UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	**Docket No. ER15-623-002** **Docket No. EL15-29-001**

REQUEST FOR REHEARING OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND REQUEST FOR EXPEDITION

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.713, the Retail Energy Supply Association ("RESA")[1] hereby files this Request for Rehearing of the Commission's June 9, 2015, Order in the above-referenced proceeding.[2] The Commission erred when it accepted PJM Interconnection, L.L.C.'s ("PJM's") proposed transition to the new Capacity Performance Resource program ("CPR"), because PJM's proposed transition mechanism violates the filed rate doctrine and causes harm to load serving entities ("LSEs") that entered into contracts with customers in reliance upon tariffed rates established by prior Base Residual Auctions ("BRAs"). In addition, the Commission erred when it exempted Fixed Resource Requirement entities ("FRR Entities") from the transition mechanism, creating an unlevel playing field that is plainly unduly discriminatory. In light of the need for prompt Commission action, RESA requests

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1 The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

2 *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) ("June 9 Order").

expedited treatment of its Request for Rehearing. On rehearing, the Commission should reject the transition mechanism. In support of this Request for Rehearing, RESA submits as follows:

I.
SPECIFICATION OF ERRORS AND STATEMENT OF ISSUES

A. The Commission erred and acted in an arbitrary and capricious matter when it accepted the PJM transition mechanism. The Commission must support its decisions by substantial evidence and the Commission's factual rationale must not be arbitrary and capricious. *Administrative Procedure Act*, 5 U.S.C. § 706(2). *Bangor Hydro-Elec. Co. v. FERC*, 78 F.3d 659, 663 (D.C. Cir. 1996); *Wisc. Power & Light Co. v. FERC*, 363 F.3d 453, 461 (D.C. Cir. 2004). The Commission must "consider[ ]the relevant factors and [draw] a 'rational connection between the facts found and the choice made.'" *Associated Gas Distrib. v. FERC*, 824 F.2d 981, 1016 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988) (citations omitted). The Commission must: (1) give "meaningful consideration" to the facts and circumstances presented in a case, *San Diego Gas & Elec. Co. v. FERC*, 904 F.2d 727, 731 (D.C. Cir. 1990); (2) respond to the arguments raised, *Carolina Power & Light Co. v. FERC*, 716 F.2d 52, 55-56 (D.C. Cir. 1983); and (3) address a substantial argument raised before it. *Iowa v. FCC*, 218 F.3d 756, 759 (D.C. Cir. 2000).

B. Implementation of the transition mechanism constitutes retroactive ratemaking in violation of the Federal Power Act. *See Associated Gas Distributors v. FERC*, 893 F.2d 349, 355 (D.C. Cir. 1989) ("AGD") ("the relevant question is not which costs are 'current' and which charges are 'past.' Rather, the appropriate inquiry seeks to identify the purchase decisions to which the costs are attached."); *Columbia Gas Transmission Corp. v. FERC*, 831 F.2d 1135, 1140 (D.C. Cir. 1987), *modified on reh'g*, 844 F.2d 879 (D.C. Cir. 1988) (retroactive ratemaking exists when purchasers are "expected to pay a surcharge, over and above the rates on file at the time of sale, for gas they had already purchased"); *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571 (1981). In *Transwestern Pipeline Company v. FERC*, 897 F.2d 570, 577 (D.C. Cir. 1990), the Court stated, "[t]he filed rate doctrine prohibits the Commission from imposing a rate different from one on file at the time gas is sold or service is made available. It allows purchasers of gas to know in advance the consequences of the purchasing decisions they make. . . ."

C. There was no adequate notice to neutralize the applicability of the filed rate doctrine. *Associated Gas Distributors v. FERC,* 893 F.2d 349, 356 (D.C. Cir. 1989) ("[t]he Commission can perhaps assume that petitioners have some acquaintance with regulatory changes in the natural gas industry, but it cannot require them to be clairvoyant").

