

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

PJM Interconnection, L.L.C. : Docket No. ER18-2068

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**COMMENTS OF THE  
JOINT STATE COMMISSIONS  
IN SUPPORT OF PJM INTERCONNECTION'S  
MOTION FOR STAY AND REQUEST FOR REHEARING/  
MOTION FOR CLARIFICATION**

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The Pennsylvania Public Utility Commission , the Delaware Public Service Commission and the Public Service Commission of the District of Columbia (“Joint State Commissions”) file Comments with the Federal Energy Regulatory Commission (“Commission”) in support of PJM Interconnection L.L.C.’s (“PJM”) Motion for Stay (“Motion”) dated February 21, 2019 of the Commission’s January 30, 2019 Order denying PJM’s Request for Waiver (“Waiver Order”) and a PJM Request for Rehearing or, in the alternative, Motion for Clarification of the Waiver Order (“Request/Motion”) dated February 26, 2019 at this docket alleging errors in the Commission’s findings that PJM’s Waiver Request did not meet the Commission’s standards for granting a waiver and seeking guidance regarding its compliance with the terms of the Waiver Order.

**I. INTRODUCTION**

The Joint State Commissions are the designated agencies of the Commonwealth of Pennsylvania, the State of Delaware and the District of Columbia with the responsibility for representing the interests of their respective ratepayers in matters affecting the

wholesale electric markets within the PJM region. In that capacity, the Joint State Commissions are regular participants in many matters resulting from tariff filings initiated by PJM before the Commission. To date, the Joint State Commissions have both supported and opposed various PJM initiatives and tariff proposals filed with this Commission depending upon the potential impact on their ratepayers. The Joint State Commissions, as retail choice jurisdictions, advocate for the development of vibrant capacity and energy markets, encourage the proliferation of a diverse fuel supply within the PJM region and support efforts to minimize market power and anti-competitive activities of market participants.

The Joint State Commissions have followed with interest and concern the circumstances surrounding the June 21, 2018 PJM declaration of default by GreenHat Energy L.L.C. (“GreenHat”) and PJM’s efforts to close-out and liquidate GreenHat’s Financial Transmission Rights (“FTR”) portfolio for the 2018/2019, 2019/2020 and 2020/2021 Planning Years in accordance with the provisions of the effective Tariff, Attachment K- Appendix, section 7.3.9. PJM interrupted the July 2018 auction when it became obvious that the Tariff requirement to liquidate the entirety of GreenHat’s obligations for the current planning period in the next available planning period FTR auction was likely to result in illiquidity and large risk premiums in the FTR auction.

Joint State Commissions have also monitored the later sequence of events involving PJM’s Request for Waiver and this Commission’s subsequent January 30, 2019

Order denying that request.<sup>1</sup> The Joint State Commissions are concerned that the Commission’s denial of the PJM waiver request failed to adequately recognize the disruptive, market-distorting effects associated with the forced liquidation of GreenHat’s entire large FTR portfolio into the market for periods with less liquidity and higher risk premiums.<sup>2</sup>

PJM’s Waiver Request proposed to gradually reduce its liquidation of the GreenHat portfolio to that discrete portion of the portfolio about to become effective for the next calendar “prompt” month from the FTR auction conducted in July 2018 through later FTR auctions conducted through the balance of 2018 and into 2019.<sup>3</sup> PJM’s motive in seeking the waiver was due to the higher liquidity associated with prompt month auctions conducted during “prompt month” periods versus “non-prompt month” periods, thus providing for greater opportunity to liquidate defaulted positions at a more efficient price. Additionally, PJM’s Waiver Request would provide it with time to communicate with stakeholders about the implications of the Tariff-imposed liquidation process and identify alternative liquidation solutions.<sup>4</sup>

PJM subsequently filed tariff changes which suspended the FTR liquidation process from August through November 2018, a supplement to the Waiver Request and

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<sup>1</sup> Request of PJM Interconnection, L.L.C. for a Waiver Effective July 27, 2018, Docket No. ER18-2068-000 (July 26, 2018) (“Waiver Request”); *PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,072 (2019) (“Waiver Order”) which denied PJM’s request for waiver.

<sup>2</sup> PJM Waiver Request at 5.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.* at 5.

revisions to the FTR liquidation rules all of which were accepted by the Commission in August and November 2018.

In filing these Comments, the Joint State Commissions do not condone or overlook the obvious flaws and shortcomings inherent in PJM's FTR credit rules and other due diligence safeguards which could have or should have avoided the entire unfortunate sequence of events. PJM has indicated that it will be conducting its own internal investigation to identify where changes need to be implemented to the credit review process in order to mitigate harm to current FTR market participants and minimize the likelihood of future FTR default events.<sup>5</sup>

## **II. THE JOINT STATE COMMISSIONS SUPPORT PJM'S REQUEST FOR REHEARING/MOTION FOR CLARIFICATION**

The Joint State Commissions file these Comments in support of granting PJM's Request for Rehearing/Motion for Clarification out of an abundance of concern that this Commission's failure to recognize the adverse consequences resulting from the remedial directives contained in the Waiver Order could have on the future viability of FTR markets as well as the implications to retail suppliers operating in PJM retail choice states.

