



STATEMENT

Dissent of Commissioner Cheryl A. LaFleur on PJM Interconnection Capacity Market Proposals

Date: June 29, 2018

Docket No.: EL16-49-000
ER18-1314-000
ER18-1314-001
EL18-178-000

In today's order, the Commission rejects two proposals from PJM Interconnection, L.L.C. (PJM) to modify its capacity market to address the impact of state policies. As discussed below, rather than reject the second of PJM's proposals, MOPR-Ex, I would provide guidance to PJM and its stakeholders to further refine that concept as a workable market reform. I write separately primarily to explain my disagreement with the Commission's companion decision to find the PJM capacity market unjust and unreasonable and pursue a significant overhaul of that market without adequate stakeholder engagement, particularly with the states.

Addressing the tension between relying on wholesale capacity markets to attract investment and state policies to support specific resources has been a longstanding priority of mine. As I have stated many times, I believe tailored regional solutions are likely to provide the best path forward in each region, and I have actively worked with regions where possible to help guide and develop those solutions. The Commission's recent approval of ISO New England, Inc.'s Competitive Auctions with Sponsored Policy Resources (CASPR) proposal¹ is, in my mind, a prime example of how a region can craft a targeted market reform to address this tension and preserve the benefits of the wholesale markets for customers while also facilitating state policies.

As evidenced by today's ruling on the Calpine complaint, filed more than two years ago, this issue is not new to PJM. I recognize that parties in PJM have awaited guidance from the Commission for some time, so I understand and am generally sympathetic to the Commission's desire for action. I am on record that the increasing use of out-of-market compensation to support policy goals in the eastern RTOs/ISOs creates long-term challenges for the viability of wholesale capacity markets. Failure to carefully address these challenges could result in messy, unplanned reregulation, which could threaten reliability while also unnecessarily increasing costs to consumers. It is therefore critical that the Commission stay engaged and help guide the eastern RTOs/ISOs towards regionally-appropriate solutions that address the tension between wholesale capacity markets and state resource selection. I recognize that finding that balance requires difficult decisions and possible trade-offs between competing priorities.

PJM's proposals certainly present the Commission with those difficult decisions, and I appreciate the significant work that went into each proposal. In my view, today's order should have granted PJM's request that the Commission provide guidance to help focus PJM and its stakeholders on a workable solution to the growing use and impact of state subsidies.

First, I agree with the majority's decision to reject PJM's capacity repricing proposal, as I am concerned that it would allow subsidized resources to both cause and benefit from higher capacity market clearing prices. With respect to MOPR-Ex, however, I disagree with the majority's rejection of that proposal, as well as its reasoning. State renewable

¹ *ISO New England Inc.*, 162 FERC ¶ 61,205 (2018).



STATEMENT

portfolio standards (RPS) are generally longstanding state programs that often pre-date the capacity market, and are not intended to prop up specific uneconomic units that would otherwise leave the market, but rather to help shape a state's resource mix over time through competitive procurements. As such, I believe that current state RPS programs in PJM are distinguishable from other state support programs that might pose a threat to the viability of the PJM capacity market.

Accordingly, I would have accepted and suspended the MOPR-Ex proposal, and directed further proceedings, including possible settlement discussions, on potential refinements to ensure that MOPR-Ex would not unduly interfere with the operation of existing state RPS programs.² Alternatively, I would have suggested that PJM consider an expanded CASPR-like construct that could include opportunities for new and existing subsidized resources to buy out the capacity obligations of other resources in the market. I think either approach could yield a just and reasonable result.

Instead, today's order rejects PJM's proposals, declares the existing PJM capacity construct unjust and unreasonable, and initiates a paper hearing to consider and flesh out the majority's proposed expansion of PJM's Fixed Resource Requirement (FRR) construct as the just and reasonable solution to the market's alleged flaws. I strongly disagree with this decision.

Let's be clear: through its action today, the majority signals its intent to adopt, through a 90 day paper hearing, the most sweeping changes to the PJM capacity construct since the market's inception more than a decade ago. If ultimately adopted, this proposal would fundamentally rebalance the resource adequacy responsibilities of the states, the Commission, and PJM.

