

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

Calpine Corporation, Dynegy Inc., Eastern Generation, LLC, Homer City Generation, L.P., NRG Power Marketing LLC, GenOn Energy Management, LLC, Carroll County Energy LLC, C.P. Crane LLC, Essential Power, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, L.P., GDF SUEZ Energy Marketing NA, Inc., Oregon Clean Energy, LLC and Panda Power Generation Infrastructure Fund, LLC

Docket Nos. EL16-49-000

v.

PJM Interconnection, L.L.C.

ER18-1314-000

PJM Interconnection, L.L.C.

ER18-1314-001

PJM Interconnection, L.L.C.

**EL18-178-000
(Consolidated)**

REPLY ARGUMENT OF THE RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to the Federal Energy Regulatory Commission’s (“Commission’s”) June 29, 2018, Order in the above-referenced proceeding,¹ and the Commission’s August 22, 2018, Notice granting extension of time, the Retail Energy Supply Association (“RESA”)² hereby submits this Reply Argument in response to the proposal submitted by PJM Interconnection, L.L.C. (“PJM”) on October 2, 2018 to address the Commission’s determination that PJM’s

¹ *Calpine Corporation, et al.*, 163 FERC ¶ 61,236 (2018), *reh’g pending* (“June 29 Order”).

² 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.

Reliability Pricing Model (“RPM”) is unjust and unreasonable because it does not adequately consider the effect of out-of-market payments made by state policymakers. PJM’s proposal, described briefly below, would create a residual capacity market and would, if implemented, be a step back from Congress’ and the Commission’s commitment to workably competitive wholesale capacity markets, which, in turn, would adversely affect competitive retail suppliers in states that promote retail access. In support of this Reply, RESA submits as follows:

I. BACKGROUND

A. June 29 Order

In its Order issued on June 29, 2018, the Commission ordered PJM to make capacity market rule changes to its Open Access Transmission Tariff (“Tariff”) and the Reliability Assurance Agreement (“RAA”) to address deficiencies in the RPM that do not properly account for out-of-market payments provided or required by certain states in the PJM to support the entry or continued operation of preferred generation resources. Specifically, in its June 29 Order, the Commission found that the existing Minimum Offer Price Rule (“MOPR”) was unjust and unreasonable. The Commission initiated a Federal Power Act Section 206 proceeding to:

address an alternative approach that would (i) modify PJM’s MOPR such that it would apply to new and existing resources that receive out-of-market payments, regardless of resource type, but would include few to no exemptions; and (ii) in order to accommodate state policy decisions and allow resources that receive out-of-market support to remain online, establish an option in the Tariff that would allow, on a resource-specific basis, resources receiving out-of-market support to choose to be removed from the PJM capacity market, along with a commensurate amount of load, for some period of time.³

³ June 29 Order at P.8.

On October 2, 2018, many market participants and interested parties, including RESA, filed comments. In its Argument, RESA expressed its strong support for robust competitive wholesale capacity market in PJM. RESA showed that a robust competitive wholesale capacity market is necessary for RESA members to be able to provide a wide variety of innovative services to end use customers in states that provide retail choice by statute.

RESA expressed a real concern that if capacity and load can be removed from PJM's wholesale capacity market, benefits associated with state statutes providing for retail electric competition will be revoked or marginalized, and retail suppliers and their customers will be harmed by this loss of competition and choice. Legislatures in multiple PJM states have adopted statutes to ensure that customers – wholesale *and retail* – benefit from competition. RESA asked the Commission to take into consideration the effects that its orders will have on existing state statutes and state policies governing retail access when limiting or marginalizing a competitive wholesale capacity market. It is possible to design and implement changes to RPM that maintain the competitive procurement of capacity and energy while also addressing the effects of out-of-market payments awarded by states.

B. PJM's October 2 Filing

Also on October 2, 2018, PJM made its Initial Submission. In it, PJM proposes an expanded MOPR and a Resource Carve-Out (“RCO”) construct.⁴ PJM would apply its MOPR across all fuel and technology types and to new and existing resources.⁵ In order to be subject to the expanded MOPR, the resource seeks to be a Capacity Resource and such resource is a “material resource” that receives a “Material Subsidy.” A material resource is any resource

⁴ October 2 Filing at 7.

