UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	**Docket No. EL05-148-000**
	)	
PJM Interconnection, L.L.C.	)	**Docket No. ER05-1410-000**

COMMENTS ON PJM'S BRIEF
BY THE
COALITION OF CONSUMERS FOR RELIABILITY

Pursuant to Ordering Paragraph (E) of the Federal Energy Regulatory Commission's ("Commission") Order issued April 20, 2006 ("Order") in the above-referenced proceedings[1], the Coalition of Consumers for Reliability ("CCR")[2] hereby provides these comments on the Brief of PJM Interconnection, L.L.C. on Paper Hearing Issues ("Brief"), filed in these proceedings on May 19, 2006.

I. INTRODUCTION

The entities that comprise CCR have participated in the PJM stakeholder process as well as the technical conference and pleadings before the Commission. CCR opposes PJM's Reliability Procurement Model ("RPM") because, in short, it is an inappropriate, administrative overreaction to discrete concerns over the existing PJM capacity construct.

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[1] *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 (2006)("Order").

[2] For purposes of this Request for Rehearing and Clarification, CCR consists of the following entities: Pennsylvania Office of Consumer Advocate; Maryland Office of People's Counsel; Office of the People's Counsel for the District of Columbia; Office of the Ohio Consumers' Counsel; Old Dominion Electric Cooperative; North Carolina Electric Membership Corporation; Delaware Municipal Electric Corporation; Allegheny Electric Cooperative, Inc.; Borough of Chambersburg, Pennsylvania; Illinois Citizens Utility Board; and Southern Maryland Electric Cooperative, Inc. While each entity reserves its rights to participate in an individual capacity in this proceeding, the entities have joined in these comments for the purpose of presenting alternatives to the PJM filing.

RPM will result in consumers shouldering a $5 billion to $12 billion annual cost increases, allegedly to solve a problem that is considerably smaller.[3] Moreover, CCR objects to the Order which accepted the core elements of RPM without an evidentiary hearing to address significant factual disputes and instead established a paper hearing and technical conference process that will allow PJM to implement RPM before parties have an opportunity to seek rehearing and appeal of the Order. In this regard, CCR does not believe it is possible to determine and resolve the factual disputes at issue in this complex proceeding through a limited paper hearing process when the fundamental facts purportedly supporting RPM have not been provided to parties by PJM. This is exacerbated by the briefing schedule established in the Order, where parties are provided only two weeks to respond to PJM's Brief.

CCR continues its request for rehearing of the Order, for the reasons stated in CCR's Request for Rehearing, and urges the Commission to conduct an evidentiary hearing to determine: (1) whether the existing capacity construct is unjust and unreasonable; and (2) if so, the just and reasonable alternative to the existing capacity construct. CCR files Comments here despite its opposition to RPM and the Order accepting significant aspects of same, because this is the only opportunity the Commission has provided for parties to address the issues set for paper hearing before the Commission issues a further order on RPM. CCR provides these comments on PJM's Brief in response to the questions posed in Appendix A of the Order, notwithstanding CCR's objection to the substance and procedures of the Order.

[3] *See Request for Rehearing of the Coalition of Consumers for Reliability*, filed in these proceedings on May 22, 2006, at page 8, note 6.

II. COMMENTS

A. Locational Delivery Areas

As CCR has consistently argued in these proceedings, the locational problem in PJM is not a problem of insufficient generation capacity; it is a problem of inadequate transmission.[4] RPM is precisely the wrong solution to the problem of an insufficient transmission infrastructure that does not provide the ability for load to access sufficient generation throughout the region. Rather than address either the insufficient transmission system or a competitive, market-oriented approach, RPM is an administrative mechanism that will artificially change the price of generation capacity throughout localized areas. The complete disregard in RPM of transmission as the vital means for maintaining reliability and facilitating competition is further exacerbated by PJM's proposal to create 23 narrow locational delivery areas ("LDAs"). CCR will not repeat here all of its arguments demonstrating that such narrowly-defined LDAs will effectively guarantee that the transmission grid will never develop into the vehicle for reliability and competition throughout the PJM region. However, the Commission must recognize that in order to reliably serve load under the new paradigm of a competitive electricity marketplace, there must be a focus on investment in the transmission system. RPM does not provide such a focus, but instead works against a transmission solution. CCR urges that the Commission bear in mind that the issue to be addressed through any locational element is one of **deliverability**, and deliverability problems must be addressed through a transmission solution.

