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February 13, 2015

VIA FERC ELECTRONIC FILING SYSTEM

Federal Energy Regulatory Commission
Attn: eFiling Department
888 First Street, NE
Washington, DC 20426

**Re: Comments to PJM Interconnection, L.L.C.'s January 14, 2015 Filing
FERC Docket No. ER15-852-000**

Dear Sir or Madame:

On behalf of the Microgrid Resources Coalition, enclosed please find comments in response to PJM Interconnection, L.L.C.'s January 14, 2015 filing in FERC Docket No. ER15-852-000, submitted pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission.

Thank you for your attention to this matter.

Very truly yours,



C. Baird Brown

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Encl.

**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

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Docket No. ER15-852-000

**Comments of the Microgrid Resources Coalition (“MRC”)
in Response to Revisions to the Reliability Pricing Market (“RPM”)
and Related Rules in the PJM Open Access Transmission Tariff (“Tariff”)
and Reliability Assurance Agreement Among Load Serving Entities (“RAA”)**

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For the Microgrid Resources Coalition

February 13, 2015

INTRODUCTION

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the Microgrid Resources Coalition (“MRC”) respectfully submits the following comments in response to PJM Interconnection, L.L.C.’s (“PJM”) January 14, 2015 filing in FERC Docket No. ER15-852-000 (“PJM Filing”).²

PJM proposes to modify the rules for its upcoming capacity market auction to alter its longstanding policy of allowing demand response resources to participate on the supply side of PJM’s capacity auctions and be compensated in the same manner as cleared generation resources. PJM’s proposal, which responds to the D.C. Circuit Court’s decision in *Electric Power Supply Ass’n v. FERC*³ (“*EPSA*”), is only intended to go into effect in the event that the Supreme Court declines to review that decision. The proposal would replace supply-side demand response resource participation in future capacity auctions with demand-side “wholesale load reduction” commitments submitted by load serving entities. The capacity auction’s demand curve would then be shifted to reflect the amount of capacity to be procured taking into account the load reduction commitments.

The MRC believes that *EPSA* was wrongly decided and supports the Solicitor General’s recent petition for certiorari to the Supreme Court. In addition, the MRC lauds PJM’s recognition of the importance of demand response and energy efficiency resources and its attempts to ensure some level of participation by those resources in the face of the regulatory uncertainty created by *EPSA*. However, the MRC believes that PJM’s approach is overly cautious and will be harmful to end users of power, not only because it will reduce competition in the capacity market and result in higher wholesale prices, but also because it will limit the ability of state regulators to empower state authorized intermediaries to acquire demand response capability from end users of power, reducing competition in that market as well. The MRC does not believe that these results are required by *EPSA*, even if it is good law, and will not result in just and reasonable rates for capacity.

BACKGROUND

A. The Microgrid Resources Coalition

The MRC is a consortium of leading microgrid⁴ owners, operators, developers, suppliers, and investors formed to advance microgrids as energy grid resources.⁵ The MRC promotes the

¹ 18 C.F.R. § 385.211 (2014).

² *PJM Interconnection, L.L.C.*, Revisions to RPM and Related Rules in the Tariff and RAA, Docket No. ER15-852-000 (filed Jan. 14, 2015).

³ 753 F.3d 216 (D.C. Cir. 2014).

⁴ The MRC defines a microgrid as a local electric system or combined electric and thermal system that (i) includes retail load and the ability to provide energy and energy management services needed to meet a significant proportion of the included load on a non-emergency basis that (ii) is capable of operating either in parallel or in isolation from the electrical grid, and that (iii), when operating in parallel, can provide some combination of energy, capacity,

widespread implementation of microgrids through advocacy for laws, regulations and tariffs that support their access to markets, compensate them for their services, and provide a level playing field for their deployment and operations. The MRC is neutral as to the technology deployed in microgrids and the entities that may own microgrid assets.

