



Electric Power Supply Association
*Advocating the **power** of competition*

1401 New York Avenue, NW
12th Floor
Washington, DC 20005
202/628-8200
202/628-8260 fax
www.epsa.org

FILED ELECTRONICALLY

January 13, 2012

Mr. David J. Collins
Executive Secretary
Public Service Commission of Maryland
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202-6806

RE: Case No. 9214, In the Matter of Whether New Generating Facilities are Needed to Meet the Demand for Standard Offer Service
(Mail log number: 136508)

Dear Mr. Collins:

Please find attached the comments of the Electric Power Supply Association (EPSA) in the above captioned matter. Additionally, EPSA would like to submit the name of John E. Shelk to appear on behalf of the organization at the January 31 hearing.

Respectfully submitted,

/s/ John E. Shelk
John E. Shelk, President & CEO

Attachment

hereby provides notification to the Commission of its interest in participating at the January 31, 2012 hearing scheduled in this proceeding. EPSA's President and CEO, John E. Shelk, would be available to participate at the hearing. EPSA appreciates consideration of this request to participate.

EPSA represents operators of existing plants and developers of new ones responsible for keeping the lights on in Maryland for decades, making investments largely at investor risk, not on the backs of consumers, and employing tens of thousands of individuals in the process. EPSA members continue to be leaders in investing in both existing and new generation resources while advancing innovation. EPSA has submitted comments in this proceeding on the Draft RFP, and has previously testified before the Maryland General Assembly raising various concerns on proposed legislation with long-term contracting provisions, and will not reiterate in detail those positions herein.

At the outset, EPSA appreciates the Commission's responsibility in ensuring that Maryland consumers continue to have access to reliable, affordable, competitively priced electricity from environmentally responsible facilities. Electricity is vital to economic well-being and social welfare. The power generation sector provides and impacts jobs and other measures of economic development in Maryland and across the country. These are challenging times for the state's and nation's economies as well as for particular sectors such as electricity. EPSA welcomes a vigorous debate on issues impacting electricity and urges a rigorous analysis of any and all proposals that impact investments in existing and new power generation resources. EPSA

commends the Commission for conducting the hearing prior to making a final determination on Maryland's need for new generation.³

However, EPSA believes that the State of Maryland derives significant benefits – and will continue to do so – from its participation in the broader regional PJM Interconnection, L.L.C. (“PJM”) wholesale markets, including its forward capacity market, the Reliability Pricing Model (“RPM”), and by relying on other competitive market approaches such as the PSC’s Standard Offer Service auctions. EPSA is confident that a fact-based analysis will validate that the RFP is not needed and should not be pursued. As discussed herein and consistent with its prior comments in this proceeding,⁴ there should be a high bar set for establishing need and the burden should be on those seeking the RFP because if the State ventures down this road it will undermine the competitive wholesale market to the detriment of the State’s consumers and economy, and such a burden is not met here. EPSA submits that current data simply does not support a finding that Maryland has a reliability need at this time requiring up to 1,500 MW of new gas-fired generation under twenty-year agreements as proposed in the RFP. EPSA therefore urges the Commission not to proceed further with the RFP process, and instead rely on competitive markets to provide the least-cost, long-term solutions – when necessary – for Maryland consumers, with

³ Notice at fn. 5.

⁴ See *Comments of the Electric Power Supply Association*, Maryland Public Service Commission, Case No. 9214 (filed Jan. 28, 2011). (“Although EPSA does not believe the underlying facts indicate a reliability need exists, EPSA asserts the Commission’s critical next step in this process must be an evidentiary hearing to evaluate and conclusively establish through the record that the State of Maryland faces a reliability threat that cannot be addressed through the existing PJM markets, before issuance, if any, of an RFP.”)

improvements to regional market rules as necessary. EPSA has recently published a statement of principles to address the importance of competitive markets and their design, and to highlight how industry and policymakers should focus on improving market design and rules to ensure a reliable power grid can deliver the full benefits of competition to the nation in the 21st century.⁵

II. Comments

In issuing the RFP in this proceeding, the Commission states the purpose is to mitigate risks faced by Maryland with regard to “the adequacy of the State’s generation resources to serve the long-term anticipated demand for electricity,” including the following: the potential that load forecasts could rise unexpectedly; that pending EPA regulations and future emissions legislation could cause substantial retirements of and/or costs of base-load generation; the cancellation or delay of new transmission lines; that demand response will not grow at the current pace; that the State will not have enough flexible generation to accommodate renewables; that the State may not fully benefit from low natural gas prices; and, that the RPM may not attract new capacity.⁶ Additionally, the Commission views the potential for such reliability issues to occur as early as 2015, and therefore, wants any resources that may result from the RFP to clear in the RPM 2015 Base Residual Auction (“BRA”) to be held in May 2012.