Yet, by declaring the PJM capacity market unjust and unreasonable, the Commission has imposed an *ex parte* restriction on its ability to meaningfully engage with stakeholders outside of formal Commission proceedings, while also creating a timing crisis related to the May 2019 Base Residual Auction (BRA). Today's action therefore creates a direct tension between the Commission's ability to engage with stakeholders and the need to quickly implement major market reforms in time for that auction. This tension could have been alleviated had the Commission chosen a different path, one which I might have been willing to support.³

I am particularly troubled that, as a result of today's order, the Commission will be hamstrung in its ability to openly and honestly engage with the states about whether this proposal will meet their needs, and how they might operate under this construct. The proposed resource-specific FRR Alternative option, however ultimately designed, presents resource owners and states with choices that could be difficult to make in advance of the May 2019 BRA, particularly given that some of the state programs are statutory in nature and could require legislative action to reform.⁴ This is too important a decision to be made this quickly, and with this little stakeholder engagement.⁵

² I note that there is disagreement in the record about whether the MOPR-Ex proposal as filed would interfere with the operation of those RPS programs going forward. *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236, at PP 91, 94 (2018).

³ For example, the Commission could have rejected PJM's proposals and provided guidance, including directing consideration of an expanded FRR construct. The Commission could also have opened an administrative docket on its proposal and any alternatives, to convene a technical conference and build a record on how the expanded FRR construct might work.

⁴ *E.g.*, Illinois 99th Gen. Assemb. S.B. 2814 (Dec. 7, 2016).

⁵ In fact, prior significant capacity market reforms were the result of months, if not years, of stakeholder engagement. For example, the proposals submitted by PJM were the result of a stakeholder process conducted over more than a year. The CASPR



STATEMENT

With regard to the merits of the expanded FRR construct, I believe that it is an idea worth exploring, and would be open to doing so in conjunction with the other ideas mentioned above. Obviously, today's order will yield a record on this proposal, and I will decide at that time whether it is just and reasonable. However, I do not share the majority's confidence that this proposal is the obvious solution to the challenge before us, in no small part because it is not clear to me how this construct will actually work.

As evidenced by the lengthy list of questions included in the order,⁶ the expanded FRR proposal is currently little more than a rough concept, with major design elements left unresolved.⁷ The relevant records before the Commission contain virtually no discussion of an expanded FRR construct, and in conversations with numerous stakeholders prior to PJM submitting its capacity repricing and MOPR-Ex proposals, I do not recall a single meeting in which any entity raised this as a possible solution. Similarly, the expanded FRR construct appears to provide states with a clear option to re-regulate certain generating facilities, and to the extent a state made the decision to transition from the capacity market to state resource selection, the expanded FRR construct could be one possible approach. However, no state in PJM has indicated its desire to re-regulate, a choice that could potentially be forced upon them by this proposal.⁸ Given this lack of clarity, today's order injects significant uncertainty into how the PJM capacity construct will work going forward, and therefore how states and market participants should prepare for these transformative changes.

Ultimately, I continue to believe that capacity markets, if properly designed and adapted, can provide meaningful benefits for customers. While I agree that the increase in state subsidies by restructured states does pose a long-term challenge to the capacity markets' ability to deliver those benefits, I am concerned that the desire for action has led the Commission to pursue a flawed and rushed process that could do more harm than good. The majority is proceeding to overhaul the PJM capacity market based on a thinly sketched concept, a troubling act of regulatory hubris that could ultimately hasten, rather than halt, the re-regulation of the PJM market. I would instead follow the "regulatory Hippocratic oath" to first, do no harm, and give PJM and its stakeholders time and direction to address these difficult issues in a sustainable manner.

Accordingly, I respectfully dissent.

proposal was the subject of several months of stakeholder proceedings, beginning in the summer of 2017, prior to its filing at FERC in January 2018.

⁶ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 at PP 159-162, 165-172.

⁷ For example, in addition to seeking comment on the high level concept (i.e., a new resource-specific FRR option, coupled with an expanded minimum offer pricing rule for any resource participating in the capacity market that receives out-of-market support), the order highlights the following open issues: (1) what subsidies, including possible federal subsidies, will trigger the revised rules; (2) how to determine which load will be removed from the capacity auction in conjunction with a resource-specific FRR selection, as well as any associated reserve requirements; (3) what MOPR exemptions should be included in this new construct; (4) how to handle potential toggling concerns for resources deciding whether to participate in the capacity market or the new FRR construct; (5) whether a different Capacity Performance construct needs to be developed for resource-specific FRR units; (6) whether the FRR options affect the competitiveness of the capacity market clearing prices; (7) what, if any, transition mechanism might be needed; and (8) what minimum offer price should be used for resources participating in the capacity market.

⁸ Perversely, the expanded FRR construct could actually *encourage* states to remove preferred resources from the market and instead rely on direct subsidies to support them, as they would receive guaranteed capacity obligations as FRR resources. Given the clean energy targets set by many states, this construct could end up hastening the demise of the capacity markets, rather than preserving them.