

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

PJM Power Providers Group	)	
	)	
v.	)	Docket No. EL11-20-000
	)	
PJM Interconnection, L.L.C.	)	
	)	
	)	
PJM Interconnection, L.L.C.	)	Docket No. ER11-2875-000

(Not Consolidated)

**COMMENTS OF THE  
ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association (“EPSA”)<sup>1</sup> respectfully submits the following comments<sup>2</sup> in the above referenced proceedings.<sup>3</sup> EPSA urges the Federal Energy Regulatory Commission (“FERC” or “Commission”) to act expeditiously in these proceedings to correct critical flaws to PJM Interconnection, L.L.C.’s (“PJM”) current rule on uncompetitively low new entry offers in the Reliability Pricing Model (“RPM”)<sup>4</sup> forward capacity auctions. Specifically, EPSA urges the Commission to approve the Tariff changes proposed by PJM with modifications as proposed by PJM Power

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<sup>1</sup> EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who 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. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the view of any particular member with respect to any specific issue.

<sup>2</sup> On February 9, 2011, and February 14, 2011, EPSA filed timely document-less interventions in Docket No. EL11-20-000 and Docket No. ER11-2875-000, respectively.

<sup>3</sup> *Complaint and Request for Clarification Requesting Fast Track Processing*, PJM Power Providers Group v. PJM Interconnection, L.L.C., Docket No. EL11-20-000 (Filed February 1, 2011) (“P3 Complaint”); and, *PJM Interconnection, L.L.C.*, Docket No. ER11-2875-000 (Filed February 11, 2011) (“PJM tariff filing”)

<sup>4</sup> Capitalized terms not otherwise defined herein have the meaning given in PJM’s Open Access Transmission Tariff, FERC Electric Tariff, Sixth Revised Volume No. 1 (the “Tariff”), including Attachment DD thereto.

Providers Group (“P3”), such as setting the minimum offer price threshold to 100% of the benchmark, and to do so expeditiously in order to allow the changes to become effective by mid-April, in time for the next RPM capacity auction scheduled for May 2, 2011.

## **I. COMMUNICATIONS**

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

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## **II. BACKGROUND**

On February 1, 2011, P3 filed a complaint under section 206 of the Federal Power Act (“FPA”) seeking critically important reforms to PJM’s current Minimum Offer Price Rule (“MOPR”) in order to ensure that the MOPR serves its intended purpose protecting the RPM and market participants from the exercise of buyer market power. P3 explains that its complaint in part responds to legislation recently enacted in New Jersey which violates the intent, if not the letter, of the MOPR by directing the New Jersey Board of Public Utilities to subsidize uneconomic and unneeded new power plants for purposes of reducing RPM clearing prices, to the long-term detriment of electric consumers, demand response providers, suppliers, and other stakeholders in PJM’s markets. P3 proposes implementation of a simplified buyer-side mitigation mechanism that would apply to combustion turbine and combined cycle resources in the

upcoming May 2011 auction and is similar to mitigation recently approved by the Commission for the NYISO and ISO-New England.

On February 11, 2011, PJM submitted the PJM Tariff Filing, seeking to “update and simplify the Reliability Pricing Model’s minimum offer price rule and to conform that rule to the Commission’s recent precedents on similar rules in New York and New England.”<sup>5</sup> In that filing, PJM generally agrees with P3 that the current MOPR is flawed, proposing several reforms, including changes to the current “net short” requirement of MOPR’s conduct screens and the complete elimination of MOPR’s impact screens.<sup>6</sup> Further, PJM’s proposal seeks to eliminate the MOPR’s sunset provision that currently limits mitigation to one auction cycle and clarify that the MOPR does apply to self-supply offers.<sup>7</sup> PJM, unlike P3’s phased-approach, has asked the Commission to act on all of the proposed reforms at the same time because PJM believes that each change it has proposed is necessary to correct the MOPR’s current shortcomings. PJM asks that these tariff revisions be accepted to be effective by April 13, 2011.