[4] *See Protest and Request for Rejection of Filing, Or In the Alternative, for Hearing*, filed in these proceedings by CCR on October 19, 2005 ("Protest) at 28-30.

1. Process for Determining LDAs

In its Brief, PJM supports its proposal to ultimately create 23 LDAs on the basis that the LDAs are the same areas tested annually by PJM for reliability issues, and that defining LDAs on this basis is appropriate because it addresses the relevant capacity import limits. Brief at 5-10; Herling Affidavit at 4-6. In his Affidavit, Mr. Herling states that larger LDAs would lead to "unwarranted socialization of capacity costs."

First, in addition to PJM's unreasonable focus in RPM on a capacity construct that works against development of transmission solutions, PJM proposed a division of what should be a **regional** transmission grid into 23 narrowly-drawn capacity zones. These many capacity zones would substitute a regional grid for a transmission grid as it existed under the vertically-integrated utility regime, where individual transmission owners planned and operated their transmission facilities to serve their own local load. Indeed, the 23 regions proposed by PJM are based on the franchise territories or zones of the traditional PJM Transmission Owners ("TOs"). *See* Brief at 8, describing that 16 of the 23 proposed zones are TO zones, five are combinations, and two are portions of TO zones. These TO-based zones do not recognize the current transmission grid, where transmission is increasingly based on regional delivery as opposed to smaller, zonal-based projects.

Recent transmission projects proposed by American Electric Power (*See* Docket No. EL06-50)**,** Allegheny Power (Docket No. EL06-54), Dominion Virginia Power, and the PHI holding companies, as well as projects identified in the PJM Regional Transmission Expansion Plan ("RTEP"), are all regional projects that cross several zones. PJM's return to a narrow geographic focus ignores the regional nature of the transmission

system and the precise root cause of the delivery problems: weak links between vertically integrated monopolists that planned and constructed transmission and generation to serve native load. More importantly, the creation of 23 narrowly-drawn LDAs will indefinitely, and perhaps permanently, bias solutions in favor of generation. With the RPM focus on capacity, load deliverability problems will be met with a generation solution, with the result that even if RPM provides price signals as PJM claims, the response will be increased local generation until each LDA becomes a region unto itself. Such an increased balkanization of the transmission grid is in direct contravention of the goal and creation of a regional transmission system where generation can be purchased and delivered to load throughout the region.

Second, Mr. Herling's characterization of socialized capacity costs as "unwarranted" ignores one of the principle benefits of a large regional market – the ability to purchase capacity from anywhere throughout the region. If there is a load deliverability problem, the price signal should be applied to the broadest area possible, so that there will be a regional solution. PJM's proposal to create islands of load through its LDA proposal will result only in smaller groups of load bearing an inordinate share of the high cost of constraints and, even under the best case scenario, crafting a solution that is local only in nature and will perpetuate a geographically narrow approach to transmission and generation. Rather than focus on inflicting the most financial pain possible on the smallest number of customers under the guise of "price signals," PJM's LDAs should assist in PJM's role of creating the broadest, most competitive **regional** transmission infrastructure and markets possible. A capacity construct that is based upon such a

granular division of the PJM region defeats the very point of having a **regional** transmission operator.

Third, there is a fundamental error in logic in assuming that smaller LDAs will *per se* lead to new generation investment. Even if generators made their siting decisions solely on the basis of capacity prices, addition of generation in a small, transmission – constrained area with high capacity prices will result in decreased capacity prices for the new generator. However, generation siting decisions are not based solely on price, and smaller LDAs will negatively impact siting decisions. Environmental regulations may prevent generation from locating in small LDAs and absent transmission investment; generators will not be able to demonstrate an ability to serve the broader region. Further, RPM was to address the need for additional baseload generation in the PJM region. Moreover, the problems of siting – including environmental restrictions, fuel supply, and community or political-based concerns – are likely to be far more difficult for a baseload unit than for a smaller peaking unit, and it will be difficult to attract baseload generation in a transmission constrained LDA that is so narrowly drawn that it does not offer sufficient load and load growth.

Finally, on this point, CCR must note the inherent market power problems posed by 23 narrowly-drawn LDAs. The creation of LDAs that follow, for the most part, TO zonal boundaries provides an incentive for transmission owners of affiliated generators not to strengthen the ties between neighboring systems, in order to increase the value of their affiliated generation. As the effect of RPM's focus on generation as opposed to transmission solutions continues, load will grow without a corresponding investment in transmission. The resulting increased congestion will create a situation where local

generation is comparatively lower-priced than generation from outside the LDA, but nevertheless is higher-priced than a competitive market would provide. By creating LDAs drawn by TO franchise territories, PJM's RPM proposal would exacerbate the ability to exercise undue market power.

