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

**PJM Interconnection, L.L.C. )** **Docket No. EL01-63-000**

**MOTION TO INTERVENE OUT OF TIME AND COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION**

This Motion to Intervene Out of Time and Comments is filed by the National Energy Marketers Association (NEM) pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), and the Notice of Filing issued on April 9, 2001, in the above-referenced proceeding. NEM requests that this Motion be granted for the reasons set forth below.

**I.**

Communications and correspondence concerning this Motion should be directed to the following:


Craig G. Goodman
President
NATIONAL ENERGY MARKETERS ASSOCIATION
3333 K Street, N.W.
Suite 425
Washington, D.C. 20007
Telephone: 202-333-3288
Facsimile: 202-333-3266
Email: cgoodman@energymarketers.com

Stacey L. Rantala
NATIONAL ENERGY MARKETERS ASSOCIATION
3333 K Street, N.W.
Suite 425
Washington, D.C. 20007
Telephone: 202-333-3288
Facsimile: 202-333-3266
Email: srantala@energymarketers.com

Jeffrey M. Bladen
AES NewEnergy
1500 JFK Boulevard
2 Penn Center, Suite 200
Philadelphia, PA 19102
Telephone: 215-563-9290
Fax: 215-563-9292
Email: jbladen@newnergy.com

**II.**

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing both wholesale and retail marketers of energy and energy-related products, services, information and technologies throughout the United States. NEM's membership includes: small regional marketers, large traditional international wholesale and retail energy suppliers (as well as wind and solar power), billing and metering firms, Internet energy providers, energy-related software developers, risk managers, energy brokerage firms, information technology providers and both manufacturers and suppliers of advanced distributed generation. Our membership has both affiliated and unaffiliated companies.

This regionally diverse, broad-based coalition of energy and technology firms have come together under the NEM auspices to forge consensus and to help eliminate as many issues as possible that would delay competition. NEM is committed to working with representatives of state and federal governments, large and small consumer groups and utilities to devise fair and effective ways to implement restructuring of natural gas and electricity markets. NEM and its members appear before state Public Utility Commissions, the Federal Energy Regulatory Commission and legislative bodies throughout the nation. NEM members urge lawmakers and regulators to implement:

a. Laws and regulations that open markets for natural gas and electricity;
b. Rates, tariffs, interconnection rules and operating procedures that lower the cost of energy;
c. Standards of conduct that protect consumers;
d. Rules to permit competition on the basis of price and quality of service; and
e. Policies that encourage new technologies, including the integration of energy, telecommunications and Internet services.

## III.

NEM, as a representative of a diverse group of providers of energy and energy-related services, has an interest to advocate the implementation of rates, tariffs, operating procedures, standards of conduct, rules, and policies that will ensure the development and maintenance of efficient and reliable competitive electricity markets, both nationwide and on the PJM system. As electricity marketers and providers of energy-related services and technologies, various NEM members intend to provide service to customers in the electricity markets served by the PJM system. The ability of NEM members to compete fairly in these markets will be specifically affected by the outcome of this proceeding.

Even if other trade associations or individual marketers intervene in this matter, NEM's interests and position are significant and unique given (1) its industry diversity, (2) its interest in serving customers who take service from or through the PJM system, (3) its current and past participation in restructuring proceedings in FERC and state jurisdictions on similar and related issues, and (4) the substantial business interests of its members in the development of viable electricity markets in the PJM system.

As such, the interests of NEM and its members in this proceeding cannot be adequately represented by any other party hereto. Under all of these circumstances, and given the recent number of filings and brevity of time to respond, NEM submits that good cause exists to grant its late motion to intervene given the nature of its interest. NEM is willing to accept the record as it already exists in this docket, and submits that there is an absence of any undue prejudice or delay on any other party to the proceeding.

## IV.

NEM reiterates its support for PJM's Proposed voluntary, market-based Load Response Program[1] as an important element in developing competitive wholesale markets by allowing consumers to respond to price signals. However, NEM is surprised that PJM would simultaneously propose what are, in effect, allocation controls in the name of

[1] See Motion to Intervene and Comments of the National Energy Marketers Association, PJM Interconnection, L.L.C. Docket No. ER01-1671-000, dated April 19, 2001, available on the NEM Website at: http://www.energymarketers.com/Documents/NEM_Motion_and_Comments.PDF.

reliability. After their repeal, academic studies concluded that the allocation controls implemented in the 1970s were a major contributing factor to the spot shortages that occurred in the refinery supply chain causing the gasoline lines that marked the period.