D. The Commission erred and acted in an arbitrary and capricious manner when it exempted FRR entities From the transition mechanism creating an unduly discriminatory result. *City of Frankfort,* 12 FERC ¶ 61,004 (1981); *Federal Power Commission v. Conway Corp.* 426 U.S. 271 (1976); *City of Frankfurt v. FERC*, 678 F.2d 699 (7th Cir. 1982). In addressing the

undue discrimination, the Commission must eliminate the transition mechanism for all. *See, Town of Norwood v. FERC,* 587 F.2d 1306 (D.C. Cir. 1978).

II.
BACKGROUND

On December 12, 2014, PJM filed a proposal to make substantive changes to its resource adequacy program and Reliability Pricing Model ("RPM"). According to PJM, its RPM has been successful in securing capacity commitments, but its then-current rules on performance do not ensure actual performance.[3] As a result, PJM proposed Tariff changes and RAA reforms in an attempt to improve actual performance of capacity resources. PJM proposed to create a new capacity product, called the Capacity Performance Resource, which, according to PJM, would provide greater assurance of performance during emergency or hot/cold weather operations. The existing capacity product would be re-named Base Capacity Resource ("BCR").

According to PJM, the new CPR will be in place for the 2020/2021 Delivery Year. Rather than plan and in an orderly fashion prepare for the RPM Auction that will take place in May 2017 for the 2020/2021 Delivery Year, PJM proposed a transition period that would result in a modification of the already completed RPM Auctions for 2016/2017, 2017/2018 and 2018/2019. PJM proposed the following (*see* PJM Filing Letter at 27):

- for the 2016/2017 Delivery Year, hold a Capacity Performance Transition Incremental Auction to seek voluntary offers of Capacity Performance Resources for 60 percent of the PJM Region's Reliability Requirement (as updated at the time of the auction);

- for the 2017/2018 Delivery Year, hold a Capacity Performance Transition Incremental Auction to seek voluntary offers of Capacity Performance Resources for 70 percent of the PJM Region's Reliability Requirement (as updated);

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[3] PJM Filing Letter at 6.

- for the 2018/2019 and 2019/2020 Delivery Years, procure at least sufficient quantities of Capacity Performance Resources to be consistent with reliability (which is an amount equal to about 80 percent of the Reliability Requirement as determined by the Base Capacity Resource Constraint discussed in section III.H);

With respect to the proposed transition auctions, PJM proposed to allow generators who already committed their resources in the particular Delivery Year (2016/2017 or 2017/2018) pursuant to the applicable RPM BRA Auction, to voluntarily re-bid into the transition auction. If a resource is accepted in the transition auction, it will be released from its obligation to provide capacity pursuant to PJM's existing tariffs—at existing filed rates—and paid a different price for the provision of capacity. If it does not clear, it may remain in the BRA as a Base Capacity Resource and collect the already-cleared BRA-based rate.

In a Motion to Intervene and Protest filed on January 20, 2015 ("RESA Protest), RESA showed, in part, that: (1) PJM's proposed transition mechanism, if implemented, would violate the filed rate doctrine and constitute retroactive ratemaking in violation of the Federal Power Act ("FPA") because the BRAs have concluded for the 2016/2017 and 2017/2018 Delivery Years and those rates are final and not subject to modification; and (2) PJM has not made a showing that the transition mechanism is necessary and the harm to LSEs from the transition proposal and the increased prices far outweighs any benefits that could arise from the transition to the CPR prior to the 2020/2021 Delivery Year. On March 9, 2015, RESA filed an Answer to the Answers filed by PJM and Exelon that responded to RESA's showing that the transition mechanism would constitute retroactive ratemaking. In its Answer, RESA showed that, while the CPR was a new charge that could be implemented prospectively (in 2020 as proposed), in allowing generators to voluntarily withdraw from the already closed BRAs for 2016/2017 and 2017/2018 would modify the rates from those already-closed BRAs in violation of the FPA. The "new"

charge would be established by allowing resources to "voluntarily" terminate their existing obligation to provide capacity for the applicable delivery year at a fixed rate set by already-completed BRAs. *See,* Attachment DD, Section 5.14D. Thus, PJM proposed to expressly modify a rate on file – the BRA-related rates for the 2016-2017 and 2017-2018 delivery years. RESA also showed that the transition proposal was not consistent with Commission precedent.