Rather than create 23 mini-regions as proposed by PJM, CCR suggests that if the Commission accepts a capacity construct that incorporates LDAs, then PJM should maintain the two large LDAs it proposed initially for the one-year phase-in period. For the reasons discussed above and by CCR in previous filings, larger is better when it comes to the locational element. PJM proposed to initially use two broad LDAs, Eastern MAAC and Southwestern MAAC, because those are the areas of most concern. Brief at 11. Although PJM expresses concern that these broader areas might result in new entry occurring in the "wrong place" generators should be given the credit of being able to site their new facilities in an area that will ensure availability to load that will value the new capacity, even without PJM drawing narrow lines around that load. Moreover, larger LDAs will provide an incentive for PJM to plan transmission projects that will build ties between service territories as opposed to maintaining the division. Absent such regional, inter-zonal approach to transmission, PJM will never achieve a regional marketplace.

In order to balance PJM's desire to incorporate a locational element that identifies the problem areas with the necessity of continuing toward a regional approach to transmission planning (and, for that matter, generation siting), CCR recommends that if the Commission accepts the RPM proposal, then the Commission should direct PJM to retain the two initial LDAs until PJM can demonstrate, through a Section 205 filing with

the Commission, that additional LDAs are warranted for price signal purposes and will not adversely affect a regional planning process.

2. Transition Provisions

PJM proposes a one-year phase in for RPM where there will be four LDAs, followed by full implementation of 23 LDAs. As discussed, CCR opposes RPM in its entirety, including the creation of 23 LDAs, and urges that if the Commission accepts RPM at all, it should direct PJM to retain two LDAs until it can demonstrate that further LDAs are warranted. However, if the Commission adopts PJM's proposal to balkanize the transmission grid and prevent development of transmission-based solutions to deliverability problems, then CCR urges the Commission to provide a meaningful phase-in period, *e.g.*, three years. In addition to softening the blow of RPM somewhat, a three-year phase-in period would provide load serving entities ("LSEs") with an opportunity to attempt to adjust their business practices and operations to address RPM. Such a reasonable phase-in period is typical of a full-scale market overhaul as presented by RPM. Moreover, as CCR explained in its Request for Rehearing of the Order, PJM's claims of a dire reliability situation that requires implementation of full-scale RPM by June 2007 are unfounded.[5]

3. Relationship to Scarcity Pricing Regions

PJM argues in its Brief that there is no need for the four broad scarcity pricing regions adopted through the settlement in Docket No. EL03-236 to apply to the RPM LDAs. Brief at 11-14. PJM's use of the 500 kV delineation of scarcity pricing regions to support its argument demonstrates that the transmission system is under– built and the

[5] *Request for Rehearing and Clarification of the Coalition of Consumers for Reliability* filed in these proceedings on May 22, 2006, at 2, 7.

Commission should adopt broad geographic LDAs. Mr. Herling testifies that there is rarely (25%) a deliverability violation on the extra-high voltage system. The majority of transmission between TO zones is not 500kV. As such, the majority of violations occur on the underlying lower voltage systems. The occurrence of congestion on the transmission system used to interconnect the TO zones means that the transmission system needs to be strengthened. Avoiding the transmission problems and rejecting the larger LDAs on the theory that larger LDAs would "not necessarily incent generation to be sited in the particular location within such region where the constraint can most effectively be resolved", as PJM proposes, ensures a generation-only regime that works against a region-wide competitive and reliable marketplace. Thus, while CCR urges two LDAs as opposed to LDAs drawn along the lines of the scarcity pricing regions, the reasoning behind the scarcity pricing regions demonstrates the fundamental problem of a capacity construct that is narrowly drawn and generation-focused.

B. Length of Contractual Commitment

1. No More Than a 1-year Commitment

Under the contemplated RPM design[6], CCR opposes any attempts to lengthen the term of resource purchases beyond a 1-year term. Individual market participants, not centralized administrative procurement auctions, should weigh the cost and risk of various investments including the term of the contract. Capacity auctions should be viewed as the residual auction where participants demonstrate the final satisfaction of obligations with the appropriate lead-time and duration of resource commitment. These

[6] CCR objects to the existing RPM proposal that uses mandatory forced clearing of all obligations 4-years prior with a VRR demand curve. CCR has previously explained its objections to buyers and sellers not setting price, artificially extended clearing horizons, and the potential adverse impact on bilateral transactions. Longer duration purchases under an already flawed structure makes a bad situation worse.

auctions should not displace the role of the participant nor be designed to act in the manner that the policy maker thinks participants should act.