⁵ October 2 Filing at 8.

except: (1) a resource having an unforced capacity value of less than 20 MW; or (2) a resource existing not primarily to produce electricity, but one whose electricity production is a function ancillary to a more primary function, such as most waste to energy or combined heat and power facilities.⁶

PJM defines a Material Subsidy as any subsidy except: (1) generic economic development subsidies not specific to the electricity sector, production of electricity or the investment in electric generation; (2) a resource-specific subsidy (state or federal) that is 1% or less of the expected PJM revenues the resources expects to receive; or (3) renewable energy credit programs (RECs) where the market seller sells the REC to a purchaser that is not required by a state program to purchase the REC and that purchaser does not receive any state financial inducement or credit for the purchase of the REC; or (4) federal subsidy programs enacted into law prior to March 21, 2016.

PJM proposed a Resource Carve-Out (“RCO”) and proposed to allow those generators to be removed from the capacity market if the resource is subject to MOPR and is receiving a state subsidy. Only resources that meet both tests may take advantage of the RCO. The resource removed would have a capacity commitment but not clear in the capacity market auction. Certain self-supply resources would be exempt. The generation resource would bid in to the energy and ancillary services markets.

On the load side, PJM proposes to match a “commensurate” level of load with the Carved-Out Resource: “for purposes of *clearing* the market, PJM proposes to allocate the capacity value of the RCO resource as a pro-rata credit across all load in the state on the basis of

⁶ October 2 Filing at 12.

load's proportional share of the state's Daily Unforced Capacity Obligation.”⁷ States would be able to propose, for Commission acceptance other arrangements to charge load for the capacity credit PJM has applied.⁸ According to PJM, “the financial *settlement* . . . can assess charges and remit revenues according to the auction clearing rules (a pro-rata credit across all load in the state) or impose the rate on load in a different manner as may be proposed by the state.”⁹ PJM Settlement will act as billing agent if the state requests.

PJM's proposal would fundamentally alter its competitive wholesale capacity market construct, allowing for the removal of generation from the capacity market, subjecting it to a non-market based state-based scheme, the costs of which would then be imposed on load.

In the PJM footprint, the majority of states that have implemented statutes and/or regulations allow competitive retail suppliers to provide not only the commodity products but also electricity capacity-related products and services to end-use customers, which may be commercial, industrial or residential customers. While each state program may have different features, all permit the load serving entity (“LSE”) to offer RTO capacity-related products and services as part of the package of service offerings. Removal of what could be a significant amount of capacity from the FCM not only reduces the competitiveness of the wholesale capacity market, but it stifles the innovation, benefits and risk sharing that retail suppliers bring to retail markets in states that permit non-incumbent utilities to serve retail load. Services provided by retail suppliers such as RESA members have reduced peak demand as well as consumption of energy, lowered prices, and provided other valuable services to consumers. Congress, the Commission and many states in the PJM footprint have spent years developing a competitive wholesale capacity market. RESA

⁷ October 2 Filing at 58.

⁸ October 2 Filing at 59.

⁹ October 2 Filing at 59.

believes that rather than retreat from competition, PJM and the Commission must continue to devise a framework that accommodates state subsidization of generation pursuant to state policies while at the same time promoting competitive capacity markets. Re-regulation, which is essentially what PJM proposes, will impose significant complexity, uncertainty and may require state law changes and significant implementation challenges that will ultimately competitive capacity markets. Rather than remove generation and load from competitive wholesale markets, the Commission, PJM and PJM's stakeholders should focus on accommodating *both* state policies that encourage generation resources by making out-of-market payments *and* maintaining a robust and competitive capacity market.

II. ARGUMENT

A. The Commission Should Not Retreat From A Forty Year Long-Standing Commitment to Competitive Wholesale Markets

Starting in 1978 with enactment of the Public Utility Regulatory Policies Act ("PURPA"),¹⁰ Congress has enacted legislation that moves wholesale electric markets toward competition. Each time the Commission or Congress recognized a need to further encourage development of competition, the Commission or Congress acted.

Starting with PURPA, public utilities, among others, were required to purchase power from third party and unaffiliated qualifying cogeneration and small power production facilities ("QFs") at the utility's avoided cost rate. In the Energy Policy Act of 1992,¹¹ Congress expanded the universe of generators capable of selling energy without traditional regulatory oversight – creating Exempt Wholesale Generators ("EWGs") that were exempt from the burdensome regulation by

¹⁰ Pub. L. 95-617, 92 Stat. 3117 (Nov. 19, 1978).