⁵ “Principles to Power America – Competitive Market Evolution: The next decade of progress,” published by Electric Power Supply Association, October 24, 2011. (“EPSA Statement of Principles”) Available at: http://www.epsa.org/forms/uploadFiles/1F33E0000017.filename.EPSA_RTOISO_MARKET_PRINCIPLES_FINAL_OCT_11.pdf

⁶ Amended RFP at 2-3; also, Request for Proposals for Generation Capacity Resources Under Long-Term Contract, Frequently Asked Questions (“FAQs”), Q-1.

RFP's Stated Reliability Risks

Regarding the identified risks the Commission seeks to mitigate through the RFP proposals, EPSA offers the following general observations:

- Load Forecasts – EPSA submits that with respect to the risk of a sudden load upswing, based on history, load forecasts may shift up or down, and may not ultimately be right in either direction. Such forecasts are one of many indicators, have been the focus of recent enhancements within PJM in particular, and as discussed below, based on energy efficiency, renewable portfolio standards, and other environmental policies of the State of Maryland, indications are much less likely for forecasts to experience a sudden upswing.⁷
- Retirements and/or Increased Cost of Baseload Generation due to EPA and Other Environmental Regulations – EPSA submits the effect of such regulations on plants which Maryland would rely on is unlikely. Again, Maryland has shown environmental leadership in this area through its own state environmental requirements. An economic regulator such as the PSC should not want to undermine the economics of projects or facilities that have retrofitted existing facilities or built new facilities to meet state air or other environmental requirements as an unjustified RFP would do.⁸
- Key Transmission Projects Will Not Be Completed As Scheduled – EPSA submits the proper way to address any documented reliability-related concerns in this regard is to participate directly in and seek improvements to the PJM transmission expansion planning process.
- Growth of Demand Response (“DR”) Resources – EPSA submits that the concerns relating to DR resources are precisely why accurate price signals are necessary, and would be hindered (for both generation and DR) through the price suppressing effects of out of market generation resulting from the RFP. DR has a legitimate role in the capacity market, and any concerns with its proper functioning should not be addressed through a one-time RFP, rather through improvements to policies governing DR. A range of issues

⁷ See for example, Appendix to “*Allocating Investment Risk in Today’s Uncertain Electric Industry: A Guide to Competition and Regulatory Policy During ‘Interesting Times’*,” Sue Tierney, Analysis Group, (September 2009) (Showing, among other things, uncertainties in forecasting as compared to actual data and how quickly out of date these forecasts become).
<http://www.epsa.org/documents/Tierney - EPSA - Allocating Investment Risk - Appendix - September 2009 FI.pdf>

⁸ See for example, “A Coal Plant That Is Eager For U.S. Rules,” New York Times, Business Section, B-3, Friday, January 6, 2012. (“The goal was to comply with a Maryland law, but the company also anticipated that the federal Environmental Protection Agency would adopt similar limits.”)

associated with DR participation in the PJM markets is properly being addressed in proceedings at the Federal Energy Regulatory Commission (“FERC”) that the PSC should participate in.

- Renewable Resources and Regulation Services – EPSA agrees that given the strides in increasing renewable resources, additional regulation service will be required to meet the variable nature of these resources. Conventional generation resources have the ability to respond in a flexible manner, but issues surrounding the new service(s) that may be required are under consideration. FERC has various pending policy proceedings to address these variable energy resource issues that the PSC should participate in.
- Shale Gas – EPSA submits that Maryland is and will continue to benefit from any low natural gas prices from shale gas (or other sources), due to PJM’s single clearing price auction, which confers regional benefits to its market participants as such low gas prices have demonstrably benefited Maryland by altering dispatch components and lower wholesale power prices.
- RPM and New Capacity – EPSA recognizes that improvements or changes may be needed to RPM, and notes that revisions are currently pending in a proceeding at the FERC that can improve RPM. Consumers are best served by acquiring the least cost resources within applicable environmental requirements, regardless of location, type of resource, or vintage, which is the purpose of RPM. If RPM results are accurate market signals, then no additional resources are needed at this time. If capacity and energy prices are not accurate, the answer is to address any such flaws directly.

