

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

CPV Power Holdings, L.P., Calpine Corporation and Eastern Generation, LLC)	
)	Docket No. EL18-169-000
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
)	

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM¹ (“Market Monitor”), submits these comments on the complaint filed by CPV Power Holdings, L.P., Calpine Corporation and Eastern Generation, LLC (“Calpine”) against PJM Interconnection, L.L.C. (“PJM”) on June 19, 2018. Calpine alleges (at 2), with respect to PJM’s filing now pending in Docket No. ER18-1314-000, “both of PJM’s proposed remedies—the so-called “Capacity Repricing” and “MOPR-Ex” proposals—are inadequate and unjust and unreasonable.” Calpine proposes (at 2) that the Commission instead “adopt what Dr. Shanker refers to as a ‘Clean MOPR’: [footnote omitted] namely a MOPR applicable to all subsidized resources and without categorical exemptions like those in PJM’s MOPR-Ex proposal.”

¹ 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”).

Calpine is correct that the current MOPR, applicable only to new entry, is inadequate to protect the market, and is unjust and unreasonable.²

Calpine is correct that PJM's proposed Capacity Repricing is inadequate. The Capacity Repricing approach would incorporate subsidies and price distortion in the PJM capacity market design. The Capacity Repricing approach would result in a noncompetitive market design. Capacity Repricing should not be approved under any circumstances.

Calpine is incorrect that PJM's proposed MOPR-Ex is inadequate and should not be approved. MOPR-Ex is imperfect, but addresses the identified threats to competitive markets. The Market Monitor continues to support MOPR-Ex, revised in accordance with its comments.

Calpine proposes a third alternative, Clean MOPR. If MOPR-Ex is not approved, Clean MOPR would protect competitive markets in PJM.

I. COMMENTS

A. The Current MOPR and Capacity Repricing Are Inadequate and Unjust and Unreasonable.

Calpine is correct (at 1–2) that the current MOPR, applicable only to new entry, is inadequate to protect the market, and is unjust and unreasonable. The Commission relies on competition to create just and reasonable rates in PJM markets. If anti competitive subsidies are not addressed, PJM markets cannot be relied upon to produce just and reasonable rates.

² On July 7, 2017, the U.S. Court of Appeals issued an opinion (Case No. 15-1452) that vacated, in part, two FERC orders, 143 FERC ¶61,090 and 153 FERC ¶61,066, that had conditionally accepted a PJM filing that revised the MOPR to include a Self-Supply Exemption and a Competitive Entry Exemption. As a result, the current RPM rules do not include a Self-Supply Exemption or a Competitive Entry Exemption. The current MOPR is the version approved in 2011. See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011) (April 2011 Order), *order on compliance filing, reh'g, & tech. conference*, 137 FERC ¶ 61,145 (2011), *order on reh'g*, 138 FERC ¶ 61,194 (2012), *aff'd sub nom. N.J. Bd. of Pub. Utils. v. FERC* 744 F.3d 74 (3rd Cir. 2014) (approving PJM's MOPR with a unit-specific review process and a one-year mitigation period).

Calpine is correct (at 1–2) that PJM’s Capacity Repricing proposal is inadequate to protect the market, and is unjust and unreasonable. The Capacity Repricing approach would incorporate subsidies and price distortion in the PJM capacity market design. The Capacity Repricing approach would result in a noncompetitive market design. PJM’s Capacity Repricing proposal undermines competitive markets, does not have majority support and is not consistent with Commission policy. Capacity Repricing should not be approved under any circumstances. The Market Monitor included detailed comments on Capacity Repricing in its comments filed in Docket No. ER18-1314, and incorporates those comments here by reference.

B. MOPR-Ex Addresses Current Market Conditions and Has Majority Support

Calpine is incorrect that PJM’s proposed MOPR-Ex is inadequate and should not be approved. MOPR-Ex is imperfect, but it addresses the current threat to competitive markets. The Market Monitor continues to support MOPR-Ex, revised in accordance with its comments.

