current and planned capacity resources in order to develop a portfolio of resources that represents a reasonable balance of cost and risk for the utility and its customers in meeting future demand for the provision of adequate and reliable service to its electric customers as specified by the Public Service Commission.

Both Staff and the CAD also recognized the importance of a properly structured RFP in this instance, by stating, in part, that:

[3] Case No. 12-1571-E-PC, Joint Stipulation, filed on September 13, 2013, adopted by the Commission's Order entered on October 7, 2013.

[4] Response and Motion to Dismiss, Monongahela Power Company and The Potomac Edison Company, Show Cause Petition, Case No. 16-1074-E-P, (filed September 7, 2016) ("Companies' Response and Motion to Dismiss").

> In today's market, it simply makes sense for the Companies to issue an RFP for an acquisition of capacity and energy above 100 MW. The Companies could obtain competitive, cost-effective proposals for acquiring capacity and energy by using the RFP process. The use of an RFP could allow the Companies to move beyond past approaches and allow the competitive process to offer to offer a variety of generation resources to meet customers' needs. . . . Given that ratepayers ultimately bear the financial risks associated with acquiring capacity and energy, they should be allowed the benefits of the RFP process.[5]

P3 and EPSA completely agree with Staff's and CAD's assessment of the cost and supply benefits of a properly structured RFP. In a research paper previously prepared in response to a request from the National Association of Regulatory Commissioners ("NARUC"), in collaboration with the Federal Energy Regulatory Commission ("FERC"), seeking a study of state and utility policies and practices for competitive procurement of retail electric supply, the Analysis Group concluded, in part, that:

> Competitive procurements can provide utilities with a way of obtaining electricity supply that has the "best" fit to customers' needs at the "best" possible terms. In principle, competitive procurements accomplish this goal by requiring market participants to compete for the opportunity to provide these services. However, for competitive procurements to fulfill their promise, they must be designed and implemented in a manner that fosters competition among market participants, including potentially the regulated utility and its affiliated companies.[6]

According to the NARUC/FERC Competitive Procurement Whitepaper, one of the most important benefits of any competitive procurement is a proper design to curtail self-dealing for which a utility would be otherwise inclined:

> The first key issue for incremental resource procurements is the design of safeguards to prevent potential improper self-dealing by the utility. Because the utility may financially benefit from the selection of its own self-build offer or a proposal from an affiliate, safeguards are necessary to ensure that the process is not improperly tilted toward the selection of such offers.[7]

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[5] Show Cause Petition, *supra*, at p.3.

[6] Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices Susan F. Tierney, Ph.D. Todd Schatzki, Ph.D. Analysis Group Boston, Massachusetts July 2008, https://www.hks.harvard.edu/hepg/Papers/Analysis_Group.pdf ("NARUC/FERC Competitive Procurement Whitepaper"), p. i.

[7] NARUC/FERC Competitive Procurement Whitepaper, *supra*, at p. iv.

The apparent plan of the Companies to utilize its 650 MW coal-fired Pleasants Power Station to meet its alleged supply need would violate not only its former settlement agreement to issue an RFP for future generation supply needs, it also runs contrary to West Virginia statutory requirements to examine all supply-side and demand-side resources in order to ensure the lowest costs for customers.[8]

Moreover, P3 and EPSA disagree with the Companies' position that it need not conduct RFPs, in part, because RFPs are best left to a "management" decision-making process and that this Commission allegedly lacks straight-forward statutory authority to require utilities to conduct RFPs.[9] P3 and EPSA believe that, as the Companies acknowledge, "cost recovery authority" is very much within the purview of this Commission.[10] Conducting RFPs in order to ascertain the full supply-side options that may be available to a utility in a cost-efficient manner, procured *"without unjust discrimination or* preference," such as self-dealing with affiliates would render, would not be outside this Commission's statutory jurisdiction, as state law requires that the Commission:

> "[ensure that rates and charges for utility services are just, reasonable, **applied without unjust discrimination or preference**, applied in a manner consistent with the purposes and policies set forth in . . . [5 24-2A- 1 et seq.], and based primarily on the costs of providing these services[.]" W. Va. Code 6 24-1-l (a)(4) (emphasis added)

Conducting a broad, competitively-neutral RFP is an industry-wide best practice for securing the most reliable resources in the most cost-efficient manner and would clearly be within the Commission's jurisdiction as it would ensure that the Companies do not discriminate or place a preference on their own, internal supply options, and the Commission is able to fully review all the supply- and demand-side resources available to the utility.

P3 and EPSA respectfully request that the Commission consider these comments and grant Staff's and the CAD's request to expeditiously issue an order directing the Companies to show cause as to why they are not required to issue an RFP for any additional energy above 100 MW.

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[8] A recent study by the Institute for Energy Economics and Financial Analysis ("IEEFA"), has calculated that Mon Power's takeover of the Harrison coal-fired coal plant has cost West Virginia electric customers $164 million since 2013. The study also provides analysis that, in seeking to transfer the coal-fired, 1,300-megawatt Pleasants Power Station to Mon Power, is part of a larger strategy whereby FirstEnergy is attempting to shift market risk to ratepayers. *See* IEEFA, "Re-regulating Coal Plants in West Virginia: A Boon to FirstEnergy, a Burden to Ratepayers, by Cathy Kunkel, Energy Analyst (issued September 2016), *available at* http://ieefa.org/ieefa-report-cynical-re-regulation-strategy-west-virginia%e2%80%a8/.

[9] Companies' Response and Motion to Dismiss at 2-4.

[10] *Id*. at 4.

Sincerely,

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