

Commission precedent, limits the scope of MOPR-Ex to what is necessary to maintain resource adequacy at just and reasonable rates. MOPR-Ex constitutes a necessary and proportional response to the negative impacts on wholesale power markets created by state specific subsidies for individual generating resources that are either uneconomic or are providing less than target returns to investors in competitive markets. MOPR-Ex is properly filed and should be approved.

The alternative Capacity Repricing proposal is not a solution to the problem that the April 9th Filing identifies. If approved, Capacity Repricing would facilitate existing state specific subsidies and incent new state specific subsidies, and undermine the efficiency and competitiveness of PJM markets. PJM staff is the only unequivocal supporter of Capacity Repricing in this proceeding as of the comment date.

I. ANSWER

A. The April 9th Filing Is Procedurally Proper.

A number of commenters object to PJM filing two alternative proposals under Section 205 of the Federal Power Act with a request that the Commission choose the better option.⁴ PJM provided support for filing two alternatives, pointing to precedents in interstate gas pipeline tariff filings and situations where proposals are contingent on decisions to be made in other cases.⁵ Exelon, in challenging the filing, acknowledges that the ISO New England tariff authorizes and the Commission has accepted “jump ball”

Exemption and Competitive Entry Exemption. Since 2017, after *NRG Marketing*, these exemptions have not been included. The MOPR-Ex proposal restores the Self-Supply and Competitive Entry Exemptions (changed to “Competitive Exemption”).

⁴ See, e.g., Exelon at 9–11; PSEG at 5–7.

⁵ See April 9th Filing at 47–50 n.131, citing, e.g., *Pac. Gas & Elec. Co.*, Letter Order, Docket No. ER18-408-000 (Feb. 7, 2018); *Gulf S. Pipeline Co.*, 149 FERC ¶ 61,173 (2014); *Ariz. Pub. Serv. Co.*, Letter Order, Docket No. ER13-2470-001 (Jan. 17, 2014); *Kinetica Energy Express, LLC*, 144 FERC ¶ 61,159 (2013); *S. Cal. Edison Co.*, 141 FERC ¶ 61,268 (2012); *Pac. Gas & Elec. Co.*, Letter Order, Docket Nos. ER13-46-000, -001 (Nov. 30, 2012).

filings but objects that the PJM tariff lacks the same provision.⁶ No party offers any support for the claim that alternative Section 205 filings are prohibited. No party cites any tariff provision, rule, statutory provision or precedent that would prohibit PJM's approach.

PJM's approach to filing MOPR-Ex is not prohibited, is supported by precedent, and serves the public interest in well regulated electricity markets.⁷

MOPR-Ex is a fully developed proposal. PJM has met its burden to support MOPR-Ex, even if PJM prefers an unsupportable alternative.

Some parties read too much into *NRG Power Marketing v. FERC*, and its statement that the Commission plays a passive role in reviewing proposals.⁸ *NRG Power Marketing* held that the Commission could not develop and approve a replacement proposal under Section 205. *NRG Power Marketing* does not hold that the Commission cannot choose between alternative and mutually exclusive proposals that a public utility chooses to present to it under Section 205.

There are two issues. Can the Commission choose between two alternatives? The answer is yes. Can the Commission make non material modifications to the selected alternative? The answer is yes. The MOPR-Ex proposal is complete, and there is no reason for the Commission to materially modify MOPR-Ex. The Market Monitor believes the Commission should make some minor modifications to MOPR-Ex to restore the MOPR-Ex as approved by stakeholders rather than PJM's modified version. The stakeholder version of MOPR-Ex can be approved without any material modifications and be consistent with *NRG Power Marketing*.

⁶ See Exelon at 9, citing *ISO New England Inc.*, 130 FERC ¶ 61,105, at P 72 (2010).

⁷ See CASPR at P 72.

⁸ See, e.g., JCA at 4–7, citing 862 F.3d 108 (D.C. Cir. 2017).

B. The Exemptions to MOPR-Ex Reasonably Accommodate State Policy Initiatives.

A number of parties argue that the MOPR-Ex design interferes with legitimate state environmental policy initiatives.⁹ Such arguments are misplaced. MOPR-Ex accommodates RPS programs. MOPR-Ex exempts all RPS programs in place before December 31, 2018, and exempts future RPS programs that meet competitive criteria.

