

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

PJM Interconnection, L.L.C.)	Docket No. ER18-1314-000
)	
Calpine Corporation, Dynegy Inc., Eastern)	Docket Nos. EL16-49-000,
Generation, LLC, Homer City Generation, L.P.,)	EL18-178-000
NRG Power Marketing LLC, GenOn Energy)	
Management, LLC, Carroll County Energy)	(Consolidated)
LLC, C.P. Crane LLC, Essential Power, LLC,)	
Essential Power OPP, LLC, Essential Power)	
Rock Springs, LLC, Lakewood Cogeneration,)	
L.P., GDF SUEZ Energy Marketing NA, Inc.,)	
Oregon Clean Energy, LLC and Panda Power)	
Generation Infrastructure Fund, LLC)	
v.)	
PJM Interconnection, L.L.C.)	
)	

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits these comments responding to the second compliance filing submitted by PJM Interconnection, L.L.C. (“PJM”) on June 1,

¹ 18 CFR § 385.211 (2019).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”), the PJM Operating Agreement (“OA”) or the PJM Reliability Assurance Agreement (“RAA”).

2020 (“Second Compliance Filing”) in compliance with the orders issued December 19, 2019, (“December 19th Order”) and April 16, 2020 (“April 16th Order”) in this proceeding.³

I. COMMENTS

A. Reverting to New Status

The April 16th Order states (at P 60):

In response to the Market Monitor’s clarification requests, we clarify that resources that are not subject to the Capacity Performance must-offer requirement will be treated as new resources if they seek to re-enter the capacity market after choosing not to participate in a particular auction, including intermittent renewable resources. We reiterate, as we found in the December 2019 Order, resources not subject to the Capacity Performance must-offer requirement seeking to re-enter the capacity market for any reason will be treated as new, consistent with the treatment of repowered resources. [Footnote omitted.] After the next BRA, any resource seeking to re-enter the capacity market will be treated as new, regardless of whether it is subject to the must-offer requirement.

In response to the Commission’s directive, PJM revised the definitions of Cleared Capacity Resource with State Subsidy and New Entry Capacity Resource with State Subsidy in the Second Compliance Filing from its March 18th Filing.⁴ PJM includes several qualifications that would incorrectly fail to revert capacity to the status of new for purposes of the Minimum Offer Price Rule (“MOPR”) and that are therefore unnecessary and counter to the Commission’s directive.

Under PJM’s revised definitions, capacity would not lose its status as a Cleared Capacity Resource with State Subsidy if it were offered in a Base Residual Auction (“BRA”)

³ *PJM Interconnection, L.L.C., et al.*, 169 FERC ¶ 61,239 (2019), *order on reh’g and clarification*, 171 FERC ¶ 61,035 (2020).

⁴ Proposed OATT § 1 (Definitions C–D), Cleared Capacity Resource with State Subsidy, (Definitions L–M–N), New Entry Capacity Resource with State Subsidy.

or were included in a Fixed Resource Requirement (“FRR”) plan for a delivery year after it last cleared. PJM’s position on inclusion in an FRR Plan should be rejected. An FRR Plan is not equivalent to offering in a competitive BRA. Not offering in an auction because the resource was in an FRR Plan and then reentering at an unmitigated sell offer would have the same potential impact regardless of the reason for not participating.

PJM’s compliance proposal on FRR Plan participation should be rejected because it does not comply with the Commission’s directives.

Under PJM’s definitions, the offer condition is satisfied by offering any amount of MW, not the resource’s available capacity, and is limited to BRAs. Using this definition of offering would allow a resource to offer a tenth of a MW of capacity in a BRA to avoid the associated consequence, and a resource could skip incremental auctions and avoid the associated consequence. Failing to participate in an incremental auction should be considered failure to participate, with the associated consequences. If a 100 MW resource offers 0.1 MW in a BRA, 99.9 MW did not participate and should be treated as a new resource for purposes of the application of MOPR. Participation in an auction should include only the MW offered and only the MW offered at a competitive price.

PJM’s compliance proposal on this issue should be rejected because it does not comply with the Commission’s directives.