Microgrids provide a wide range of other benefits to their hosts, the larger grid, and to the surrounding community. By “islanding” from the grid in emergencies, a microgrid can both continue serving its included load when the grid is down and serve its surrounding community by providing a platform to support critical services from hosting first responders and governmental functions to providing key services and emergency shelter. Microgrids present an opportunity to install reliable capacity in congested urban areas of the grid where large scale power plant development may not be feasible, and strategic placement of microgrids can reduce contingencies that threaten grid stability if properly integrated into the regional planning process. Using electric and thermal storage capabilities, a microgrid can provide local management of variable renewable generation, particularly on-site solar. Of particular relevance to this filing, a microgrid can provide load following and other ancillary services to the grid in response to real time signals through fine-tuning its own generation and load. Moreover, microgrids are capable of providing energy and multiple ancillary services at the same time. Local microgrid service providers increase competition in the provision of services required for the reliable operation of the grid, both distribution and transmission.

B. Demand Response, FERC Order 745, and the *EPSA* Decision

Demand response, defined generally as rapid adjustment to grid requirements provided by retail customers, is the grid’s safety valve, typically called on by grid operators to relieve stress on the grid at times of highest demand.⁶ Demand response capacity has provided between a third and a half of the reserve margin in PJM in the last several capacity auctions.⁷

Microgrids and other behind-the-meter distributed generation resources have been providing demand response services to wholesale market operators pursuant to FERC Order 719⁸

ancillary or related services to the grid. Microgrids typically have advanced control systems that enable them to provide more, and more responsive, grid services than other demand response resources.

⁵ These comments represent the position of the MRC as an organization, but not necessarily the views of any particular member with respect to any issue.

⁶ See Office of Enforcement, Federal Energy Regulatory Commission, *Energy Primer: A Handbook of Energy Market Basics* (July 2012) at 46-48 (available at <http://www.ferc.gov/market-oversight/guide/energy-primer.pdf>).

⁷ PJM, *RPM Offers and Commitments by Fuel Type* (May 29, 2014) (available at <http://www.pjm.com/markets-and-operations/rpm/rpm-auction-users.aspx> and <http://www.pjm.com/markets-and-operations/rpm/rpm-auction-user-info.aspx>); *Forecasted Reserve Margin Graph* (October 14, 2014) (available at <http://www.pjm.com/~media/planning/res-adeq/res-reports/20141014-forecasted-reserve-margin-graph.ashx> and <http://www.pjm.com/planning/resource-adequacy-planning/resource-reports-info.aspx>).

⁸ See *Wholesale Competition in Regions with Organized Electric Markets*, 73 Fed. Reg. ¶ 64,100 (Oct. 28, 2008). The *EPSA* decision cites this history without disapproval. *EPSA* at 219-20.

since 2008. FERC Order 745⁹ went beyond Order 719 to require uniform compensation equal to the locational marginal price (“LMP”) for suppliers of certain¹⁰ demand response resources participating in organized wholesale energy markets.¹¹ The *EPSA* majority reasoned that Order 745 amounted to “direct regulation of the retail [energy] market”—an infringement upon regulatory authority that the Federal Power Act¹² (“FPA”) reserves exclusively to the States.¹³ In particular, the court held that FERC infringed on state regulatory authority by setting the price which retail consumers must be paid for providing demand response services in the energy market.

However, *EPSA*’s limited holding should not be read too far. The majority cited with approval the *Connecticut Department of Public Utility Control v. FERC* (“*Conn. DPUC*”)¹⁴ case for the proposition that FERC could offset prices and the level of capacity required in the capacity markets even though those actions gave incentive to more generation.¹⁵ In *Conn. DPUC*, the District Court for the District of Columbia Circuit also specifically indicated that load serving entities could meet their capacity requirement by procuring demand response contracts.¹⁶ Indeed, two other Circuit Courts of Appeal have ruled that FERC has exclusive jurisdiction over capacity markets notwithstanding state interests.¹⁷ Other than to note the history and cite *Conn. DPUC* with approval, the *EPSA* court did not address participation on the supply side of wholesale markets by demand response resources.¹⁸

⁹ *Demand Response Compensation in Organized Wholesale Energy Markets*, 134 Fed. Reg. ¶ 61,187 (Mar. 15, 2011) (hereinafter Order No. 745).

