

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

PJM Interconnection, L.L.C.

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Docket No. ER13-535-000

**COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 211 of the Commission's Rules and Regulations,<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"),<sup>2</sup> submits these comments on the filing submitted by PJM Interconnection, L.L.C. ("PJM") on December 7, 2012. With this filing, PJM proposes to replace the current Minimum Offer Price Rule ("MOPR") with a significantly reformed version ("December 7<sup>th</sup> Proposal"). The current MOPR provides a process for resources subject to the MOPR to develop a unit-specific competitive offer and to pass the MOPR screen based on a confidential review of their costs. The proposed MOPR eliminates unit-specific review and provides instead four bases on which to obtain an exemption from the MOPR, which are a showing that a project: (i) is competitive; (ii) was selected in a competitive non-discriminatory process; (iii) is self supply based on ownership by a public power entity; or (iv) is self supply based on ownership by a vertically integrated utility. The proposed MOPR collapses these four items into the competitive supply option which includes (i) and (ii) and the self supply option which includes (iii) and (iv). The proposed MOPR includes a number of beneficial changes. If all of the enhancements recommended by the Market Monitor are included, the revised MOPR should be approved. Without the recommended

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<sup>1</sup> 18 CFR § 385.211 (2012).

<sup>2</sup> PJM Interconnection, L.L.C. is a FERC-approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning provide in the PJM Open Access Transmission Tariff ("OATT").

enhancements, the MOPR will be improved in some ways, degraded in other ways, valid issues with the MOPR will remain unaddressed and controversy over the rule likely will persist.

With one exception, the two competitive supply exemptions (items (i) and (ii)) would afford adequate protection for the markets from buyer-side market power, and would better accommodate state procurement processes designed to meet state regulators' obligations to ensure local reliability than the current rule. The Market Monitor has repeatedly and publicly endorsed the competitive supply exemptions since the approval of the current MOPR last year, and welcomes these reforms.

The Market Monitor is concerned that the proposed MOPR does not go as far as it could to protect state interests in addressing local reliability concerns while protecting competitive markets. The Market Monitor believes that state interests in maintaining local reliability would be enhanced with the addition of two special limited procurement processes while protecting competitive markets. The first would apply in circumstances where PJM identifies an immediate, local reliability issue in a Locational Deliverability Area (LDA) that existing or imported capacity cannot solve. In these very limited circumstances, a MOPR compliant process could specify that only incremental resources in the LDA be included in a competitive and nondiscriminatory auction because existing resources and imports cannot resolve the issue. The second would apply in circumstances where a state identifies an immediate, local reliability issue based on PJM information, but PJM does not agree with the state's assessment that the reliability need is immediate and local. In these very limited circumstances, resources selected in a competitive auction that includes only local resources would be MOPR compliant. Such resources could be included in RPM, under the state competitive exemption, only based on a unit-specific review of costs to ensure that the offer is competitive, provided that such review applies the same modeling assumptions used to establish the gross Cost of New Entry (CONE). These processes would apply only in extremely limited circumstances, but the Market Monitor believes that they would go far towards meeting the concerns raised by some of the state regulators about the

potential impact of the MOPR on their ability to fulfill their obligations to maintain local system reliability.

The December 7<sup>th</sup> Proposal includes an exemption for self supply which would exempt public power entities and vertically integrated utilities under certain, generally achievable criteria. A perfect MOPR would not include the self supply exemptions. The Market Monitor agrees, however, that the exemption for public power entities would resolve concerns raised by a segment of stakeholders without negative impacts on the markets. If the MOPR is revised to include this exemption, its impact should be monitored and the issue revisited if necessary. The Market Monitor does not agree that vertically integrated utilities should be excluded because those entities have been responsible for significant investment historically, because this improperly discriminates against merchant competitors in the service territory and against utilities located in states where retail restructuring has occurred and because there are other alternatives in the RPM tariff to address the situation of vertically integrated utilities that do not want to fully participate in PJM capacity markets. Similarly, if the MOPR is revised to include this exemption, its impact should be monitored and the issue revisited if necessary.

The December 7<sup>th</sup> Proposal includes enhancements to the current MOPR rule: applying the MOPR to the entire PJM region; setting the default MOPR offer to 100 percent of the applicable net CONE; including the competitive supply exemption; including the state competitive, nondiscriminatory procurement process exemption; and including the public power exemption. Each of these would improve the MOPR, although the definition of net CONE is not adequate to serve as a competitive benchmark for new generation projects.

