

**“Powering America: Consumer-Oriented Perspectives on  
Improving the Nation’s Electricity Markets”**

**October 5, 2017**

**Before the Subcommittee on Energy  
House Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC**

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**Summary of Testimony**

- Consumer advocate participation at the RTOs is difficult due to the resources needed for meaningful participation. Advocates have come together to obtain stable sources of funding and increase their participation, but the process by which RTOs consider transmission projects and market mechanisms should still be improved to increase transparency and consumer advocate participation.
- RTOs should give greater consideration to costs as part of their analysis of transmission projects and market mechanisms and should incorporate in – depth consideration of the reasonableness of costs into their mission.
- Efforts should be made to minimize administrative rule changes and maximize competition in the capacity market, and resist efforts to direct the market results to non-competitive outcomes. Effective and independent market monitoring is an important part of maintaining competitive outcomes in the market.
- The FERC process is also opaque and does not provide sufficient consumer participation and due process protections. Congress should pass H.R. 2656 (S.1240) which would create an Office of Consumer Advocacy at FERC and provide for intervenor funding.

Good Morning Chairman Upton, Ranking Member Rush and distinguished members of the Subcommittee. My name is Stefanie Brand and I am the Director of the New Jersey Division of Rate Counsel. Rate Counsel is a state agency designated by our Legislature to represent utility customers of all sizes – residential, commercial and industrial – on both the state and federal levels. We participate extensively in matters and proceedings at PJM Interconnection, as well as at the Federal Energy Regulatory Commission (FERC). In addition, I am an Executive Committee member of the National Association of State Utility Consumer Advocates (NASUCA), an association of agencies in over 40 states and the District of Columbia, whose members are charged by statute with representing utility consumers.

I very much appreciate the opportunity to appear before you today to talk about the role of consumer advocates at the Regional Transmission Organizations (RTOs) and at FERC. Our office, and other members of NASUCA, have been actively involved in pressing for greater consideration of the needs and interests of consumers in the federal electricity markets and in transmission planning and cost allocation. It has been a long, uphill battle. We have had some successes but

there is a very long way to go and we very much appreciate the attention of this Subcommittee to this very important topic.

At PJM, the sheer number of issues and meetings makes it very difficult for consumers to participate. The stakeholder process in which issues are considered and proposals are formulated is extremely complex and requires attendance at many meetings mostly at PJM headquarters in Valley Forge, PA. By way of example, in September there were 44 meetings over 22 days. In August, there were 45 meetings over 21 days. While most of these meetings are accessible by phone or webinar, as in many arenas much of the work takes place on the sidelines or in the hallways making physical attendance a priority, if not a necessity. This can be a tremendous strain for resource-strapped agencies like ours, and even more so for state consumer advocates who must fly to get there. The consumer advocates within the PJM footprint have attempted to deal with this by working together. We formed a group called the Consumer Advocates of PJM States (CAPS) that allows us to pool our resources so that we speak together with a stronger voice. We have an Executive Director who is present at the most important meetings representing us as a group, and individual offices are stepping up efforts to vote, participate and speak up in the PJM stakeholder process. CAPS also facilitates education and information sharing so that we are better able to

keep track of all of the meetings and proceedings that are going on simultaneously. Even with this increased focus, our participation is limited and is certainly less than the other sectors at PJM.

CAPS was formed and received a stable source of funding after several years of trying. An initial vote by the members of PJM to fund CAPS through the PJM tariff was rejected, even though the cost would be less than a penny per year for residential customers. The fact is that there was, and still is, resistance to having a greater voice for customers. While PJM was receptive to the idea and tried to help us, given the structure of PJM and sector weighted voting process, our efforts were brushed aside. It was only with the support of our states and money from an enforcement settlement at FERC that was earmarked for customer related projects, that we received a few years of funding and were able to start work. CAPS then established itself as a beneficial partner in the process, so much so that that the next time CAPS funding came before the PJM membership, it was overwhelmingly approved.

My understanding is that in other RTOs, such as the Midcontinent Independent System Operator, or MISO, even less progress has been made. In MISO, funding is available to state consumer advocates only to reimburse for MISO-related travel expenses. That funding comes from the Organization of

MISO States, which is made up of state commissions within the MISO footprint, who stepped in when efforts by the consumer advocates to obtain stable funding were opposed by the transmission owners.

There are a few potential solutions to the difficult task of increasing consumer participation at the RTOs. The first would be to identify and make available sources of funding for groups like CAPS. Generally the amount that would be needed is so small that it would be a minuscule component of the RTO tariff. As I mentioned, CAPS funding amounts to about a penny a year for a residential customer, and the benefit that customer receives is much greater.

In addition to funding mechanisms, consumer participation at the RTOs could be improved if consideration of the interests of consumers was made a more central part of the mission of the RTOs. Ensuring that rates are just and reasonable is certainly an essential goal of the Federal Power Act. It should also be a critical component of the analysis for those charged with implementing the Act. Consideration could also be given to having consumer interests represented on the RTO Board, or at least to having a designated consumer liaison among the Board members. Even if only one member of the Board had familiarity with the concerns of consumers it would go a long way toward bringing those concerns into the conversation.

