

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Calpine Corporation, Dynegy Inc., Eastern Generation, Docket No. EL16-49-000
LLC, Homer City Generation, L.P., NRG Power
Marketing LLC, GenOn Energy Management, LLC,
Carroll County Energy LLC, C.P. Crane LLC, Essential
Power, LLC, Essential Power OPP, LLC, Essential
Power Rock Springs, LLC, Lakewood Cogeneration,
L.P., GDF SUEZ Energy Marketing NA, Inc., Oregon
Clean Energy, LLC and Panda Power Generation
Infrastructure Fund, LLC

v.

PJM Interconnection, L.L.C.

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EL18-178-000
(Consolidated)

(Issued July 25, 2019)

LaFLEUR, Commissioner, *concurring*:

1. Today's order provides PJM Interconnection, L.L.C. (PJM) guidance regarding whether to run its August 2019 Base Residual Auction (BRA). While we deny PJM's Motion, we affirmatively provide PJM with its requested guidance. I am voting for today's order to give PJM clarity on its proposal to run the August 2019 BRA and to avoid their running an auction that the Commission may ultimately find unjust and unreasonable.

2. I write separately, however, to underscore my dissent on the June 2018 Order that declared PJM's Tariff unjust, unreasonable, and unduly discriminatory and proposed a replacement rate structure of the Commission's design.¹

3. As noted in my dissent, I objected not just to the substance of the order but also to its process and timeline. In the June 2018 Order, the Commission proposed a hastily designed and thinly sketched proposal conjured without any engagement with PJM stakeholders. The Commission – in my view, incorrectly – believed that a 90 day paper hearing would be sufficient to build a record, receive feedback from the states and other

¹ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (June 2018 Order) (LaFleur, Comm'r, dissenting), *reh'g pending*.

stakeholders, and set the just and reasonable replacement design for the market. Now, more than a year after the Commission upended the PJM capacity market with no clear path to repairing it, we have still not acted to resolve the foreseeable and avoidable uncertainty created by our own actions. At the time, I called the June 2018 Order an act of regulatory hubris; however, given the passage of time, the uncertainty created by the Commission might better be labeled an act of regulatory malpractice. The Commission, whatever concerns it has with the PJM capacity market, should not have put PJM, the states and customers served by its markets, and its stakeholders in this position.

4. I believe it is essential that PJM have an opportunity to engage with its stakeholders on a redesign of this magnitude. In particular, I think that PJM would be well-served by engaging with the states that regulate its member companies to ascertain their long-term commitment to the mandatory capacity market for resource adequacy, as opposed to state selection of preferred resources to meet state initiatives. As I said in my earlier dissent, I believe that an ill-considered replacement market design that imposes choices on the states without adequately accounting for their input could ultimately lead to the unplanned demise of the capacity market.²

5. The concerns raised in my earlier dissent have only been reinforced by what has transpired during the past year. The PJM capacity market is unable to move forward until it receives guidance from the Commission. I hope the Commission is able to give PJM some clarity of direction soon. In the meantime, I am reluctantly voting to suspend the August 2019 BRA.

For these reasons, I respectfully concur.

Cheryl A. LaFleur
Commissioner

² *Id.* (LaFleur, Comm’r, *dissenting* at 5).