P3 subsequently filed a motion to consolidate its complaint with PJM’s Section 205 filing.<sup>8</sup> While the Commission has not yet consolidated the dockets, it did issue an extension of time in the P3 complaint proceeding so that comments on both the P3 complaint and the PJM Section 205 filing would be due on the same date.<sup>9</sup>

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<sup>5</sup> *PJM Tariff Filing*, Docket No. ER11-2875-000 (February 11, 2011), p. 1.

<sup>6</sup> *Id.*, pp 3-4; p. 17.

<sup>7</sup> *Id.*, pp 20-21.

<sup>8</sup> *Motion of PJM Power Providers Group to Consolidate and Answer to Motions for Extension of Date for Responses*, Docket Nos. EL11-20-000 and ER11-2875-000 (February 14, 2011). Requests for extension of time were also filed in Docket No. EL11-20-000 by the New Jersey Division of Rate Counsel, the Public Service Commission of Maryland and the Maryland Energy Administration.

<sup>9</sup> *Notice of Extension of Time*, Docket No. EL11-20-000 (February 15, 2011).

### III. COMMENTS

The revisions proposed by PJM and P3 would substantially improve the MOPR's ability to achieve its critical intended purpose, which is to protect market participants and consumers from the exercise of buyer market power. These revisions are necessary to preserve the integrity of the competitive wholesale market in PJM, which faces imminent threats from state subsidies designed to distort wholesale prices even though states may avail themselves of alternative methods to meet legitimate state interests without negatively impacting wholesale markets.

The Commission should accept these revisions without delay in order to remedy technical defects in the MOPR that have created ambiguity as to the applicability and effectiveness of the MOPR. While the letter of the currently-effective MOPR provisions of the Tariff may be unclear and inadequate, the intent of the MOPR is crystal clear and indisputable. The MOPR is supposed to address concerns about uneconomic entry designed to suppress prices,<sup>10</sup> consistent with similar mechanisms in other organized markets.<sup>11</sup> Legislation recently enacted by the State of New Jersey has brought to light flaws in the Tariff that could allow this intent to be defeated, in New Jersey's case by directing the state commission to procure up to 2,000 MW of new generation with the condition that it be offered in to PJM's capacity market at levels not supported by market

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<sup>10</sup> *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at PP 103-04; *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at P 191 (2006), *on reh'g & clarification*, 119 FERC ¶ 61,318 (2007);, *on clarification*, 127 FERC ¶ 61,104, *on reh'g & clarification*, 128 FERC ¶ 61,157 (2009).

<sup>11</sup> *See, e.g., ISO New England Inc. & New England Power Pool Participants Comm*, 131 FERC ¶ 61,065 (2010) (explaining that the purpose of the analogous mechanism in the New England market is ""to discourage buyers that have the incentive and ability to suppress market clearing prices below a competitive level from doing so" in order "to ensure that the prices in capacity markets reflect the market cost of new entry when new entry is needed"); *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 at P 100 (accepting a buyer market power mitigation mechanism "to prevent uneconomic entry that would reduce prices in the [] capacity market below just and reasonable levels"), *on reh'g & compliance*, 124 FERC ¶ 61,301 (2008).

economics but instead by an uneconomic subsidy from state ratepayers. This scheme and a similar proposal under consideration in Maryland threaten the existence of RPM, and it is essential that the technical flaws be remedied and the letter of the Tariff properly reflects the intent of the MOPR.

RPM is a formal capacity auction mechanism designed to fulfill the two foundational goals of any Resource Adequacy program: (1) to maintain future reliability of the system; and, (2) to attract the necessary amount of investment in new and existing resources necessary to do so.<sup>12</sup> In approving RPM, the Commission emphasized the need for “market designs and rate policies that elicit sufficient investment in energy, transmission and demand response,” and found that RPM achieves those goals, and ensures just and reasonable rates.”<sup>13</sup> The proceeding that led to the RPM arose from an earlier finding by the Commission that, as a result of a combination of factors, PJM’s market rules at that time were unjust and unreasonable because they failed to set prices adequate to ensure sufficient resources.<sup>14</sup> Since initial approval by the Commission, the RPM market has been upheld and affirmed by the Commission in several proceedings,<sup>15</sup> as well as by the D.C. Circuit Court of Appeals

