

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

**Participation of Energy Efficiency
Resources in RTO/ISO Markets**

Docket No. AD24-___

PETITION FOR A TECHNICAL CONFERENCE ON ENERGY EFFICIENCY

Pursuant to Rule 207 of the Federal Energy Regulatory Commission’s Rules of Practice and Procedure, Petitioners Alliance to Save Energy, American Council for an Energy-Efficient Economy, California Efficiency and Demand Management Council, Energy Efficiency Alliance of New Jersey, Institute for Market Transformation, Keystone Energy Efficiency Alliance, Metrus Energy, Midwest Energy Efficiency Alliance, National Association of Energy Service Companies, and National Association of State Energy Officials (collectively, “the Coalition”) respectfully request that the Commission convene a technical conference to explore the future role, participation, and eligibility of energy efficiency in FERC-jurisdictional wholesale markets.

There is currently significant disparity between regional transmission operators (“RTOs”) in the treatment of energy efficiency. And recent actions by PJM Interconnection targeting energy efficiency have led to five separate complaints filed at the Commission within the last few months.

This backdrop, along with existential concerns over reliability and affordability in the RTO markets, indicate the importance of the Commission making efforts now to re-evaluate the role and participation of energy efficiency across all wholesale electricity markets. A technical conference is an important, and necessary, first step in building the record to enable further Commission action.

BACKGROUND

I. THE COMMISSION HAS LONG RECOGNIZED THAT ENERGY EFFICIENCY IS A VALUABLE CAPACITY RESOURCE

The Commission has consistently acknowledged the importance of energy efficiency resources (“EERs”) as a vital component of our nation’s energy strategy. FERC has affirmed that EERs should compete on an equal footing with other capacity resources, such as demand response, generation, and transmission solutions, as emphasized in *Advanced Energy Economy*, 161 FERC ¶ 61,245, at P 60 (2017). The Commission articulated this principle again in 2009, when it approved PJM’s tariff revisions on EERs, stating:

We commend PJM for developing a proposal to incorporate energy efficiency into its capacity markets. We believe that energy efficiency is a critical part of efficient energy markets, and should be treated comparably to other types of resources, by being allowed to participate in base residual auctions and be paid the auction clearing price when they are accepted in the auction.¹

Despite this clear and enduring support from FERC, EERs have seen minimal and inconsistent participation across the Commission’s jurisdictional markets.

¹ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at PP 130-31 (2009) (emphasis added).

Meanwhile, on August 21, 2024, PJM’s Members Committee endorsed a tariff change proposed by the PJM Market Monitor to eliminate energy efficiency from the capacity market; PJM has indicated that it intends to file this tariff proposal with the Commission before the next BRA. ISO-NE continues to see robust EE participation.

It is imperative that any changes to market rules affecting the participation and eligibility of EERs, which could jeopardize their role in these markets, stem from a thoughtful, holistic process led by the Commission—not by one-off actions from individual RTOs.

II. THE COMMISSION’S DUTY TO ENSURE AFFORDABLE AND RELIABLE ENERGY WEIGHS STRONGLY IN FAVOR OF RE-EVALUATING THE ROLE AND PARTICIPATION OF EERs ACROSS ALL RTOs

The Commission’s responsibility to ensure reliable and affordable energy is more critical than ever. Chairman Phillips, in his 2023 testimony before the Senate Energy and Natural Resources Committee, underscored that “reliability is—and always must be—job number one” for the Commission.² He highlighted the Commission’s essential role in ensuring that the nation’s energy supply is reliable, affordable, and sustainable. Commissioner Christie also expressed concerns over the reliability risks posed by the retirement of dispatchable resources and pointed to

² Testimony of Chairman Phillips, Senate Energy & Nat. Res. Comm. (May 4, 2023).

flaws in RTO market design—particularly capacity market design—as a significant contributor to this emerging crisis.³

Our electricity markets face unprecedented challenges: rising electricity demand, a transitioning supply mix, an aging grid requiring extensive and costly upgrades, and backlogged interconnection queues. These factors are contributing to tighter reserve margins and escalating prices nationwide.⁴ The urgency to secure additional resources to meet future needs is becoming increasingly evident, especially given the hurdles of rapid load growth, interconnection backlogs, and the time required to develop and integrate essential network upgrades.