¹⁰ “FERC Order 745 compensation requirements applied only when an ISO or RTO could use the demand response resource in lieu of a generation resource to balance supply and demand, and only when paying a demand response resource was cost-effective under the rule’s net benefits test.” *EPSA* at 235 (dissent).

¹¹ *EPSA* at 225. In order for a demand response resource to be compensated at the LMP it had to have been deemed “cost-effective” using the Commission’s “net-benefits test.” *EPSA* at 219.

¹² 16 U.S.C. § 824(b)(1).

¹³ *EPSA* at 224.

¹⁴ *Conn. Dep’t of Pub. Util. Control v. FERC*, 569 F.3d 477, 479 (D.C. Cir. 2009).

¹⁵ *EPSA* at 222.

¹⁶ *Conn. DPUC* at 482.

¹⁷ See *PPL Energyplus, LLC v. Solomon*, 766 F.3d 241 (3d Cir. 2014) (relating to sales of capacity); *PPL Energyplus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (relating to sales of capacity),

¹⁸ The court was critical of FERC’s argument that it had jurisdiction because the resources participated in the wholesale market, saying that FERC had “lured” them into the market and could not bootstrap its own jurisdiction. *EPSA* at 221. However, the court did *not* say that RTOs could not provide incentives, only that it wasn’t an independent basis for price jurisdiction.

C. PJM's Proposed Revisions

As a response to *EPSA*, PJM's recent filing supplies proposed revisions to PJM's (1) Open Access Transmission Tariff ("PJM Tariff") and (2) Reliability Assurance Agreement Among Load Serving Entities ("RAA").¹⁹ The PJM Filing modifies PJM's rules that relate to participation of demand response resources in PJM's capacity market, which is known as the Reliability Pricing Model ("RPM"). The RPM system is PJM's method of pricing capacity to "ensure that future availability of the generating capacity and other resources that will be needed to keep its regional power grid operating reliably."²⁰ The RPM requires a "utility or other electricity supplier to have the resources to meet its customers' demand plus a reserve...with generating capacity they own, with capacity purchased from others under contract or with capacity obtained through PJM capacity-market auctions."²¹ Since its original implementation in 2007, PJM's "RPM system includes incentives that are designed to stimulate investment both in maintaining existing generation and in encouraging the development of new sources of capacity—not just generating plants, but demand response and energy-efficiency programs as well."²²

The proposed rules would modify the demand curve for the amount of capacity procured in RPM auctions "to conform to qualifying commitments by wholesale entities to reduce their wholesale loads in the capacity market." PJM refers to these commitments as "wholesale load reductions," and would eliminate supply-side participation by demand response and energy efficiency resources in favor of this new "resource."²³ PJM requests an effective date of April 1, 2015 for the proposed changes, subject to the outcome of the Supreme Court's decision on review of *EPSA*.

PJM characterizes the proposed revisions as a "stop-gap" rule to go into effect in the event that the Supreme Court does not grant certiorari to review *EPSA*.²⁴ PJM characterizes the proposed rules as "intended to allow PJM and the marketplace to have a fully adjudicated method to allow demand response to participate in the May 2015 Base Residual Auction. PJM seeks to preserve "operational and market efficiencies of demand response in the PJM Region," but cites unspecified "risks and uncertainties that would arise if PJM cleared demand response in its capacity market auctions under the existing rules after the *EPSA* mandate had issued."²⁵ PJM has substantially overstated the reach of *EPSA*, and would unnecessarily reduce competition in

¹⁹ FERC Docket No. ER15-852-000.

²⁰ PJM, *PJM Markets Fact Sheet* (2014) (available at <http://www.pjm.com/~media/about-pjm/newsroom/fact-sheets/pjms-markets-fact-sheet.ashx>).