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<sup>12</sup> See: *Order Conditionally Accepting Midwest Independent Transmission System Operator Tariff Sheets to Start Energy Markets and Establishing Settlement Judge Procedures*, 108 FERC ¶ 61, 163 at P 397 (August 6, 2004); *Initial Order on Reliability Pricing Model*, 115 FERC ¶ 61, 079 at P 29 (April 20, 2006); *Order Accepting ISO-NE LICAP Settlement*, 115 FERC ¶ 61, 340 at P 113 (June 16, 2006).

<sup>13</sup> *PJM Interconnection, L.L.C.*, Order Denying Rehearing and Approving Settlement Subject to Conditions, 117 FERC ¶ 61,331 at P1 (December 22, 2006). (“December 2006 Order”)

<sup>14</sup> *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 at P 1-6 (April 20, 2006).

<sup>15</sup> *RPM Buyers v. PJM Interconnection, L.L.C.*, Order Denying Rehearing and Request for Oral Argument, 127 FERC ¶ 61, 274 (June 18, 2009); *RPM Buyers v. PJM Interconnection, L.L.C.*, Order Dismissing Complaint, 124 FERC ¶ 61, 276 (September 19, 2008); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, Docket No. ER05-1410-000, et al. (March 26, 2009).

last month in a short decision that clearly and strongly supported the Commission's orders approving RPM. The court stated,

The [Federal Energy Regulatory] Commission recognized that the price hikes petitioners challenge would encourage much needed long-term investment in energy capacity. And there is substantial evidence the Commission was right. The PJM's independent report found that the RPM spurred an unprecedented amount of potential new resources-including approximately 33,000 MW of new generation projects-and that reliability had been increased to meet the PJM's target levels.

Given this evidence, we conclude that the Commission had a substantial basis on which to conclude that the RPM was an appropriate tool for increasing reliability in electricity markets, that the RPM did precisely what it was intended to do...<sup>16</sup>

As implicitly acknowledged by the D.C. Circuit and explicitly recognized in the Commission's orders on RPM, price signals that encourage both new entry by new capacity resources and discourage premature exit by existing resources are the core means by which RPM increases reliability in PJM. As a result, schemes like that enacted by the State of New Jersey, which seek to artificially suppress prices, dampen those price signals and ultimately threaten reliability. Importantly, and not to be overlooked, the results of the RPM auctions since its inception have, in each year and at each stage, been monitored and analyzed by the Independent Market Monitor and found to be competitive.<sup>17</sup>

The subsidized new entry approved by legislation in New Jersey and contemplated in Maryland would artificially reduce capacity market revenues to PJM

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<sup>16</sup> *Maryland Public Service Commission v. FERC*, No. 09-1296 (D.C. Cir Feb. 8, 2011) slip op. at 5.

<sup>17</sup> See Monitoring Analytics' Analysis of the 2013/2014 RPM Base Residual Auction, the Independent Market Monitor for PJM, (September 20, 2010). Available at: [http://www.monitoringanalytics.com/reports/Reports/2010/Analysis\\_of\\_2013\\_2014\\_RPM\\_Base\\_Residual\\_Auction\\_20090920.pdf](http://www.monitoringanalytics.com/reports/Reports/2010/Analysis_of_2013_2014_RPM_Base_Residual_Auction_20090920.pdf)

suppliers by more than **3 billion dollars** per year.<sup>18</sup> To understand the impact of this reduction, it represents a reduction of 45% to the revenues yielded by the 2010 auction for the 2013/2014 delivery year, an auction that delivered competitive results as analyzed and attested to by the IMM.<sup>19</sup> It is clear that the contemplated intrusion of subsidized out of market generation is a specific threat to the operation of a FERC-approved regional market that has been upheld by the Commission and the Court.