NEM opposes the implementation of the proposed changes to the Reliability Assurance Agreement (RAA) for the PJM system. In the name of reliability, NEM is seriously concerned that this new regulatory scheme that mandates who may sell to whom, for how long with substantial 4 month penalties for one day underdeliveries has the potential to create artificial, regulatory-induced shortages and make the current imperfections in the ICAP market substantially worst. Additionally, potential penalties of the size proposed can and will have a significant adverse impact on both the wholesale and retail markets. NEM urges the Commission to reject the PJM filing and avoid the imposition of other regulatory mandates or changes to the existing ICAP rules until and unless there is agreement among all the parties that such change will serve the public interest. Additionally, to enhance liquidity and reliability, any future changes that occur in this market should be consistent with similar requirements in neighboring markets.

**A. The Commission Should Reject the Present Complaint on the Merits**

NEM acknowledges that the current ICAP market is flawed and neither insures reliability nor promotes a robust competitive retail energy market. However, the PJM proposal to modify the RAA neither (1) improves the reliability of the system nor (2) improves the liquidity of the markets that are needed for retail competition. Rather these changes may very well damage both.

PJM has proposed to (1) adjust the period of time over which a load serving entity must commit generation resources to PJM to meet its capacity obligations under the RAA from a daily commitment to a multi month interval commitment; (2) adjust the deficiency charge provisions to provide for an interval penalty, rather than a daily penalty; (3) require generation owners to commit excess capacity to PJM on an interval basis, rather than a daily, in order to participate in any distribution of revenues from capacity deficiency charges to load serving entities; and (4) distribute revenues from capacity deficiencies to load serving entities meeting their obligation in addition to those entities having excess capacity.

**1. Little to No Improvement in Reliability**

As was stated by several Members of the Reliability Assurance Agreement – Reliability Committee (RAA-RC) this proposal does not improve reliability and may reduce reliability. The assertion by PJM that Competitive LSEs care less about reliability then the previous Utilities is unfounded and signals a significant departure of PJM from an entity that has fostered competition to one that is advocating a return to a Utility run system. The main reason NEM believes that the current proposal will reduce reliability is the incentive that this proposal gives for large generation owners to de-list their resources from PJM for the multi-month interval or bid them at clearing prices in excess of the deficiency amount. Whereas, the current rules give an incentive for generation to re-enter the market, due to changes in the external energy markets or the clearing price of ICAP inside the PJM market, under the PJM proposal there is little incentive for Generators to re-enter the market and no incentive for Load Serving Entities to look for additional supply once they are short during the procurement period. Under the PJM proposal, it is just as likely, and maybe more likely, that PJM will be short for the entire procurement period.

The incentive for Generation Owners with large excess capacity positions to de-list can be significant, for instance, a Generation Owner has a long position of 2000MW while the pool is about 500MW long. By de-listing 600 MW the Generation Owner can insure that they will clear 1400 MW at $177.30 MW-day. When the markets clear the LSE who ends up short by 100 MW pays the seasonal deficiency price - in the case of Summer 2001, $1,631,100.6 (177.30 * 92 days*100 MW). The LSE will then have no further obligation to procure ICAP and the pool will remain 100 MW short for the procurement period. Under the previous rules, generation that had de-listed to sell externally would see the high price in the daily market and might have re-listed making the pool long for the remainder of the period. It is equally likely that the pool could be far more then 100

MW short for the summer period and without proper energy price signals there could be a true energy shortage in PJM.

**2. Damages Liquidity and Retail Competition**

The adjustment of the time period is inconsistent with retail choice programs and retail rate design within the PJM territory. Throughout 1999, several LSEs operating in PJM worked with the various State Public Service Commissions to develop a daily capacity market to add liquidity to a relatively illiquid ICAP market. Although flawed, this market allows for LSEs to true up their load and generation owners to enter the market on a daily basis. This daily market aligned well with retail choice in that customers can be added or removed on a daily basis as their meters are read. By locking in a multi-month procurement period several issues arise that hinder liquidity and retail competition.