CCR is concerned with potential strategic bidding outcomes under RPM given PJM's proposed mitigation (this concern is exacerbated by suggestions that mitigation be further weakened). The RPM auction is an artificial administrative approximation of a market. On an unnecessarily distant horizon, virtually all load plus projected growth is going to be cleared on a known price schedule. On the supply side, the existing resource set is known as well as potentially only a small finite set of potential new entrants given the publicly available queue process. The unmitigated new resource knows all this information with a steeply sloping administrative price curve. Insult to injury would be exposing load to purchases on their behalf for a multi-year period.

Additionally, CCR would again note that there are significant external drivers of resource procurement activity that occur outside of the PJM capacity construct.[7] This activity, in conjunction with the natural incentives for both supply and demand to manage their own cost and risk tends to add the appropriate longer-term perspective. It is not appropriate for PJM to enter into longer-term purchases on behalf of load when already clearing the full market 4-years in advance.

2. RPM Seasonal Prices

While the concept of incorporating seasonal price into RPM is not sufficiently developed to fully address, based on PJM's initial statements, CCR questions whether the goal is simply a cost allocation issue or is an element to facilitate further market

[7] Regulated utilities, utilities with longer-term rate freezes, default obligation providers with 1-3 year terms, municipals, cooperatives, etc. make up a significant portion of the market and all have reasons to look past the immediate short-term. Even the pure merchant generator has an incentive to manage the stability of its cash flows with a mix of long and short-term hedges. Buyers and sellers find each other without a need for a centralized auction to enter into long-term bilateral contracts on behalf of others.

development and discovery. PJM states that it would look to use the same total obligation for the entire delivery year, but would then look to incorporate seasonal resources (Ott Affidavit, at 3, 3-26). If the goal were to encourage the natural development of seasonal resources, including demand response, it would seem logical to look just at the volume of supply resources on a seasonal basis, but also to look at the volume of the demand or obligation on a seasonal basis[8]. Seasonal resources with the appropriate seasonal rating against the appropriate seasonal obligation may shift prices relatively lower in the winter and shoulder months and relatively higher in the summer. This may allow the market to develop further summer demand response capability. However, it is hard to fathom this potential future to unfold, even with more meaningful seasonal pricing, while clearing virtually all the market four years in the future.

3. Reliability Backstop

As the RPM advocate, PJM has continued to stress the reasons to believe that RPM will work as advertised. PJM, in rejecting or not considering any real modifications to the proposed RPM design, has emphasized the critical nature of planning certainty on an extended four-year horizon. Taking these two items together, a few questions come to mind. After all the cost and expense of RPM, why does PJM even need to consider including a backstop? If virtually absolute planning certainty is necessary, how can PJM afford to wait four years before acting? If PJM can accept this uncertainty or somehow believes the market can be trusted to act on a shorter horizon when it has failed for four years in a row, then why cannot a much shorter clearing horizon be used to begin with,

[8] This is an illustration of just one obvious issue arising from PJM's statements and should by no means be considered an exhaustive discussion of all the issues surrounding seasonal RPM pricing. A complex issue like this would be best addressed in the stakeholder process and not through a limited paper hearing process.

especially given evidence suggesting that participants do satisfy their obligations without leaning on the system?

C. Transmission Cost Recovery

In the Order, the Commission notes that PJM states that transmission will be integrated into RPM because RPM will allow for "planned transmission upgrades that provide incremental increases in import capability into constrained areas to be offered into the auctions." Order at App. A. The Commission directed PJM to respond to a series of questions to address the coordination of cost recovery under RPM with the cost allocation process under PJM's RTEP. In response, PJM states in its Brief that the RPM cost recovery for transmission projects is not for RTEP-identified projects for which costs will be allocated under Schedule 12 of the PJM OATT. Instead, PJM explains that the RPM transmission projects will be those for which Schedule 12 cost allocation will not be provided, and that RPM will provide an additional revenue source for these participant-funded projects.