This context underscores the need for greater participation by new resources, not less. Energy efficiency offers significant advantages, including reducing the need for new generation and the costly transmission upgrades that come with it. By lowering demand, it can also free up existing transmission capacity, enabling a more expedited interconnection of additional resources. Moreover, unlike other resources, energy efficiency can be implemented without depending on the interconnection queue, resulting in substantial time and cost savings.

³ Testimony of Comm’r Christie, Senate Energy & Nat. Res. Comm. (May 4, 2023).

⁴ Recently, for example, PJM announced unprecedented prices for its latest capacity auction (for the 2025/26 Delivery Year), an order of magnitude higher than the last auction and that included \$466.35/MW-day for the Baltimore Gas and Electric zone in Maryland and \$444.26/MW-day for the Dominion zone in Virginia and North Carolina. Utility Dive, *PJM capacity prices hit record highs, sending build signal to generators* (July 31, 2024).

However, the full benefits of energy efficiency participation are currently under-realized, partly due to the patchwork of policies that have resulted in some markets where EERs make up as much as 10% while in others there is no participation at all. To effectively address this, it is crucial to first resolve fundamental questions about the participation model for energy efficiency. This process must involve a broad spectrum of stakeholders, beyond just RTO/ISO members, to ensure a well-informed and balanced discussion. Therefore, a comprehensive evaluation, engaging all relevant stakeholders across the RTOs in a technical conference, is urgently needed.

ARGUMENT

I. RTO STAKEHOLDER PROCESSES ARE INADEQUATE TO FULLY ADDRESS THE ROLE OF ENERGY EFFICIENCY

RTO stakeholder processes play a vital role in developing and proposing the rules and tariffs that govern each respective market. While these processes are essential, they may not be sufficiently structured to address the broader issue of energy efficiency participation in FERC-jurisdictional wholesale markets. The Commission bears the statutory obligation to ensure rates (and practices affecting rates) are just and reasonable, and not unduly discriminatory or preferential.

When determining whether an entire asset class, like energy efficiency, should participate in wholesale markets, relying solely on RTO stakeholder processes risks creating (and indeed already has created) a fragmented and inconsistent approach across different markets. It cannot be just and reasonable to both permit energy

efficiency to participate in one capacity market yet exclude it altogether from a different capacity market.

Moreover, as demonstrated in the recent stakeholder process in PJM, participation in RTO/ISO stakeholder processes is typically restricted to RTO/ISO members, thereby excluding crucial voices from the conversation. Neither states nor nonprofit advocacy organizations had any opportunity to participate in PJM's August 21, 2024 vote at the Markets and Reliability Committee and subsequent process before the Members Committee. State representatives, public utility commissions, state energy offices, measurement and verification ("M&V") experts, economists, market specialists, trade associations, and energy efficiency program administrators all bring valuable perspectives that are necessary for a comprehensive assessment of energy efficiency's role in these markets. It is equally imperative that FERC staff and the Commissioners themselves be actively involved in these discussions to ensure a well-rounded and informed dialogue on the future of energy efficiency in FERC-regulated markets.

II. A FERC-LED TECHNICAL CONFERENCE TO HOLISTICALLY EVALUATE ENERGY EFFICIENCY RESOURCES IS NECESSARY TO ESTABLISH MARKET POLICY

Each RTO has the obligation to determine how to properly and fairly evaluate energy efficiency in their respective markets, while also ensuring reliability and just and reasonable rates for load. However, the existing tariff rules regarding energy efficiency have seen little substantive revision since the Commission first allowed EERs to participate in PJM's capacity market back in 2009, in ISO-NE in 2008 and

in MISO in 2012.⁵ As energy markets continue to evolve, and as energy efficiency becomes increasingly necessary, a comprehensive and forward-looking discussion about its future is long overdue. States, with their diverse and impactful energy efficiency programs, must play a central role in these policy discussions, given their essential contributions to supporting and advancing EERs.

The various complaint proceedings now pending before the Commission indicate significant disagreement and debate over what role EERs should play in the capacity markets. Four of those five complaints were filed against PJM, while another challenges an entire sector of the market (upstream and midstream resource providers). These complaints allege a variety of different violations and seek a host of starkly different remedies—including stripping payments from resources that have already cleared the auction, permitting resources to submit offers, asking for a technical conference, and appointing a settlement judge to referee ongoing disputes.