The primary difference between PJM’s version of MOPR-Ex and the stakeholder MOPR-Ex tariff language is PJM’s incorporation of a new term, Capacity Resource with Actionable Subsidy. PJM presumably made this change so that the PJM version of MOPR-Ex would be consistent with the Capacity Repricing tariff language, but in doing so PJM introduced a new and confusing concept. PJM includes as a condition for qualifying as a Capacity Resource with Actionable Subsidy, a requirement that the “Capacity Market Seller has not obtained a Self-Supply Exemption, a Competitive Exemption, a Public Entity Exemption, or an RPS Exemption for such Capacity Resource...”³ Then in subsequent sections PJM describes the eligibility for each of the exemptions for a Capacity Resource with Actionable Subsidy. For example, eligibility for the Self-Supply Exemption states that

³ PJM Filing, ER18-1314-000 (April 9, 2018) (“April 9th Filing”) Option B tariff language, Attachment DD, Section 5.14h)(2)(d).

a “Capacity Market Seller that is a Self-Supply LSE may qualify a Capacity Resource with Actionable Subsidy ... for a Self-Supply Exemption.”⁴ This is confusing in that a subsidized resource is considered to be a Capacity Resource with Actionable Subsidy until the point in time the Capacity Market Seller is granted an exemption, at which point the subsidized resource ceases to be a Capacity Resource with Actionable Subsidy. The MOPR-Ex tariff language supported by the MRC builds on the existing MOPR language by extending the definition of MOPR Screened Resource to include existing resources and all technologies.⁵

Calpine is concerned (at 9) that MOPR-Ex cannot be approved including revisions that would improve it, without conflicting with *NRG Power Marketing v. FERC*.⁶ *NRG* held that the Commission cannot require revisions to a proposal under Section 205 if “FERC’s proposed modifications resulted in an ‘entirely different rate design’ than PJM’s proposal” and from “the rate design that was ‘previously in effect.’”⁷ FERC cannot impose its “own original notion of a new form of rate” or an “entirely new rate scheme.” *NRG* relied heavily on the desires of stakeholders in determining that purpose.⁸

The changes requested by the Market Monitor to PJM’s version of MOPR-Ex are not an entirely different rate design from PJM’s version of MOPR-Ex or from the rate design previously in effect. MOPR-Ex, with the Market Monitor’s changes, restores features in the current MOPR, and allows for a competitive exemption to avoid unnecessary administrative review of offers that raise no competitive concerns. Inclusion of a

⁴ See April 9th Filing , Attachments A & B, Attachment DD, Section 5.14h)(7).

⁵ MOPR language as it existed prior to the NRG remand order. See Attachment A to this filing.

⁶ See *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (“*NRG*”), vacating and remanding, *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013) (“*ER13-535 Order*”), *reh’g denied*, 153 FERC ¶ 61,066 (2015).

⁷ See *id.* at 115–116.

⁸ See *id.* at 116 (“FERC largely eviscerated the terms of the bargain between generators and Load Serving Entities.”)

competitive exemption is fully consistent with PJM's filed version of MOPR-Ex, which addresses that issue using the definition of an actionable subsidy and is fully consistent with the existing tariff which addresses that issue with a unit specific exception. The Market Monitor's MOPR-Ex can be approved consistent with *NRG*.

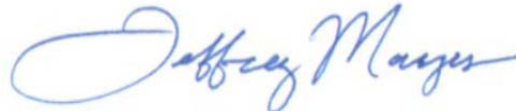
C. The Clean MOPR Would Protect PJM Markets.

Calpine proposes a third alternative: Clean MOPR. The Clean MOPR removes all exemptions and relies on the definition of a material subsidy, the MOPR default offer level and unit specific review where requested by a participant. The Market Monitor agrees that a Clean MOPR could effectively protect PJM Markets if the Commission does not approve MOPR-Ex, although the Clean MOPR would be improved by making the same changes to Clean MOPR that the Market Monitor recommends be made to PJM's filed version of MOPR-Ex, for the same reasons.

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,



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Dated: June 20, 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 20th day of June, 2018.



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