Adding urgency to these proceedings, newly implemented mandatory reliability standards and the challenging investment demands of various energy and environmental policies increase the importance of capacity revenues and the signals they send for investment today to ensure reliability tomorrow. Therefore, the changes proposed to ensure that the MOPR is a viable protection against the exercise of buyer side market power to artificially influence prices are equally critical for the long-term market stability that encourages necessary investment.

Considering the potential for buyer side market power protection is nothing short of fundamental to the operation of a functional wholesale electricity market, no less important than the extensive supply side market power protections utilized in these markets. Therefore, the imprecision of the current MOPR tariff language presents an immediate concern for PJM and all market participants for the upcoming RPM auction and, ultimately, for consumers. As both P3 and PJM have noted, the revisions

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<sup>18</sup> Comments of the Independent Market Monitor for PJM at p. 4, *In the Matter of Whether New Generating Facilities Are Needed to Meet Long-Term Demand for Standard Offer Service*, Before the Maryland Public Service Commission, Case No. 9214 (filed January 28, 2011, revised on January 31, 2011). Available at: [http://www.monitoringanalytics.com/reports/Reports/2011/IMM\\_Comments\\_to\\_MDPSC\\_Case\\_No\\_9214\\_20110128.pdf](http://www.monitoringanalytics.com/reports/Reports/2011/IMM_Comments_to_MDPSC_Case_No_9214_20110128.pdf).

<sup>19</sup> Id. at Table 4 of supporting report, "Impact of Maryland PSC's Proposed RFP on the PJM Capacity Market," prepared by the Independent Market Monitor for PJM.

proposed are necessary to ensure that the MOPR functions as *intended*, and hence are narrow and clearly focused to allow the MOPR to be applied and utilized as envisioned when included as part of the initial RPM provisions of the PJM tariff in 2006,<sup>20</sup> and as upheld by the Commission on review in 2009. EPSA urges the Commission to act expeditiously to revise the fatally flawed MOPR as proposed by PJM with modifications outlined by P3 in advance of the May 2011 Base Residual Auction.

**A. The integrity of RPM is critical to the financial environment of PJM broadly**

The enactment of the Long-term Capacity Agreement Pilot Program (“LCAPP”)<sup>21</sup> in New Jersey presents a conundrum. To be sure, States have a legitimate role in ensuring resource adequacy within their borders through power procurement policies and otherwise. But that does not mean that the Commission must stand silently by when State procurement policies are, like the New Jersey legislation, deliberately designed to interfere with the workings of, and to suppress prices in, FERC-jurisdictional wholesale markets. For all the window dressing about ensuring reliability in New Jersey, the fact remains that a core requirement of the legislation is that the new supply offer into, and that the offer be **accepted** in, the regional capacity market auction, effectively mandating by a single state’s law a zero or near zero bid in a federally regulated interstate wholesale market. The only conceivable purpose of this requirement is to affect – specifically, to suppress – clearing prices in RPM, a wholesale

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<sup>20</sup> *PJM Interconnection, L.L.C.*, 117 FERC 61,331 (2006).

<sup>21</sup> See Long-Term Capacity Agreement Pilot Program (“LCAPP”) Law, P.L. 2011, c. 9, amending and supplementing P.L. 1999, c. 23 (signed into law on January 28, 2011 by Governor Christopher Christie, establishing a LCAPP to “promote the construction of qualified electric generation facilities for the benefit of New Jersey’s electric consumers.”). Also, see State of New Jersey, S. No. 2381, 214th Leg. (N.J. 2011). Available at: [http://www.njleg.state.nj.us/2010/Bills/AL11/9\\_.PDF](http://www.njleg.state.nj.us/2010/Bills/AL11/9_.PDF)

electricity market subject to the Commission's exclusive jurisdiction. As noted in one market analysis report on the subject:

In our view, the [New Jersey] legislation calls for an arrangement that looks deliberately structured to obviate the application of MOPR that would normally apply in a standard of self-scheduling arrangement between a load serving entity with a capacity obligation and a party providing that capacity through new generation additions. The contract for differences, shared across multiple New Jersey LSEs does not seem to be an actual capacity commitment to meet an obligation of any kind, let alone for 15 years. The transaction looks intended to operate outside of PJM capacity market construct and creates precisely the condition that FERC felt required mitigation when it declined to eliminate MOPR from the RPM in 2009.<sup>22</sup>

