

**Congress of the United States**  
**Washington, DC 20515**

January 29, 2020

The Honorable Neil Chatterjee, Chairman  
The Honorable Richard Glick, Commissioner  
The Honorable Bernard L. McNamee, Commissioner

U.S. Federal Energy Regulatory Commission (FERC)  
888 First Street, NE  
Washington, DC 20426

Dear Chairman and Commissioners:

We are deeply concerned by the Commission's December 19 Order to make significant changes to PJM Interconnection's (PJM) capacity market. The Commission's policy decision will functionally nullify the energy preferences of states, increase consumer costs by forcing customers to pay twice for generation capacity, and deny states flexibility to pursue their policy goals. Moreover, the Commission's order runs contrary to its duty to ensure that the markets are truly competitive by restricting the kinds of resources that can participate in the capacity market while effectively requiring customers to purchase all their capacity (plus an extra buffer) from this market.

The order threatens to preempt state policies that choose the energy generation mix within their borders. Under the Federal Power Act (FPA), states have the authority to support the resource mix of their choice. Indeed, most states in PJM require utilities to source some of their energy needs from zero-emission energy resources, including wind, solar, and nuclear power plants. However, the new FERC order broadly defines "state subsidies" to subject nearly all of these resources to a minimum bid in the market, called the Minimum Offer Price Rule (MOPR). In effect, this broad definition appears to sweep in nearly all state policies developed to date to encourage deployment of energy technologies, namely renewable portfolio standards, energy efficiency resource standards, renewable energy certificate markets, clean energy standards, and any state-legislated or mandated tax incentives that are in place for any power generation technology (nuclear, fossil fuel or renewables). For example, this new order would force a minimum bid on nuclear power plants in Illinois and New Jersey, new renewable resources built to meet state targets in Maryland, New Jersey, and Pennsylvania, and even nuclear and coal plants eligible to receive support in Ohio.

The consequence of applying the MOPR to these resources is a functional blocking of these resources from PJM's capacity market. Not only does this nullify state and consumer policy preferences and directly undermine the clear authority Congress has given to the States over generation in the Federal Power Act, but by applying the MOPR to state-subsidized resources in PJM's capacity market, it limits how low they can bid. This creates an artificial floor that masks

true cost-effectiveness. It also masks the fact that these resources are providing value and receiving compensation for that value, which thereby lowers the costs they need to recoup from the capacity market, and thus their bids. It undermines numerous market benefits, including cost savings to consumers, enhanced grid reliability, and the entry of new, clean, and innovative energy technologies into markets. This Order could potentially harm the long-term health of the PJM market by forcing many of the load-serving entities to elect PJM's "fixed resource requirement" and leave the capacity market altogether, and in fact make it less like a truly competitive market.

Most PJM states require energy targets or support specific energy resources. By enacting a minimum price for these resources, new wind and solar resources, for example, will have to bid into the capacity market at prices nearly four times as high as the current clearing price. If developers choose to forego payments from the capacity market, early industry estimates suggest that the average wind and solar project will increase its prices by 20% and 25% respectively. Nearly 100 gigawatts of renewable resources are currently under development in PJM, and this price increase threatens the viability of these projects as well as future projects.

Practically speaking, FERC's decision will also result in consumers paying twice for generation capacity in states. Consumers will pay for capacity once through the capacity market, and then consumers also pay for clean energy resources through state policies. Those resources will provide capacity to the system even if their capacity isn't "counted" in the capacity market (because of the MOPR). So, through the state policies, consumers have now paid a second time for capacity. Another way of putting this is that the MOPR forces consumers to pay for capacity in the capacity market they don't need because the capacity is already on the system and available to meet energy needs as a result of the state policies.

Projections estimate the costs of functionally barring these new state-subsidized resources range from \$1.6 billion to \$5.7 billion a year and rising in future years as more and more state-subsidized energy is built yet barred from PJM's capacity market. FERC's decision disregards the billions of dollars of added costs it imposes on consumers. Indeed, the Commission does not discuss the potential cost increases. It has been described by municipally-owned utilities as a "clear attack" on their business model. The cost to consumers will also increase due to decreased competition in these markets. By requiring artificially high bids from advanced energy resources, these resources will be priced out of the market.