Since PJM's February 26<sup>th</sup> filing, several other market participants have filed Requests for Rehearing which all vigorously challenge the Waiver Order as arbitrary and capricious, unsupported by substantial evidence and inconsistent with the Commission's

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<sup>5</sup> *PJM to Examine FTR Auction After FERC Order*, PJM Inside Lines (February 7, 2019)

prior precedent for evaluating waiver requests.<sup>6</sup> The Joint State Commissions will not opine on the merits of the various requests for rehearing other than to support and endorse the many and well-reasoned presentations filed by PJM and other market participants. As the various filings make clear, the Commission needs to revisit its prior Waiver Order and potentially harmful remedial directives contained therein and craft a remedy that is most appropriate and least disruptive to the FTR markets and its participants. The Joint State Commissions' overarching concern in supporting rehearing in this proceeding is related to the adverse retail market implications of the Waiver Order. Retail markets and retail customers are directly impacted by disruptions that occur in PJM markets including FTR markets. As cited by PJM in its filings, significant harm to market participants resulting from the GreenHat default may occur with resulting allocation assessments estimated to be in the range of \$250-300 million and a revised total default reference of as high as \$450 million, all of which could be absorbed by market participants.<sup>7</sup> Any financial impact on retail market participants then ultimately

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<sup>6</sup> To date, Requests for Rehearing have been filed by PJM, Indicated PJM Parties, LS Power/Calpine, Shell Energy Trading, Energy Trading Institute and the Retail Energy Supply Association.

<sup>7</sup> *PJM Reeling from Major FTR Default*, RTO Insider (August 13, 2018); <https://www.rtoinsider.com/pjm-greenhat-energy-ftr-financial-transmission-rights-98057/>; *Ex-J.P. Morgan Traders Lost Million on Bad Bets in Power Markets*, Bloomberg Businessweek (September 25, 2018) <https://www.bloomberg.com/news/articles/2018-09-25/a-power-grid-and-its-customers-could-get-stuck-paying-for-a-failed-wall-street-bet>; *PJM Won't Act on Order Before Stay Ruling*, RTO Insider (February 10, 2019): <https://www.rtoinsider.com/pjm-fters-stay-ruling-110714/>; *PJM to Examine FTR Auction after FERC Order*, PJM Inside Lines (February 7, 2019); January 2019 e-mail from Suzanne Daugherty to the PJM Members Committee and Markets and Reliability Committee – Potential Member Impact and PJM Response.

impacts retail ratepayers, whose interest the Joint State Commissions represent in wholesale market matters.

The Commission's denial of PJM's waiver request and issuance of remedial directives, including the potential rerunning of specific FTR auctions, "could undermine confidence in FTR markets possibly leading to wholesale revision or elimination of the long-term FTR construct."<sup>8</sup> Further, a large immediate default allocation assessment "may cause market participants to reach or exceed credit limits, triggering collateral calls."<sup>9</sup> These collateral calls may cause "a domino effect of default for many other market participants such as utility companies and their ratepayers."<sup>10</sup>

Retail markets may also be at risk in the event the Commission fails to grant rehearing, or at a minimum, clarify those portions of the Waiver Order that PJM has designated in its Motion. The collateral impacts from the default market assessments may adversely impact retail suppliers and default service customers alike that are active in the Pennsylvania, Delaware, and District of Columbia retail choice markets. Retail suppliers may be subjected to breach of their collateral requirements under PJM's credit policies. As highlighted in the Retail Energy Supply Association ("RESA") Rehearing Request, retail suppliers and their ratepayers will be among the market participants most harmed by the Waiver Order requiring the re-running of the FTR auctions. These parties may not be able to flow additional costs through to customers, cannot defer the costs and

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<sup>8</sup> See Rehearing Request of Energy Trading Institute at 2.

<sup>9</sup> *Id.*

<sup>10</sup> See Rehearing Request of Shell Energy North America, L.P. at 7.

may be subject to credit calls for actions beyond their control.<sup>11</sup> The Commission must consider the “downstream” impacts to state retail markets and, ultimately, retail ratepayers, in its deliberations on whether to grant rehearing/clarification.

### **III. THE JOINT STATE COMMISSIONS SUPPORT PJM’S MOTION FOR STAY**

The Commission should grant PJM’s February 21, 2019 Request for Stay of the remedial directive issued in its Waiver Order. The standards for issuance of a stay are: (1) whether the moving party will suffer irreparable injury without the stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.<sup>12</sup> The complex interplay of circumstances in this matter coupled with potentially unforeseen consequences to FTR markets mandate a more detailed Commission examination of the facts of this case than occurred in the Waiver Order. Under the present circumstances, a stay of that Order is appropriate.

Most compelling is PJM’s contention that compliance with the Waiver Order runs counter to the Commission’s longstanding policy against rerunning auctions and markets.<sup>13</sup> PJM is thus placed in the position of being required to potentially rerun auctions that may prove costly and disruptive to market participants should the Commission subsequently decide to reject PJM’s (and other parties’) requests for rehearing/clarification.