In its June 9 Order, the Commission disagreed with RESA's arguments that the transition mechanism violates the filed rate doctrine. The Commission stated that:

> PJM's transition proposal does not impermissibly propose to revise the already-cleared BRAs for the 2016-2017 and 2017-2018 delivery years; rather, like the incremental auctions PJM already conducts, and will continue to conduct, between the initial BRA for a particular delivery year and the commencement of the delivery year, the transition auctions allow PJM to adjust the type and amount of resources needed to ensure reliability in the appropriate delivery year, and to ensure that those resources are fairly compensated. PJM does not seek to retroactively revise the rules upon which it conducted the original 2016-2017 and 2018-2019 BRAs, but instead proposes incremental procurements, with separate payment structures, to ensure that reliability is met in those delivery years. June 9 Order at P.261.

The Commission also found, without any evidentiary showing and, in fact, evidence to the contrary, that ratepayers had "sufficient notice that PJM proposed to change its tariff on file." *Id.*

While the Commission imposes this transition mechanism on the PJM market, the Commission expressly *exempts* one segment of the capacity market – FRR Entities – from the transition mechanism, allowing FRR Entities to "phase-in" the Capacity Performance rules and implement them "after the conclusion of the Fixed Resource Requirement plans to which these entities are currently obligated as of the date of [the June 9] Order." June 9 Order at 212. As a result, upon implementation of the transition mechanism, there will be an unlevel playing field of those LSEs that must comply with the new capacity program and those LSEs who do not. This

is plainly unduly discriminatory. All Market Participants should be subject to the same rules at the same time in 2020. The Commission should reject, on rehearing, the transition mechanism and should require all Market Participants participating in capacity markets to comply with the new capacity program rules at the same time in 2020. On rehearing, the Commission should reject the transition mechanism and make the CPR applicable to all Market Participants effective 2020.

III.
ARGUMENT

The Commission must support its decisions by substantial evidence and the Commission's factual rationale must not be arbitrary and capricious. *Administrative Procedure Act*, 5 U.S.C. § 706(2). *Bangor Hydro-Elec. Co. v. FERC*, 78 F.3d 659, 663 (D.C. Cir. 1996); *Wisc. Power & Light Co. v. FERC*, 363 F.3d 453, 461 (D.C. Cir. 2004). The Commission must "consider[ ]the relevant factors and [draw] a 'rational connection between the facts found and the choice made.'" *Associated Gas Distrib. v. FERC*, 824 F.2d 981, 1016 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988) (citations omitted). The Commission must: (1) give "meaningful consideration" to the facts and circumstances presented in a case, *San Diego Gas & Elec. Co. v. FERC*, 904 F.2d 727, 731 (D.C. Cir. 1990); (2) respond to the arguments raised, *Carolina Power & Light Co. v. FERC*, 716 F.2d 52, 55-56 (D.C. Cir. 1983); and (3) address a substantial argument raised before it. *Iowa v. FCC*, 218 F.3d 756, 759 (D.C. Cir. 2000). The Commission erred and did not support its decision by substantial evidence when it accepted PJM's transition mechanism. This error is compounded and results in undue discrimination when PJM exempts FRR Entities from the transition mechanism, creating an unlevel playing field in the market.

Finally, the Commission erred when it declared that LSEs, like RESA members, were on notice that PJM planned to fundamentally restructure its RPM.

