UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Power Providers Group v. PJM Interconnection, L.L.C.	)	Docket No. EL11-20-000
PJM Interconnection, L.L.C.	)	Docket No. ER11-2875-000 (not consolidated)

MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rules 212 and 213 of the Commission's Rules and Regulations, 18 CFR § 385.212 & 385.213 (2010), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM[1] ("Market Monitor"), moves for leave to answer and answers the protests filed by several intervenors in this proceeding on March 4, 2011.[2] The

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[1] PJM Interconnection, L.C.C. is a Commission-approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning provided in the PJM Open Access Transmission Tariff ("OATT") or the PJM Reliability Assurance Agreement ("RAA").

[2] New Jersey Rate Counsel ("NJ Rate Counsel"), which includes an Affidavit of James F. Wilson ("Witness Wilson"); The PJM Load Group, including Old Dominion Electric Cooperative, the PJM Industrial Customer Coalition, American Municipal Power, Inc., Southern Maryland Electric Cooperative, Inc., Public Power Association of New Jersey, Duquesne Light Company, the Borough of Chambersburg, Pennsylvania, the Electricity Consumers Resource Council, the Office of the Ohio Consumers' Counsel, North Carolina Electric Membership Corporation, Blue Ridge Power Agency, Rockland Electric Company, the Pennsylvania Office of Consumer Advocate, the Maryland Office of People's Counsel, Delaware Municipal Electric Corporation, Inc., the Portland Cement Association, and the Office of the People's Counsel for the District of Columbia (collectively, "PJM Load Group"); and National Rural Electric Cooperative Association at 36–39 ("NRECA"), which includes an Affidavit of Dr. Laurence D. Kirsch and Dr. Mathew J. Morey ("Witness Kirsch/Morey").

Market Monitor's initial filing on March 4, 2011, addressed most of the concerns raised as they would apply to the Market Monitor's proposal, but some of the arguments require a response. In general, the exception process proposed by the Market Monitor and others addresses many of the protestors' concerns. For example, the MOPR rules proposed by the Market Monitor would have no impact on the ability to offer competitive, non-discriminatory self supply in RPM auctions. In addition, the MOPR rules proposed by Power Providers and PJM impose unnecessary risks on new entrants, which can be avoided if the MOPR is not applied after projects successfully clear one RPM Auction with either a competitive offer or a mitigated offer.

I. ANSWER

A. The MOPR Proposed by the Market Monitor is Flexible in Defining a Competitive Offer While Preventing the Exercise of Market Power

Although the rules defining the benchmark for a competitive offer are clear in the Market Monitor's proposed MOPR rules, those rules also include an essential level of flexibility. The proposed rules would include an exception process under which a market participant would pass the MOPR if it could support its case that its actual costs are lower than net CONE, or if a market participant could support its case that it procured capacity via a competitive, non-discriminatory process, or if a market participant's offer passed a competitiveness test for long lead time units.

The goal of the Market Monitor's approach to capacity markets overall is to have a flexible rule based approach to prevent the exercise of market power either to increase or reduce prices, and to eliminate barriers to entry, ensuring the maximum possible potential entry by competitive suppliers.

It is essential to have a rule based approach to ensure that all participants understand the rules ahead of time and neither the Market Monitor nor the Commission is expected to make an after the fact determination about how the MOPR should apply. The approach in the Market Monitor's proposed MOPR rules is to set the standards for competitive offers clearly, including a clear definition of exceptions. The Market Monitor could, and is fully prepared to, play a role in screening and evaluating requested exceptions. This is essentially identical to work currently performed by the Market Monitor under the current market power mitigation rules. The Commission would make the final decision in the event of disagreements.

Where objective rules are possible they are preferred. However, competitive markets cannot serve the public interest if the rules are too lax to afford needed protections or too rigid to accommodate varied circumstances. An approach that sets clear and appropriate standards and provides for initial review of requests for exceptions by the Market Monitor achieves this balance. This approach also permits rapid and detailed review, protects confidential information, avoids expensive filings and permits a FERC determination at the option of the market participant.