MOPR-Ex restores the MOPR exemptions that were in place from 2013 to 2017, before *NRG Power Marketing* reversed the Commission's order approving the exemptions.¹⁰ The MOPR-Ex restores the previously approved exemptions for self supply and competitive entry (renamed "competitive" and modified to include existing units), includes the exception for unit specific offers and adds the RPS exemption.

States can and do implement policy initiatives that value environmental attributes without any impact from MOPR. If states want to price carbon emissions, they can join the Regional Greenhouse Gas Initiative ("RGGI") or develop their own alternative PJM carbon emissions market. A program that creates a carbon price, like RGGI, does not create state specific subsidies and does not implicate MOPR. RGGI does not create state specific subsidies and would not be subject to the MOPR-Ex.

C. MOPR-Ex Does Not Unduly Discriminate.

MOPR and MOPR-Ex both apply criteria that exempt some resources and not others. Section 205 prohibits rates that unduly discriminate.¹¹ Discrimination is appropriate when

⁹ See, e.g., Exelon at 6; PSEG at 4; DPL at 9–10.

¹⁰ See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011), *reh'g denied*, 138 FERC ¶ 61,194 (2012), reversed *NRG Power Marketing*.

¹¹ 18 U.S.C. § 824d(b) ("No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.").

units are not similarly situated.¹² MOPR and the proposed MOPR-Ex exempt offers from units that do not pose a threat to competitive markets according to defined criteria. The existing MOPR was limited to new gas fired CTs, CCs and IGCCs. MOPR was narrowly designed to address an identified threat to the competitive markets. Incumbent owners opposing MOPR-Ex, such as PSEG, supported MOPR when it was more discriminatory than MOPR-Ex.¹³ Today the threat has changed, and MOPR-Ex addresses the proliferation of state specific subsidies to existing units. MOPR-Ex is narrowly tailored to address contemporary challenges. MOPR-Ex does so by expanding the scope of units covered and by expanding the scope of the exemptions to accommodate state policies. MOPR-Ex is significantly less discriminatory than the current rule. The discrimination that remains is consistent with the purpose of the rule to protect competitive markets, while accommodating state policies consistent with that objective.

A MOPR with exemptions approved by the Commission was effective in PJM from 2013 to 2017, until it was reversed for reasons having nothing to do with discrimination.¹⁴ The Commission recently confirmed the MOPR approach with exemptions in the CASPR decision.¹⁵ In that decision, the Commission approved (at P 45) a definition of a Sponsored Policy Resource that was “narrowly tailored to meet ISO-NE’s objective to limiting the impact of out-of-market state procurements.”

Arguments that MOPR is discriminatory should be rejected.

¹² See CASPR at P 45.

¹³ See, e.g., Comments and Limited Protest of the PSEG Companies, Docket No. EL11-20-000 (March 4, 2011) at 4 (“The PSEG Companies further agree that prompt Commission action in accordance with the requests set forth in the Complaint will maintain the efficacy of the competitive capacity markets, and will help provide all stakeholders with just, reasonable, and non-discriminatory rates, including lower costs for consumers over the long term.”).

¹⁴ See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011), *reh’g denied*, 138 FERC ¶ 61,194 (2012), reversed *NRG Power Marketing*.

¹⁵ See *ISO New England Inc.*, 162 FERC ¶ 61,205 (2018) (“CASPR”).

D. The MOPR-Ex Appropriately Exempts RPS but Not ZECs.

Exelon complains (at 22–25) that zero emissions credits (“ZECs”) subsidies are not materially different from Renewable Energy Credits (“RECS”) defined under renewable portfolio standards (“RPS”) programs.

RPS programs require Load-Serving Entities to procure target levels of energy from renewable resources. Most PJM states have RPS programs.¹⁶ RPS programs are generally competitive.

Nuclear units are not renewables. There is no undue discrimination against nuclear units when they are not included in the RPS exemption.

ZEC programs are readily distinguished from RPS/RECs programs. Unlike RECs, ZECs target individually identified nuclear generators that are at risk of retirement, and ZECs are specifically designed to safeguard those identified nuclear generators from the exit price signals that are a critical part of efficient competitive markets.

