

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

**Calpine Corporation, Dynegy Inc., Eastern)
Generation, LLC, Homer City Generation,)
L.P., NRG Power Marketing LLC, GenOn)
Energy Management, LLC, Carroll County)
Energy LLC, C.P. Crane LLC, Essential)
Power, LLC, Essential Power OPP, LLC,)
Essential Power Rock Springs, LLC,)
Lakewood Cogeneration, L.P., GDF SUEZ)
Energy Marketing NA, Inc., Oregon Clean)
Energy, LLC and Panda Power Generation)
Infrastructure Fund, LLC,)
)
Complainants,)
)
v.)
)
PJM Interconnection, L.L.C.,)
)
)
Respondent.)**

Docket No. EL16-49-000

COMMENTS OF THE ENVIRONMENTAL DEFENSE FUND

On March 31, 2016, the Public Utilities Commission of Ohio (“PUCO”) issued two orders¹ allowing the Ohio electric distribution utility operating companies for American Electric Power Company, Inc. (“AEP”) and FirstEnergy Corporation (“FirstEnergy”) to recover from captive consumers the costs for Affiliate Power Purchase Agreements (“Affiliate PPA”).

Calpine, *et. al.* argue that PJM’s Minimum Offer Price Rule (“MOPR”) should be expanded to

¹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO (Opinion and Order) (March 31, 2016) (“FirstEnergy Order”), available at: <http://dis.puc.state.oh.us/TiffToPdf/A1001001A16C31B41521H01842.pdf>;
In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, Case No. 14-1693-EL-RDR (Opinion and Order) (March 31, 2016) (“AEP Order”), available at: <http://dis.puc.state.oh.us/TiffToPdf/A1001001A16C31B40932C01840.pdf>.

cover these “massive ratepayer-funded subsidies (the “Calpine Complaint”).² The Complainants propose a MOPR expansion that would “prevent the artificial suppression of prices in the Reliability Pricing Model (“RPM”) market by below-cost offers for existing resources whose continued operation is being subsidized by State approved out-of-market payments.”³ That is, the Complainants suggest that the MOPR should cover not only new resources⁴ receiving out-of-market subsidies, but existing resources as well, subject to several limitations.

As described in further detail below, the undersigned submit that (1) a MOPR expansion specifically targeted and limited to the particular and unique facts at issue in this case is warranted; but that (2) the MOPR expansion requested by the complainants is overly broad and could lead to negative and unforeseen consequences if a MOPR expansion is not specific, limited, and particularly tailored to the fact pattern at issue in this docket.

1. A MOPR Expansion Specifically Targeted and Limited to the Particular and Unique Facts at Issue in this Case is Warranted

By approving AEP and FirstEnergy’s requests, the PUCO order requires Ohio ratepayers to subsidize over 6 GW of uneconomic existing generation resources. These resources, owned by AEP and FirstEnergy unregulated affiliates, are structured so that the utility affiliates, pursuant to Affiliate PPAs, re-sell the purchased power into PJM markets. The utility then recovers the difference between these revenues and the costs of the plants through a non-bypassable charge levied on all retail delivery consumers within the service territory. Although Ohio is a retail choice state, AEP’s and FirstEnergy’s delivery consumers are captive consumers because the plants’ costs will be recovered through a non-bypassable charge paid by all delivery consumers,

² Calpine, *et. al.*, *Complaint Requesting Fast track Processing*, Docket No. EL16-49-000 (filed March 21, 2016), at 2.

³ *Id.*

⁴ See Tariff, § 5.14(h)(1).

regardless of whether they buy power from the utility as provider-of-last-resort or from a competitive retail electric supplier.

This fact pattern is both unique and inherently abusive, where (1) an unregulated affiliate openly sells existing and admittedly uneconomic power⁵ directly to its utility affiliate at above-market prices with (2) all Ohio consumers inescapably responsible for the unjust and unreasonable costs. Indeed, the extraordinary conditions at hand are further underscored by company statements suggesting that retirements would result without this action.⁶ These unique circumstances, and only these unique circumstances, warrant unique response.

