



limit to exceptions to the must offer rules based on physical incapability should be accepted.

## I. ANSWER

### **A. The Must Offer Rule Provides Important Protection from the Exercise of Market Power and the Rules for Exceptions Should Be Properly Designed.**

Exelon et al. argue (at 3): “Must offer exception requests are quite rare and thus the threat of physical withholding posed by them is very small, especially since they are subject to review by the [Market Monitor] and PJM.” FE also argues (at 2) that “PJM’s concerns ... are excessive.” Exelon et al.’s and FE’s evaluation of the threat posed by the exercise of market power in the capacity market does not have merit. Review of transactions is only significant if there is a clear and enforceable rule. The historical frequency of such requests is also irrelevant. Even a small number of units in constrained locations in the market can have a significant impact on prices. In the absence of the rule proposed by PJM, must offer exceptions can be expected to increase in number and significance. The must offer rule is critical to prevent withholding in the PJM Capacity Market. The threat posed by physical withholding in markets characterized by permanent structural market power is significant. Market power is and will remain endemic to the structure of the PJM Capacity Market.<sup>4</sup>

The must offer rule has always been a core principle of the PJM Capacity Market, consistent with the obligation of load to purchase capacity. There are four exceptions to the must offer rules identified in the RPM market rules. The CP must offer rule was added to the must offer rules to assist generation owners in the transition to the CP construct for units that could not immediately become CP and required investment to become CP. That transition is complete. PJM has acted appropriately to more clearly define the exception.

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<sup>4</sup> “Analysis of the 2021/2022 RPM Base Residual Auction - Revised,” <[http://www.monitoringanalytics.com/reports/Reports/2018/IMM\\_Analysis\\_of\\_the\\_20212022\\_RPM\\_BRA\\_Revised\\_20180824.pdf](http://www.monitoringanalytics.com/reports/Reports/2018/IMM_Analysis_of_the_20212022_RPM_BRA_Revised_20180824.pdf)> (August 24, 2018), p. 2.

The issue is simple. A generation owner must decide whether to be a CP resource or not. The decision is a straightforward economic decision. If the unit needs an upgrade, the economics of the investment can be evaluated. Under the proposed rule, the unit has four years to complete the upgrade prior to the relevant delivery year. There is no economic reason to delay the decision. Exelon et al.'s complaint about the nature of the investment decision and whether exogenous factors affect the decision is irrelevant. That decision is made by the incumbent generator. If the incumbent generator decides not to invest, the incumbent should not be granted a free option to invest at a later date while blocking a competitor from investing. Exelon et al. request that free option.

Exelon et al. want the unlimited ability to postpone the investment decision, while blocking the access of potential new entrant competitors to the transmission system. By holding the CIRs for a long period, or indefinitely, the incumbent would force new entrants to spend millions on transmission upgrades that would not be necessary if the existing unit released the CIRs. If the existing generation owner decides that it is not economic to invest in the unit to make it CP eligible, the existing owner does not have the right to block access to transmission system for competitors.

Repeated CP must offer exceptions for a capacity resource also block market access to relevant information about retirement or capacity resource status change decisions. The result is to prevent competitors from even knowing that there is an opportunity to add capacity in the area. Blocking access to market information is also a barrier to entry. Under the RPM must offer exception process, a Capacity Market Seller seeking an exception based on retirement must submit a preliminary exception request by September 1 prior to the Base Residual Auction and a final request by December 1 prior to the Base Residual Auction. PJM posts a MW summary of the exception requests five business days after the preliminary and final request deadlines. These RPM rule changes were made to ensure

market transparency about anticipated supply conditions.<sup>5</sup> Repeated CP must offer exceptions prevent competitors from knowing about market opportunities and thus interfere with competition.

The detailed timeline incorporated in the PJM proposal is attached to this filing.

**B. The Proposed Rules Are Not Punitive.**

Exelon et al. argue that the proposal “strips away resources’ ability to maintain their Capacity Resource status and attendant CIRs if they are unable or unwilling to invest in significant upgrades to be in place for the delivery year following the year for which the exception is sought.” Exelon et al. argue that “the proposal would infeasibly require detailed information about upgrades to obtain an exception...” Exelon et al. argue (at 6) the limits “convert the existing ‘must offer’ requirement to a ‘must invest’ requirement, despite the fact that the investment may not be justified based on current market revenues...”

