UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Maryland Public Service Commission, et al.

v. Docket No. EL08-34-001
and EL08-47-001

PJM Interconnection, L.L.C.

Request for Rehearing of the NRG Companies

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure,[1] the NRG Companies[2] hereby request rehearing of the Commission's May 16, 2008 "Order Granting in Part and Dismissing in Part Complaint, and Establishing Section 206 Hearing," which removed price cap exemptions for PJM generating facilities constructed between 1999 and 2003.[3]

The NRG Companies participated in the complaint proceeding as part of the PJM Power Providers ("P3") trade association, and are parties to this proceeding.[4] NRG files this separate rehearing request to emphasize the disruption to the market that was caused by the May 16 Order and the need for

[1] 18 C.F.R. § 385.713 (2007).
[2] The NRG Companies that are parties to this proceeding are NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, and Vienna Power LLC (collectively, "NRG" or the "NRG Companies").
[3] *Maryland Public Service Commission v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169 (2008) ("May 16 Order").
[4] The NRG Companies also join in the request for rehearing filed by the PJM Power Providers trade association in the instant docket, which highlights several legal and factual errors in the May 16 Order that the Commission is legally required to address. NRG incorporates the P3 rehearing request as if fully set forth herein.

the Commission to utilize the stakeholder process prior to changing market rules.

I. Specifications of Legal Error and Statement of Issues.

The Commission erred in its decision to eliminate the generation price cap exemptions:[5]

1. without considering how the imposition of default mitigation rules impacts previously exempted units;

2. without sufficient consideration of the regulatory compact created by the Commission for units that relied on the exemption when built;

3. without developing an adequate factual record demonstrating that units constructed in reliance on the exemption no longer require the exemption in order to remain economic;

4. without developing an orderly process to institute the new market rules through the PJM stakeholder process, and instead engaging in market-design-by-complaint;

5. without recognizing that creating regulatory uncertainty will send a chilling message to the companies looking to invest in the PJM market at the same time the Commission is encouraging such investment; and

6. without addressing the arguments raised by P3 in its response to the Complaint and in which NRG participated.

[5] Under PJM's default market power mitigation rules, a generator is subject to offer cost-based price mitigation whenever a transmission constraint either: (1) causes generators within the transmission constraint to fail a market power screen; or (2) require PJM to commit the unit out of merit. *See* May 16 Order at P 2.

Thus, the Commission did not engage in reasoned decision making and should not have granted the complaint.

II. Request for Rehearing

The Commission's decision to apply the default market mitigation rules to previously exempt generators in PJM does not represent reasoned decision making and must be reversed. The Commission's decision to impose market rule changes based on a complaint deprived it of an adequate record on which to justify its elimination of the price cap exemption or an understanding of the consequences of its decision. Further, the Commission erred in not utilizing the PJM stakeholder process to construct market reforms and should have provided stakeholders the opportunity to develop an orderly transition to the new market rules.

A. The May 16 Order Erred By Changing Complex Market Rules With No Consideration Of The Impacts.

One of the unintended consequences of repealing the price cap exemption is that it removed a tool that allowed the affected units to control when and how often they are dispatched, which is very important when such units have limited run times. For example, an exempt generating unit may be subject to air permit requirements that significantly limit the total number of hours it is permitted to run each year.

Under the previously effective exemption rules, such units were able to self-manage their assets and bid into the market in a manner to ensure: (1) that the units were only dispatched for the number of hours allowed by their air permits; (2) that the units were efficiently utilized by operating in periods of high spark spreads; and (3) that the units were available for dispatch in critical peak periods. However, under the new mitigation rules, this ability to self-manage is effectively eliminated during periods of localized congestion.

Under the default PJM bid mitigation rules, bids placed by such a unit is now mitigated to cost during periods of congestion, and the unit is now more likely to be selected for dispatch by PJM. The result is that a price capped unit could quickly use up its available hours during periods of congestion and run through its entire allotted run time prior to the summer peak period.[6] The result would be that such units would not be available at the very time they provide both the greatest reliability benefits to the system, as well as a large portion of the revenues that make these units economically viable. Thus, the May 16 Order reduced the ability of these units: (1) to manage their scarcity; (2) to recoup their opportunity costs during peak periods (when congestion exists); and (3) to be dispatched in an efficient manner.