A. The Commission Erred and Acted in an Arbitrary and Capricious Manner When It Accepted the Transition Mechanism – the Transition Mechanism Results in Retroactive Ratemaking in Violation of the Federal Power Act

The Commission is prohibited from modifying or changing rates retroactively. "Predictability is an underlying purpose of both the filed rate doctrine and the rule against retroactive ratemaking." *Pub. Utils. Commission of Cal. v. FERC,* 988 F.2d 154, 164 (D.C. Cir. 1993 (citing *Towns of Concord, NH v. FERC,* 955 F.2d 67, 75 (D.C. Cir. 1992). The Commission cannot impose a surcharge based on past purchases if a customer has no way of knowing that it will incur a surcharge. *See Associated Gas Distributors v. FERC*, 893 F.2d 349, 355 (D.C. Cir. 1989) ("AGD") ("the relevant question is not which costs are 'current' and which charges are 'past.' Rather, the appropriate inquiry seeks to identify the purchase decisions to which the costs are attached."); *Columbia Gas Transmission Corp. v. FERC*, 831 F.2d 1135, 1140 (D.C. Cir. 1987), *modified on reh'g*, 844 F.2d 879 (D.C. Cir. 1988) (retroactive ratemaking exists when purchasers are "expected to pay a surcharge, over and above the rates on file at the time of sale, for gas they had already purchased"); *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571 (1981). In *Transwestern Pipeline Company v. FERC*, 897 F.2d 570, 577 (D.C. Cir. 1990), the Court stated, "[t]he filed rate doctrine prohibits the Commission from imposing a rate different from one on file at the time gas is sold or service is made available. It allows purchasers of gas to know in advance the consequences of the purchasing decisions they make...."

The transition mechanism if implemented as proposed by PJM and accepted by the Commission, constitutes retroactive ratemaking and violates the filed rate doctrine under Commission and court standards. The Commission's rationale for finding otherwise is in error.

Generators supplying capacity in BRAs for 2016-2017, 2017-2018 and 2018-2019 overlap with the transition period, allowing generators supplying capacity in the BRA to elect to bid into the CPR or remain in the already-cleared BRA. Generators cleared and included in the BRA have entered into a binding obligation to provide capacity at the fixed, auction price for the applicable delivery year. PJM's Tariff allows a generator to be relieved of this obligation only under limited circumstances, and that generator must obtain replacement capacity for its obligation. *See* PJM Tariff, Attachment DD, Section 5.4. Thus, a generator may, by entering and being selected in the Transition Period Incremental Auction, substitute the fixed rate at which the generator agreed to provide capacity with a new rate (with new obligations) for the same delivery year. The BRA results and relied-upon rates are altered by this voluntary withdrawal from the BRA and entry to the transition auction, which is prohibited retroactive ratemaking.

In the June 9 Order, the Commission found that the new capacity product was to be applied prospectively and that PJM did not propose to "retroactively revise the rules upon which it conducted the original 2016-2017 and 2017-2018 BRAs, but instead proposes incremental procurements, with separate payment structures, to ensure that reliability is met in those delivery years." June 9 Order at P.261. PJM reasoned incorrectly that the "like the incremental auctions PJM already conducts, and will continue to conduct, between the initial BRA for a particular delivery year and the commencement of the delivery year, the transition auctions allow PJM to

adjust the type and amount of resources needed to ensure reliability in the appropriate delivery year, and to ensure that those resources are fairly compensated." June 9 Order at P.261. The Commission's rationale does not hold up factually. The transition-based incremental auctions are very different than the incremental auctions held by PJM in BRAs.