There is no proposed “must invest” requirement. Generation owners of capacity resources that are physically incapable of being CP resources have the choice to make the required investment, convert the resource to energy only, or retire the resource. Allowing repeated CP must offer exception requests for project investments that are not justified based on expected market revenues permits the withholding of information to the market about capacity supply conditions. To accept the notion that incumbent generation owners should be permitted to hoard CIRs because they are “unwilling” to make a unit CP capable would be to endorse withholding. If the incumbent generation owner does not think the investment is justified based on the economics, that owner is not obligated to invest. But that owner should not be permitted to prevent investment by a competitor that has a different view of the future or to raise the costs of that investment by requiring unnecessary transmission upgrades. Detailed information about upgrades is only infeasible if no serious

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<sup>5</sup> 145 FERC ¶ 61,035.

planning has been done. When incumbents actually plan to make an upgrade they have the detailed information necessary to make the decision. The proposed documentation requirement is similar to the level of detail currently required for market seller offer caps and minimum offer price rule exception requests.

The PJM proposal would prevent the hoarding of CIRs and the withholding of information from the market about retirement and capacity resource status change decisions. The proposal promotes competitive markets by reducing barriers to entry and by promoting market transparency about supply conditions. The proposed rules do not prevent the generation owner of CP incapable resources from later reentering the interconnection queue to request capacity resource status if market conditions change and the investment is justified.

### **C. The PJM Rules for CIRs Are Conditional.**

Exelon et al. claim interconnecting generators “often” incur “significant financial outlay” for upgrades. Payment for upgrades and other obligations such as annual generator testing are conditions to receive accreditation as deliverable under the RAA.<sup>6</sup> Meeting such obligations does not create a permanent, unilateral right to deprive competitors of the ability to use a portion of the transmission grid. Continued use of CIRs is conditional. CIRs are not property rights, they are contractual in nature.

Exelon et al.’s citation to the Commission’s interconnection service rules, showing that generators’ use of CIRs is included in the terms of interconnection service, demonstrates that such rights are limited and contractual in nature.<sup>7</sup> Citation to the

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<sup>6</sup> RAA Schedule 10.

<sup>7</sup> Exelon et al. at 7, citing, *e.g.*, *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043, at P 493 (2018) (describing interconnection service as “a contractual right provided by an LGIA”) (“Order No. 845”), *order on reh’g and clarification*, 166 FERC ¶ 61,137, at P 126 (2019) (“As long as the original interconnection customer remains in compliance with its LGIA, it retains the right to make full use of its contracted for interconnection service, and, so long as any

Commission's rules does not support Exelon et al.'s assertion of unconditional rights to retain unused CIRs indefinitely. If a unit chooses not to provide capacity, then it appropriately must relinquish capacity resource status and any associated CIRs. PJM proposes that CIRs would be terminated one year from the date that the capacity resource status change takes effect. This is the same period defined in the current rules used in the generator deactivation process. PJM's proposal is consistent with Commission rules, consistent with competitive market design and consistent with the public interest.

## II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.<sup>8</sup> In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

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necessary transmission service has been obtained, it may inject at the full level contracted for under its LGIA.").

<sup>8</sup> See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *N.Y. Independent System Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

### III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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Jeffrey W. Mayes

General Counsel  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Eagleville, Pennsylvania 19403  
(610) 271-8053  
*jeffrey.mayes@monitoringanalytics.com*

Joseph E. Bowring  
Independent Market Monitor for PJM  
President  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Eagleville, Pennsylvania 19403  
(610) 271-8051  
*joseph.bowring@monitoringanalytics.com*

Alexandra Salaneck  
Senior Analyst  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Eagleville, Pennsylvania 19403  
(610) 271-8050  
*alexandra.salaneck@monitoringanalytics.com*

Dated: August 23, 2019

## 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 at Eagleville, Pennsylvania,  
this 23<sup>rd</sup> day of August, 2019.



