

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

State Policies and Wholesale Markets	*	
Operated by ISO New England Inc., New	*	Docket No. AD17-11-000
York Independent System Operator, Inc.,	*	
And PJM Interconnection, L.L.C.	*	

**Comments of the Maryland Public Service Commission**

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The Maryland Public Service Commission appreciates the opportunity to speak at the FERC technical conference on state policies and wholesale markets. At a time when the energy industry is facing increasingly complex issues, including how to address economic pressure on traditional baseload generation such as coal and nuclear units, the increasing presence of distributed generation resources, and the integration of intermittent resources, the Maryland Commission believes it is imperative for state agencies and their federal counterparts to work together in a renewed spirit of cooperative federalism to find solutions.

### **Maryland's Energy Profile and Strategic Goals**

The Maryland Commission regulates four investor-owned utilities and nine cooperatives and municipal electric utilities. The State deregulated retail electric supplies in 1999, and competitive choice for customers is robust and growing. The Maryland Commission is an active PJM stakeholder and a member of OPSI – the Organization of PJM States – which coordinates frequently with PJM on matters of energy policy.

Maryland possesses an aging generation fleet, with 65% of its coal capacity over forty year's old and facing significant risk of retirement. Maryland imports approximately 45% of its electricity from out of State. Maryland endured a prolonged period of time without the construction of any utility-scale power plants, but several new natural gas-fired facilities are currently under development and are expected to come online within the next few years. Solar energy, both residential rooftop and utility-scale, is providing a small but rapidly increasing amount of generation capacity to Maryland.

Maryland has set several ambitious energy and environmental goals that present challenges and opportunities for the State. First, when enacted in 2009, the Greenhouse Gas Reduction Act required that Maryland reduce carbon emissions by 25% by the year 2020 compared to 2006 levels. In 2016, Maryland reauthorized and extended the Act to reduce greenhouse gas emissions 40% by the year 2030. In order to achieve those goals, Maryland became a member of the Regional Greenhouse Gas Initiative (“RGGI”), a nine-state emissions cap and trade program with a market-based emissions trading system. The agreement requires participating states to cap greenhouse gas emissions from the electrical generation sector and to reduce those emissions each year. Maryland's participation in this initiative has been a success, with RGGI CO<sub>2</sub> power sector emissions declining more than 45% since 2005 region-wide. (Maryland's CO<sub>2</sub> emissions are projected to decrease by 3.60 MMt by 2020).<sup>1</sup> Additionally, Maryland has reinvested revenue from the sale of CO<sub>2</sub> allowances to support energy efficiency, renewable energy, and direct bill assistance programs.

Second, Maryland enacted a renewable portfolio standard (“RPS”) that requires electricity suppliers to procure a minimum portion of their electric retail sales with eligible renewable energy sources. In the most recent legislative enhancement, the RPS requires 25% renewables by the year 2020. Additionally, the RPS specifies that 2.5% of retail electricity sales come from solar resources by 2020. Recent 2013 legislation put Maryland on the vanguard of new renewable energy technology, with the State creating a maximum 2.5% carve out for offshore wind energy. The Maryland Commission is currently reviewing two applications for

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<sup>1</sup> Maryland Department of the Environment 2015 Greenhouse Gas Reduction Act Plan Update Report at 81.

approval of offshore renewable energy credits (“ORECs”). The ORECs would support the development of offshore wind farms to be located on the outer continental shelf between 10 and 30 miles off the coast of Maryland in the U.S. Department of Interior’s designated offshore wind leasing zones. PJM assists Maryland in successfully implementing its RPS by administering the Generator Attribute Tracking System (“GATS”), a trading platform that tracks and records the environmental and emissions attributes of generators registered in its system.

Third, Maryland has augmented its EmPower Maryland Energy Efficiency Act, originally enacted in 2008. The Act required that Maryland reduce per capita electricity usage as well as peak demand 15% by the year 2015. The Maryland Commission achieved those goals through aggressive deployment of energy efficiency, demand response, and conservation measures. Subsequent to 2015, the Maryland Commission acted pursuant to new legislation to require electric utilities to achieve annual incremental cost effective energy savings equal to two percent of their retail electric sales. Through the end of 2016, EmPower Maryland programs have achieved 2,367 MW in verified peak demand reduction and 6.5 million MWh in annualized energy savings.<sup>2</sup>

This year, the Maryland General Assembly passed two bills to prepare the State for changes in the energy industry. HB 773 requires review of regulatory reforms and market incentives necessary to expand the use of energy storage devices in the State. HB 1414 directs a study of the costs and benefits of the State’s RPS, including an assessment of its effectiveness in encouraging the development of renewable energy and a review of alternative models of regulation. The Maryland Commission also recently promulgated regulations to establish a pilot community solar program. The three-year pilot program, capped at approximately 200 MW, allows residential consumers who do not own their rooftops to participate in the State’s net metering program and encourages community solar development utilizing brownfield sites, parking lots and industrial areas. Finally, the Maryland Commission has initiated a public conference (PC44) to examine issues related to the “grid of the future,” including an evaluation of the benefits and costs of distributed solar energy resources in Maryland.