Moreover, the facts contradict language in the New Jersey legislation designed to obscure its market distorting purpose, and demonstrate that it does not address a pressing or imminent need for new generation to serve the state's customers. Rather, PJM has reported substantial recent decreases in demand and forecasts much slower growth rates over the next ten years.<sup>23</sup> Nonetheless, New Jersey proposes to contract for supply that is not signaled by PJM's RPM market, the very mechanism developed to send the necessary signals for when and where additional supply is or will be needed. In fact, the New Jersey LCAPP contracts, along with similar contracts under consideration in Maryland,<sup>24</sup> will be a tool to artificially suppress capacity clearing prices for several years and across the region, not just for the state itself. The PJM IMM notes in the Maryland draft RFP proceeding:

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<sup>22</sup> *Kerkhoven and Tezak Bulletin* (November 30, 2010), p. 6.

<sup>23</sup> PJM, Load Forecast Report at tbl.B-1 (Jan. 2010), <http://www.pjm.com/~media/documents/reports/2010-load-forecast-report.ashx>

<sup>24</sup> See Maryland Public Service Commission, In re *Whether New Generating Facilities Are Needed to Meet Long-Term Demand for Standard Offer Service*, No. 9214, Request for Proposals for Generation Capacity Resources Under Long-Term Contract ("Draft RFP")(M.P.S.C. December 29, 2010). Available at: <http://webapp.psc.state.md.us/Intranet/home.cfm>

[P]rocurring capacity when it is not needed for reliability, requiring it to clear in the auction through an offer price below its costs and providing subsidies in the form of additional out of market revenue is not consistent with the PJM market design. The proposed RFP process appears to do exactly that. In addition, such an outcome would not be consistent with a competitive outcome.

The result of such a subsidy by Maryland ratepayers would be to artificially depress the RPM auction prices below the competitive level with the result that the revenues to generators both inside and outside of Maryland would be affected as would the incentives to customers to manage load and to invest in cost effective demand management technologies.<sup>25</sup>

The IMM then explains and the analysis indicates that the proposed RFP would result in “a reduction in capacity market revenues to PJM suppliers of more than three billion dollars per year.”<sup>26</sup> The IMM concludes:

This substantial reduction in revenue would affect the investment decisions of current owners of capacity and potential investors in capacity both in and outside of Maryland. The likely result is less investment in capacity. Depressing the price in Maryland would also mean that the required direct subsidy by Maryland ratepayers would increase with perhaps significant unintended consequences for the business and residential customers who would have to pay the subsidy.<sup>27</sup>

The dire economic consequences of the subsidization of out of market generation like New Jersey’s LCAPP are twofold. While the desired impact is the short term suppression of regional capacity costs, based on the notion that lower costs for all is simply and always better, this is counteracted and overshadowed by the subsidy payments required from ratepayers to support the binding state-required contract for

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<sup>25</sup> Comments of the Independent Market Monitor for PJM at p. 4, *In the Matter of Whether New Generating Facilities Are Needed to Meet Long-Term Demand for Standard Offer Service*, Before the Maryland Public Service Commission, Case No. 9214 (filed January 28, 2011, revised January 31, 2011).

<sup>26</sup> Id., p. 4, supported by “Impact of Maryland PSC’s Proposed RFP on the PJM Capacity Market,” prepared by the Independent Market Monitor for PJM, January 28, 2011. See [http://www.monitoringanalytics.com/reports/Reports/2011/IMM Comments to MDPSC Case No 9214 20110128.pdf](http://www.monitoringanalytics.com/reports/Reports/2011/IMM%20Comments%20to%20MDPSC%20Case%20No%209214%20110128.pdf)

<sup>27</sup> Id, p. 4.

differences, a contract that has not been shown to be an efficient or economic decision and may, in fact, be shown to offer a guaranteed premium for the plant developer.<sup>28</sup>

Therefore, it is likely that this arrangement will increase costs for New Jersey ratepayers as they are bound to pay a guaranteed regulated rate to a new generation plant in New Jersey which has not been shown to be necessary for reliability or resource adequacy.