These proceedings demonstrate the presence of multiple stakeholders, each with deeply held views, including market monitors, RTOs, states, utilities, third-party aggregators, trade associations, and public interest organizations. One opportunity for the Commission to address these competing interests and establish a clear path forward is to convene a FERC-led technical conference. This forum could

⁵ See, e.g., PJM Answer to Joint Consumer Advocates Complaint, Docket No. EL24-118, at 26 (filed July 10, 2024) (acknowledging that “that the existing EE rules need to be updated as they have not been substantially revised since the Commission first allowed EE Resources to participate in PJM’s capacity market in 2009”).

provide a single platform for all relevant voices to be heard, ensuring a thorough and inclusive examination of energy efficiency's role in wholesale markets.

Furthermore, a technical conference is critical to developing consistent and uniform policy solutions to address the intertwined challenges of tightening supply, surging demand, and rising prices. To fulfill its mandate of ensuring reliability and affordability for customers—and to guarantee that rates and practices affecting rates are just and reasonable—the Commission must lead this process. A Commission-led technical conference is not just necessary; it is essential to establishing a coherent and equitable future for energy efficiency in FERC-jurisdictional markets.

III. ISSUES TO BE EXPLORED IN A TECHNICAL CONFERENCE

To best evaluate how to ensure robust participation of energy efficiency across all wholesale markets in a manner that ensures reliability and affordability to customers, the Commission should examine a broad range of issues in a technical conference. To assist the Commission, the Coalition provides a proposed agenda in Appendix A.

Respectfully submitted,

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Appendix A: **Proposed Energy Efficiency Technical Conference**

PANEL I: ENERGY EFFICIENCY IN WHOLESALE MARKETS TODAY

This panel would focus on the current rules governing energy efficiency participation in wholesale capacity markets today. This could include presentations by each region that currently permits the participation of energy efficiency in its markets that includes an overview of what type of energy efficiency has participated, the amount that has participated and how that has changed over time. Additionally, these presentations can provide an overview of the most common practices of measurement and verification utilized by energy efficiency resources. Finally, this panel could include a discussion of state energy efficiency policies, as well as state-run energy efficiency programs, and how such policies and programs interact or participate in the wholesale market.

PANEL II: RECONCILIATION WITH LOAD FORECAST

This panel would focus on the role of the RTO load forecast in the treatment and valuation of energy efficiency resources. The RTOs/ISOs could discuss how their load forecast is developed including how energy efficiency is incorporated in the load forecast. This could include discussions as to whether this is through an adjustment to the load forecast or whether and how expected energy efficiency is embedded in the load growth projections. This panel could also discuss whether energy efficiency can be shown to be incremental to the load forecast and if so, whether such resources can be treated as other supply resources that are used to meet reliability requirements. It could also explore whether the forecasting methodology should influence the rules governing energy efficiency, specifically addressing whether the inclusion of projected energy efficiency in the load forecast should impact the eligibility of these resources to participate in the capacity market.

PANEL III: ELIGIBILITY, MEASUREMENT, VERIFICATION, AND STANDARDS

This panel could focus on who should be able to sell energy efficiency and how it should be measured and verified. This panel could discuss whether there should be a causation standard and if so, how one could show that *but for* the capacity market revenue, the energy efficiency measure would not have been adopted or if a *contributory* (or other) causation standard could be effective, enforceable and auditable. It could also focus on the relationship between the EER provider and the end-use customer and whether capacity markets should enable aggregation through the supply chain. If so, what requirements should be utilized to ensure that the sellers

have the rights to those reductions, including how best to ensure there are not multiple claims to the same energy efficiency. This panel could also focus on the different approaches used when energy efficiency is not metered directly including reliance on state technical reference manuals, and whether the industry would benefit from updated and enhanced NAESB standards.

PANEL IV: VALUE PROPOSITION OF ENERGY EFFICIENCY

This panel could explore how energy efficiency should be valued and compensated. Panelists could discuss the benefits energy efficiency provides to the wholesale market and the best options for promoting energy efficiency as a means to achieve a reliable and affordable energy future. This panel could explore whether energy efficiency participating in wholesale markets as a supply resource is an effective way to foster the growth of energy efficiency. The panel would seek to answer whether EE should remain as a resource in capacity markets, other alternatives to incorporating energy efficiency in wholesale markets. If maintained as a capacity resource, this panel could also discuss how best to reconcile that participation with the load forecast to ensure that rates remain just and reasonable.