[6] For oil-fired units, concerns regarding excess dispatch are largely offset by the fact that recent oil prices have decreased the dispatch of such units. If not for the high cost of oil, however, the May 16 Order could have caused such units to be unavailable during the peak summer season.

There is no evidence that the Commission intended this result; however, because the May 16 Order engaged in market design by complaint and the Commission did not utilize the PJM stakeholders process, the Commission did not have the opportunity to develop a transition plan that would avoid this type of unanticipated consequence.[7] The Commission should, at a minimum, remedy this failure of reasoned decision making by reinstating the price cap exemption until such time as PJM and its stakeholders develop a reasonable transition plan that permits such units to better control their scarcity.[8]

B. Market-Design-By-Complaint Creates Regulatory Uncertainty For Market Participants.

The May 16 Order erred by upsetting the regulatory compact that existed between PJM and generators that built generating units in reliance on the existing market rules. Participants need to be assured that any regulatory change to market rules on which they rely will be handled in an orderly and deliberate manner and that the Commission will consider stakeholder input before enacting changes to the existing market design.[9]

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[7] In fact, all of the units subject to the price cap operate in extremely constrained portions of the PJM system, and any change in the way these units are compensated is likely have serious impacts on localized system reliability and prices.

[8] PJM is developing a proposal that would allow opportunity costs to be included in such mitigated bids.

[9] Further, the Commission issued its order repealing the regulatory price cap exemption on Friday, May 16, 2008, after 5 p.m., and declared that the new rules were effective the day after issuance. Accordingly, affected companies were expected to operate in a market with new price mitigation and bidding rules beginning on 12:01 a.m. Saturday, May 17. The Commission's

Further, the order did not develop the factual record necessary to support the elimination of market rules on which Participants have relied in making substantial investment decisions. For example, while the May 16 Order asserts that the price cap exemption is no longer necessary to protect the reliance interest of these generators, the order provides no economic analysis or other evidence supporting its decision.[10] Thus the Commission is not able to support its decision with a factual record developed with input from the specific generators involved.

The Commission is not prohibited from revisiting its prior ruling that the price cap exemptions were just and reasonable, or that the complaint did not put Market Participants "on notice" that the exemption could end. However, the Commission erred in eliminating the regulatory protections previously in place without providing for stakeholder input, without ensuring an orderly transition to the new market design and without any protection of the generator's reliance interests.

C. The May 16 Order Sends Precisely the Wrong Pricing Signals to New Market Entrants Considering Participating in the PJM Market.

The Commission's repeal of existing generation incentives at the same time PJM is trying to encourage the construction of new generation capacity is

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sudden repeal of the existing exemptions puts Market Participants in the difficult position of having to react to changes in complex and interrelated market bidding rules with essentially no notice.

[10] *See, e.g.,* May 16 Order at P 44.

unfortunate. There is a critical need for new generation in the PJM market, which both the Commission and PJM have repeatedly recognized. It is very difficult for PJM to attract new generation when the Commission is in the process of eliminating the incentives used to lure new market entrants during the last building boom.

Regulatory certainty is critically important to companies deciding whether to build new generation in the PJM market, and this order sends the strong signal that the Commission is willing to change market incentives to encourage generation long after the investments are made. The Commission should grant rehearing to address this inconsistent position, and assure generators considering entry into the PJM market that their reasonable investment expectations will be protected.

III. Conclusion

The Commission erred in granting the complaint. Removing the longstanding exemption on existing generators has had serious negative implications for the operation of previously exempt units, and also sends an unfortunate message to new generation considering locating in the PJM region. If the Commission were inclined to upset the current market design, it should have required PJM to make a compliance filing to prospectively implement the Commission's order after a stakeholder process.

Wherefore, the NRG Companies respectfully request that the Commission consider these comments in conjunction with the Rehearing Request filed by P3, and reconsider its decision to grant the Maryland PSC Complaint.

Respectfully submitted,

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