While CAPS represents a significant step forward, consideration of the interests of consumers remains inadequate. PJM's primary function is to keep the lights on, and it freely admits that it does not necessarily factor in the ultimate costs when putting forth proposals or approving projects. While we certainly share PJM's interest in keeping the lights on, we believe that costs should be taken into account early in the process so that customers get the service they need but at a just and reasonable price. There is some progress being made, such as FERC's Order 1000 that seeks to introduce competition into the selection of transmission projects, but there is currently no institutional mechanism for a comprehensive review of costs in the transmission planning and market oversight process at PJM. Once the PJM stakeholder process concludes and PJM files its proposed tariff changes at FERC, the burden of demonstrating that the proposed tariff changes are unreasonable falls to the challenger, who only has 20 days to respond. It is therefore difficult to undertake an in-depth review of cost considerations at that juncture. This failure to adequately consider costs early enough in the process is something that needs to change to make the system work better for consumers.

With respect to the markets, competition should keep prices at a reasonable level. I do believe that competitive markets work and that New

Jersey's ratepayers have benefitted from the State's participation in the federal electricity markets. However, as time has gone on there have been more and more administrative changes to the market rules so that, with respect to the capacity market at least, it is so administratively driven that it is difficult to call it a market. At any given time at PJM, there are multiple proceedings to examine market changes. In fact, since 2010, there have been 27 significant filings made to modify RPM. There have been rule changes in just about every annual auction since 2007 when the Reliability Pricing Model was put in place for PJM's capacity market.

What is the impact of this for consumers? First, the system is so opaque and confusing and constantly changing that the average consumer will never make sense of it. Even some of the largest consumers who do participate directly at PJM and consumer advocates whose job it is to pay attention and monitor these markets have difficulty understanding the many rules and revisions to those rules. In New Jersey, generation and transmission costs, which flow through PJM, account for nearly 60% of a customer's bill, and there really is no way for customers to understand how those costs are derived.

Second, the complexity of the rules I believe leads to higher prices. There are so many "fixes" each time a particular problem or issue arises, that consumers

end up subsidizing virtually everyone. In fact, as we are seeing now, when the market does work, favoring lower priced generation sources and bringing overall prices down, the unsuccessful bidders and generators faced with lower prices then seek changes and subsidies to undo those market results. Rather than leveling the playing field among market participants, these efforts raise the entire playing field so that everyone pays more.

This is one of the reasons why retail prices appear to be staying flat even though we are relying more on inexpensive gas generation. In addition, on the state level utilities view reductions in the cost of generation as “headroom,” allowing them to propose other initiatives to be paid for with the savings. In New Jersey, we have certainly seen some reductions in our gas prices and heating costs, but not as much as you might expect given the increased reliance on cheaper natural gas. It may be useful to explore other sources of funding, such as federal grants for grid modernization, to reduce this additional spending and return the “headroom” to customers.

We do have a strong Independent Market Monitor (IMM) at PJM who diligently works to keep the markets competitive. In many instances it is only the intervention of the IMM that ensures competitive market outcomes. But it is a battle for him as well. I cannot stress enough the importance of independent

monitoring of these markets. The RTOs themselves are private corporations governed by their Board but beholden to their members, who for the most part are transmission owners and generators who join the RTO voluntarily. There are those within PJM who would seek to limit the IMM's access and authority which would undermine his effectiveness. The access and independence of the market monitor is essential not only to protect competition, but also to foster confidence in the markets by regulated entities and the public.

The process at FERC is not much more consumer friendly. Nearly all proceedings are conducted on paper, with limited opportunity for public input. Evidentiary and public hearings are rare. The process consists of each side filing briefs and then at some point an Order is issued. There is no opportunity for cross-examination if factual certifications are submitted and there is no oral argument on the legal or policy issues. An application for rehearing is required before an appeal can be taken and even though the statute provides a deadline by which the agency must act on the petition for rehearing, FERC often grants the rehearing request to satisfy that deadline but then fails to take any further action for long periods of time. This serves to delay the ability of objectors to be heard in court and the delay often effectively denies relief as there is rarely a stay in place while the rehearing is pending.

Consumers need real representation at FERC to protect their due process rights and seek redress. Increased transparency and more opportunity for public participation at FERC would advance that important objective. There is a bill pending H.R. 2656 (S.1240) sponsored by Congresswoman Schakowsky that would create an Office of Consumer Advocacy at FERC and provide for intervenor funding. We support this legislation and think a FERC-level version of CAPS will provide much greater opportunity for consumers to be heard. In addition, we believe legislation requiring greater public participation and transparency in FERC proceedings is long overdue. We would also urge you to develop and support such legislation.

To summarize, I urge you to consider the following:

- Establish stable funding mechanisms for consumer advocate organizations to participate in stakeholder processes at the RTOs;
- Make consideration of the reasonableness of costs part of the RTO's mission and consider requiring that at least one member of each RTO Board be a representative of or liaison to consumer interests;
- Explore ways to minimize administrative rule changes and maximize competition in the capacity market, and resist efforts to direct the market results to non-competitive outcomes;
- Mandate effective and independent market monitoring in all RTOs;
- Support H.R. 2656 and other efforts to increase transparency, consumer participation and due process protections at FERC.

Thank you again for the opportunity to testify today. I would be happy to answer any questions you may have.