In the existing capacity market construct, a generator is not given an option to withdraw from a BRA without penalty and enter a new auction for a different product. It must obtain replacement capacity or make other tariff-specified arrangements, not implicated or relevant here. In all other cases, PJM makes all of the decisions on the need for and location of generation necessary to meet the reliability needs of the PJM market. If a generator seeks to withdraw from the BRA, it may do so, but must obtain replacement capacity. *See,* Attachment DD, Section 5.4(d). Under the transition mechanism, the generator has unfettered discretion to elect whether or not to withdraw from the BRA without penalty or without complying with Section 5.4(d), PJM does not wield control. For example, a generator that wishes to provide capacity pursuant to the new capacity product may elect to enter the new capacity product auction. *See,* PJM Attachment DD, Section 5.14D. If it is selected it will supply capacity under the new construct. If it is not selected, it remains subject to the existing BRA and resulting market clearing price. In addition, a generator may elect not to participate in the new capacity product auction. In that case, the generator receives the market clearing price from the relevant BRA.

In the existing capacity market construct, capacity is procured based on the location where it is needed. If PJM makes a decision that more or less capacity is needed in a particular area, it adjusts the capacity needs in the incremental auction. But, in the transition auction for

the CPR, capacity is not procured based on location. In short, the transition mechanism is nothing akin to PJM's procurements in incremental auctions. PJM is not adjusting the type and amount of resources needed to ensure reliability – PJM has established the generation necessary for reliability and that generation necessary to procure in the new capacity program. Generators elect whether to withdraw from the BRA and enter the new auction or not.

Finally, under the transition mechanism, no matter which or how many generators withdraw from the BRA and elect to enter the new capacity product auction, the BRA prices are not changed to reflect the withdrawal of generation. While the auction price would not change, the components of the rate, as illustrated by the generators that cleared in the auction that elect to withdraw, most certainly would. If, for example, a marginal unit in the BRA for the 2016-2017 delivery year voluntarily elects to withdraw from the BRA and enter the new capacity product auction, the fundamental support for the auction price in that BRA is gone. Because additional costs are recoverable in the new capacity product and because a generator will not take on the extra risk without additional compensation, customers will pay unjust and unreasonable rates because the BRA prices do not reflect the fundamental principles of the BRA methodology. LSEs and ultimately retail customers will over pay for capacity in the BRA and pay for the new capacity product. Thus, PJM *is* modifying a rate on file in violation of the filed rate doctrine by allowing generators who may set the auction price voluntarily withdraw from the BRA and enter the new capacity product auction.

Moreover, the Commission would allow PJM to make this rate modification without making any showing that the existing rates – derived from the results of the BRAs held for the 2016/2017 or 2017/2018 Delivery Years are unjust and unreasonable.

The transition mechanism clearly violates the filed rate doctrine. LSEs like RESA members, have reasonably relied on the BRA's rates for the 2016-2017 and 2017-2018 Delivery Years. Such LSEs are entitled to rely on those rates and did rely on those rates as being in effect for the applicable Delivery Year. LSEs, like RESA members, serve retail customers, often under long-term fixed price contracts. The capacity price is an important component of the LSE's fixed price. When the BRA clears and the capacity price is set for the Delivery Year, LSEs rely on that rate to set prices to charge their retail customers. By approving the transition mechanism the Commission would be adding a new capacity product rate while assessing the existing capacity charge, with the CPR being comprised of resources that were previously included in the existing capacity charge. The prohibition against retroactive ratemaking is a protection against just this sort of rate change. On rehearing, the Commission must reject the transition period and make the new capacity product effective in 2020.

B. The Commission Erred When it Found That There Was Adequate Notice to Rebut Claims That the Transition Mechanism Violates the Filed Rate Doctrine

In rebutting RESA's arguments that the transition mechanism violated the filed rate doctrine, the Commission stated, "[w]e further note that the instant proceeding concerns prospective changes only and provides ratepayers with sufficient notice that PJM proposed to change its tariff on file." June 9 Order at P.261. The Commission is simply incorrect that there was sufficient notice that the BRA rates would be modified via implementation of the transition mechanism as part of the CPR. The 2016-2017 BRA settled in May, 2013. The 2017-2018 BRA settled in May 2014. At no time during those times did parties have notice that a transition mechanism would be imposed that would radically modify the RPM and BRA rates for those

