UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

State Policies and Wholesale Markets Operated by ISO-New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.

Docket No. AD17-11-000

Pre-Conference Comments of the Joint Consumer Advocates

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Introduction

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), and the Commission's April 13, 2017 Supplemental Notice,[1] the Joint Consumer Advocates ("JCAs") provide these comments in advance of the Technical Conference to be held on May 1-2, 2017.

The issues presented in this technical conference clearly impact the prices consumers pay for reliable, wholesale electric service. The Joint Consumer Advocates are honored to participate in this technical conference and we thank the Commission for including a voice for consumers in these extremely important and timely discussions. The following Consumer Advocate offices signed onto this pleading: The Delaware Division of the Public Advocate, the Illinois Citizens Utility Board, the New Jersey Division of Rate Counsel, The Pennsylvania Office of Consumer Advocate, and The West Virginia Consumer Advocate Division The positions identified in this pleading should not be construed as necessarily reflecting the fully articulated position on the issues addressed of any single consumer advocate office.[2]

[1] *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc. and PJM Interconnection, L.L.C.*, Docket No. AD17-11-000, et al., Supplemental Notice of Technical Conference, (April 13, 2017) ("April 13, Supplemental Notice").

[2] Some of the consumer advocate offices view this state action or subsidy issue differently than the JCAs and could not participate. Those offices include, but are not limited to the following. For example, the Office of the Ohio Consumers' Counsel has specific positions identified in FERC Docket Nos. EL16-33 and EL16-34 (FERC has exclusive jurisdiction over interstate wholesale electricity rates, and that the state does not have jurisdiction to require any subsidy to be paid by captive retail customers.)

Summary of Comments

The JCAs' position focuses on three guiding principles that we ask the Commission to take into consideration while addressing the matters identified in this technical conference:

- The goal of wholesale capacity markets should be to maximize value for consumers – establishing just and reasonable wholesale rates through workably competitive wholesale markets. Fair and reasonable wholesale rates are more likely to be developed through competitive wholesale market structures.
- PJM and the Independent Market Monitor play an essential role in ensuring the integrity of a regional wholesale market. PJM and the IMM are entities that provide strong, independent, technical experience to operate a fair market and provide reliable service with as much transparency as possible.
- To the extent possible, however, FERC and the RTOs should avoid enmeshing themselves in debates over the merits of any particular state or federal government policy outside of its impact on the wholesale markets. Furthermore, the Commission should be guided by the parameters set in the recent *Hughes* Supreme Court ruling and only seek to address state actions that are inappropriately tethered to the wholesale market.

Each of these three principles can be incorporated into the questions presented to the participants.

Initial observations in response to the Panel 2 topics and questions:

1. There are a number of state policies that may or may not influence wholesale markets. Should the Commission distinguish between state actions that are considered inside the market and ones that are out of market, and why? How can certain types of state policies be readily integrated into wholesale markets as opposed to pursuing state policies outside of the centralized energy and capacity markets?

It becomes dangerous when federal entities start establishing which public policies are worthy of state action and which are not. State and local actions can have broad applications for generation. It is hard to think of a generation type that does not benefit from some level of federal, state, or local government incentive. The existence of subsidies does not by itself skew the markets. It becomes a question of degree – should resources still compete in the market or is the state action so substantive that it influences market outcomes?

The Commission should be guided by the recent unanimous Supreme Court ruling in *Hughes v. Talen Energy Marketing:*

> Our holding is limited: We reject Maryland's program [to incentivize new in-state power generation] only because it disregards an interstate wholesale rate required by FERC. We therefore need not and do not address the permissibility of various other measures States might employ to encourage development of new or clean generation, including tax incentives, land grants, direct subsidies, construction of state-owned generation facilities, or re-regulation of the energy sector. Nothing in this opinion should be read to foreclose Maryland and other States from encouraging production of new or clean generation through measures "untethered to a generator's wholesale market participation.[3]

The essential action of FERC is establishing reasonable wholesale electric rates and states may not "intrude on FERC's authority over interstate wholesale rates." There is, however, no bright line. The line between the federal and state jurisdictions in regard to public policy and wholesale rates appears largely unaltered by this ruling. The Supreme Court did not discount the states' role in establishing policy to maintain the power system, but sent a clear message that state actions cannot be tethered to wholesale market participation.

2. If your company is receiving/seeking an out-of-market payment as a result of a state policy, please explain the dynamics or features of the RTO/ISO market that, in your view, made this particular payment necessary. For the rest of the panelists, please explain how this payment has affected or will affect wholesale markets in general and your entity specifically.