B. Cleared Portion of a New Entry Capacity Resource

The April 16th Order states (at P 398):

We grant the Market Monitor’s request for clarification that only the cleared portion of a resource is considered existing, unless otherwise specified in this order.

In response to the Commission’s directive, PJM modified the proposed definitions of New Entry Capacity Resource with State Subsidy and Cleared Capacity Resource with State Subsidy where capacity would transition from new to existing for MOPR purposes for only

“the MWs (in installed capacity) comprising a Capacity Resource with State Subsidy that have cleared an RPM Auction” starting with the 2022/2023 Delivery Year.⁵

To avoid ambiguity, the PJM compliance proposal should specify exactly how the conversion to installed capacity would be calculated. For generators, the conversion should use the sell offer EFORd.

The PJM compliance proposal limits the cleared portion application starting with the 2022/2023 Delivery Year. This means that an entire resource would be considered a Cleared Resource with State Subsidy if it cleared any MW quantity prior to the 2022/2023 Delivery Year but only the cleared portion of a resource would be considered a Cleared Capacity Resource with State Subsidy if it cleared for 2022/2023 Delivery Year or after. There is no rationale for applying two definitions of clearing for MOPR application purposes.

PJM’s compliance proposal on this issue should be rejected because it does not comply with the Commission’s directives.

C. State Default Service Procurements

The April 16th Order (at P 386) clarified the Commission’s position that state default service auctions “meet the definition of State Subsidy to the extent they are a payment or other financial benefit that is a result of a state-sponsored or state-mandated process and the payment or financial benefit is derived from or connected to the procurement of electricity or electric generation capacity sold at wholesale, or an attribute of the generation process for electricity or electric generation capacity sold at wholesale, or will support the construction, development, or operation of a capacity resource, or could have the effect of allowing a resource to clear in any PJM auction.”

PJM’s Second Compliance Filing addresses this issue. PJM’s revised compliance definition has two key elements. PJM’s proposal is that there must be a state auction

⁵ *Id.*

consultant or a state auction manager that would certify that the auction is based on a nondiscriminatory and competitive bidding process. PJM's proposal is that the state default service auction must not place any conditions based on the ownership, location, affiliation, fuel type, technology, or emissions, of any resources or supply, other than RPS requirements. PJM's proposal is that any resource subject to MOPR will continue to be subject to MOPR, regardless of participation in a state default service auction.

The Market Monitor supported an exemption from MOPR for resources selected in competitive state administered auctions: "The Market Monitor's position is that the BGS auction is not, and does not create, a subsidy under the definition in the order."⁶ The Commission addressed the question and more is required to explicitly address the issues defined by the Commission.

The goal of compliance with the directive at P 386 should be to implement the simplest but complete method of conformance with the Commission's intent and to minimize the impact on state auctions given that intent. The essential elements of compliance are to ensure that competitive, market rates are paid for resources in the state auctions and that no subsidized resources may be part of the state auctions without being subject to the MOPR rules.

PJM's Second Compliance Filing is a positive step towards meeting the Commission's requirements in the compliance directive at P 386, but PJM's approach needs to be modified. In order to comply with the April 16th Order, the tariff should require that PJM and the Market Monitor regularly certify that the rules governing each state default service auction either meet or do not meet the Commission's standards subject to the Commission's authority to ensure that its intent is met. PJM's reference to a consultant or manager is not defined but presumably is the consultant to the manager of the state auction

⁶ See Request for Clarification of the Independent Market Monitor for PJM, Docket Nos. EL16-49-000, EL18-178-000 (January 17, 2020) at 2.

process or the manager of the state auction process. There is no reason to leave this critical decision to those with existing interests in the state auction process. The question is about the competitiveness of PJM wholesale power markets and PJM and the Market Monitor should make that decision and recommendation to the Commission.

PJM's other conditions are reasonable but should be required to include additional criteria which would result in application of the MOPR rules. More specifically, the criteria for applying MOPR should include, in addition to the PJM criteria: Any resource sold to load serving entities ("LSEs") participating in the state auctions to meet any state sponsored or state mandated requirement including RECs, ZECs, ORECs or any other mandate that limits participating capacity by technology, fuel, location, or other attribute should be subject to MOPR.

