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supervision of principals of the washington office.

February 20, 2004

Honorable Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

VIA ELECTRONIC FILING

RE: PJM Interconnection, L.L.C.
Docket No. EL03-236-000

Dear Secretary Salas:

Enclosed for filing with the Commission in the above-referenced proceeding is the Motion To Intervene Out-of-Time and Comments of the Electricity Consumer Resource Council ("ELCON").

As evidenced by the attached Certificate of Service, copies have been served upon all parties of record. Thank you.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON

By: Sara D. Schotland

Counsel to the Electricity Consumers Resource Council

Enclosure

cc: All parties on official service list

member companies produce a wide range of products from virtually every segment of the manufacturing community. The member companies of ELCON consume approximately five percent of all electricity in the United States. ELCON members have significant operations in PJM that will be directly impacted by the Commission's resolution of this matter.

II. REQUEST TO INTERVENE OUT-OF-TIME

ELCON submits that good cause exists to grant its Motion to Intervene Out-of-Time in this proceeding pursuant to Section 214(d) of the Commission's Rules of Practice and Procedure. First, the scope of the instant proceeding has been broadened as a result of the February 4-5, 2004 Technical Conference. Consequently, the potential impact of the PJM Filing is much greater and has triggered the instant intervention.

Approval of ELCON's Motion to Intervene Out-of-Time will not prejudice other parties. ELCON agrees to accept the record of this proceeding as it stands at the time this motion is granted. Moreover, permitting ELCON'S late intervention will not delay the resolution of this proceeding, given that the Commission's Notice affords additional comment opportunities on February 20, 2004 and March 4, 2004.

III. SUMMARY OF COMMENTS

ELCON believes that, for the PJM region, PJM's proposed amendments to its offer price cap rules effectively balance concerns about the exercise of local market power in load pockets, while producing just and reasonable revenues for RMR units. ELCON believes that the proposed modifications to the PJM OATT and Operating Agreement will ensure that adequate incentives exist for new generation investment in load pockets and that resulting rates are not excessive. *ELCON's support for price cap for must-run units of cost plus 10% is limited to PJM only: for other RTOs, fact-specific inquiry may lead to a different (and potentially lower) just*

and reasonable rate. ELCON thus supports the PJM offer price cap for must-run units. ELCON joins PJMICC in its comments on the PJM proposal including use of an auction process as an interim means for addressing long term scarcity which is appropriate at this point in time; repeal of the exemption for Post-1996 Units from price cap rules; and uniform applicability of price cap rules to all generators. However, ELCON does not believe that the MMU should not be authorized to suspend the offer price cap rules in load pockets based on a “sufficiently competitive determination.”

IV. COMMENTS

A. PJM’s Offer Price Cap Rules Are An Appropriate Based On The Facts Of Circumstances Of The PJM RTO To Effectively Address Local Market Power And Produce Just And Reasonable Rates .

PJM’s offer price cap rules are designed to prevent the exercise of market power when conditions on the transmission system and the absence of sufficient competition in the area, defined by the transmission constraint, put units in a position to exercise local market power. PJM’s offer price cap rules apply only to RMR units and are triggered only during hours when transmission constraints, in absence of the offer cap, would allow a generating unit to exercise local market power.

PJM’s offer price cap rules limit the offers of units with market power to the *higher of* marginal cost plus ten percent, or the market clearing price. Thus, if market conditions produce clearing prices that exceed an RMR unit’s offer price cap, that RMR unit is compensated at the higher prevailing market price. The proposal that mitigated units be compensated at the market clearing price when such price exceeds the offer price cap ensures that such units are not disadvantaged by the cost capping provisions. As PJMICC points out in its comments, the MMU’s analysis of the PJM market indicates that cost plus ten percent is generally reflective of

how units offer their energy into the PJM markets and how markets prices are set in the PJM energy markets. Accordingly, PJM's offer price cap rules ensure that RMR units are afforded all opportunities to earn just and reasonable revenues.