A second important consequence created by the artificial manipulation of the market-based mechanism for signaling and incenting capacity needs is the creation of a hostile environment for future investment, leading to a cycle in which subsidies must be offered to support any investment in new or existing facilities. A financial analyst's report concludes:

We believe passage of the bill is fundamentally a negative to the long term competitive generation New Jersey investment outlook, since future power developers would essentially demand state backed out-of-market contracts in the future to invest in generation. Investors in new generation would demand greater returns to offset perceived political interference risk (if the political class can interfere once with market rules, they can do it again). In addition, preexisting generators would have little assurance that market capacity or energy prices would ever reach sustainable levels to incent new generation investment, resulting in potential for capacity shutdowns.<sup>29</sup>

Therefore, this arrangement creates new costs by dampening the investment environment in New Jersey, creating a new paradigm based on subsidized contracts to

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<sup>28</sup> While LS Power has claimed below market costs in a filing concerning the MOPR in FERC Docket No. ER11-2936-000, the West Deptford Energy Project intends to receive the support of a contract for differences which represents an assurance of at least \$1.9 billion over 15 years of the life of the project. See: *Statement of the PJM Power Providers Group (P3) on New Jersey Senate Bill 2381, p.2, using the formula: Standard Offer Capacity Price (\$232.75) \* 1500 MWs \* 15 years \* 365 days = \$1,911,459,375. Available at: <http://www.p3powergroup.com/siteFiles/News/362B07A343BDD583F6BF013B0E3948B4.pdf>*

<sup>29</sup> *Citi Capacity Markets Update: The Jersey Devil in the Details*, by Brian Chin (December 10, 2010), p. 2.

support new build in the state, and disincenting existing generation assets which are an important part of the portfolio of supply available to serve New Jersey and the region.

All of these concerns are reiterated by the Maryland Industrial Technology Alliance (“MITA”), which noted that it sympathizes with the desire to lower electricity costs in high cost states like Maryland and New Jersey, but worries “that the methods proposed in those states will undermine competitive markets, and result in higher, not lower, prices.”<sup>30</sup> Invoking the economic consequences underlying the state’s schemes for subsidizing new uneconomic entry, the Maryland industrial group explains:

Even under the best-case scenario, these procurement plans seem destined to provide short-term savings and long-term price increases. Because businesses thrive on predictability, not merely short-term, artificially lowered prices, this scenario is not one that MITA can support. In particular, MITA is concerned that these plans will result in a situation where industrial customers are forced to subsidize new, uneconomic generation assets via nonbypassable wires charges, thereby increasing industrial rates to pay for this generation. Ultimately, neither suppliers nor consumers should be allowed to exercise unfair market power. In regulating power markets FERC should treat both groups fairly to provide a balanced playing field. This is the best method for securing the lowest sustainable prices for consumers over the long-term.<sup>31</sup>

One of the largest supermarket chains in America, Safeway, echoes the concerns expressed by MITA, noting:

Considering the current economy, it is more important than ever that all consumers receive reliable electric service at the lowest price. Competitive markets are the best way to make this happen, and without changes to the MOPR, customers will suffer. FERC rules need to prevent anti-competitive subsidies that are paid for by PJM residents and businesses and that undermine the long term effectiveness of competitive power markets in the RTO and increase prices for consumers. We cannot afford an energy surcharge to guarantee billions of dollars or revenue to select generators irrespective of market conditions.<sup>32</sup>

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<sup>30</sup> *Comments of the Maryland Industrial Technology Alliance*, Docket Nos. EL11-20-000 and ER11-2875-000 (February 18, 2011) p. 1.

<sup>31</sup> *Id.*, p 1-2.

<sup>32</sup> *Comments of Safeway Inc.*, Docket Nos. EL11-20-000 and ER11-2875-000 (February 17, 2011), p. 1.