Subsidies can create a slippery slope as more and more requests for subsidies are likely to ensue once the first subsidy is in place. Subsidies result in higher costs for consumers. State actions should not cause FERC to penalize consumers in other states. Finally, the more changes/reactions that are taken by FERC/RTOs to address state actions the more administrative the capacity market mechanism will become.

Any policies established by FERC and/or the RTOs should take into account the fact that different conditions exist in different states. Resources that might be uneconomic in one area may be economic in another.

The line between state and federal jurisdiction under the Federal Power Act is not always clear. Great care must be taken to avoid asymmetrically shifting market price risk onto customers. As a general principle, any changes should be "surgical" so consumers do not pay for resources twice. However, there are potentially enormous consequences of federal responses to state policy actions if those responses result in additional costs through wholesale market mechanisms.

[3] Hughes v. Talen Energy Marketing, LLC, 136 S.Ct. 1288, 1299 (April, 2016).

3. **What wholesale market benefits may be lost when states take actions outside of these markets**?

If state actions are inappropriately "tethered" to wholesale market participation there are a number of benefits that may be lost for consumers that rely on regional wholesale markets. Benefits that may be impacted include: competition between resources, rejection of uneconomic resources, transparency in the process, and confidence that consumers are receiving reliable electricity at just and reasonable rates.

Competitive markets can provide value for consumers. The PJM Independent Market Monitor provided the following succinct analysis of the PJM Market in the recent State of the PJM Market Report:

> The results of the [PJM] energy market, the results of the capacity market, and the results of the regulation market were competitive in 2016. The goal of competition is to provide customers wholesale power at the lowest possible price.[4]

While there has been a great deal of concern expressed over state actions that influence wholesale market outcomes, the Commission and RTOs should be cautious before taking actions that impede the ability of the markets to provide customers with the lowest possible price.

4. **With the idea that state or regional policy objectives can be achieved on a long-term basis through modifications to or potentially new or different wholesale market mechanisms, what would be the elements of a policy solution that could accommodate the objectives of a state or region while preserving the competitiveness and efficiency of wholesale markets?**

The JCAs support the continuing discussions regarding adopting PJM market rules to achieve public policy objectives but changes should be efficient, impartial, and avoid unnecessarily burdening consumers. The more changes and reactions that are taken by FERC/RTOs to address state actions the more administrative the capacity market mechanism will become. The key question is whether the problem that led to the state action represents a systemic market problem or a more localized concern. This may help determine if new or different wholesale market mechanisms can achieve the states' policy objectives.

5. If state policy objectives cannot be achieved through the wholesale markets, what are the consequences for the wholesale markets, as well as for market participants' ability to make long-term decisions, of continued state support for certain resources or resource types outside wholesale markets?

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[4] State of the Market Report for PJM (2016), Monitoring Analytics, LLC, Volume 1: Introduction, page 1 (March 9, 2017).

The electricity market is larger than any one state and even larger than the PJM wholesale energy and capacity markets. In order to evaluate the consequences of state action on wholesale markets, the nature of the state concern and the state action must be evaluated. Some state action is local and "untethered" to federal energy or capacity wholesale markets. For some consumer advocate offices the relevant inquiry is whether the state actions disrupt market efficiency, market entry and exit signals, or distort market results.

6. In light of current and future state actions, what role should the RTO/ISO play in ensuring resource adequacy? Specifically, do you see a diminished role for the RTO/ISO? Under what conditions should a state intervene in a resource's entry and exit decision and at what point could any such intervention affect the RTO's/ISO's role in ensuring resource adequacy?

RTOs/ISO should take the lead in ensuring resource adequacy and resiliency in the wholesale market. For example, a major component of the resource adequacy of the electric grid is to consider the increasing prevalence of natural gas. It is essential that the planning of the gas pipeline transportation system be subject to broader scrutiny, as has occurred in the electric industry with transmission planning. The efficiencies resulting from this effort will ensure that this developing natural fuel resource will be optimized for both the electric grid and natural gas retail customers.

FERC has determined that competition within federal energy markets is the tool it will use to achieve resource adequacy. Particularly in restructured states, the investors and regulators rely on market processes at the wholesale level, including price signals to enter or exit the market, as well as administratively set reserve margins, to assure resource adequacy.

Conclusion

The Joint Consumer Advocates appreciate the opportunity to provide these pre-conference comments in this proceeding. If provided the opportunity, we may address these and other issues in greater detail at the May 1-2 technical conference.

Dated: April 25, 2017