As the Commission states, the Market Monitor "is not an administrative agency,"[3] and recourse to the Commission is available to any party dissatisfied with the outcome of any process involving the Market Monitor. There is no reason why an efficient and effective administrative process cannot include sufficient protection of the rights of all parties.

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[3] *West Deptford Energy, LLC*, 134 FERC ¶61,189 at P 31 (2011).

Thus, Witness Wilson's assertion (at ¶12) that the proposed default MOPR would interfere with the normal competitive process for new entry is not correct. If actual unit costs are less than net CONE, a review would support that assertion and the offer would be made in the auction. In addition, the suggestion by New Jersey Witness Wilson (at ¶66) and others that the Market Monitor could file a complaint pursuant to section 206 of the Federal Power Act to request mitigation longer than one year is inconsistent with the Market Monitor's proposed rule based approach and would be unfair to market participants who could be expected to argue in response to such a filing that their behavior was consistent with the rules.

B. No MOPR Proposal Would Apply to Existing Resources.

Several protestors argue that the revisions proposed to the MOPR would compromise the ability of LSEs to provide self supply.[4] These concerns are misplaced to the extent that they address potential mitigation of existing resources. Neither the current MOPR nor the MOPR proposed by any participant in this process would affect self supply from existing capacity resources.

C. The Market Monitor's Proposed MOPR Is Consistent with Self Supply

The same principle applies to self supply as to the design of the Market Monitor's entire proposed MOPR. If the self supply is acquired under a competitive and non-discriminatory procurement process, it could be offered in the RPM auction without a MOPR limit. A procurement process would be discriminatory, for example, if it accepted offers solely from new units and not from existing units. No RPM rules should inhibit

[4] PJM Load Group at 48–50; NJ Rate Counsel at 26–28 and NRECA at 36–38.

competitive responses to market signals. Market entities including public power agencies and LSEs may wish to enter into long term contracts for physical supply, or to buy or build under a range of options not incorporated in the one year RPM auctions. If the market entity conducts a verifiably open, competitive, non-discriminatory process for acquiring such a contract, the resultant contract with the lowest cost supplier would pass MOPR under the exception process. If the self build option were similarly demonstrated to be the least cost option using a competitive process, even if it were funded using the standard regulatory rate base rate of return approach, then it would also pass MOPR under the exception process. Supply procured under either approach could be offered into RPM auctions without a lower bound. Lowest cost could be defined using a net present value criterion as well as current expectations of future energy market revenues.

Self supply, when it is based on a discriminatory acquisition process, would be subject to the MOPR. For example, if the acquisition process restricted participation to only new units, the process would be discriminatory and any associated offers would be subject to making an offer at no less than the minimum price specified in the MOPR.

In each case, such approaches are exceptions to the Market Monitor's proposed MOPR rule. Such exceptions would be verified by the Market Monitor subject to final decision by the Commission. This is the same process currently applied by the Market Monitor in the review of supply offers subject to market power mitigation rules.

Thus, Witness Wilson's comment (at ¶13) that the Market Monitor's proposed approach to MOPR is inconsistent with long term buy or build options is not correct.

D. The MOPR Should Apply Only Until a Competitive Offer or a Mitigated Offer Clears in a Capacity Auction.

A difference among the various proposals for MOPR reform is the term of application. The Market Monitor proposes that the MOPR apply for one year and that, for offers that either pass the MOPR screens or are subject to mitigation under the MOPR, and clear in an RPM auction, the MOPR would no longer apply in subsequent RPM auctions. For projects that fail the MOPR test, the Market Monitor agrees that mitigation should apply until the mitigated offer clears in an RPM auction in order to prevent the exercise of market power.

The Market Monitor recommends that the MOPR require that (i) a unit clear one BRA based on either an offer of net CONE or its demonstrated individual net CONE, and (ii) that its sponsor demonstrate that the unit is not receiving any subsidies, defined to be any revenues from outside the organized PJM markets, and has not contracted to receive any subsidies. In year two, any offer would be acceptable subject to ACR based caps. To do otherwise would place an unnecessary burden on the potential entrant after making a substantive investment to meet obligations created by their clearing a BRA on the basis of their competitive offer.

