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Austin D. Saylor
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044

Re: Delaware Dept. of Natural Resources et. al v. EPA
US Court of Appeals D.C. Circuit
Docket No. 13-1093

Dear Mr. Saylor:

I am writing to provide you with certain key facts associated with the impact of the Court of Appeal's ruling in the above-captioned case on reliability of the bulk power electric grid in the 13-state region served by PJM Interconnection, L.L.C. PJM is the FERC-regulated Regional Transmission Organization ("RTO") serving all or portions of the states of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, West Virginia, Kentucky, Tennessee, Ohio, Michigan, Indiana, Illinois and the District of Columbia. Among other tasks, PJM is responsible for ensuring the reliability of the bulk power electric grid in this region and ensuring adequate resources to cover customer demand for electricity in our 13-state region.

PJM administers a market for "capacity resources". Through that market, PJM commits, on a three year forward basis, sufficient resources in order to ensure adequate generation and demand response resources are available to cover customer demand along with an adequate reserve margin. A capacity resource in PJM is obligated to provide energy or reduce its consumption when called upon by PJM in response to PJM-declared emergency conditions.

Pursuant to its FERC-approved tariff, "demand response resources" (in addition to generation resources) compete in PJM's market to serve as capacity resources. Demand response resources commit to curtail their consumption when called upon by PJM in response to declared emergency conditions. In this way, demand response resources serve as the mirror image to generation resources---demand response resources reduce their consumption from the grid while generation resources generate more electricity to respond to the PJM-identified need. As detailed below, a number of locations such as commercial and industrial establishments agree to serve as demand response resources in PJM's market since they maintain power to their site through the use of on-site back-up generation including resources which fall under the RICE rule.

As of today, PJM has 10,600 MW of demand response resources committed to meet the period which begins today, June 1, and runs through May 31, 2016 ("2015/16 Planning Year"). This represents approximately 6% of our total resources for the 2015/16 Planning Year. The Curtailment Service Providers who register as demand response resources are required to inform us of the status of their

environmental permits. It appears from our review of the submitted data, that approximately 14% of the total demand response resources or 1,500 MW out of 10,600 MW are restricted to running for 100 hours and appear to be RICE units and thus affected by the Court's decision in the above case.

Because the US Supreme Court has granted certiorari of the Court of Appeal's decision in EPSA vs. FERC, we are no longer facing the potential loss of all demand response resources during the 2015/16 Planning Year. The Court of Appeals in the EPSA case held that FERC had no jurisdiction over demand response which, absent the stay issued by the US Supreme Court, would have put a cloud over all of PJM's demand response procurement for the 2015/16 Planning Year. As a result of the US Supreme Court's grant of certiorari, the impact of the Court's decision in Delaware for 2015 is lessened but still impactful to the upcoming summer cooling and winter heating seasons. Specifically, issuance of a mandate in June by the Court of Appeals in the Delaware case, would have the following implications for PJM:

- Although the majority of demand response resources are not obligated to perform under our present market rules during the winter period, demand response resources were helpful to PJM in maintaining reliability during extreme winter events such as the Polar Vortex conditions experienced in the winter of 2014. Given the obvious lack of summer air conditioning programs as a resource to call upon, the voluntary participation of demand response resources (supported by RICE units) contributed to the total demand response resources that respond to winter emergencies and were helpful to PJM for reliability purposes during the 2014 Polar Vortex;
- The remand being issued in the third week of June would cause us to lose these demand response resources with no realistic means to replace that capacity in the midst of the summer months. As a system operator, we have a long-standing practice of attempting to avoid significant disruptions or new operating rules during the summer months as this is a period when all resources are needed should we see multiple days of hot weather in our footprint as we have seen in past years. As a result, issuance of the mandate in June, with virtually no prospect for replacing the 1,500 MW and potential litigation as to whether such units can even legally run when called upon, creates particular operational challenges for PJM and demand response resource providers given its timing. Issuance of the mandate after the summer season and before the winter (i.e. September 1- November 30) would allow for a more orderly transition as well as potential adoption by EPA of interim rules governing the operation of these units so as to provide greater clarity as we enter into the winter portion of the 2015/16 planning year.

As it explained in the proceedings before the agency, PJM reiterates that although RICE units make up part of a portfolio of resources that curtailment service providers use to develop their demand response bids, PJM does not have direct visibility or control over these units. Moreover, for purposes of meeting PJM's demand response requirements, the performance of individual units can be aggregated so long as the aggregated total meets the locational requirements associated with demand response resources' capacity obligation. As a result, there may remain some latitude for operation of these units even if the per unit 100 hour restriction is

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eliminated as a result of the Court's ruling. However, the ability of these units to run at all upon issuance of the mandate, and the rules governing how long they can run if called upon in a PJM-declared emergency, would need to be sorted out---a task which could prove particularly difficult in the middle of the summer season when PJM is most likely to need these units to perform in order that the demand response commitment for the 2015/16 planning year is met.

PJM expresses no opinion as to the feasibility or time associated with retrofitting these units to install the applicable pollution controls. Rather, per your request, PJM is setting forth the above facts and the challenges associated with a disruptive transition in the middle of the summer months should the Court's remand order not be stayed.

Please contact me with any questions or if you need any further information.

Very truly yours,



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