¹¹ 106 Stat. 2776 (Oct. 24, 1992).

the Securities and Exchange Commission (“SEC”) under Public Utility Holding Company Act of 1935.

Next, in 1996, the Commission tackled greater access to transmission in issuance of Order Nos. 888¹² and 889.¹³ The provision of open access transmission service led to the development of independent system operators and regional transmission organizations (“ISOs/RTOs”).¹⁴ The Commission next standardized interconnection procedures when it issued Order No. 2003 in 2003.¹⁵

The development of markets and access to transmission led to the Commission permitting sales for resale in interstate commerce at market-based rates.¹⁶ Around the same time, Congress enacted the Energy Policy Act of 2005,¹⁷ which, modernized the Federal Power Act’s jurisdictional requirements for mergers, required public utilities to study and implement standards on net

¹² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹⁴ *Regional Transmission Organizations*, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

¹⁵ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 FR 49846 (Aug. 18, 2003), FERC Stats. & Regs. ¶ 31,146, at P 676 (2003), *order on reh’g*, Order No. 2003-A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, 70 FR 37661 (Jun. 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

¹⁶ *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, FERC Stats. & Regs. ¶ 31,208 (2006).

¹⁷ Pub. L. 109-58, 119 Stat. 594 (Aug. 8, 2005).

metering, and repealed PUHCA 1935, transferring record-keeping jurisdiction over public utilities from the SEC to the Commission. Finally, the Commission issued Order No. 1000, which consolidated transmission planning on a regional basis.¹⁸

These Commission-led efforts resulted in what exists today in PJM – competitive capacity, energy and ancillary service markets, robust reliability standards, robust capacity performance standards and sophisticated real-time and day-ahead energy markets. When issues have arisen – such as a concern that capacity resources did not perform adequately when PJM’s bulk transmission system was in distress, PJM and its stakeholders developed a response -- PJM’s Capacity Performance Program. In short, PJM and stakeholders have worked together to find solutions to issues, while retaining the fundamental competitive market paradigm.

As the Commission promoted competition in wholesale markets, many states in the PJM footprint enacted laws and implemented regulations to promote retail competition. Competition and innovation in retail markets is really just another step in the further development and viability of competitive wholesale markets. Retail suppliers such as RESA members, have stepped in and offered innovative services to retail customers by procuring wholesale services, including capacity, from PJM capacity, energy and ancillary services markets. As RESA noted in its Argument (at 3-4), competitive retail suppliers may: (1) provide commodity retail energy based on fixed, indexed or variable prices; (2) offer RTO capacity-related products and services; (3) offer demand response services; (4) offer both capacity and commodity-based energy efficiency services; and/or (5) offer electricity with a certain component of renewable energy – or all renewable energy. Retail

¹⁸ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014). These are just a few of the efforts of the Commission to spur competition in wholesale markets.

suppliers also offer non-commodity-based services, including market data and analytical analysis, and integrated home solutions. Retail suppliers often serve customers under long-term contracts. Retail suppliers provide critical services to customer that allow them to efficiently procure their energy supplies in a way that traditional, vertically-integrated utilities cannot.

After forty years of commitment to and development of competitive wholesale markets, the Commission must not step back and retreat from markets that have provided benefits to wholesale and retail customers. The Commission must move forward and order PJM and its stakeholders to find a competitive solution to the latest issue – incorporating state-mandated subsidies to generators to support state policy goals into wholesale capacity markets. The current proposal to re-regulate capacity markets and essentially create a residual capacity market, not only harms competition, but injects unnecessary complexity by trying to place the regulatory genie back in the bottle. The Commission must remain committed to competitive wholesale capacity, energy and ancillary service markets and direct PJM to work with stakeholders to develop proposals that incorporate resources that receive state subsidies into the wholesale competitive capacity markets. RESA believes that it is possible to account for state subsidized resources in a workably competitive wholesale markets.