a. Exacerbation of the "Chicken and Egg" Problem of Customer Switching

In trying to sign up new customers before the procurement period there will likely be a shortage of ICAP available for sale. This is due not only to the relative scarcity in the PJM market but also due to the fact that the current LSEs, often the incumbent utilities, are not aware of how many customers they will lose to competitive LSEs over the procurement period and therefore do not know how much "excess" capacity they have to sell. Competitive LSEs who are trying to purchase ICAP in advance of signing up customers, so that they can offer a guaranteed price, will be unable to. This has been referred to as the "Chicken and Egg" problem. Does the LSE sign the customer up and then purchase ICAP or get ICAP and then sign up customers. Although the current market does not fully address this concern it does minimize its impact to a relatively short interval. By going to a multi-month mandated market, with significant penalties for insufficient ICAP, this problem will become even greater as Utilities who have Provider of Last Resort responsibility will want to be more conservative about how much ICAP they sell and LSEs will be less willing to trust that there will be a market through which they can procure ICAP.

b. Annual Utility Contracts

The second hurdle that arises from a multi-month procurement period is the ability to sign up customers who are on annual contracts with their host Utility that expire in the middle of a procurement period. As there is expected to be little, if any, liquidity in these interim daily markets it will be unlikely that those customers could be served by a competitive LSE. For instance a customer whose contract expires with a utility on August 1st would look to start service from a competitive LSE on August 1, 2001. On July 1st the customer comes to the LSE looking for a price. The LSE risks a deficiency payment for the entire procurement period ($16,311.6) despite the fact that someone else has been serving the customer for the first month of the procurement period. This additional risk, compounded by the reduced liquidity, will make it unlikely that the LSE will be able to serve the customer at a competitive price.

c. Increase Overall Costs

NEM believes that these new rules will likely increase the cost of ICAP for the shoulder periods by increasing the incentives for long ICAP holders to de-list or physically withhold their resources. One of the factors that goes into the pricing of any product is the penalty that is provided for an entity that does not procure the product. With relatively few significantly long sellers in the ICAP market these opportunity costs are very important in the determination of how much the seller of ICAP is looking to garner. The following chart can illustrate the proposed incentives for a summer procurement period of June - September:

An LSE picks up a customer on the 15th the month.
122 days in Summer Interval
ICAP Deficiency rate of $177

| Month | Max Value for last 15 days of Month | Max Value for Remainder of Period | Number of Days of Service | Average per MW-day Value | Max Opportunity Cost in Monthly Market |
|---|---|---|---|---|---|
| May | N/A | $21,594 | 122 | $177 | $177 |
| June | $2655 | $21,594 | 107 | $226 | $234 |
| July | $2655 | $21,594 | 76 | $319 | $354 |
| August | $2655 | $21,594 | 45 | $538 | $720 |
| September | $2655 | N/A | 15 | $177 | N/A |

As the chart illustrated, the opportunity cost increases as an LSE picks up a customer closer to the end of a procurement period. This increasing opportunity cost is likely to increase the overall price at which the market clears and promote economic withholding in the earlier procurement periods.

**B. Alternatively, the Commission Should Modify the Present Complaint**

There are four elements of the RAA that NEM would encourage the FERC to address; (1) the elimination of the 2X penalty for LSEs when the pool is short as this currently increases the incentive of very long ICAP holders to de-list their generation and force to pool short, (2) maintain the "Mandatory Sell" provision in the PJM Operating Agreement as this will increase the liquidity under any daily or multi-month procurement system, (3) have deficiency payments for any new customers calculated on a daily basis for the remainder of the procurement period, and (4) have new generation that comes on after its initial start date pay only the deficiency payments for those days it had committed for and is not available.

## V.

WHEREFORE, NEM respectfully requests that the Commission permit it to intervene in the above-referenced proceeding and be made a party for all purposes. For the foregoing reasons, NEM requests that the Commission reject the present complaint. Alternatively, NEM requests that the Commission set the matter for hearing.

Sincerely,

Craig G. Goodman
President
National Energy Marketers Association
3333 K Street, NW
Suite 425
Washington, DC 20007

Counsel for The National Energy Marketers Association

Dated: April 25, 2001.

## CERTIFICATE OF SERVICE

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

Dated: April 25, 2001
Washington, D.C.

Stacey L. Rantala
National Energy Marketers Association
3333 K Street, NW
Suite 425
Washington, DC 20007
(202) 333-3288