years. May 2013 was well before the Polar Vortex of January 2014, where generation in PJM performed poorly. Even a year later, in May 2014, there were no stakeholder processes underway that would have prepared LSEs for a transition mechanism. In fact, on April 6, 2014, less than one month prior to the May 2014 BRA, Michael J. Kormos, Executive Vice President – Operations at PJM testified before the U.S. Senate Committee on Energy and Natural Resources. In that testimony he gave no indication that a fundamental restructuring of the RPM was under consideration. In fact, Mr. Kormos noted that PJM was able to meet its record peak, despite capacity being tight. *See,* Protest of Direct Energy dated January 10, 2015 in Docket No. ER15-623 at 3, 11, citing to http://www.pjm.com/~/media/documents/other-fed-state/20140408-testimony-of-kormos-ussenate-oversight-hearing-on-electric-grid-reliability-and-security-20140410.ashx. In addition, as PJM itself admits, it did not use the stakeholder process in developing its CPR. Its filing was made on December 12, 2014, well after the close of the BRA for the 2017-2018 delivery year.

The Commission rejected as insufficient notice under similar circumstances in *Associated Gas Distributors v. FERC,* 893 F.2d 349 (D.C. Cir. 1989). As the Commission stated in *AGD*, "[t]he Commission can perhaps assume that petitioners have some acquaintance with regulatory changes in the natural gas industry, but it cannot require them to be clairvoyant." 893 F.2d at 356. Here, during May 2013, no one had any idea that PJM would create a new capacity product and implement a transition mechanism that would modify the rates underlying the 2016-2017 and 2017-2018 BRA. In May 2014, there was still insufficient notice under Commission precedent and case law to constitute notice to overcome RESA's showing that implementation of the transition mechanism would constitute retroactive ratemaking.

The cases relied upon by the Commission to support its holding are not persuasive. In *Pub. Utils. Comm'n of Cal. v. FERC*, 988 F.2d 154, 164 (D.C. Cir. 1993), the Court held that notice alleviates concerns regarding retroactive ratemaking only when such notice is provided to interested parties at the time the rate subject to change is established. The notice must indicate that the rate is provisional in nature and the notice must provide an indication of the ultimate change that may occur. *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992) reached a similar result. In that case, a utility appealed FERC's rejection of a proposed rate. In its tariff filing, the utility provided notice that it would seek to collect the difference between the original rate and approved rate to the extent that litigation is resolved in its favor. *Id.* The Court stated, "Here we conclude that the open-access shippers had the necessary notice that they might end up paying the originally filed rate." *Id.* Likewise, *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d at 797 (D.C. Cir. 1990) concluded that notice does not authorize retroactive ratemaking of legally effective rates, and parties must be on notice that a rate is provisional in nature when enacted. As the Court stated, it must place the "relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision. This in no way dilutes the general rule that once a rate is in place with ostensibly full legal effect and is not made provisional, it can then be changed only prospectively." *Id.*

Accordingly, LSEs were simply not on notice that the RPM would be fundamentally restructured with a transition mechanism that would alter already settled BRA rates. The Commission must reject the transition mechanism.

C. The Commission Erred and Acted in an Arbitrary and Capricious Manner When it Exempted FRR Entities From the Transition Mechanism Creating an Unduly Discriminatory Result

While the Commission improperly imposes the transition mechanism on LSEs, it exempts FRR Entities from the transition mechanism. *See* June 9 Order at P.212. This disparate treatment is unduly discriminatory and is unjust and unreasonable.

The prohibition against undue discrimination under the FPA requires that "the factual differences [must] justify the specific rate differences permitted." *Public Service Co. of Indiana v. FERC,* 575 F.2d 1204, 1212 (7th Cir. 1978). The Commission must offer a "valid reason for the disparity." *Electricity Consumers Resource Council v. FERC*, 747 F.2d 1511, 1515 (D.C. Cir. 1984). Here, there are no factual differences that would justify exempting FRR Entities from the transition mechanism and implementation of the new capacity product if other market participants are subject to the transition mechanism. The Commission should recognize this undue discriminatory effect and find that the transition mechanism is unjust and unreasonable. That way, the new capacity product will be implemented throughout the PJM market in 2020. In the alternative, if the Commission continues to require a transition mechanism, it should apply to the PJM market and PJM must not exempt FRR Entities.