²¹ *Id.*

²² *Id.*

²³ *Id.* at 2-3.

²⁴ *See* PJM Filing at 2.

²⁵ *Id.*

the capacity market. PJM readily acknowledges that its rules are inferior to the current RPM rules, which have allowed for direct participation by demand response resources with compensation on par with generation resources for the last seven years.²⁶ FERC should not accept this wholesale retreat from demand response participation in RTO markets.

DISCUSSION

A. PJM's Proposed Revisions are an Overreaction to *EPSA*

MRC has no objection to FERC's supply-side provisions for demand response resource participation. However, as discussed above, *EPSA*'s ruling does *not* require elimination of demand response from the *supply* side of wholesale energy markets. Further, as PJM correctly acknowledges, *EPSA*'s ruling is currently limited to energy markets and has not been determined to extend to capacity or other wholesale markets.²⁷ Three courts of appeal have held that FERC has clear jurisdiction over capacity markets,²⁸ and the *EPSA* majority did not address these markets in its opinion.²⁹

There is a better response to the *EPSA* decision that does not place unnecessary barriers to demand response participation. FERC has made undisputed findings that demand response is a direct substitute for generation in both the wholesale energy and capacity markets.³⁰ As the *EPSA* court noted, "Congress in 2005 declared 'the policy of the United States that time-based pricing and other forms of demand response shall be encouraged and unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated.'"³¹ The *EPSA* court also points to an additional provision of the statute requiring FERC to "provide technical assistance to states and regional organization . . . in . . . developing plans and programs to use demand response to respond to peak demand or emergency needs."³² Given the economic realities and strong Congressional policy in favor of demand response, the best solution is not to eliminate supply-side demand response resource participation. A better response would be to retain demand response as a supply-side product, but only permit RTOs to

²⁶ *Id.* at 3.

²⁷ PJM Filing at n.7.

²⁸ See n.14 and 17, *supra*; see also *Conn. DPUC* at 482 (further discussing FERC's jurisdiction over capacity markets).

²⁹ On the other hand, FirstEnergy and the New England Power Generation Association have filed Section 206 complaints with PJM asking it to prohibit participation by demand response resources in RTO capacity markets based on the reasoning in *EPSA*. FERC Docket No. EL14-55-000 (filed May 23, 2014). As discussed previously, that argument is misguided under *EPSA* and *Conn. DPUC*.

³⁰ Order No. 745 at P 40.

³¹ *EPSA* at 219 (quoting *Ind. Util. Reg. Comm'n v. FERC*, 668 F.3d 735, 736 (D.C. Cir. 2012) (citing 16 U.S.C. § 2642)).

³² *EPSA* at 219 (quoting 16 U.S.C. § 1252(e)).

purchase it from entities that have been authorized by state public utility commissions to acquire it from demand response resources at prices regulated by the states.

B. State Regulated Supply-Side Market

Even if the *EPSA* decision remains the law, we believe that RTOs can establish wholesale markets for demand response or other “retail products” so long as state authorized entities procure those products from retail customers at state regulated prices and resell them to the RTO as aggregated wholesale products.

Currently, electricity distribution companies are generally permitted to engage in energy sales to retail customers. In states where retail deregulation has occurred, competitive load serving entities may also directly transact with retail customers. Under *EPSA*, both types of entities could purchase demand response products from retail customers subject to state utility commission regulation for resale on the supply side of the capacity market. Moreover, demand response aggregators who do not also sell power have been licensed under the laws of some states to purchase demand response products or could be so authorized in other states if those states choose. All of these entities are either already authorized, or could be authorized, by individual states to purchase demand response capability from retail load at prices subject to state regulation. While these prices could be specified as a part of a retail tariff, many deregulated states have permitted purchase of these products at competitive market prices. We hope they would do so.