Lack Of Reliability Threat

As a threshold matter, the Commission must conclusively establish that a reliability threat exists in Maryland, and it is important to highlight that a December 1, 2011 report on the long-term electricity needs of the State prepared at the direction of the Governor, does not generally support such a determination. The *Long-Term Electricity Report for Maryland (“LTER”)*, prepared by the Maryland Department of Natural Resources’ Power Plant Research Program, provides a comprehensive assessment of approaches to meet Maryland’s long-term electricity needs, examining sustainable energy challenges and assessing

electric energy and peak demand requirements for the 20-year period covering 2010-2030. The LTER determined:

*For most scenarios, no new generation capacity is needed in Maryland to meet reliability requirements until 2019 or 2020. For scenarios using more conservative assumptions, no new generation is needed until 2015, and for scenarios using more optimistic assumptions, no new generation is needed until 2023.*⁹ [Emphasis added.]

Among the data points factored into the LTER for electric demand during the report period was forecasted energy and peak demand modified to account for energy conservation and efficiency programs (undertaken pursuant to the EmPOWER Maryland Energy Efficiency Act of 2008). Notably, this Commission has recently issued an order that implements the next three-year phase of approved energy efficiency programs for the Maryland electric utility companies who would be required to participate in the RFP with various improvements to ensure a 15% reduction in peak demand electricity consumption over 2007 levels by the end of 2015 to achieve the EmPOWER Act's goals.¹⁰ In the accompanying press release, the Commission stated that “[a]n estimated 235,000 Marylanders and businesses have participated in the first wave of EmPOWER programs, which have saved consumers \$91 million annually and 702,000 annual [megawatt-hours] MWh as of September 1, 2011.”¹¹ The

⁹ *Long-Term Electricity Report for Maryland* at ES-9, Maryland Department of Natural Resources' Power Plant Research Program, prepared by Exeter Associates, pursuant to Executive Order 01.01.2010.16 signed by Governor Martin O'Malley on July 23, 2010 (LTER issued December 1, 2011).

¹⁰ See Maryland Public Service Commission Order No. 84569, (issued Dec. 22, 2011).

¹¹ “Commission Renews and Expands Commitment to EmPOWER Maryland,” Maryland Public Service Commission press release, (issued Dec, 22, 2011), http://webapp.psc.state.md.us/intranet/psc/press_new.cfm.

implications for both energy demand and consumer savings at the regional and national levels from these state energy efficiency programs is considerable as reflected in several recent reports, and should be evaluated in this broader context. A January 2012 report published by the Institute for Electric Efficiency (“IEE”) found that ratepayer-funded energy efficiency and demand response programs in the U.S. saved enough electricity to power almost 10 million homes in 2010, representing approximately 112 million megawatt-hours of electricity (“MWh”). These savings signify an increase of 21 percent over 2009 levels, or nearly 20 million MWh. IEE projects that total electric savings from these energy-efficiency programs will continue double digit increases in the future.¹² Another recent report from Credit Suisse discusses that:

Power demand growth expectations could be too high, as explicit state energy efficiency standards, federal rules, and appliance innovation could slow the rate of demand growth by [approximately] 70 bp per year off a ‘normalized’ 1.5% annual assumption with greater variability by region...

We are growing more concerned that the medium to longer term US power demand outlook needs to be reconsidered as the impact of state efficiency programs and advances in device efficiency slows the rate of growth... We see potential demand growth reductions of 0.6-0.8% per year relative to a base normalized growth assumption of 1.5% per annum, or a [approximately] 50% drop in the rate of electricity demand growth...”

Notably, the Northeastern markets are the most exposed to energy efficiency as virtually every state has a target program in place with annual target reductions in PJM of 1.03%, NEPOOL 1.51%, and NYISO 2.00%.¹³

¹² *Summary of Ratepayer-Funded Electric Efficiency Impacts, Budgets and Expenditures (2010-2011)*, Institute for Electric Efficiency, (January 2012) <http://www.edisonfoundation.net/iee/>

¹³ “A Thought...Energy Efficiency,” Credit Suisse Equity Research, Dan Eggers, et. al., (Jan. 4, 2012), pgs. 1-3.