PJM's actual proposed tariff language is unnecessarily specific, particularly if PJM and the Market Monitor have the authority to review the state auction rules.⁷

For purposes of subsection (e) of this definition, a state default procurement auction that has been certified to be a result of a non-discriminatory and competitive bidding process shall:

(i) have no conditions based on the ownership (except supplier diversity requirements or limits), location (except to meet deliverability requirements pursuant to a modeled LDA), affiliation, fuel type, technology, or emissions of any resources or supply (except state-mandated renewable portfolio standards for which Capacity Resources are separately subject to the minimum offer price rule or eligible for an exemption);

(ii) result in contracts between an Entity Providing Default Retail Service and the electric distribution company for a retail default generation supply product and none of those contracts require that the retail obligation be sourced from any specific Capacity Resource or resource type as set forth in subsection (i) above; and

⁷ Proposed OATT § 1 (Definitions R-S), State Subsidy.

(iii) establish market-based compensation for a retail default generation supply product that retail customers can avoid paying for by obtaining supply from a competitive retail supplier of their choice.

There is no reason to specify supplier diversity requirements or limits in section i. There is no reason to specify deliverability requirements pursuant to a modeled LDA. None of these conditions are clearly defined and these conditions do not and should not apply unambiguously and without exception. These conditions and similar conditions should be part of the state default service auction rules and subject to review for consistency with competition in the wholesale power markets.

PJM's compliance proposal on this issue should be modified because it is not consistent with the Commission's directives.

D. Fixed Resource Requirement ("FRR") Revenues

PJM proposed to exclude from the definition of State Subsidy "any revenues for providing capacity as part of an FRR Capacity Plan or through bilateral transactions with FRR Entities."⁸ Resources that sell in an FRR Plan should not be excluded from the definition of a State Subsidy. FRR Plans may compensate resources in a variety of ways including those explicitly recognized as a State Subsidy. FRR entities are effectively Self Supply Entities and should be treated in the same way for the same reasons. For example, if a resource is an FRR resource but selling part of its capacity in the PJM Capacity Market and is therefore split between FRR and RPM, the FRR related revenues should clearly be considered as a State Subsidy and not be considered in the calculation of the MOPR floor offer price. If a resource is leaving FRR and returning to RPM, the projected net revenues should not include any FRR related revenues.

⁸ *Id.*

The bilateral sale of capacity by an FRR entity should be treated in the same way as the bilateral sale of any subsidized resource, including the bilateral sale by a Self Supply Entity. The FRR entity should be assumed to be receiving a State Subsidy and the bilateral treated accordingly. Consistent with the April 16th Order, the capacity from an FRR entity (State-Subsidized resource) cannot serve as replacement capacity for unsubsidized capacity resources.

PJM's compliance proposal on this issue should be rejected because it does not comply with the Commission's directives.

E. Restrictions on State Subsidized Resources Serving as Replacement Capacity

The April 16th Order states (at P 400):

With respect to the Market Monitor's other request, we clarify that, to the extent the Market Monitor refers to replacement capacity bilaterally procured to fulfill a capacity commitment, capacity from State-Subsidized Resources cannot serve as replacement capacity for unsubsidized capacity resources.

The Market Monitor had requested clarification that replacement capacity restrictions for state subsidized resources include transactions within a portfolio as well as bilateral transactions.⁹ The Market Monitor continues to seek clarification on this issue and reiterates that market power manipulation concerns exist with allowing subsidized resources to serve as replacement capacity within a portfolio. However, if the Commission orders that the restrictions on subsidized resources serving as replacement capacity apply only in the case of bilateral transactions, the Market Monitor identifies issues with the PJM compliance proposal on this issue.

In the RPM capacity market, the bilateral replacement process includes a series of transactions that are initiated with either a unit specific bilateral transaction or a locational

⁹ Request for Clarification of the Independent Market Monitor for PJM, Docket No. EL16-49-002 (May 15, 2020).