## I. BACKGROUND

By order issued April 12, 2011, the Commission approved PJM's filing to revise the MOPR that was included in the 2006 RPM settlement.<sup>3</sup> This action was needed to protect the wholesale competitive power markets from the potentially disruptive effects of new generation procured through noncompetitive or discriminatory processes.<sup>4</sup> The revised MOPR rule was put in place before the Base Residual Auction (BRA) in May, 2011, for the 2014/2015 Delivery Year, and was applied again in the May, 2012, BRA for the 2015/2016 Delivery Year. The Market Monitor conducted unit-specific offer reviews for both auctions under the current rule and believes that all offers except one were consistent with competitive conduct.<sup>5</sup> The Market Monitor initiated a regulatory proceeding to address that one offer, but was able to terminate that proceeding upon confirmation that the offer had no impact on the market results.<sup>6</sup> The Market Monitor concluded that both Base Residual Auctions produced competitive results.

The current MOPR, including unit-specific cost review, has successfully protected the markets. Recently approved revisions clarifying the Market Monitor's role in that process have improved the MOPR.<sup>7</sup> To the extent that unit-specific cost review remains a component of the MOPR, the Market Monitor would apply unit-specific reviews using the same modeling assumptions that are used to establish CONE.<sup>8</sup> The modification of the

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<sup>3</sup> *PJM Interconnection, L.L.C., et al.*, 135 FERC ¶ 61,022.

<sup>4</sup> *Id.* at PP 19–21, 26.

<sup>5</sup> Complaint of the Independent Market Monitor for PJM v. Unnamed Participant, Docket No. EL12-63-000 (May 1, 2012) (“IMM Complaint v. Unnamed Participant”).

<sup>6</sup> See Notice of Withdrawal of the Independent Market Monitor for PJM, Docket No. EL12-63-000 (May 17, 2012).

<sup>7</sup> See Letter order in Docket No. ER13-149-000 (November 28, 2012).

<sup>8</sup> The IMM repeatedly complained that the PJM rules failed to require a clear objective standard for unit-specific cost review under the MOPR, even though the agreed upon and approved modeling

MOPR rules to require that all unit-specific MOPR exception requests use the same modeling assumptions used in the gross CONE calculation together with expected first year energy and ancillary service net revenues is the only change needed to establish an efficient, effective and reliable unit-specific cost review consistent with the operation of competitive wholesale capacity markets.

Substantial new resources cleared RPM in 2012, and they did so consistent with competition. These new resources demonstrated the potential for RPM, despite some design flaws, to successfully meet its critical role in maintaining resource adequacy over the long term.<sup>9</sup> RPM worked, including the MOPR component.

Nevertheless, a collection of PJM stakeholders with perceived grievances about the MOPR and its implementation sought an alternative solution. The Market Monitor does not agree with these grievances, which include unsupported assertions about the results of the unit-specific review process. The Market Monitor does, however, agree that the proposed MOPR included in the December 7<sup>th</sup> Proposal includes improvements to the current MOPR. Appropriately modified, the proposed MOPR would be superior to the current MOPR.

The opportunity to put a better rule in place does not, however, mean that there is an emergency. No compelling reason justifies a need to rush to approve the proposal in time for the May, 2013, BRA. To date the Market Monitor is not aware of a plausible explanation from anyone that explains a need for urgent action. On the other hand, there is

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assumptions used to set CONE offered a consistent reference. *See* IMM Complaint v. Unnamed Participant; Motion for Clarification of the Independent Market Monitor for PJM, Docket No. ER11-2875-000, et al. (February 17, 2012) (“IMM Motion for Clarification”); Protest of the Independent Market Monitor for PJM, Docket No. ER11-2875-002 (June 2, 2011) (“IMM June 2<sup>nd</sup> Protest”).

<sup>9</sup> See the 2010 *State of the Market Report for PJM*, Section 5, which can be accessed at: [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2010/2010-som-pjm-volume2-sec5.pdf](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2010/2010-som-pjm-volume2-sec5.pdf).

no reason for unnecessary delay. The Commission should take whatever time it needs to review the proposal.

The Market Monitor has suggested alternative approaches to meeting the MOPR test in proceedings before the Commission and two state regulatory commissions, including: (i) a process that would permit a participant to show that a unit received no subsidies and was submitting a competitive offer; and (ii) a process that would permit states to demonstrate that auctions for long-term capacity were competitive and nondiscriminatory and that the winners would pass the MOPR test. The point of the nondiscriminatory condition is that the competitive auction be open to the maximum amount of competition, particularly from existing resources.<sup>10</sup> The Market Monitor believes that both of these exemptions could work effectively.

