

June 1, 2021

VIA ELECTRONIC DELIVERY

The PJM Board of Managers
c/o Mark Takahashi, Chairman
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, PA 19043

Dear Chairman Takahashi and Board Members:

P3 members have invested billions of dollars of at-risk capital into the PJM markets with the expectation that PJM and its leadership supported a vision of robust competitive wholesale capacity markets in the mid-Atlantic region.¹ P3 is increasingly questioning whether PJM continues to believe in the promise of markets or if other priorities have supplanted this historical priority of the organization. P3 urges the Board to communicate clearly to PJM management that the organization remains committed to markets and expects to review a MOPR-related proposal that is consistent with PJM's historical commitment to competitive capacity markets.

The PJM Operating agreement makes it clear that PJM's Board is entrusted by its members to promote "a robust, competitive and non-discriminatory" market. Under the Operating Agreement, the Board is affirmatively charged to, "...ensure that the President, the other officers of the LLC, and Office of the Interconnection perform the duties and responsibilities set forth in this Agreement, including but not limited to those set forth in Sections 9.2 through 9.4 and Section 10.4 in a manner consistent with (A) the safe and reliable operation of the PJM Region, (B) *the creation and operation of a robust, competitive, and non-discriminatory electric power market in the PJM Region*, and (C) the principle that a Member or group of Members shall not have undue influence over the operation of the PJM Region. (emphasis added)"²

¹ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. ("PJM") region. Combined, P3 members own over 67,000 MWs of generation assets and produce enough power to supply over 50 million homes in the PJM region covering 13 states and the District of Columbia. The views expressed in this letter represent those of the organization and not necessarily any individual P3 members with respect to any issue. For more information on P3, visit www.p3powergroup.com.

² PJM Operating Agreement, Section 7.7(i), *Duties and Responsibilities of the PJM Board*.

Further, FERC and appellant precedent makes clear that FERC cannot simply ignore the exercise of buyer-side market power out of a desire to avoid interfering with state policy prerogatives. As FERC Commissioner Danly recently argued, “because state subsidies to generation owners constitute the exercise of buyer-side market power, RTO capacity markets must have provisions to mitigate the effects of such subsidies, as the Commission has held on numerous occasions.” Moreover, courts have found that markets can yield just and reasonable rates only “where neither buyer nor seller has significant market power.”³

While FERC and PJM’s mandate as it relates to markets is without question, recent events are causing P3 to question whether the historical commitment to markets remains. While P3 generally would not offer a letter to the PJM Board about a stakeholder matter that is still being actively discussed in the stakeholder meetings, the PJM proposed revisions to the Minimum Offer Price Rule (MOPR) are so ill-conceived and completely incompatible with FERC’s authority and PJM’s mission that our organization feels compelled to bring certain matters to the Board’s attention at this time.

At the outset, P3 recognizes that the electric grid is changing and that markets must evolve and adapt consistent with those changes. Our organization is sympathetic to many concerns that have been expressed by the more vocal critics of the capacity market in general and the MOPR specifically and believe that there are viable paths forward to adapt to the evolving marketplace. However, those paths require time to assess the market including reliability assurance and new reliability products that may be required with the changing fuel/technology mix, new reliability modeling and analysis techniques, new modeling capability and methods, and new resource adequacy constructs to ensure sufficient reliable resources are available to ensure reliability and energy deliverability. These issues have yet to be explored in the stakeholder process, and to make drastic changes to the current market construct, such as PJM is proposing with the MOPR, is premature and potentially harmful to the safe, reliable operation of the PJM system.