For purposes of the transition mechanism, there are no fundamental differences between the FRR Entities and other entities subject to the transition mechanism. First, the Commission insisted that the transition mechanism is necessary to ensure reliability. Yet, the Commission would allow FRR Entities to ignore those supposed immediately-needed reliability benefits. Second, in states where open access and competition exists, an unlevel playing field will exist on a rate and performance level. Those LSEs that are in FRR Entity service areas will not be subject to the same rates and generation will not be subject to the same performance requirements. Third, exempting FRR Entities from the transition mechanism may create the

perverse effect of driving more entities to FRR. Fourth, the Commission's rationale was that these FRR Entities should be exempt from the transition mechanism because such entities had already filed their plans with PJM and their state regulators. LSEs also relied on the long-term nature of the established forward capacity market characteristics and finalized BRA prices. . Like the FRR Entities, LSEs locked in prices with their residential customers, or had bid in state wholesale procurement auctions with the same reliance interest. In short, there is no difference in the reliance interests of FRR Entities and other LSEs in this regard, yet there will be anticompetitive effects. Treating FRR Entities and others differently by exempting the FRR Entities from the transition mechanism will result in LSEs in competitive states will pay for the new capacity product and effectively subsidize FRR Entities' reliability. Discrimination which is anticompetitive is presumptively undue. "It is both the fairness and avoidance of competitive advantage which underlies [FPA] Section 205(b)." *City of Frankfort,* 12 FERC ¶ 61,004 at 61,008 (1980); *Federal Power Commission v. Conway Corp.* 426 U.S. 271 (1976); *City of Frankfurt v. FERC*, 678 F.2d 699 (7th Cir. 1982). In addressing the undue discrimination, the Commission must eliminate the transition mechanism for all. *See, Town of Norwood v. FERC,* 587 F.2d 1306 (D.C. Cir. 1978). The Commission should, on rehearing, reverse its finding that the transition mechanism is just and reasonable. In the alternative, should the Commission retain the transition mechanism, it should make it applicable to FRR Entities as well.

D. The Commission must Act on Rehearing Expeditiously

The Commission should act on RESA's Request for Rehearing expeditiously. Good cause supports this request. PJM will soon hold the BRA for the 2018-2019 delivery year and begin the transition period. Because the transition period proposal is unjust and unreasonable

and unduly discriminatory, it must be rejected and removed from the CPR and RPM as soon as possible and prior to commencement of the transition period auction.

IV.
CONCLUSION

The Commission erred and acted in an arbitrary and capricious manner when it accepted the PJM's proposed transition mechanism. Implementation of the transition mechanism results in modification of the already-established and fixed BRA rates in violation of the filed rate doctrine and the prohibition against retroactive ratemaking. The Commission is simply incorrect that there was sufficient notice to rebut RESA's claims. There was no notice that PJM would fundamentally restructure its RPM. Finally, the Commission erred by exempting FRR Entities from the transition. Granting the exemption is unduly discriminatory as described in Part C above. The Commission should issue its order on rehearing expeditiously as requested.

WHEREFORE, RESA respectfully requests that its Request for Rehearing be granted and the Commission act expeditiously.

Respectfully submitted,

/s/Elizabeth W. Whittle
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Dated: July 9, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Request for Rehearing of the Retail Energy Supply Association via e-mail on each person listed on the Commission's official service list compiled by the Secretary in this proceeding.

Dated in Washington, DC this 9th day of July, 2015.

/s/Elizabeth Whittle___
Elizabeth W. Whittle