### **In Support of State Policies and Cooperative Federalism**

The Maryland Commission supports the right of states to pursue their energy policies, and believes that the challenges presented by the energy industry can best be addressed only through a cooperative approach between federal and state governments. In considering how FERC and state commissions should work together to address state policies regarding generation resources, we believe the starting point must be the language of the Federal Power Act (“FPA.”) Although the FPA grants FERC plenary authority over wholesale rates, it expressly reserves to states “jurisdiction ... over facilities used for the generation of electric energy.”<sup>3</sup> Consistent with that delegation of authority, when Congress empowered FERC to issue mandatory reliability standards in the Energy Policy Act of 2005, it specified that the Act did not authorize FERC to order the construction of additional generation. Instead, only the states retained the authority to build new generation or to expand existing generation in order to meet reliability needs.

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<sup>2</sup> 2016 Annual Report of the Public Service Commission of Maryland at 20.

<sup>3</sup> Federal Power Act § 201(b)(1).

Reliability issues therefore present an example where FERC and state commissions must work together to achieve common goals.

FERC jurisdictional RTOs currently operate wholesale markets in a manner that optimizes operational and economic efficiency (putting aside environmental or other externalized costs) and clear auctions without specific regard to resource type. The Maryland Commission generally supports that approach, so long as it works in concert with and does not override state authority to make policy-based choices among generation resources. Nevertheless, over the last few years, certain parties have voiced a novel and dangerous view of the FPA that argues that by setting wholesale capacity price signals that attempt to incentivize the construction of generation at lowest cost where needed most, the federal government has preempted states from exercising any policy discretion in the heart of their historic jurisdiction over generation resources. In other words, the argument is that any so-called “out of market” payment by a state distorts wholesale capacity price signals and is accordingly preempted. Maryland wholly rejects this unbalanced view of the FPA, which would essentially silence the voice of state government and relegate state commissions to commenting on the results of capacity auctions.

Perhaps the best example of cooperative federalism in the energy industry is demand response, which is a resource that is vital to both retail and wholesale energy markets and cannot be effectively regulated by either the states or FERC alone. When certain parties challenged the authority of FERC to compensate demand response resources in wholesale markets, claiming that demand response is inherently a retail product outside the reach of the FPA, the Maryland Commission joined California and Pennsylvania to advocate for the retention of FERC’s jurisdiction. Jointly, the states argued before the Supreme Court in *FERC v. EPSA* that the states’ mass market demand response programs added billions of dollars of wholesale benefits, balancing demand and supply at critical times and improving grid reliability, even while helping the states achieve important state policy goals at the retail level, such as reducing energy consumption and obviating the need to build costly generation. The Supreme Court agreed, finding that FERC’s Order 745 represents “a program of cooperative federalism” that is consistent with the FPA’s allocation of federal and state authority.<sup>4</sup>

The EPA’s 2015 Clean Power Plan is another example of how joint federal and state action is necessary to achieve important environmental goals, such as reduction of greenhouse gas emissions. When the EPA issued the Clean Power Plan in 2015, the Plan relied heavily on state initiatives to achieve the federal emissions-reduction goals. Maryland’s participation in RGGI, the State’s significant RPS requirements, and its solar power carve out provided the tools for Maryland to achieve the CPP’s objectives. In contrast, FERC’s wholesale markets, which are agnostic regarding resource type, would have reduced carbon emissions only by coincidence, if the clearing resources happened to be low carbon emitters. That is not to denigrate FERC’s

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<sup>4</sup> The Supreme Court stated in full: “Wholesale demand response as implemented in the Rule is a program of cooperative federalism, in which the States retain the last word. That feature of the Rule removes any conceivable doubt as to its compliance with § 824(b)'s allocation of federal and state authority.” *F.E.R.C. v. Elect. Power Supply Ass’n*, 136 S.Ct. 760, 780 (2016).

wholesale markets, which provide valuable contributions. But the CPP is an example of how state and federal cooperation can work successfully to meet shared goals.<sup>5</sup>