PJM Has Maintained Reliability

Additionally, while the above measures are likely to subdue demand to varying extents over the coming years and yield consumer savings, current data continues to support that PJM is maintaining reliability, both regionally and for Maryland. Significantly, as reflected in the 2013/2014 RPM Base Residual Auction results, the cleared reserve margin for the region exceeds 20 percent,¹⁴ well in excess of the roughly 15.3 percent target.¹⁵ At the same time, the regional peak load forecasts have reflected year-over-year decreases in demand for the last several years. Information published in advance of PJM's 2012 Load Forecast suggest load is still growing, but at a slower pace than previously considered. Comparing the current draft version of the PJM 2012 Load Forecast¹⁶ to the final PJM 2011 Load Forecast¹⁷ indicates that peak loads in 2012, 2015 and 2020 in the Southwest MAAC region will be approximately three percent – or well over 400 MW – smaller than expected just a year ago.¹⁸ This update to the load forecast, based on the latest economic inputs, should help allay the Commission's concern of excessive load growth relative to

¹⁴ See *2013/2014 RPM Base Residual Auction Results*, PJM Interconnection LLC, available at: <http://www.pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2013-2014-base-residual-auction-report.ashx> at p. 1.

¹⁵ "Long Term Resource Assessment 2010-2019," ReliabilityFirst Corporation, October 2010, Page 5.

¹⁶ Published for the January 11, 2012 PJM Planning Committee.

¹⁷ 2011 PJM Load Forecast Report (issued January 2011), available at: <http://www.pjm.com/documents/~media/documents/reports/2011-pjm-load-report.ashx>

¹⁸ PJM's 2011 Load Forecast Report indicated coincident peak loads for the Southwest MAAC region in 2012, 2015, and 2020 of 13,999 MW, 14,564 MW and 15,378 MW, respectively. For those same years, the 2012 draft Load Forecast Report indicated coincident peak loads for Southwest MAAC at 13,554 MW, 14,151 MW, and 14,782 MW.

expectations. Further, as part of its detailed RTEP planning process, the PJM Board determined earlier this year to hold the Mid-Atlantic Power Pathway (“MAPP”) project in abeyance, retaining the project in its 2011 RTEP with a 2019-2021 in-service date, as “only very low probability scenarios identify violations earlier than 2019 at this time.”¹⁹

EPSA also notes that the collective PJM wholesale market results, including the RPM auctions, have repeatedly been deemed competitive by the PJM Independent Market Monitor (“IMM”) and produced just and reasonable prices as determined by the Federal Energy Regulatory Commission (“FERC”). As the PJM IMM asserted in earlier comments in this proceeding, Maryland consumers will be better off in the long run participating in a well-designed RPM, and further urged the Commission’s continued involvement in helping to improve PJM market rules, including RPM.²⁰

In sum, EPSA submits that PJM provides a robust competitive market framework offering reliability now and in the future for Maryland consumers, and ongoing processes that allow for regular analysis and updated reporting on market conditions within the region.

The High Bar For Establishing Need Has Not Been Met

As noted at the outset, there should be a high burden on those seeking the RFP to establish that new generation facilities committed under twenty-year

¹⁹ See PJM letter to Pepco Holdings, Inc. dated August 18, 2011, available at <http://www.pjm.com/documents/-/media/documents/reports/mapp-letter-to-phi.ashx>

²⁰ *Comments of the Independent Market Monitor for PJM*, Maryland Public Service Commission, Case No. 9214, (filed Jan. 28, 2011) (“IMM Comments on Draft RFP”).

agreements are actually required at this time, and that burden has not been met. As reflected above, there is no imminent reliability threat to Maryland and PJM has maintained reliability, and provides numerous benefits to the State through its broader regional markets. Further, and as reflected in the PJM Independent Market Monitor's ("IMM") assessment of the Draft RFP, once a politically beneficial decision is made by a single state participating in a competitive market, it will have a lasting negative impact on all other market participants. As the PJM IMM concludes:

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 side management technologies.

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.²¹

EPSA opposes in the context of the proposed RFP any long-term contract(s) that would establish a significant multi-year financial commitment(s) that will ultimately be paid by consumers and stems from the premise that out-of-market subsidies are justified because doing so will increase supply to drive down capacity prices. Significantly, the IMM further opined that "procuring 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

²¹ IMM Comments on Draft RFP, See attached analysis "Impact of Maryland PSC's Proposed RFP on the PJM Capacity Market."

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.”²²

It is also important to note activity that is related to a public conference the Commission held on RPM due to concerns that it “has failed to attract significant new generation in Maryland,”²³ and prior to the Commission’s issuance of the Draft RFP for comment in this proceeding. As part of that separate record, the Commission received letters from several project finance lenders, who provide financing for new electric generation projects, among other energy construction projects. The letters suggest that, in general, successful financing of such capital intensive projects requires firm, long-term (i.e., longer than the three year price certainty provided by RPM, preferably 10 to 20 year commitments) agreements with a creditworthy buyer.²⁴

In a direct contradiction to this, it is important to highlight that one of the recipients of those letters, LS Power Development, has recently announced that it closed merchant (debt) financing with four lenders for its 738 MW power plant project in West Deptford, New Jersey, without the need for any ratepayer subsidies pursuant to the New Jersey Long-term Capacity Agreement Pilot

²² IMM Comments on Draft RFP at Section B., pg. 4.