For example, the Illinois ZEC subsidy is explicitly tethered to the wholesale rate and targets the wholesale rate. The subsidy is a simple contract for differences against the wholesale market price of power. The subsidy targets a total amount of compensation to the nuclear power plants equal to the subsidy plus the current wholesale market price of power. As the wholesale price of power increases, the subsidy decreases so that total compensation remains constant. The gross value of the subsidy starts at \$16.50 per MWh, and is adjusted upwards one dollar each year thereafter. The amount of the subsidy is tied directly to market prices, termed the “baseline market price index” which equals \$31.40 per MWh. The baseline market price index is equal to the PJM energy price in Illinois plus the

¹⁶ As of March 31, 2018, Delaware, Illinois, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, and Washington, DC had renewable portfolio standards. Virginia and Indiana had voluntary renewable portfolio standards. Kentucky and Tennessee did not have renewable portfolio standards. West Virginia had a voluntary standard, but the state legislature repealed their renewable portfolio standard effective February 3, 2015.

average of the MISO and PJM locational capacity market prices. If the projected power market price (“market price index”) exceeds the baseline market price index, the subsidy is reduced by the amount of the difference. If the market price index equals the subsidy plus the baseline market price index, the subsidy goes to zero, but never below zero.¹⁷

The level of the ZEC subsidy is tethered to and changes the federal regulated wholesale prices, raising the price that Exelon receives for the ZEC Units’ output and changing Exelon’s market incentives in ways that distort market outcomes. When federally regulated wholesale prices rise to a specified level under the program, the ZEC subsidy disappears.

The states with ZECs programs did not create open, transparent, competitive auctions to reduce carbon emissions at the lowest possible cost.

RPS programs create markets that value RECs based on the objectives of the program. Such programs do not attempt to single out and change the compensation received by particular units. Such programs do not explicitly or implicitly seek to change wholesale clearing prices. Prices are instead determined by demand, defined by the RPS procurement target, and supply from sources that meet broad eligibility requirements relative to the program’s objective. MOPR-Ex requires RPS programs to have such features in order to establish eligibility for an exemption.

Distinguishing between ZECs and RECs on the basis of their material differences does not result in undue discrimination because resources receiving ZECs and RECs are not similarly situated.

¹⁷ See 20 ILCS 3855 § 1-5(d-5)(1)(b).

E. MOPR-Ex Protects Federal Jurisdiction Over Wholesale Sales.

MOPR-Ex does not intrude on state jurisdiction or prerogatives. MOPR-Ex protects the ability of the Commission to regulate wholesale sales according to its policy preferences and to establish wholesale rates.

ZECs and similar programs do not provide payments based on the general desirability of the attributes units possess. They are determined through a formula designed to pay distressed units subsidies equal to the difference between what the units receive from the wholesale market and what the unit needs to avoid retirement (or achieve the profitability level desired by investors). Similarly situated units are treated very differently. A nuclear plant that is profitable receives nothing under ZECs while a distressed nuclear unit receives significant subsidies through ZECs even though their attributes are identical from a policy perspective. The clear purpose is to change the wholesale rate to one preferred by the unit owners with the state's assistance. ZECs operate to change the wholesale rate, with no comity for the Commission's decision to regulate wholesale sales through competition.

MOPR-Ex might not be needed if the courts determine, as they should, that ZECs and other programs designed to change wholesale rates to forestall the retirement of particular units are preempted under the Constitution.¹⁸ Incumbents have argued that the ability of the Commission to approve a MOPR is a reason that Court action to protect federal jurisdiction is unnecessary.¹⁹ The Supreme Court rejected the argument that the Commission's ability to approve MOPR is a reason to allow intrusion on the Commission's jurisdiction over wholesale rates, but its decision also leaves room for possible intrusion on federal jurisdiction (depending on the outcome of future litigation) when the targeting of

¹⁸ See *Village of Old Mill Creek v. Star*, No. 17-2433 (7th Cir. July 17, 2017); *Coal for Competitive Elec. v. Zibelman*, No. 17-2654 (2d Cir. Aug. 25, 2017).

¹⁹ See *Hughes et al. v. Talen Energy Marketing, et al.*, slip op. (April 19, 2016) at 12 n.11.

wholesale rates is arguably indirect and the tethering of subsidies to rate levels is arguably not explicit.²⁰ Whether, when and how uniformly the Courts will act is currently an open question. Action must be taken now to defend the Commission's ability to regulate the wholesale power markets. MOPR-Ex allows comity for state prerogatives, such as RPS, but also defends federal jurisdiction.