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Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

*jeffrey.mayes@monitoringanalytics.com*

Attachment

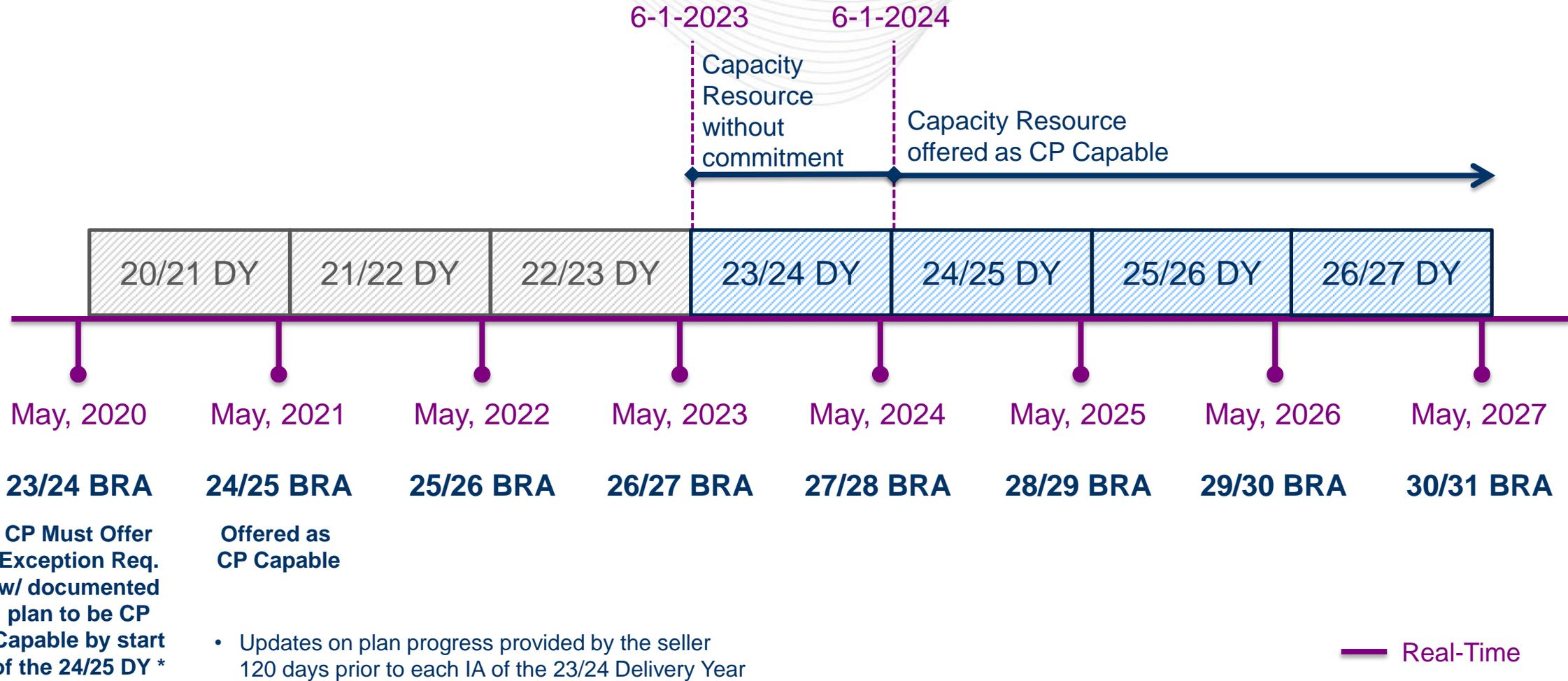


# Must-Offer Exception Process Issue

Patrick Bruno  
Sr. Engineer, Capacity Market Operations  
Market Implementation Committee  
March 6, 2019



# Alt. Proposal Example: Seller Submits Plan to be CP Capable by start of the 24/25 DY





# Alt. Proposal Example 2: No Plan Submitted w/ CP Must Offer Exception Request (**Required** Status Change)