Stakeholders interested in reforming the MOPR rule and aware of the Market Monitor proposals included the Market Monitor and PJM in confidential discussions. These stakeholders developed the detailed provisions included in the filing.

New Jersey and Maryland state regulators and public advocates objected to the settlement process when it became public. At that point, little time was left, and little

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<sup>10</sup> See Comments of the Independent Market Monitor for PJM in Docket No. ER11-2875, et al. (March 4, 2011) (“IMM March 4<sup>th</sup> MOPR Comments”) at 10–12, 15–16 & 19–21; Protest of the Independent Market Monitor for PJM, Docket No. ER11-2875-002 (June 2, 2011) (“June 2<sup>nd</sup> IMM Protest”) at 4–5; Post Technical Conference Comments of the Independent Market Monitor for PJM, in Docket No. ER11-2875-001, et al. (August 29, 2011) at 4–6 (“IMM Post-Technical Conference Comments”); Comments of the Independent Market Monitor for PJM in Maryland Public Service Commission Case No. 9214 (January 28, 2012) at 3–4 (“IMM Comments to MdPSC”); Testimony of Joseph Bowring to the New Jersey General Assembly (December 15, 2010) at 1 (“IMM Testimony to NJ General Assembly”), which can be accessed at: [www.monitoringanalytics.com/reports/Reports/2010/Bowring\\_NJ\\_Assembly\\_3442\\_Testimony\\_20121216.pdf](http://www.monitoringanalytics.com/reports/Reports/2010/Bowring_NJ_Assembly_3442_Testimony_20121216.pdf); Comments of the Market Monitor re In the Matter of the Board’s Investigation of Capacity Procurement and Transmission Planning, in New Jersey Board of Public Utilities Docket No. EO 11050309 (October 31, 2011) (“IMM October 31<sup>st</sup> Comments to NJ BPU”); Comments of the Market Monitor re In the Matter of the Board’s Investigation of Capacity Procurement and Transmission Planning, in New Jersey Board of Public Utilities Docket No. EO 11050309 (June 17, 2011) at 6–7 (“IMM June 17<sup>th</sup> Comments to NJ BPU”).

incentive was left for serious consideration of any significant modifications to the fully developed proposal.

In retrospect, the Market Monitor believes that it should have approached these discussions differently, particularly its assent to keeping the existence of the discussions confidential. The Market Monitor agrees that concerned states have raised valid grievances about the process. In retrospect, it would have been preferable to have the state regulators involved in a parallel negotiation to ensure that their concerns were considered carefully and in detail. Stakeholders, PJM and the Market Monitor recently concluded an extensive review of the stakeholder process in order to promote transparency and fairness.<sup>11</sup> The better course would have been to follow agreed upon mechanisms to protect transparency. The Market Monitor does not believe that an improved process, as suggested, would have prevented a subset of stakeholders from developing the December 7<sup>th</sup> Proposal.

## **II. COMMENTS**

### **A. The Proposed Competitive Supply Exemption Is Reasonable.**

#### **1. The Competitiveness Showing is Reasonable.**

Under the December 7<sup>th</sup> Proposal, one way for an entrant to obtain an exemption from the MOPR default level is to demonstrate that it receives no subsidies. The Market Monitor has advocated such an exemption and welcomes its inclusion in the December 7<sup>th</sup> Proposal.<sup>12</sup> An entrant not receiving subsidies, and not planning on receiving subsidies, has its own capital at risk, and can be relied upon to behave competitively.

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<sup>11</sup> PJM Manual 34 (PJM Stakeholder Process) at 1, which can be accessed at: <http://www.pjm.com/~media/documents/manuals/m34.ashx> (“PJM Manual 34”). PJM Manual 34 was the product of discussions conducted under the auspices of the Governance Assessment Special Team (GAST), a PJM stakeholder group that convened numerous meetings from 2009–2012 in an effort to improve the PJM stakeholder process.

<sup>12</sup> See IMM March 4<sup>th</sup> MOPR Comments at 11–12, 15–16 & 19–21.

The December 7<sup>th</sup> Proposal includes enhancements to the current MOPR rule: applying the MOPR to the entire PJM region; setting the default MOPR offer to 100 percent of the applicable net CONE; including the competitive supply exemption; including the state competitive, nondiscriminatory procurement process exemption; and including the public power exemption. Each of these would improve the MOPR, although the definition of net CONE is not adequate to serve as a competitive benchmark for new generation projects.