²³ *“In the Matter of the Reliability Pricing Model and the 2013/2014 Delivery Year Base Residual Auction Results,”* Notice of Public Conference, Maryland Public Service Commission, Administrative Docket No. PC22, (issued August 16, 2010).

²⁴ See Comments of CPV Maryland, LLC, Maryland Public Service Commission, Administrative Docket No. PC22, Attachments A through E: Letters from project finance lenders Natixis, The Bank of Tokyo-Mitsubishi UFJ, Ltd, Societe Generale Corporate & Investment Banking, Union Bank, Credit Agricole Corporate & Investment Bank, respectively, (filed October 1, 2010).

Program (“LCAPP”).²⁵ First, this development demonstrates the importance of allowing markets to work and signal the need for new generation without unnecessary regulatory mandates.²⁶ Second, the letters actually support EPSA’s position. EPSA questions whether such letters are merely a reflection of a point in time when certain project finance lenders did not view a particular project as needed (or the risk of it not being needed is too high given other available resources and lower likely demand). EPSA posits why Maryland ratepayers should instead take on the very risks that a particular project ends up wholly or largely uneconomic or unneeded that these lenders are not willing to assume.²⁷ Furthermore, the Commission should discuss with individual market participants various other financing options that would put less risk on consumers. At the same time, EPSA reiterates its statement of principles which includes specific areas for FERC to explore to provide greater capacity price certainty and less regulatory volatility.²⁸

²⁵ See LS Power November 30, 2011 news release, “LS Power Completes Financing for West Deptford Energy Station,” available at <http://www.lspower.com/News/newsArticle113011.htm>. The four experienced project finance lenders providing the merchant financing are ING Capital, Citi, Credit Suisse, and Morgan Stanley.

²⁶ Michigan is an example of a state that returned to more regulation, and use of integrated resource planning (“IRPs”), long term planning and projects, only to have the utilities there back out and away from the projects they said were once needed.

²⁷ Legislation requiring long-term agreements (25-year contracts) with offshore wind farms failed to pass in the 2011 Maryland General Assembly legislative session. See January 1, 2012 Washington Times article: “The bill failed largely because of legislators’ concerns that the mandatory agreement would increase energy costs and consumers’ utility bills.” Available at: <http://www.washingtontimes.com/news/2012/jan/1/omalley-again-tout-offshore-wind-changes-course/>

²⁸ See EPSA Statement of Principles, Centralized Capacity Market Improvements at pgs. 10-12. http://www.epsa.org/forms/uploadFiles/1F33E0000017.filename.EPSA_RTOISO_MARKET_PRINCIPLES_FINAL_OCT_11.pdf

EPSA submits that it would be a gross mistake for the Commission to proceed with finalizing any agreements under the RFP without a reliability threat or need for new facilities established. It would be impossible to “surgically” add up to 1,500 MW within the state under twenty-year contractual commitments without a significant impact on the PJM market and spillover effect on surrounding states as reflected in the PJM IMM analysis, and an unacceptable shift in risk to consumers for these long-term costs. As highlighted in the example for new generation above, well-regulated competitive markets need further time to signal need, without a regulatory “fix.”

III. Conclusion

EPSA appreciates the opportunity to submit these written comments and looks forward to being a constructive participant in the debate on these important matters, including the opportunity to participate at the January 31, 2012 needs hearing scheduled in this proceeding. EPSA submits the underlying facts do not indicate a reliability need exists and urges the Commission not to proceed further with the RFP process as the basis for doing so has not been established. The RFP and the genesis of this proceeding arise from the faulty premise that regional supply issues should be addressed by state-specific remedies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Shelk". The signature is fluid and cursive, with a large initial "J" and "S".

John E. Shelk, President and CEO
Nancy Bagot, Vice President, Regulatory Affairs
Sharon Theodore, Director, Regulatory Affairs
Electric Power Supply Association
1401 New York Avenue, NW, 12th Floor
Washington, DC 20005
(202) 628-8200

Filed: January 13, 2012

Certificate of Service

I hereby certify that on this 13th day of January, 2012, a copy of the foregoing Comments of the Electric Power Supply Association was sent by first-class mail, postage prepaid, to all parties in Case No. 9214.

/s/

Sharon Theodore