These particular facts directly undermine the MOPR in a manner unlike other MOPR exempted contracts and resources. With consumers – including those buying power from a competitive retail electric supplier – required to pay AEP and FirstEnergy for revenue not received through the wholesale marketplace, price signals will be distorted because AEP and FirstEnergy will be incented to bid these plants into the PJM auction at zero cost, in order to maximize the revenues for the plants. As existing and uneconomic generation, this unjust and unreasonable and market distorting impact will be supported for the next eight years, the duration of the Affiliate PPAs. And unlike a typical PPA, this transaction includes no consumer protections such as a competitive solicitation or after-the-fact prudency review. The case at hand is unique, and deserves unique and constrained response.

2. The MOPR expansion requested by the complainants is overly broad and could lead to negative and unforeseen consequences if a MOPR expansion is not specific, limited, and particularly tailored to the fact pattern at issue in this docket.

⁵ *First Supplemental Testimony of Joseph E. Bowring on Behalf of the Independent Market Monitor for PJM* at 3, PUCO Case Nos. 14-1693-EL-RDR & 14-1694-EL-AAM (filed December 28, 2015).

⁶ *Id.* ([AEP] “Witness Vegas (P14) stated that market conditions mean a greater risk of unit retirements and the likely sale of these assets by AEP.”

The uniquely abusive, unjust, and unreasonable action at issue in this case should not be used for generalized MOPR extension to all existing generating resources. The current MOPR was created through thoughtful stakeholder process, and wholesale extension – even within the limits proposed by complainants – would both undermine this process and create potential unintended consequences.

The Calpine complaint, if read broadly, suggests that the MOPR should be expanded to cover all instances where subsidies may allow a seller to offer capacity at a rate less than an unsubsidized offer. Such an expansion would cover not only the particularized facts of this case, but other actions that do not suffer from the unique and abusive defects inherent in the AEP and FirstEnergy contracts. Indeed, testimony before the PUCO by the Independent Market Monitor for PJM highlights the uniqueness of the case:

The fact that AEP is proposing to transfer the costs, the risks and the asserted net benefits of these units from shareholders to customers is evidence that AEP does not believe that the units are profitable and does not appear to believe that current and expected market conditions will make the units profitable.⁷

These actions stand in stark contrast to other MOPR exempted actions. Actions founded upon genuine state and public interest rationales could be compromised through sweeping change to the MOPR. Unique facts are ill-suited to create generalized decisions. That is, the abusive, captive, and uneconomic actions at issue in this case should not be used to form rules and laws on non-abusive, non-captive, or economic actions.

Viewed in this light, a constrained MOPR expansion, covering only uniquely abusive cases such as the one at hand, is warranted. The undersigned thus recommend that FERC should expand MOPR only to cases replicating the one at hand. To this end, the undersigned recommend well-tailored language, ensuring that any MOPR expansion applies only to: (1)

⁷ *Id.*

instances where an unregulated affiliate openly sells existing and admittedly uneconomic coal or nuclear power directly to its utility affiliate at above-market prices with all consumers inescapably responsible for the unjust and unreasonable costs; (2) the transaction was not conducted through a competitive solicitation or informal negotiation where non-affiliates had an opportunity to participate; and (3) the transaction is not subject to an after-the-fact prudency review where the price paid by consumers can be challenged.

3. Conclusion

WHEREFORE, for the reasons stated above, the undersigned urge the Commission to consider a narrow, well-tailored, and fact-specific determination extending the MOPR to only cases exactly replicating the facts at issue in this case.

Respectfully submitted,

ENVIRONMENTAL DEFENSE FUND

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On behalf of **Environmental Defense Fund**

OHIO ENVIRONMENTAL COUNCIL

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On behalf of **Ohio Environmental Council**

Dated: April 11, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 11th day of April, 2016.

/s/ Michael Panfil

Michael Panfil