Under the December 7<sup>th</sup> Proposal, the rules will require an entrant subject to the MOPR receiving any subsidy and ineligible for the competitive process exemption to offer at 100 percent of the applicable net CONE, the MOPR default offer. However, the loss of flexibility afforded by the cost review highlights the flaws in the net CONE established under the PJM rules as a measure of a competitive offer. The Market Monitor believes that additional attention to the applicable rules is needed immediately to ensure that the gross CONE level is set accurately.<sup>13</sup> In addition, the net CONE calculation is flawed as a MOPR screen because it relies on a three year historical average of net revenues from energy and ancillary services markets. These historical net revenues are not a reliable guide to the expected net revenues in the first year of operation, which would be appropriate for a MOPR screen. This means that net CONE is not a reliable screen for noncompetitive behavior. The MOPR screen will be too high if net revenues are expected to increase compared to the last three years and the MOPR screen will be too low if net revenues are expected to decrease compared to the last three years. These differences can be quite large. The unit-specific review process permits the use of a forward looking net revenue offset. Calculation of net revenues for use in the calculation of net CONE as the MOPR threshold is a problem that needs correcting in both the current and proposed rule. However, this problem is aggravated under the proposed rule because the default rule is set at 100 percent

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<sup>13</sup> See Docket No. ER12-513.

of net CONE. The Market Monitor supports setting the default at a 100 percent of net CONE, but this increases the need to address the significant flaws in the calculation of net CONE.

## **2. The Proposed Exemption for Selection in a Competitive Nondiscriminatory Procurement Process Enhances the MOPR, and Should Be Further Enhanced.**

Under the December 7<sup>th</sup> Proposal, another way for an entrant to obtain an exemption from the MOPR default level is to demonstrate that it was selected in a procurement process that is both competitive and nondiscriminatory. Specifically, a nondiscriminatory auction means that the process cannot exclude participation by, for example, existing capacity suppliers, specific technologies, specific owners, or specific locations. Such exclusions would be discriminatory and reduce competition in the auction. The Market Monitor has advocated an exemption for competitive, nondiscriminatory auctions and welcomes its inclusion in the December 7<sup>th</sup> Proposal.<sup>14</sup> An entrant selected in a competitive and nondiscriminatory auction has established that it is a bona fide competitor and the markets require no further protection under the rules. An additional benefit of including this exemption is the opportunity it presents for participants to obtain long term contracts on competitive terms.<sup>15</sup>

The Market Monitor understands that the December 7<sup>th</sup> Proposal intends to provide that a state could impose a non-bypassable charge on its loads to support cost recovery for a capacity resource, provided that the capacity resource was procured in a process that meets the specified criteria as competitive and nondiscriminatory. The December 7<sup>th</sup> Proposal, as

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<sup>14</sup> See IMM March 4<sup>th</sup> MOPR Comments at 10–11; June 2<sup>nd</sup> IMM Protest at 4–5; IMM Post-Technical Conference Comments at 4–6; IMM Comments to MdPSC at 3–4; IMM Testimony to NJ General Assembly at 1; IMM October 31<sup>st</sup> Comments to NJ BPU; IMM June 17<sup>th</sup> Comments to NJ BPU at 6–7.

<sup>15</sup> See *Wholesale Competition in Regions with Organized Markets*, Order No. 719, 125 FERC ¶ 61,071 at PP at 277–309 (2008), *order on reh'g*, Order No. 719-A, 128 FERC ¶ 61,059 (2009).

filed, included contradictory provisions. PJM explicitly identifies that problem and explains that the filed language does not correctly state its intentions.<sup>16</sup> Subsection 5.14(h)(7)(i) of the Attachment DD bars non-bypassable charges tied to clearing or construction, but 7(ii) permits arrangements to support cost recovery for projects selected in a state procurement process that is Competitive and Non-Discriminatory. The provisions are in conflict. A Capacity Market Seller invoking the competitive self-supply exemption should not have to show both that it was procured through a competitive, nondiscriminatory process and that it receives no support under a non-bypassable charge. The conflict can be readily resolved by removing the bar on receipt of non-bypassable charges imposed by subsection 5.14(h)(7)(i) for projects procured through a competitive and nondiscriminatory process. Accordingly, the Market Monitor supports PJM's request that the Commission direct PJM to modify the language to correct this error.<sup>17</sup>

The Market Monitor has discussed the competitive, nondiscriminatory procurement process with concerned state regulators. We understand that a major objection to the December 7<sup>th</sup> Proposal is that the process does not permit states to procure capacity in a circumstance where PJM has informed a state that an immediate reliability problem exists, or the state believes that there is such a problem based on information received from PJM, in a location subject to its jurisdiction and that the capacity market design has failed to address it.

The state utility regulators have an interest in preserving their ability to meet their reliability-related responsibilities. Limited provisions should be added to address these concerns. The Market Monitor proposes two additional modifications to the competitive, nondiscriminatory procurement processes that could accomplish this objective consistent with MOPR principles.