In short, the transmission projects referred to in RPM are restricted to merchant transmission projects. There is no provision in RPM cost allocation for projects identified in the PJM RTEP or Regional Planning Process Working Group (RPPWG) and there should not be such coordination of cost allocation for RTEP/RPPWG projects in RPM. The RTEP and RPPWG cost allocation processes are complex and must not be affected by whatever provisions in RPM purport to allow recovery of revenues for transmission facilities. The RPM transmission cost recovery, if accepted at all, must remain restricted to merchant transmission facilities.

In this regard, CCR notes that despite PJM's advocacy for RPM, the Commission must not rely on any intimation that RPM will lead to increased merchant transmission

facilities. Currently, only the existing, regulated TOs have sufficient knowledge (*e.g.*, transmission planning, siting) and resources to offer transmission alternatives. Additionally, there are inherent physical problems that remain unresolved regarding free-flowing merchant AC transmission as a merchant function. RPM does not cure these existing ills that work against merchant transmission and, as such, RPM alone cannot lead to increased merchant transmission facilities, even with the promise of cost recovery.

CCR must also clarify PJM's statement that it still may direct TOs, through the RTEP, to construct transmission. Brief at 22. While PJM may have the ability to direct transmission enhancements, PJM's existing processes do **not** provide the comprehensive determination necessary to address deliverability problems throughout PJM. The current RTEP and RPPWG process do not address transmission delivery capability to import generation as an alternative to local generation. Absent such inter-zonal transmission capability, the deliverability problem will persist. PJM simply does not plan to strengthen the interconnection between its zones and should be directed to do so in order to meet the goal of a regional, competitive, reliable bulk transmission system.

D. Market Power Mitigation

PJM's market power mitigation is necessary, but does not go far enough. CCR concludes that a mitigation proposal is necessary in LDAs, but the proposal put forward by PJM neglects the real potential for market manipulation under the general RPM model. In this context, CCR is particularly concerned that the Commission chose to leave the mitigation issue open for discussion in this portion of the Paper Hearing.

One of the principle reasons for CCR's opposition to PJM's LDA approach is specifically because it creates a number of small market areas that will be inherently

vulnerable to market manipulation. Such small markets will exist in the context of restricted patterns of generation ownership. These conditions will almost always lead to limited supply options with many to most of the suppliers in each LDA having the physical potential to exercise market power. Given available information, those suppliers will know how to strategically price and offer, or not offer, their capacity. Thus, the mitigation approach proposed by PJM must be a fixed part of the RPM model's approach to LDAs.

CCR supports PJM's proposal to use a three-critical suppliers test to determine whether mitigation is necessary within an LDA. CCR believes this test is a well-established and reasonably conservative approach to identifying a need for mitigation. Some CCR members have historically advocated for more stringent approaches. However, the settlement of the scarcity pricing issue (Docket Nos. EL03-236 and EL04-121) established this test as the basic methodology for identifying the need for mitigation. Because the VRR curve in the RPM is significantly vulnerable to the exercise of market power, this test is the minimum reasonable level of protection for consumers.

PJM appears to create an overly broad exception from mitigation in those LDAs where new generation is needed to clear the market, *i.e.*, where the capacity reserve is below IRM. *See* Bowring Affidavit, p. 16. CCR recognizes the need for full compensation for new entrants. However, it is possible that unit-specific mitigation will be needed where new entry is required **and** the owner of existing generation makes an inflated offer that is above the net CONE. Contrary to the Bowring Affidavit that views scarcity, or unmitigated prices as legitimate, CCR finds that such "price signals" serve no purpose other than to enrich some generation owners. Thus, CCR urges the Commission

to limit the exemption proposed for LDAs to only the new entrants which are required to clear the market.

In the general area outside LDAs, PJM effectively proposes that mitigation only take place through the auction rules, specifically, a resource that does not bid into the market and does not have a firm external capacity commitment may not offer capacity and cannot receive capacity revenues. *See* sections 5.14 and 6.6 of proposed Attachment Y. This is not, as the Commission incorrectly characterized it, a "must offer" scheme. CCR emphasizes that market power generally can be exercised within the larger region whenever excess capacity approaches 120%. The established shape and dimension of the demand curve permits market participants to know when withholding will be advantageous. As long as withholding pushes the price up the curve, any participant can determine whether more money can be made by selling capacity or by withholding capacity. In fact, there are points on the demand curve where the results of this calculation are more likely to favor withholding, especially at 1% above IRM where the curve becomes significantly steeper.