F. The Status Quo Is Not Tenable.

Comments and protests from several entities urge the Commission to reject both PJM proposals and take no action to address state specific subsidies. The PJM markets have resulted in significant benefits to customers. Suppressing the short term price of capacity below the competitive level is not in customers' interests. Subsidizing specific uneconomic resources is not in customers' interests. It does not require detailed analysis to demonstrate that subsidies will suppress capacity market prices and that subsidies for some uneconomic resources will increase the economic pressure on other resources leading to more requests for subsidies.²¹ Ignoring the issue because it has not yet led to a crisis for markets is myopic. The need to protect competitive markets requires that the Commission act now.

G. Some Aspects of the RPS Exemptions Have Been Misunderstood or Misrepresented.

Some aspects of the RPS Exemption have been misunderstood or misrepresented.

The RPS Exemption requires that the state mandated or voluntary RPS programs after December 31, 2018, include certain design criteria to ensure that the value associated with the program's renewable energy credits reflect competitive market outcomes. The restrictions on the use of locational requirements and participation screens included in the

²⁰ *Id.* at 9–15.

²¹ For example, "PJM has still [Footnote omitted] failed to provide evidence to support its allegations that harmful market impacts occur when resources receive financial support from state policy initiatives." OPSI at 2.

program design criteria, are intended to exclude from RPS Exemption eligibility, an individual resource, or a narrowly defined group of resources, because such narrow definition is not consistent with competition to provide renewable attributes.²²

Clean Energy Advocates state (at A-5) that “because Indiana’s RPS includes nuclear and fossil-fueled resources, it is not a qualifying program under (b)(ii)(8), so even renewable energy resources procured through the program would be ineligible for the RPS Exemption.” That is not correct.²³ If the program allows renewable generators, where renewable does not include coal, natural gas, or nuclear thermal resources, to participate, without screening for additional characteristics such as economic distress, then the program would satisfy the criteria in Section 5.14h(7B)(ii)(8).

Clean Energy Advocates also state (at A-5) that the “solar carve-out in the [District of Columbia’s RPS] potentially runs afoul of (b)(ii)(3) and (8).” That is not correct. A specific solar requirement that allows all solar resources to participate and does not screen participation on characteristics other than the renewable characteristic would satisfy the criteria specified in Section 5.14h(7B)(ii)(3) and (8). Separate solar procurements and separate wind procurements would be consistent with the MOPR-Ex, but a separate procurement of solar in a specific county or of offshore wind would not. Separate solar procurement within a single state would be consistent with MOPR-Ex.

The Solar RTO Coalition objects (at 21) to PJM and the Market Monitor “deciding whether a state program is a “subsidy” or not.” These concerns are not warranted with respect to MOPR-Ex. PJM and the Market Monitor do not decide whether a state program is a subsidy under MOPR-Ex.

²² See Section 5.14h(7B) (ii) – (iv) in Attachment A, “Comment of the Independent Market Monitor for PJM”, ER18-1314-000, May 7, 2018.

²³ Ibid., Section 5.14h(7B)(ii).

H. MOPR-Ex Addresses the Impacts of Oversupply.

Several commenters, including PJM in the April 9th Filing (at 57), mistakenly assert that MOPR-Ex will suppress energy prices. PJM states that “MOPR-Ex... could well have the effect of enabling price suppression in the wholesale energy and ancillary service markets.” The Solar RTO Coalition echoes this sentiment (at 20) stating “the MOPR-Ex Proposal is likely to reduce energy market revenues long term (by encouraging oversupply).”

These commenters misunderstand the problem and mistake the solution for the problem. MOPR-Ex does not encourage oversupply. MOPR-Ex provides a disincentive to oversupply and results in competitive prices. State specific subsidies to uneconomic resources are the cause of oversupply. Accommodating and therefore artificially retaining uneconomic resources with low marginal costs of energy in the market will suppress energy prices and capacity prices. MOPR-Ex is the only option in PJM’s filing that addresses this issue by discouraging additional state specific subsidies. Capacity Repricing and the status quo will encourage more state specific subsidies, which will suppress energy and capacity market prices. By discouraging additional state specific subsidies, MOPR-Ex helps to ensure the long-term viability of PJM markets.