B. Re-Regulation of Capacity Markets Will Have Adverse Effects that Will Harm Customers

Retail suppliers such as RESA members bring innovation and provide services to commercial, industrial and residential consumers that provide benefits not replicated by incumbent utilities. Every retail supplier's load is different, and in order to offer competitive services, retail suppliers require both a capacity market and an energy market that provides liquidity and price transparency. Transparency in capacity, energy and ancillary service markets is crucial for retail suppliers to meet the individualized needs of their customers and in turn to build products and

services that meet customer needs. Reducing competition in capacity markets and removing load from the capacity market and attempting to socialize the costs of wholesale market products and services will remove differentiation and innovation. This will harm innovative retail suppliers and shift risk from the market to their customers. The Commission must ensure that all wholesale products and services are just and reasonable and not unduly discriminatory.

1. The Commission Must Exercise FPA Jurisdictional Authority Over All Wholesale Transactions, Including those Involving Credits and Costs for RCO Resources

As noted above (at 5), PJM proposes to allocate the capacity value of the RCO resource as a pro-rata credit across all load in the state. However, the Commission must also affirm that it possesses FPA jurisdiction over not only PJM's allocation of the credits, but the calculation of the rate determined by the state or its designee to replace the capacity revenue subsidized resources lose by leaving the capacity market. Of course, any rate must be just and reasonable and not unduly discriminatory, requiring, at a minimum compliance with cost causation principles.¹⁹ As Direct Energy notes in its October 2, 2018 Comments (at 6), “[w]hile a state is well within its rights to adopt a program or subsidy for particular resources and charge retail customers as it sees fit within the confines of that program, the Commission remains responsible for the wholesale capacity market and therefore must retain control over the administration of all mechanisms associated with the operation of that market.”

A critical feature of the Commission's jurisdictional determination of the rates will be ensuring transparency in the derivation and calculation of the rate. All market participants must

¹⁹ *California Power Exchange Corp.*, 106 FERC ¶ 61,196 at P.17 (2004) (“[t]he well-established principle of cost causation requires that the costs should be allocated, where possible, to customers based on customer benefits and cost incurrence”); *See also, KN Energy, Inc. v. FERC*, 968 F.2d 1295 (D.C. Cir. 1992); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *Pacific Gas & Electric Co.*, 100 FERC ¶ 61,160 (2002); *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004).

be able to evaluate the components of the rate. Similar to the Fixed Resource Requirement construct, the state may approve the rate and that the rate is then filed with the Commission for acceptance pursuant to Federal Power Act Section 205.²⁰ The rate need not be a stated rate, but could be a formula rate, so long as the components of the formula are consistent with Commission precedent. PJM must then retain this information so that it is easily accessible to entities interested in understanding capacity costs and related charges that may be applicable to services procured in the competitive wholesale market. It will be critical that whatever rates are devised by/on behalf of the state are synced with the Base Residual Auction. To do otherwise will result in rate mismatch and significant market uncertainty.

In addition, the Commission's affiliate rules must be applied for all rates for sales between a franchised public utility and its market-regulated power sales affiliate.²¹ Commission review of these rates is critical to ensure that there is no cross subsidization and no unfair dealing or favoritism between the franchised public utility and its market-regulated power sales affiliate.

It is important to note that, regardless of whether the Commission has approved the replacement capacity rate, no allocation of capacity credits by PJM can overcome the risk and regulatory uncertainty discussed below. That is, limits on state and federal jurisdiction likely prevent the coordination that is needed to avoid cost shifts among end-use customers as a result of subsidy cost responsibility under state jurisdiction and wholesale capacity cost responsibility under federal jurisdiction.

²⁰ See, PJM Reliability Assurance Agreement, Schedule 8.1; *PJM Interconnection, L.L.C.* 115 FERC ¶ 61,079 at PP 103, 110 (2006).

²¹ 18 C.F.R. §§ 35.43 and 35.44.

2. **The RCO Will Increase Risk to Customers**

PJM's proposal, if implemented, will increase risk to consumers. A critical role that retail suppliers have taken on is market risk. Retail suppliers, in developing their innovative products and, in competing against each other to serve customers, have radically changed the traditional utility rate model. Vertically integrated investor owned utilities serve customers based on a particular customer's regulated rate class. In return, the utility recovers its cost of service from customers, receiving a regulated rate of return on investment. In contrast, retail suppliers meet the needs of their customers on an individual basis. A commercial customer operating 24 hours a day, 7 days a week may purchase a service tailored specifically to that need; a customer with needs that peak during the day may receive a service to meet its needs that is priced differently. Simply put, there is no one size fits all/standardized service, which is a great benefit to customers who are not one size fits all. Customers may lock in their pricing and terms and conditions of service for terms of up to 5 years.