UCAP transaction. The completion of the replacement process using unit specific bilateral transactions includes two separate transactions. A unit specific bilateral transaction would occur where available capacity from a capacity resource is transferred from a seller to a buyer. Then a replacement transaction could be completed using the available capacity within the buyer's portfolio. The completion of the replacement process using locational UCAP transactions also includes two separate transactions. A locational UCAP transaction between a buyer and seller would occur where the seller specifies a replacement resource and an RPM commitment of the replacement resource is increased by the locational UCAP MW quantity. Then the buyer could use the LDA and product type specific locational UCAP MW in a separate replacement transaction within its portfolio.

In response to the Commission's directive, PJM proposed to apply the replacement transaction restrictions only to bilateral transactions that are one year or less.¹⁰ The definition of the bilateral transaction type used in PJM's capacity application is not equivalent to the Commission's definition of bilateral. For example, the bilateral transaction type in PJM's capacity application is used to handle joint ownership. PJM's proposed patch would explicitly allow some replacement transactions to bypass the Commission's directive instead of addressing the data definition issues or systemically reviewing all replacements that use state subsidized resources. This is a proxy approach that fails to comply with the Commission's directive.

If the Commission orders that the restrictions on subsidized resources serving as replacement capacity apply only in the case of bilateral transactions, clarification is needed on the definition of bilateral and which types of transactions or series of transactions would be subject to this rule.

To be consistent with the intent of the April 16th Order, subsidized resources should not be allowed to serve as replacement capacity within a portfolio.

¹⁰ Proposed OATT Attachment DD § 4.6(e).

PJM's compliance proposal on this issue should be rejected because it does not comply with the Commission's directives.

F. Default and Resource Specific Calculations for Seasonal Capacity and Resources with No Must Offer Requirement

PJM proposed to apply the same default values to seasonal offers as annual offers.¹¹ PJM also proposed that resource specific calculations would "be applied to each MW offered by the resource regardless of actual Sell Offer quantity and regardless of whether the Sell Offer is for a Seasonal Capacity Performance Resource."¹²

Under PJM's approach, a 20 MW demand resource or intermittent resource that is subject to MOPR could calculate its resource specific sell offer based on the 20 MW and decide to offer only 10 MW for the delivery year. The sell offer would be artificially low and the resource would not be ensured its full cost recovery. For example, if the sell offer calculated using 20 MW is \$100 per MW-day, the offer MW quantity is 10 MW, and the offer clears at \$100 per MW-day, the resulting capacity revenue (10 MW times \$100 per MW-day times 365) would be less than the actual revenue requirement (20 MW times \$100 per MW-day times 365) needed to cover the costs of the resource.

There are several reasons why a capacity resource may be only partially offered in an RPM auction, including commitment to an FRR plan, export, exemption from the RPM must offer requirement, and, for resources not subject to the CP must offer requirement, uncertainty about the capability of the resource to satisfy CP performance requirements.

In the case where a portion of the capacity is committed outside the RPM market, it would be appropriate to prorate the costs and MW accordingly as it is known that the resource is recovering part of its capacity revenue elsewhere. For example, if 25 MW of a 100 MW resource is defined as an export, the MOPR floor offer price would be calculated

¹¹ Proposed OATT Attachment DD § 5.14(h-1)(2)(A) & (B).

¹² Proposed OATT Attachment DD § 5.14(h-1)(3).

using the full costs and full capacity, or equivalently using 75 percent of the costs in the numerator and the RPM offered capacity in the denominator.

In the case where there is no defined reason such as export or FRR for a resource not offering its full capacity, it is appropriate to use the offered capacity in the denominator. The PJM approach of using the full capacity incorrectly assumes that the resource would offer the remaining portion in an incremental auction or that the resource is expected to receive capacity revenue elsewhere to cover its revenue requirement. There is no rational reason for a resource to hold out capacity for an incremental auction as BRAs historically clear at a higher price than incremental auctions. A more realistic assumption is that the offered capacity represents the capacity market seller's expectation of the actual capability of the resource and that the unoffered capacity could not earn any capacity revenues. The MOPR floor offer price defines the net cost, exclusive of state subsidies, that must be recovered in the RPM market. Using a value other than the offered capacity and without seasonality considerations would inappropriately apply different definitions of the revenue requirement and MOPR floor offer price to those resources with RPM must offer requirements than to those resources without RPM must offer requirements.