ELCON's support for the price cap is limited to the facts and circumstances of PJM; in other regions, a different (and potentially lower) cap may be appropriate.

Based on the foregoing, ELCON recommends that FERC adopt PJM's offer price cap rules, as modified in the PJM Filing, on a PJM-specific basis, to ensure that RMR units receive adequate compensation.

B. PJM's Proposed Auction Is A Satisfactory *Interim* Mechanism For Addressing Long-Term Scarcity And Incenting New Investment Within PJM

The PJM Filing, while recognizing that long-term scarcity is not affecting the reliability of the PJM region, proposes the establishment of an Auction as an anticipatory measure that would permit PJM to address this issue if it were to arise. The PJM Filing further recognizes that the offer capping mechanism may not adequately incent new generation to locate in a load pocket where long-term scarcity exists, i.e., when there is inadequate generation and transmission import capability to serve the load in an area.

Once implemented, the Auction would enable PJM to select the lowest cost option among transmission, generation, and load response alternative to meet the reliability needs of the locality. The local market auction would provide long-term reliability at an efficient price resulting from a competitive bidding process. ELCON supports this approach on an interim basis.

Any proposal for a scarcity pricing approach must be rejected as inappropriate in a load pocket where the laws of supply and demand do not temper market forces. PJM's proposed Auction should produce market-based incentives that should attract and retain investment in

areas where it is needed and prevent payment of excessive rates that would result from the short-term scarcity pricing approach.

C. PJM’s Proposed Elimination Of Post-1996 Units’ Exemption From PJM’s Offer Price Cap Rules Is Necessary To Effectively Address Local Market Power.

The PJM Filing proposes to amend the Operating Agreement to remove provisions that exempt Post-1996 Units from PJM’s offer price cap rules. ELCON agrees with PJM’s conclusion that no basis for this exemption exists as Post-1996 Units in PJM may have the incentive and ability to exercise local market power.

D. PJM’s Proposal For Uniform Generator Obligations Is Necessary And Appropriate.

The PJM Filing proposes to modify the OATT and Operating Agreement to provide that generation owners located in the PJM region must either become PJM members or agree to abide by all rules and procedures pertaining to generation and transmission in the PJM Regions. ELCON supports this proposed modification because it provides uniformity with respect to the rules applicable to existing and prospective generators.

E. The MMU Should Not Be Authorized To Suspend The Offer Cap Rules In Load Pockets.

The PJM Filing proposes to empower the MMU to suspend the offer price cap rules when it determines that a load pocket is “sufficiently competitive.” A load pocket would not be deemed sufficiently competitive if three or fewer generation suppliers are jointly pivotal to serve the load in the locality.” Suppliers are jointly pivotal if the energy from three or few suppliers’ capacity is necessary to meet the local market’s peak demand.

ELCON believes that vesting the MMU with the discretion to suspend the offer price cap rules upon a determination that a load pocket is “sufficiently competitive” cannot be justified at this time when by the PJM MMU’s own admission, there are no cases where actual ownership of

units is diverse enough to eliminate concerns about the exercise of local market power. So long as there is potential exercise of market power within PJM's load pockets, market mitigation measures are required.

V. NOTICES AND COMMUNICATIONS

The following persons are designated by ELCON to receive service and communications on their behalf with regard to these proceedings:

Dr. John Anderson
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VI. CONCLUSION

For the reasons discussed herein, ELCON respectfully requests that the Commission:

- Grant this Motion to Intervene Out-of-Time;
- Authorize PJM's proposed price cap rules on a fact-specific basis for PJM only as a just and reasonable basis to compensate RMR units in the PJM region;
- Deny the proposal to authorize the MMU to suspend offer price cap rules in load pockets.

Respectfully submitted,

/s/ Sara D. Schotland

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Dated: February 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, the foregoing Motion to Intervene Out-of-Time and Comments of the Electricity Consumer Resource Council (“ELCON”) upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Jennifer A. Morrissey

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Dated at Washington, D.C., this 20th day of February 2004.