I. The Process for Defining Default ACR Values Is Insufficient.

PJM included, as part of the Capacity Repricing proposal, an option to use default ACR values in the determination of the Actionable Subsidy Reference Price.²⁴ The Market Monitor does not object to the use of default ACR values and would support incorporating default ACR values into the MOPR-Ex Unit-Specific Exception process. However, the process for defining the ACR values included in the PJM tariff language proposal would not be sufficient if the Commission were to include default ACR values. A transparent

²⁴ See Section 5.14(j)(4)(a)(i)(B) in the April 9th Filing, Attachment A.

review process that includes the Market Monitor is needed and the values should be submitted for Commission approval. The default ACR values included in the April 9th Filing, although preliminary, are a source of serious concern. These values are much higher than values calculated by the Market Monitor, highlighting the need for an open and transparent process for developing default ACR values.

J. Calculation of Competitive Offer Floors and Caps Should Be Consistent.

Generation units that are not eligible for an exemption may pursue a Unit-Specific Exception. The default for such units is that the capacity sell offer will be replaced by the MOPR Floor Offer Price. The MOPR Floor Offer Price is equal to Net Cone multiplied by B ($\text{Net CONE} * B$), which, as it should be, is the same as the Market Seller Offer Cap. The Market Seller Offer Cap (MSOC) value is equal to the competitive offer level in the capacity performance construct under certain simplifying assumptions. When there are no performance assessment hours, the MSOC is equal to the net avoidable cost rate (ACR).

MOPR-Ex does not rigidly apply $\text{Net CONE} * B$ as the offer floor. The ability to submit a Unit-Specific Exception ensures that all resources may submit a competitive offer under MOPR-Ex. The Unit-Specific Exception requires that the market seller calculate the competitive offer and that the calculation be reviewed by the Market Monitor. The Unit-Specific Exception is not an administratively derived value.²⁵ It is a unit-specific competitive offer calculation based on the mathematical logic of the PJM capacity market design that is subject to an administrative review. This is an important distinction. A competitive capacity market offer will be at least as high as the net ACR for the generator. If the opportunity cost of foregoing the capacity performance bonus payments is higher than the net ACR, the competitive offer is equal to the opportunity cost, which depends on the level of the key

²⁵ The Pennsylvania Public Utility Commission objects (at 16) to replacing capacity market offers with administratively determined replacement offers.

variables in the capacity performance calculations.²⁶ The administrative review will verify that the level of key variables is supported and that the offer calculation is consistent with a competitive offer.

No resource under MOPR-Ex will be required to submit an offer that is not competitive. MOPR-Ex retains the opportunity for unit specific cost review. The CASPR order noted (at P 46) the opportunity to justify to the market monitoring unit an offer below the MOPR default level when it determined the CASPR program was not unduly discriminatory.

K. MOPR-Ex Can Be Efficiently and Appropriately Administered.

The Solar RTO Coalition contends (at 20) that MOPR-Ex is administratively unworkable and will “result in unnecessary administrative burdens for all parties and the Commission.” The administrative requirements for implementing MOPR-Ex are generally identical to the current MOPR process and the unit specific Market Seller Offer Cap determination. The Market Monitor anticipates expanding the Member Information Reporting Application (MIRA) to streamline the data gathering and certification processes. Decisions regarding whether or not a state’s RPS program satisfies the criteria required by the RPS Exemption are a routine part of tariff administration and market monitoring, two of the core functions of an RTO.²⁷ MOPR-Ex can be efficiently and appropriately administered so as to minimize the administrative costs.

²⁶ A Unit-Specific Exception under MOPR-Ex allows a Market Seller to use alternative assumptions for the availability ratio, the number of Performance Assessment Hours, the Balancing Ratio, and the Capacity Performance bonus payment rate based on the actual market conditions and the actual circumstances of the unit, and could result in a value that differs from Net Cone * B.

²⁷ See *Regional Transmission Organizations*, 89 FERC ¶ 61,285 (1999).

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.²⁸ 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.

²⁸ 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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Dated: May 25, 2018

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 25th day of May, 2018.



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