PJM's compliance proposal on this issue should be rejected because it does not comply with the Commission's directives.

G. Compliance with Voluntary RECS via GATS

In its Second Compliance Filing (at 44), PJM's position is that capacity market sellers of capacity resources that generate RECs or equivalent credits may elect the competitive exemption if they certify that the credits will only be used and retired for voluntary obligations rather than used to comply with state-mandated renewable portfolio standards. PJM's position is that capacity market sellers can certify that RECs that are eligible for state sponsored RPS programs will not be used for state mandated compliance purposes and therefore avoid being subject to the modified MOPR.

PJM proposed that to facilitate tracking the voluntary use of RECs under the competitive exemption, PJM will modify the existing Generation Attribute Tracing System (i.e., “GATs”) to ensure that any capacity market sellers’ self-imposed limitations on use of the RECs can be tracked.

The PJM GATS system is owned by a for profit subsidiary of PJM.¹³ PJM has not provided full access to GATS data to the Market Monitor. If PJM’s proposal to use GATS to track compliance of voluntary RECS usage with the competitive exemption, PJM should be required to make the GATS data available to the Market Monitor so that the Market Monitor can track compliance.¹⁴

H. Demand Resources

The April 16th Order states (at P 172):

The December 2019 Order finds that any uprates (i.e., incremental increases in the capability of existing resources) of any size are considered new for purposes of applying the MOPR because uprates may come with additional avoidable costs, such as construction costs, that existing resources otherwise do not face. [footnote omitted] Therefore, we find that demand response resources increasing the number of MWs they offer year-to-year must explain why the increased quantity they intend to offer is not connected to any increased costs or State Subsidies that make the uprate possible.[footnote omitted]

In response to the Commission’s directive, PJM proposed that any increase in the nominated capacity of an end use customer would be subject to the MOPR if the increase “is due to an investment made for the sole purpose of increasing the curtailment capability of the location in the capacity market.”¹⁵ The April 16th Order requires that demand

¹³ See PJM Website, <<https://www.pjm-eis.com/program-information.aspx>>.

¹⁴ See OATT Attachment M § V.A.

¹⁵ Proposed OATT Attachment DD § 5.14(h-1)(7)(B).

resources explain increases, but PJM does not define any process for certifying or verifying such explanations. PJM's criterion is unclear and unenforceable. Similar to generation, any MW increase should be treated as a new resource, and require documentation of costs.

PJM proposed to require that each demand resource registration be associated with one end use customer location. PJM clarified the demand resource registration rules to provide that only utility based residential load curtailment programs may be aggregated into a single demand resource registration, and all other registrations must be composed of only a single location. Requiring that registrations be for a single location is logical and a reasonable change to the demand response registration process. PJM should be directed to add the requirement that utility-based residential programs may aggregate only within zip codes. PJM can dispatch demand resources by subzones, which are defined by zip codes. While aggregation for utility residential programs is logical, the exception should be limited to ensure rough consistency with PJM's nodal pricing model.

The current pre registration process does not require firm contracts between the CSP and end use customer. CSPs must have all end use customers under contract in order to effectively apply the expanded MOPR and should be required to do so. Requiring all CSPs to have firm contracts with customers at the time of the auction, and the competitive exemption penalty will treat demand resources like all other capacity resources.

I. Energy Efficiency Gross CONE

The measurement and verification ("M&V") for Energy Efficiency ("EE") resources should be included in the gross CONE calculation. The current M&V requirements for Energy Efficiency resources generally rely on assumptions about usage rather than measurement and verification. The M&V costs for EE should include all of the costs associated with a verifiable measurement and verification program.

II. CONCLUSION

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

Respectfully submitted,



Jeffrey W. Mayes

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

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

Keri Dorko
Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, PA 19403
(610) 271-8050
Keri.Dorko@monitoringanalytics.com

Skyler Marzewski
Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
skyler.marzewski@monitoringanalytics.com

Dated: June 22, 2020

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 22nd day of June, 2020.



Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

jeffrey.mayes@monitoringanalytics.com