### **FERC Should Help States Achieve Policy Goals by Simplifying Unduly Complex Capacity Market Rules**

Consistent with federal direction to reduce the complexity and burden of regulations, and in answer to FERC’s inquiry as to how to assist states achieve their policy goals, the Maryland Commission urges FERC to simplify wholesale markets, in particular, capacity markets. In the ten years since FERC approved PJM’s Reliability Pricing Model, for example, layer upon layer of additional regulation has been added to an already complex RPM construct. In particular, state policy decisions over new generation – previously exempted under the RPM settlement – have become subject to the cudgel of the Minimum Offer Price Rule (“MOPR”). The MOPR has been utilized to attempt to stymie state policy decisions to support certain types of generation resources and to promote resource adequacy and diversity. The Maryland Commission understands that certain parties view any state action in support of particular resources as an impermissible subsidy and ultimately an existential threat to the health of wholesale capacity markets. The Maryland Commission would like to state unequivocally, however, that it has never acted with the intention of thwarting FERC’s capacity market objectives, but always with the goal of ensuring adequate and reliable electric service to Maryland’s citizens. Additionally, we do not believe that any state Commission would fail to give profound weight to the cost on its ratepayers of supporting generation resources to reach a policy goal. In that regard, we believe that the putative threat of state initiatives that the MOPR was devised to counter is overblown. Accordingly, the Maryland Commission agrees with former Chairman Bay that the MOPR, as currently utilized, “places [FERC] in constant tension with the states” and inhibits valuable state policies. As he observed, “states are rightly celebrated for being laboratories for experimentation” that may be used to “incentivize the development of needed energy infrastructure [and] the deployment of innovative technologies...”<sup>6</sup> We therefore encourage FERC to reduce the chilling effects of the MOPR on state innovation and policy decisions, and to otherwise simplify capacity market rules.

In lieu of placing additional emphasis on capacity markets, the Maryland Commission also urges FERC to maintain or enhance the use of long-term contracting. The original purpose of capacity markets was a “backstop” mechanism, or a residual market, for generation that had not entered into power purchase agreements. The Maryland Commission continues to see value in bilateral long-term agreements, including with state entities, and sees the eclipsing of such agreements by wholesale auctions for short-term commitments as ill-advised.

### **FERC Should Consider Recognizing the Value of Emissions-Free Generation**

FERC’s wholesale markets are resource neutral, clearing auctions based on price alone. The efficiency and discipline FERC provides in regulating wholesale capacity markets is

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<sup>5</sup> Of course, the Maryland Commission recognizes that the CPP may be significantly modified or replaced under the new Administration. The purpose of this example is merely to illustrate that however greenhouse gas emissions are addressed, a successful and efficient approach will require joint state and federal cooperation.

<sup>6</sup> FERC Docket No. EL16-92: *New York State Public Service Commission*, 158 FERC ¶ 61,137 (2017), Concurring opinion at 3.

valuable. Nevertheless, FERC should consider recognizing that emissions-free generation provides benefits that are not captured by FERC's resource-neutral capacity markets. Fossil fuels produce harmful societal costs through the emissions of pollutants such as carbon, nitrogen oxides, and sulfur dioxide, the costs of which are not captured in the wholesale price of the resources and therefore constitute negative externalities. In order to resolve that omission, FERC should investigate placing value on the avoided externalized costs of non-emitting generation resources. States like New York and Illinois have attempted to do this at the state level to bolster struggling nuclear power plants. FERC should consider a wider federal program to value non-emitting generation resources nationwide. Nevertheless, we do not believe that any FERC monetization of non-emitting generation resources at the wholesale level should be viewed as preempting state policy decisions over their resource portfolios, including any state decision to support non-emitting generation resources.

### **FERC Should Not Attempt to Settle State Conflicts**

Finally, in its questions for panelists, FERC staff asked how wholesale markets can or should resolve policy conflicts between states. The Maryland Commission respectfully comments that FERC should not act to resolve such conflicts. When former Chairman Bay referred to states as being laboratories for experimentation, the statement reflected the reality that states will often seek different, and at times even conflicting, goals. That is not inherently a bad outcome, however. The pursuit of different state policies promotes creativity in addressing energy policy and encourages, among other advantageous outcomes, diverse resource portfolios. The Maryland Commission submits that a top-down approach that mandates a single policy would stymie innovation and make the nation's electric grid more vulnerable to disruption from shortages in fuel or price spikes. Additionally, states have devised methods of discussing their differences. The Maryland Commission participates with other PJM states in OPSI, which coordinates regularly with PJM, and provides policy advice through resolution when appropriate and when consensus can be reached. The existence of state conflict is therefore not a problem that requires FERC resolution.

The Maryland Commission appreciates the opportunity to speak to FERC about the important issues states and FERC are facing jointly in the energy industry and we look forward to the exchange of ideas that will take place during the Technical Conference.