The nature of a competitive offer changes when there are significant sunk costs. Imposing risks on a project sponsor that the project which clears in an auction will not clear in a second or third auction and thus not be available to meet capacity obligations or receive capacity payments after a significant financial investment has been made deters competitive new entry without affording additional protection against the exercise of monopsony market power.

Both PJM and Power Providers propose standards that impose risk on new entry, regardless of whether the offer passes or fails the MOPR test. Power Providers propose that a project must clear RPM auctions for two Delivery Years.[5] This means this a sponsor could clear an RPM Auction with an acceptable offer, proceed with construction and incur associated costs, only to fail to clear in the next auction.

PJM's approach requires a project to clear once and then applies the MOPR for two additional years.[6] As with the Power Providers' proposal, this imposes a risk. The risk of two years of lost capacity payments and the inability to use to capacity to meet capacity obligations constitutes a significant barrier to entry. PJM has not explained how this provides additional protection against monopsony market power.

E. The Definition of Subsidy.

The Public Power Association of New Jersey raises an issue (at 6–8) specifically questioning how the tax exempt status and related laws affecting the cost of financing would impact self supply offers from municipalities and public power entities. Such elements of cost are legitimate as a matter of long standing public policy and would be considered actual costs under the exception process.

The Commission is the ultimate arbiter of what constitutes a subsidy under the proposed MOPR rules.

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5 Complaint and Request for Clarification Requesting Fast Track Processing at 37–41 (February 1, 2011).

6 PJM filing in ER11-20-000 at 19–20 (February 1, 2011).

F. Common Goal of Competitive Markets and Participant Flexibility

The Market Monitor continues to assume that all parties to this discussion of the MOPR share a common interest in competitive markets. Properly structured, competitive markets permit entry without barriers and permit a range of competitive options for meeting the needs of market participants. Such competitive markets should not and do not provide special advantages to incumbent generators or to buyers of capacity. There appears to have been some misunderstandings based on the first round of comments about the flexibility of the approach proposed by the Market Monitor and others. There is nothing in the Market Monitor's proposal that would interfere with the ability of states, LSEs or public power agencies to take creative actions to address their own reliability needs in a competitive and non-discriminatory manner.

The application of these simple criteria can distinguish, in most cases, between approaches designed to make markets more competitive and to ensure that participants have full flexibility to react to market conditions, and approaches designed to distort market outcomes in favor of a particular group of market participants. Most commenters recognize that both are possible and that the former is appropriate while the latter is not.[7] Given that fundamental agreement, modifying the MOPR rules in the short term is a task that can and should be accomplished prior to the next Base Residual Auction in order to ensure competitive markets and the maximum achievable level of certainty for market participants while leaving open the additional RPM issues that should be addressed prior to the following Base Residual Auction for 2015/2016. Even if the supply procured through

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[7] E.g., Witness Wilson at ¶7; Witness Kirsch/Morey at 22–23.

New Jersey's Long-Term Capacity Agreement Pilot Program is not offered in the upcoming 2014/2015 BRA, the intent to do so in the 2015/2016 auction, absent a rule change, itself creates substantial uncertainty for participants in the 2014/2015 auction who are making investment decisions about existing and planned long lived assets. The status quo also creates uncertainty for planned projects to which the MOPR might apply and which would offer in subsequent auctions.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answer 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 created a complete record.[8] 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.

III. CONCLUSION

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

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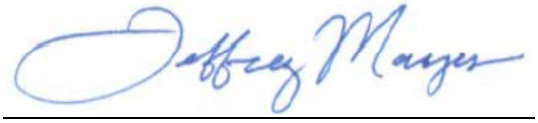
[8] *See, e.g., PJM Interconnection, L.L.C., 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "*provided information that assisted … decision-making process*"); California Independent System Operator Corporation*, 110 FERC ¶61,007 (2005) (answer to answer permitted to assist Commission 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).

Respectfully submitted,



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Dated: March 21, 2011

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 21st day of March, 2011.

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