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<sup>11</sup> RESA Rehearing Request at 4,10-11.

<sup>12</sup> *Boyce Hydro Power, L.L.C.*, 165 FERC ¶ 61,027 (2018).

<sup>13</sup> *Midwest Indep. Transmission System Operator, Inc.*, 162 FERC ¶61,173 (2018).

PJM’s Motion for Stay details the potential for irreparable harm and adverse consequences to market participants should it be compelled to rerun the August 2018 FTR auction and subsequent related auctions. A convincing case is made regarding harm to market participants in those auctions who made “multiple business, economic and financial choices following the close of the market” that may now be disrupted by later “remedial” actions.<sup>14</sup> PJM has detailed the practical difficulties, in complying with the Waiver Order, to rerun the August 2018 auction given the complex power flow models, the determination of FTR prices, paths and quantities and the “simultaneous feasibility” requirements associated with successfully running these auctions.<sup>15</sup> PJM has identified many other issues associated with the complexities of rerunning the FTR auction process which may only be alleviated by granting a stay pending a Commission decision on rehearing/clarification:

- PJM never determined actual results for August 2018 auction because review of submitted July 2018 offers and bids raised enough concern to prompt PJM to seek a waiver.<sup>16</sup>
- Rerunning the August 2018 auction may result in unintended consequences for market participant collateral requirements and other credit issues.<sup>17</sup>
- If PJM re-runs the July auction, tariff violations could occur for the August and later auctions. The simultaneous feasibility requirement will be violated because the existing offers applicable to the August auction will not be feasible once the July auction is rerun.<sup>18</sup>

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<sup>14</sup> PJM Motion for Stay at 9.

<sup>15</sup> *Id.* at 11.

<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.* at 12-13, 20.

<sup>18</sup> *Id.* at 15-16.



- Determining “original” auction results would require a determination of whether liquidation of GreenHat FTRs are setting the clearing price under applicable tariff rules—an action deemed unnecessary by PJM in August 2018 given the observed dysfunctional nature of the FTR market at that time.<sup>19</sup>
- Rerunning the August 2018 auction will cause changes in participants’ positions in subsequent auctions for the September 2018-January 2019 (and later) periods, putting PJM in the position of making assumptions about bidder behavior during that period.<sup>20</sup>
- Rerunning post-August 2018 (September 2018 onward) auctions may introduce uncertainty into market participant expectations that GreenHat liquidation concerns had been resolved. Additionally, participants that took positions in later auctions based on the perceived value of positions taken earlier may see the expected value of positions diverge from expectations.<sup>21</sup>
- Rerunning the October 2018 and later auctions may disrupt market expectations given these auctions occurred under different rules implemented to address GreenHat FTR irregularities. Rule changes and subsequently accepted FTR Tariff revisions create additional uncertainties unless and until rehearing/clarification is granted.<sup>22</sup>
- Compliance with the Waiver Order may result in other credit defaults, FTR forfeitures and increased default allocation assessments.<sup>23</sup>

The foregoing list of adverse impacts coupled with the substantial dollar value of the default (estimated to be in the hundreds of millions of dollars) is sufficient to establish the irreparable harm standard necessary to grant PJM’s request for stay of the

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<sup>19</sup> *Id.* at 12.

<sup>20</sup> *Id.* at 14-15.

<sup>21</sup> *Id.* at 15, 18.

<sup>22</sup> *Id.* at 17.

<sup>23</sup> *Id.* at 20-21.

Commission's remedial directive. Moreover, the Commission's own actions may increase harm to the market if the Waiver Order is not stayed and auctions are re-run.

Having met the irreparable harm requirement, the remaining two prongs are also met. No other parties will be harmed by the issuance of a stay as, to date, no parties have filed in opposition to PJM's stay request. Finally, the public interest requirement is met because of the potential for overall disruption to the FTR markets and adverse consequences to market participants if a stay is not granted. Among the public interest concerns implicated by the failure to grant a stay include undermining PJM member confidence in the efficiency of FTR markets and a diminished confidence in PJM's role in operating a market for management of congestion through the FTR process. Additionally, as discussed herein, the Waiver Order's directives may lead to retail market participants, and ultimately retail ratepayers, incurring financial burdens for which they were unable to hedge and are now potentially unable to defer. The public interest implications are especially pronounced if the Commission does not grant the stay, ultimately grants rehearing and PJM has been forced to re-run its prior auctions with all of the potentially adverse consequences associated with that process.

#### **IV. CONCLUSION**

For all the foregoing reasons, the Joint State Commissions respectfully request the Commission grant PJM's Request for Rehearing on the remedial directive contained in the Waiver Order and approve the requested waiver and additionally grant PJM's Request to Stay the Waiver Order pending consideration of the other issues in this proceeding.

Respectfully submitted,

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FOR DISTRICT OF COLUMBIA PUBLIC  
SERVICE COMMISSION

Dated: March 11, 2019

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am on this date serving a copy of the foregoing document upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Harrisburg, PA this 11th day of March 2019.

Respectfully submitted,

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