Creating a residual capacity market by removing generation and commensurate load as proposed by PJM's RCO, impedes what has become a vibrant competitive retail market to the detriment of customers. First, a portion of the capacity product will not be subject to competitive forces. This generator charge will be includable in all rates, presumably on a state-by-state basis – essentially as a surcharge – returning part of the electricity product to a model more akin to the vertically-integrated electric utility one. Today, retail suppliers use tools developed to price and offer innovative services by hedging and absorbing risks in competitive wholesale markets to offer long-term, fixed price, all-in contracts to meet a customer's individual needs. If the PJM proposal is implemented, a critical component of that service – capacity – will be balkanized. The non-bypassable charge associated with generation removed from the capacity market may not be

derived on a transparent basis and will not serve as a differentiating product or service offered by a retail supplier to a customer. The retail supplier may no longer be absorbing the full pricing risk, and customers will not see the benefits of innovative services and pricing.

In addition, a challenge to a PJM's proposal will be ensuring that there is no double charge for capacity. As the PJM Providers Group noted in their comments, using historic business models as justification for re-regulation of capacity markets does not reflect current RTO market design and the reliability benefits provided through development of an integrated market, which captures the "benefits of scale, efficiency and reliability."²²

The RCO construct increases risk to retail suppliers as well. Currently, retail suppliers make capacity commitments in the FCM three years in advance, but generally based on the load served today. This works because customers migrating to and from retail suppliers carry the same market-based capacity cost. In the RCO construct, migration between/among suppliers and even back to the utility will be more complicated because a certain amount of capacity is no longer competitively and transparently priced. This increases the risk to retail suppliers, who must price services using capacity prices that are determined three years ahead of time. Retail suppliers may add premiums to their pricing in order to cover this risk, which will lead to an increase in prices to customers.

3. The RCO Construct will Create Regulatory Uncertainty

Removal of capacity from the PJM capacity market will create uncertainty in the market place to the detriment of wholesale and retail customers. While states that promote retail access have programs that vary, the common features are participation in PJM's competitive wholesale capacity markets. PJM's proposal, if implemented, would result in re-regulation of capacity

²² Comments of PJM Providers Group, filed October 2, 2018, Affidavit of Roy Shanker at P.16.

markets on a state-by-state basis. Each state would have to accommodate removal of capacity and devise a way to allocate these costs to LSEs or load. This causes a number of issues. First, states will have to change their state laws to re-regulate their retail markets. As the Organization of PJM States, Inc. stated in a letter to the PJM Board of Managers on September 26, 2018:²³

While a FRR Alternative approach may align with certain states' policies, many states never contemplated procurement of capacity from specific resources under a restructured framework. As such, many states do not currently have, and may not have time to develop, enact and implement, the enabling authority necessary to facilitate selective capacity procurements like those envisioned under the FRR Alternative approach in time for the next PJM Base Residual Auction (BRA). Since many of our state legislatures are not expected to reconvene until next year, it is uncertain if such authority would be granted in time, if at all.

Second, a state-prepared non-bypassable charge allocable to load will be difficult to predict and price. How much generation will be removed? How will it be priced? Can the pricing change and how often? How will customer migration be handled? Additional complexity arises when the Commission's affiliate rules are applied pursuant to 18 C.F.R. §§ 35.43 and 35.44, which will apply to sales between a franchised public utility and its market-regulated power sales affiliate. The unpredictability becomes more problematic when retail suppliers are offering similar products and services to customers in different states, especially for customers with operations in more than one state.

This unpredictability also impacts the ability of customers to forecast pricing over the short- and long-term, limiting the ability of customers to lock-in predictable energy prices and the retail supplier the ability to hedge this pricing risk. There will be customers who benefit and those who will pay more, not based on competitive market forces, but by individual state pricing schemes

²³ This Letter can be found at: <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20180928-opsi-letter-regarding-ferc-order-capacity-mkt-rules.ashx?la=en>

as applied. Similarly-situated customers may pay vastly different rates based solely on their location vis a vis the level of subsidized generation in a region. That is not a just and reasonable result.²⁴

Depending on how states address these issues, creating a residual capacity market could reduce competition and reduce transparency. Capacity purchases outside the PJM capacity market will become separated by state and further separated by barriers such as individual generator demands in locations throughout the PJM footprint. Capacity purchasers in the residual capacity market will face far less choices in resources and the market will be less robust. The residual capacity market will need to be monitored carefully to ensure that generators remaining in the capacity market do not have market power. These events, in turn, may adversely affect the products and services that retail suppliers can offer their commercial, industrial and residential customers that have received benefits from their access to competitive services over many years.