Lastly, FERC's Order largely denies states any flexibility in setting energy policy goals. FERC's broad definition of state subsidy effectively subjects any new resource to the MOPR if it intends to comply with a state program. Thus, states are inherently penalized for using their authority under the FPA, as any future exercise of the authority will bear enormous costs. Because of the loose definition of "subsidy", this means that corporations, cities, utilities and individuals will also pay more. Additionally, many large energy users have voluntarily pursued the procurement of renewable energy resources to source some of their energy needs and meet sustainability targets.

This order creates uncertainty and will likely impose price increases for customers who want clean energy.

In sum, given today's rapidly evolving electricity sector, FERC's policy change will effectively nullify state policies to choose their generation mix, unnecessarily raise costs for consumers across PJM, and denies the ability of states to move energy policies forward. It creates a direct conflict between wholesale power markets and state policy goals. This needless conflict will inevitably cause states to reconsider the benefits of wholesale markets, placing decades of work developing competitive deregulated markets at risk.

We respectfully request a response to our deep concerns on the significant impact of this Order.

Sincerely,



Donald S. Beyer Jr.





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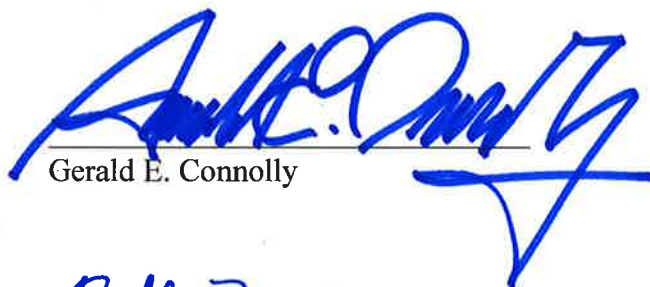
  
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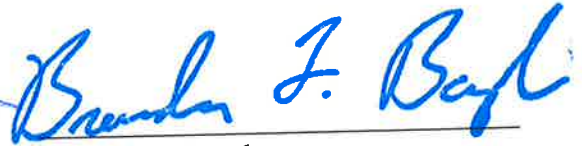
  
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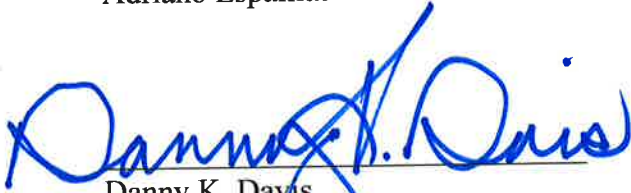
  
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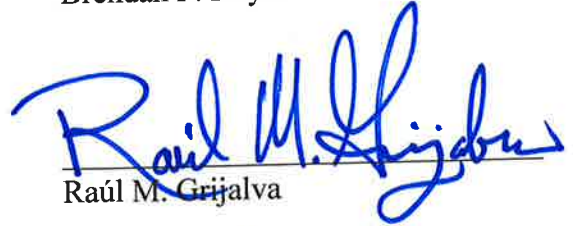
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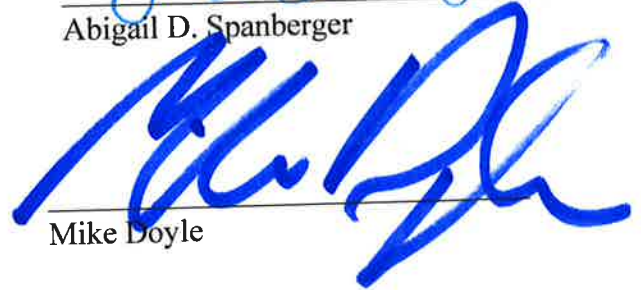
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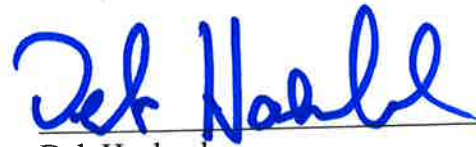
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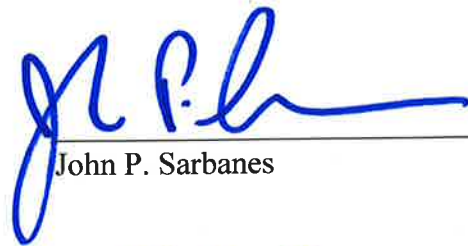
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