Finally, CCR opposes PJM's proposal to guarantee as part of its mitigation plan that the clearing price will be fixed at the CONE for four years when new entry sets the clearing price in that LDA at the start of the four year period. The fact that PJM sees the need to implement such price supports indicates that the LDAs proposed under the RPM construct are too small to support new entry and robust competition. Instead, CCR proposes timely construction of adequate infrastructure to yield appropriately sized LDAs that would obviate the need for the type of price supports such as proposed by PJM.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, CCR repeats its request that the Commission rejects RPM and establish full hearing procedures for the purpose of determining (1) whether PJM's existing capacity construct is unjust and unreasonable and (2) the just and reasonable alternative to PJM's current capacity construct. Alternatively, if the Commission proceeds with its acceptance of RPM as filed by PJM, CCR requests, for the reasons discussed herein, that the Commission (1) direct PJM to retain the Eastern MAAC and Southwestern MAAC LDAs until PJM has established, through a filing with the Commission, that additional LDAs are just and reasonable; (2) direct that the contractual commitment period shall be no more than one year; (3) require PJM to provide further explanation and support for its seasonal concept; (4) reject the reliability backstop auction proposal; (5) clarify that RPM must not take into account or address Schedule 12 cost allocation for RTEP projects; (6) direct PJM to develop a framework to provide recommended regulated transmission upgrades between its 23 LDAs to provide the necessary capacity emergency transfer capability to support its vision of competitive markets as well as its recommendation on how best to address this regulated investment; (7) retain PJM's market mitigation proposal, with the exception of eliminating the exemption for new entrants; and (8) such other relief as the Commission deems appropriate.

Respectfully Submitted,

/s/ - *Adrienne E. Clair*
Glen L. Ortman
Adrienne E. Clair
Stinson Morrison Hecker LLP
1150 18th Street NW, Suite 800
Washington, D.C. 20036
For: Old Dominion Electric Cooperative

/s/ filed electronically
Aron J. Beatty
David T. Evrard
Assistant Consumer Advocates
Pennsylvania Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

/s/ filed electronically
Sean T. Beeny, Esq.
Denise C. Goulet, Esq.
Miller, Balis & O'Neil, P.C.
1140 Nineteenth Street, N.W., Suite 700
Washington, D.C. 20036
For: North Carolina Electric Membership Corporation

/s/ *filed electronically*
Chris Thomas
Director of Policy
Illinois Citizens Utility Board
208 S. LaSalle, Suite 1760
Chicago, IL 60604

/s/ filed electronically
Thomas K. Austin, Esq.
Associate General Counsel
North Carolina Electric Membership Corporation
3400 Sumner Boulevard
Raleigh, NC 27616
For: North Carolina Electric Membership Corporation

/s/ filed electronically
John Michael Adragna
Denise C. Goulet
Miller, Balis & O'Neil, P.C.
1140 Nineteenth Street, N.W., Suite 700
Washington, D.C. 20036
For: Counsel for Borough of Chambersburg, Pennsylvania

/s/ filed electronically
Patricia A. Smith, Esq.
People's Counsel
Theresa V. Czarski, Esq.
Deputy People's Counsel
William F. Fields, Esq.
Assistant People's Counsel
Maryland Office of People's Counsel
6 St. Paul St., Suite 2102
Baltimore, MD 21202

/s/ filed electronically
Sandra Mattavous-Frye
Deputy People's Counsel
Lopa Parikh
Assistant People's Counsel
Office of the People's Counsel for the District of Columbia
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005

/s/ *filed electronically*
Thomas L. Rudebusch
Duncan, Weinberg, Genzer
& Pembroke, P.C.
1615 M Street, NW
Suite 800
Washington, D.C. 20036
For: Delaware Municipal Electric Corporation, Inc.

/s/ David J. Dulick
David J. Dulick
General Counsel
Allegheny Electric Cooperative, Inc.
P.O. Box 1266
Harrisburg, PA 17108
For: Allegheny Electric Cooperative, Inc.

/s/ *filed electronically*
Vincent F. Kaminski
Allegheny Electric Cooperative, Inc.
212 Locust Street
PO Box 1266
Harrisburg, PA 17108-1266

/s/ *filed electronically*
Robert Weinberg
Duncan, Weinberg, Genzer
& Pembroke, P.C.
1615 M Street, NW
Suite 800
Washington, D.C. 20036
For: Southern Maryland Electric Cooperative, Inc.

/s/ *filed electronically*
Jacqueline Lake Roberts
Assistant Consumers' Counsel
Ohio Consumers' Council
10 W. Broad St., Suite 1800
Columbus, OH 43215-3485