Third, PJM's RCO proposal will stifle further innovation to the detriment of wholesale and retail markets. Retail markets continue to grow at a robust pace. Commercial and industrial customer participation in retail markets has grown substantially. In 2016, retail suppliers served more than 3 million commercial and industrial customer accounts.²⁵ In addition, in 2016, 72.3% of load eligible to switch in 14 customer choice markets was served by retail suppliers.²⁶ Retail competition is widely accepted and support across the electric utility industry, as noted in numerous comments filed on October 2, 2018, on the topic is this docket.²⁷ Retail suppliers and

²⁴ As noted in Part II.A.1 above, these transactions must be expressly subject to the Commission's jurisdiction.

²⁵ See, O'Connor, Philip, Ph.D, *Restructuring Recharged, The Superior Performance of Competitive Electricity Markets 2008-2016*, April 2017, at 15, available at https://www.resausa.org/sites/default/files/RESA_Restructuring_Recharged_White%20Paper_0.pdf

²⁶ *Id.*

²⁷ See, e.g. Comments of: (1) Clean Energy and Consumer Advocates at p. 26; (2) Calpine Corporation at p.8 ("because wholesale and retail markets are intertwined, any examination of retail choice typically involves a

the customers they serve must be considered and, as noted in Part II.A above, should be permitted to continue to promote further market development based on a robust competitive wholesale capacity market.

III. CONCLUSION

RESA members do not oppose states offering public policy-based subsidies to generators. RESA members believe, however, that competitive markets, including competitive capacity markets, are critical to further refinement of wholesale markets and continued development of competitive retail markets. Competitive markets benefit ultimate consumers. Congress and the Commission have spent 40 years developing and refining competitive markets and should not revert to cost-based ratemaking and balkanization of the PJM's integrated capacity marketplace. PJM must be directed by the Commission to work with stakeholders to develop a methodology that incorporates these resources into a workably competitive wholesale market. At a minimum, the Commission must expressly retain its jurisdiction over all components of any RCO construct accepted by the Commission.

critique of the combination of the particular retail choice program and the RTO's or ISO's wholesale market design"); (3) PJM Consumer Representatives at pp. 2, 8, 16 (noting that consumer representatives advocate for low prices in the short term and long term; that state legislatures will have to tackle difficult issues of re-regulation; and noting the need to ensure that customers do not pay twice for capacity); (4) PJM Providers Group, including Dr. Shanker's Affidavit; (5) the Public Utilities Commission of Ohio, at pp. 5, 8 (noting that a competitive wholesale market is a necessary pre-requisite to a competitive retail market in retail choice states like Ohio; PJM's proposal will result in a heavy regulatory burden on Ohio; uncertainty will arise when customers return to standard offer service which may lead to shortages of such service or if there is active migration between standard offer service and retail service providers); (6) Ohio Consumers' Counsel at pp. 5, 23 (noting a concern that a new mechanism does not allow states or power plants to distort capacity and energy market outcomes); (7) NRG Power Marketing at pp. 3, 20, 26 ("Capacity markets work for retail choice customers because all load within a given area pays the same rate for capacity. Allowing certain "carved-out" customers to pay a higher (or lower) capacity rate threatens to disrupt this competitive balance;" and noting that the FRR Alternative could create winners and losers in retail choice markets); and (8) LS Power Associates, L.P.

As currently proposed, a RCO mechanism will be difficult to implement, will result in less competition, more administrative burdens and will shift risk that retail suppliers willingly take on back to customers with no tangible benefits to them. The uncertainty created will benefit no one.

WHEREFORE, RESA respectfully requests that the Commission order PJM to work with stakeholders to design a capacity construct that takes into account generator resources that receive state subsidies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Argument, via email, on each person listed on the Official Service List compiled by the Secretary in this proceeding.

Dated in Washington, DC this 6th day of November, 2018.

Elizabeth W. Whittle
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