Unfortunately, PJM’s current MOPR proposal chooses a path that is a dramatic departure from many of the foundational principles of PJM and has forced stakeholders to use precious stakeholder time discussing a proposal that is fundamentally flawed on multiple levels. PJM’s proposal starts with the unsupported premise that PJM can take no action to preserve a competitive market outcome if that action could be viewed as interfering with a state policy. From there, PJM’s current proposal puts forth a complete retreat from the notion of a competitive capacity market and instead sets up a market design that

³ See, “Danly Office White Paper: The Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets,” <https://www.ferc.gov/news-events/news/danly-office-white-paper-requirement-competitive-markets-be-protected-exercise>

will allow subsidies rather than market signals to dictate market exit and entry. PJM concedes that subsidies will suppress capacity market revenues and force those that are not subsidized to either retire, face enormous capacity market risk, or seek a subsidy of their own. PJM's proposal is legally flawed and antithetical to a robust, competitive, and non-discriminatory market design.⁴

P3 will continue to raise concerns about PJM's proposed revision in the stakeholder process in hopes that a better product can be presented to the Board in July or PJM determines it is premature to move this quickly to change one component of the market without taking a holistic review of the entire market structure. As part of this decision, P3 implores the Board to remind PJM management of its obligation to competitive markets. To do so, the Board need look no further than the PJM position offered to FERC in 2018. At the time, PJM stated unequivocally that "if a material fraction of resources price their capacity offers relying on their selective receipt of subsidies, then:

- other sellers in PJM's interstate market that do not receive subsidies will receive an artificially suppressed, unjust and unreasonable rate;
- competitive entry will face a significant added barrier;
- new subsidies will be encouraged; and
- one state's policy choices could contribute to a 'crowding out' of other competitive resources and resulting policy choices on which other states rely."⁵

Since PJM offered this view to FERC a mere three years ago little has changed at PJM or in the marketplace that would obviate the need to provide just and reasonable wholesale market rates to those resources that do not receive a material subsidy. If anything, the pace of subsidization efforts has slowed down in PJM since 2018 and, in the notable case of Ohio, the General Assembly repealed a significant subsidy that had been previously awarded to its two nuclear facilities.

PJM's efforts at MOPR reform appear motivated to provide the maximum amount of support for resources subsidized by state policies while completely ignoring the need for unsubsidized resources to have a market signal that is not affected by anti-competitive subsidies. The wholesale capacity market rate needs to be just and reasonable for both subsidized and unsubsidized resources. PJM has an obligation to

⁴ P3 would be pleased to expand upon these concerns when provided an opportunity to do so; however, the design of the Critical Issue Fast Path process is not conducive to an open discussion of the merits of PJM's proposed solution.

⁵See, PJM Interconnection, L.L.C., Docket No. ER18-1314 Capacity Repricing or in the Alternative MOPR-Ex Proposal: PJM Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market, Apr 9, 2018 at 4.

all resources in the market – not just those that are subsidized or considered “policy” resources.⁶ The majority of resources in PJM are not receiving material subsidies and PJM has clearly articulated views that wholesale capacity rates for unsubsidized resources are not just and reasonable if the rates for unsubsidized capacity resources are suppressed by the effects of subsidy-skewed clearing prices.

P3 appreciates the Board’s prompt consideration of these comments and urges the Board to emphasize to PJM management that its expectation is to receive a MOPR-related proposal in early July that supports PJM historical commitment to “robust, competitive and non-discriminatory” markets. The “fix” to the MOPR should not result in a market that is unprotected from the effects of buyer side market power as PJM’s current MOPR proposal does. The “fix” also should balance the integrity of capacity market pricing in PJM with the desire to accommodate state policies.

P3 remains hopeful that a proposal can emerge that will garner the support of our members; however, at this time PJM’s current proposal is so far from a durable solution that it is difficult to envision widespread support emerging unless dramatic changes are made to PJM’s approach. There is no point filing a proposal that is legally flawed and that will either be rejected by FERC or subject to protracted legal challenge. The Board and PJM management should not make a premature filing that will undermine PJM’s markets and reliability as PJM’s current proposal does, but instead, respectfully communicate to FERC that more time simply is necessary to develop a just and reasonable proposal. Absent dramatic changes to the current PJM proposal, P3 respectfully suggests that extending the time for additional consideration of alternative proposals is the course most consistent with the Board’s mandate.

Respectfully submitted,

/S/ Glen Thomas

Glen Thomas

President, PJM Power Provider Group

⁶ See, “Danly Office White Paper: The Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets,” <https://www.ferc.gov/news-events/news/danly-office-white-paper-requirement-competitive-markets-be-protected-exercise>