EER Problem Statement: "A Flawed Solution Seeking a Problem"

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MIC Meeting

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The EER Problem Statement Should Be Rejected

- No evidence that any EER problem exists that needs “fixing”.
  - EERs benefit retail customers, the capacity market, and PJM.
  - Tariff changes would be antagonistic to competitive market principles.
  - Could lead to an inequitable balkanization of energy markets.
  - The FPA grants FERC exclusive jurisdiction over the participation of EERs in wholesale markets.
  - Consumers would be harmed by the Problem Statement.
  - Under FERC policy and applicable law, any Tariff changes must be prospective.

There is Not an EER Problem to be Fixed

- To date, only one electric utility has proposed that a State commission should have jurisdiction over EERs.
- That State commission has declined, to date, to approve the utility's proposal.
- To our knowledge, no other PJM Members have suggested that there is a "problem" with EERs that needs to be "fixed".
  - Moreover, neither the one electric utility in question or any other PJM member has made any kind of plausible demonstration to PJM that there is a market or a reliability problem associated with the current EER Tariff provisions.
- As a result, this Problem Statement is premature, and the MIC should not be asked to vote on it.

EERs Provide Real Benefits to PJM

- EERs:
    - Benefit consumers by encouraging the purchase of energy efficient products.
    - Increase the visibility of energy efficiency activities throughout the PJM States.
    - Incrementally reduce PJM's resource adequacy capacity requirements and improve system reliability.
    - Incrementally reduce PJM's capacity prices, providing additional benefits to loads.
- EERs are not dispatched by an ARC or by a utility, unlike Demand Response resources, and thus EERs also provide benefits during non-emergency conditions.

Tariff Changes Would Harm Competitive Markets

- Competition requires **consistent** and **predictable** market rules:
  - “Competition means that decisions about whether to enter the market, to exit the market and to remain in the market are made by suppliers based on market fundamentals. <u>Suppliers must believe that the market fundamentals will determine the success or failure of their investment</u> or they will not invest, the market will not sustain adequate supply and the federal regulatory approach will fail.“ (Emphasis added) (3/16/17 Comments of PJM IMM in Illinois proceeding).
- Order No. 719 mandates that RTOs: (1) be inclusive; (2) be fair in balancing diverse interests; (3) represent minority positions; and (4) be responsive.
- If market rules are changed for only one segment of the market, competition is harmed.
  - *Will PJM’s next Problem Statement suggest that RERRAs should be given jurisdiction over: energy storage or solar rooftop generation or . . .??*
- **Potential Balkanization of energy market** is inconsistent with reliability.

Authorizing RERRAs to Exclude EERs Would Weaken Competitive Markets & Create Uncertainty

- Markets depend upon consistency across geographic boundaries
- Market rules should avoid “carve outs” of particular resources.
- Other capacity suppliers and utilities could give themselves an unfair competitive advantage through this process.
    - Other capacity suppliers could eliminate a competitor.
    - Danger that State utilities could have an unfair competitive advantage over the use of EERs if negotiating EER contracts is required.
- Danger that a State could exercise parochial authority to potentially benefit its customers over the best interests of all PJM Members.

The Federal Power Act Grants FERC Exclusive Jurisdiction Over EER Participation in PJM

- *FERC v. EPSA* held that FERC has exclusive authority over participation of load management activities in wholesale markets - - despite any potential impact on retail electricity rates -- <u>if the resource directly impacts </u>wholesale competitive markets.
- FERC voluntarily delegated authority over DRs to RERRAs in Order No. 719.
- FERC expressly <u>excluded</u> EERs from the Order No. 719 delegation to RERRAs.
  - *EERs are "valuable resources . . . however, the scope of [Order No. 719] is limited to removing barriers to comparable treatment of demand response resources in the organized markets."* Paragraph 276 of Order No. 719.
- It is illogical to suggest that RERRAs somehow should have any jurisdiction or similar authority over EERs, given lack of nexus with or impact on retail electric service.

Consumers would be harmed by any Tariff change

- Consistent EER Tariff provisions benefit EERs and other capacity resources by encouraging the uniform regional development of valuable capacity resources.
- Granting RERRAs the ability to restrict the commitment of EERs in the PJM wholesale capacity markets would harm consumers.
- Reducing amount of capacity supply in market results in higher consumer costs.
- Potentially conflicting and/or inconsistent State EER programs:
    - inhibit development of EERs.
    - restrict the ability of consumers to take advantage of purchasing more affordable energy efficient products.

Any Tariff Change Must be Prospective, Per FERC Policy and the Filed-Rate Doctrine

- Any PJM Tariff changes must only be prospective in nature.
- EERs have invested significant capital resources in acquiring EERs (and have cleared those resources in the capacity auction and met all verification requirements for participation); that capital would be lost if Tariff changes are applied retroactively
- Retroactive application of any Tariff changes would cause significant disruption to settled market outcomes and produce no offsetting benefits
  - Sets a bad precedent for all other capacity resources.
- Also would change the prices of past RPM auctions, after-the-fact

Observations

- The EER Problem Statement is a "flawed solution that is seeking a problem to solve".
- If the EER Problem Statement is correct, then <u>the RERRA</u> that is concerned about EERs should make a Section 206 filing; not PJM.
- It would be a violation of the Sherman Antitrust Act for PJM Market Participants (who are capacity resource competitors) to "combine" or "conspire" to restrain the trade of a competing capacity resource.
- The EER Problem Statement should <u>not</u> be approved.