If PJM continues to purchase a defined demand response product as a supply side wholesale product through its capacity auction, distribution companies, load serving entities and other state-authorized aggregators who are PJM members (or sell through a member agent) could purchase that product from retail customers and sell it to RTOs. Just as load serving entities in states where retail sales are deregulated currently offer to sell power to electing customers at real time prices that mirror the RTO wholesale price, there is nothing preventing a state licensed entity with state authorized competitive rate authority from purchasing an RTO-compliant product from retail customers at a price reflecting the RTO price net of its costs as an aggregator. In these circumstances, neither the RTO nor FERC is setting the price paid to the retail customer. Rather, the state licensed entity is setting its own price on a competitive basis as authorized by state law. We have referred to this result elsewhere as a “pass through market”³³ and hope that states will work toward this result.

A demand-side market will not achieve the same results as a supply-side market. If we assume for the sake of argument that the result of a demand-side bid and a supply-side bid in the RPM auction will have the same effect on the clearing price of capacity, those bidding postures nevertheless have a very different effect on the retail market for demand response. Although PJM’s filing doesn’t say so, it appears that the only entity that can purchase demand response

³³ See Comments by the Microgrid Resources Coalition in Developing the REV Market in New York DPS Staff Proposal on Track One Issues, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, New York Public Service Commission, Docket No. 14-M-0101 (Sept. 22, 2014) (available at http://www.microgridresources.com/data/files/Site_18/Track%20One%20Comments%20-%20Final%20Filing%20Package.pdf).

from a retail customer is that customer's retail electricity provider, who in turn would fold that response into its demand bid. In other words, a monopoly market is being created in which the transmission of a price signals from the PJM market will depend on state regulation of the monopoly transaction. PJM does mention the possibility of load serving entities using agents, but it is not clear if those agents can approach customers other than the load serving entity's own.³⁴ Numerous states have authorized a wide variety of demand response programs through authorized state entities.³⁵ In other words, they recognize that the sale of demand response is a separate transaction from the reduction of load. On the one hand, we have no objection to load serving entities acquiring this product from third parties and bidding it on the demand side. However, if a state permits third-party acquisition of demand response services, there can be no objection under *EPSA* to having those services, once acquired in a state regulated transaction, from being provided to an RTO on the supply side. We believe it is critical to the functioning of the market that FERC not allow PJM to preclude the competition that can only be fostered by supply side bids.

³⁴ See PJM Filing at 46.

³⁵ See, e.g., FERC, *Assessment of Demand Response & Advanced Metering Staff Report*, at 16-18 (Nov. 2011) (available at <http://www.ferc.gov/legal/staff-reports/11-07-11-demand-response.pdf>); Business Energy, *Demand Response is Now Big Business* (Apr. 29, 2014) (available at http://www.businessenergy.net/DE/Articles/Demand_Response_Is_Now_Big_Business_25503.aspx).

CONCLUSION

The D.C. Circuit Court's *EPSA* decision has cast a shadow over the participation of demand response resources in the markets of RTOs throughout the nation's electric power grid. *EPSA* has similarly clouded energy reform proposals like the New York State Public Service Commission's "Reforming the Energy Vision" proceeding for restructuring distribution utility functions to serve as a platform for additional distributed energy resources.³⁶ And now, the *EPSA* decision has injected substantial confusion into the operation of the capacity market in PJM. In that context, overly cautious tariff revisions that create unnecessary barriers to demand response participation will not reverse *EPSA*'s chilling effects on the ability of behind-the-meter resources to benefit the grid. PJM's proposed revisions would create needless reduction of the competitiveness of its capacity markets, leading to unjust and unreasonable prices. The MRC believes that the pass-through market structure outlined above is a better way forward.

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³⁶ Order Instituting Proceeding by the New York Public Service Commission (Apr. 25, 2014) and Developing the REV Market in New York: DPS Staff Straw Proposal on Track One Issues by New York Public Service Commission (Aug. 22, 2014), Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, New York Public Service Commission, Docket No. 14-M-0101 (available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={9CF883CB-E8F1-4887-B218-99DC329DB311}> and <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CA26764A-09C8-46BF-9CF6-F5215F63EF62}>, respectively).