In sum, efforts to suppress market prices in the short term as intended by the LCAPP legislation ignore the long term, whereby normal and necessary investment has been disincentivized, causing power prices to soar above the initial suppressed prices. The near term savings distort any long term equilibrium and will likely create resource adequacy problems down the road.

To be clear, while EPSA opposed the New Jersey legislation, it is not suggesting that the Commission should act to invalidate, or to disturb in any way, that ill-conceived legislation. What the Commission can – and, if the RPM’s integrity as a market is to be preserved in the face of that and similar schemes, must – do is approve revisions to the Tariff that will ensure that the MOPR functions as intended. And if New Jersey is so dissatisfied with the RPM resource adequacy construct that it prefers to opt out, PJM’s Tariff expressly provides a means for a state, or any load serving market participant, to contract for a dedicated source of self-supplied capacity without distorting the RPM market as New Jersey seeks to do. As P3 notes:

Underscoring the flexibility states have in resource planning, the PJM market design includes a Fixed Resource Requirement (“FRR”) option, which allows a state or region to decide to fully plan for all of its resource requirements. As a result, if a state truly thinks that the PJM capacity market is not meeting its needs, it can steer its own course through the FRR option.

The PJM IMM likewise highlighted this option in discussing Maryland’s copycat proposal, explaining:

If the [Maryland] Commission does not believe that the PJM capacity markets are the most cost effective way to maintain reliability, the most direct option would be to opt out of RPM markets entirely via the FRR (fixed resource requirement) option. Under the FRR option, the choices that Maryland utilities make would have a minimal impact on other participants in the RPM markets and would permit Maryland to make its own decisions about how to reach required reliability levels. There is no

guarantee that the FRR outcome would be lower cost than participating in the RPM markets. The Market Monitor does not recommend this course of participation in PJM's capacity market.<sup>33</sup>

If a state truly wants to take control of its resource adequacy destiny, PJM's FRR could be utilized without dire negative impacts to the broad RPM market. Similarly, if a state wants to procure additional supply without opting out of the RPM construct, it is free to do so, provided the new supply's offers are subject to appropriate mitigation under the MOPR to protect the integrity of RPM. What a state cannot be allowed to do is to subsidize *uneconomic* supply to bid in to the RPM auction *in order to* artificially suppress auction outcomes. Preventing such actions is why the revisions proposed by PJM and P3 are essential to ensure that the MOPR fulfills that purpose.

**B. The minimum offer price threshold should be 100% of applicable net cost of new entry for CT and CC asset classes**

While directed to the same problem and generally similar in approach, the PJM and P3 filings are not identical. One important difference is that PJM has proposed MOPR thresholds, both for the conduct screen and the "mitigated to" price, of 90% – rather than 100%, as proposed by P3 – of the reference price. As PJM acknowledges, a 100% factor "decreases the likelihood that an improper sell offer can evade the MOPR,"<sup>34</sup> but the RTO then proceeds to defend a 90% factor as setting "a reasonable balance between legitimate competing interests: on the one hand, recognizing the

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<sup>33</sup> Comments of the Independent Market Monitor for PJM at pg. 3, *In the Matter of Whether New Generating Facilities Are Needed to Meet Long-Term Demand for Standard Offer Service*, Before the Maryland Public Service Commission, Case No. 9214, (filed January 28, 2011, revised January 31, 2011).

<sup>34</sup> PJM tariff filing, p 11.

imprecision of ‘one-size fits all’ administrative estimates, balanced against, on the other hand, preserving protections against an unreasonable exercise of market power.”<sup>35</sup>

EPSA respectfully disagrees with PJM’s characterization of the 90% factor as representing a “reasonable balance,” because it is not an acceptable tradeoff to tolerate the exercise of market power just to avoid making a supplier request a unit specific determination of costs and revenues. As Safeway Inc. put it in discussing the current thresholds:

In a competitive business like ours, “a little” anti-competitive action by our competitors is unacceptable and unlawful for good reason and it should be the same for competitive generation resources in PJM. The impact screen in the current PJM MOPR is anti-competitive and therefore it should be eliminated.

This premise holds equally for establishing a MOPR threshold below 100%. A little market power is too much market power, as demonstrated by Dr. Roy Shanker in his testimony filed as part of the P3 complaint explaining that the effects of setting the benchmark too low are vastly more damaging than setting the benchmark too high.<sup>36</sup>

An additional and important point is that implicit in PJM’s stated concern about the burden of the exception process is the recognition that units do indeed have recourse to bid at or below 100% of Net CONE – there is an exception process in place,

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<sup>35</sup> PJM tariff filing, p 11.

<sup>36</sup> P3 Complaint, Exhibit 1, Testimony of Roy J. Shanker, Ph.D, see generally pp. 20-25 (“In sum, due to competitive entry, long-term market prices would not be expected to change from competitive levels if the mitigation were set at too high a price. In stark contrast, however, if the mitigation value selected were too low, prices would be artificially depressed. This in turn would lead to the cascading failure of any market solution: no party will privately enter the market if, even when buyer market power is mitigated, prices are set below competitive levels. Taking the perspective of designing mitigation measures to protect the *market*, as opposed to protecting individual market participants, it becomes clear that the right course is, at minimum, to mitigate to the nominal levelized Unit Specific Net Cost of New Entry. With the above in mind there really is no harm to over-mitigation with a “too high” substitute Sell Offer versus precipitating the destruction of the market with under mitigation via a “too low” offer. In this context, use of the 100% value for the substitute Sell Offer is conservative. But under no circumstances could 100% be considered too *high*.” p. 24, lines 5-18).

and such a process is retained in both the P3 and PJM proposals. Further, this alternative is clearly viable as it is currently in use before the Commission in a related proceeding (*West Deptford Energy, L.L.C.*, Docket No. EL11-23-000, filed Feb. 22, 2011). It is this very process, available to true competitive entrants that can demonstrate they are not receiving out of market or discriminatory subsidies, that buffers the reasoning for a 100% threshold for mitigation. With this option available to any supplier that is concerned about overmitigation under the default screens, there is no justification for including a false bottom for the market power screen. Valid and justified offers that are below the 100% MOPR threshold can bid and be accepted in an RPM auction, and in such cases the exception will prove the rule.

**C. The revisions proposed by PJM as modified by P3 for the May 2011 Base Residual Auction are necessary to ensure competitive results**

The suite of revisions proposed by PJM as modified by P3's filing are necessary as a package to correct the flaws in the current MOPR structure and protect the PJM market from price distortions created by the exercise of buyer side market power at the May 2011 RPM auction. Therefore, EPSA urges the Commission to timely approve the revisions which include:

- The conduct screen threshold is set at 100% of the net cost of new entry of its asset class, or by a unit that: (1) demonstrates its nominal, levelized unit specific offering below net CONE is justified and therefore economic; or (2) establishes that it has not received any discriminatory payments, to be determined at the time of the offer.
- The impact test is eliminated.
- Uneconomic offers are mitigated to 100% of the nominal levelized Net CONE of new entry of the offering resource.
- Mitigation is applied until the entrant is cleared in two auctions.

- The following exemptions from MOPR are eliminated: (1) resources who are not deemed to be “net buyers”; (2) self-supply; (3) certain state-sponsored projects; and (4) resources that are not “Planned Generation Capacity Resources.”

This array of revisions is explained and supported in detail in the PJM Tariff filing and the P3 complaint, and EPSA urges the Commission to approve the full package on a fast track basis to ensure the integrity of the upcoming capacity auction.

#### **IV. CONCLUSION**

Wherefore, EPSA respectfully requests that the Commission consider the comments herein in rendering its decision in these proceedings. EPSA urges the Commission to act expeditiously in these proceedings involving proposed changes to correct significant flaws to PJM’s current rule on uncompetitively low new entry offers in the RPM forward capacity auctions. EPSA requests that the Commission address the merits of the filings in these dockets prior to the next RPM capacity auction scheduled for May 2011.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments via email upon  
Each person designated on the official service list compiled by the Secretary in this  
proceeding.

Dated at Washington, D.C. March 4, 2011.



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Nancy Bagot, VP of Regulatory Affairs