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<sup>16</sup> December 7<sup>th</sup> Proposal at 23–24 n.53.

<sup>17</sup> *See id.*

In a situation where (i) an RPM BRA clears with total cleared MW less than the reliability requirement for the LDA, (ii) PJM informs a state that they have a potential reliability issue in a specific LDA, (iii) PJM informs the state that this issue is expected to persist, (iv) the reliability issue results from the fact that capacity in the LDA is less than the reliability requirement for the LDA, and (v) the reliability issues cannot be resolved without the acquisition of new generation or incremental generation within the LDA, it would be acceptable for a state to run a competitive, nondiscriminatory auction to acquire additional capacity in the LDA. In such a procurement process, designed to address these very limited circumstances, the auction may appropriately exclude imports and existing generation in the LDA, because neither could resolve the issue. In this scenario, PJM's independent findings preclude any need to protect against potential ulterior motives.

The rules could also address a situation where, after a PJM reliability analysis, a state believes it must address a reliability issue that PJM does not agree exists, based on a specific disagreement about a specific aspect of PJM's analysis. Such a disagreement could be about the likelihood of a significant transmission line being completed within a defined time period. If, based on information received from PJM, and based on a documented process defining a short term reliability issue and its duration, a state does not agree with PJM on a specific aspect of the PJM analysis, such state could procure capacity in a process that excludes existing and imported resources. However, because PJM's independent determination is lacking, any new project selected under this process would be subject to a unit-specific review using unambiguous standards that match those used in the PJM tariff calculation of gross CONE net of expected first year energy and ancillary service net revenues. This additional process would address a very limited circumstance. However, this approach avoids an outcome that could otherwise be perceived as subjecting state reliability decisions to PJM's administrative discretion.

**B. The Proposed Exemption for Self-Supply Should Be Subject to Future Scrutiny and Modified to Exclude Vertically Integrated Utilities.**

The December 7<sup>th</sup> Proposal includes an exemption for self supply not included in the current MOPR. New entry sponsored by public power entities and vertically integrated utilities would be exempt from the MOPR screen if they meet certain criteria, including tests for long and short market positions.<sup>18</sup>

**1. The Self Supply Exemption for Public Power Entities Is Unlikely to Negatively Impact the Markets, but Its Effects Should Be Subject to Continued Evaluation.**

Public power entities have complained about the potential impact of the current MOPR on their longstanding approach to acquiring new capacity.

The Market Monitor recognizes that public power entities, if they continue to invest in new generation at historic levels, will not have a negative impact on the market. If approved, the Market Monitor recommends continued evaluation of the operation of the exemption as applied to public power entities.

**2. The Self Supply Exemption for Vertically Integrated Utilities Should Be Eliminated.**

The potential impact of exempting vertically integrated utilities is greater than the impact for public power entities, even with the attempt to limit the potential impact with the net long criteria. Vertically integrated utilities have been responsible for significant investment historically. Exempting vertically integrated utilities improperly discriminates

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<sup>18</sup> By “public power entities,” the Market Monitor refers to three types of Self-Supply LSEs defined in the proposed MOPR (§ 5.14(h)(6)), including Municipal/Cooperative Entities (“cooperative and municipal utilities, including public power supply entities comprised of either or both of the same, and joint action agencies.”), Single Customer Entities (“an LSE that serves at retail only customers that are under common control with such LSE, where such control means holding 51% or more of the voting securities or voting interests of the LSE and all its retail customers”) and Multi-State Public Power Entities. By “vertically integrated utility,” the Market Monitor refers to entities defined in the proposed MOPR (*id.*) as “a utility that owns generation, includes such generation in its regulated rates, and earns a regulated return on its investment in such generation.”

against merchant competitors in that utility's service territory and against utilities located in states where retail restructuring has occurred.

The Market Monitor recognizes the tension between the regulation of wholesale supply through competition at the federal level and regulation under a traditional approach at the state level. The PJM resource adequacy framework already provides sufficient accommodation for jurisdictions that are not restructured and want to pursue some form of integrated resource planning under cost of service regulation. Vertically integrated utilities that do not want to fully participate in competitive markets have the option to meet their capacity obligations through the Fixed Resource Reliability Resource (FRR) alternative.<sup>19</sup> The FRR option is currently in use. Accordingly, there is no need to exempt vertically integrated utilities from MOPR review, as they would be under the proposed rule. Vertically integrated utilities are not exempt from MOPR review under the current rules.

**C. The Unit-Specific Review Process Is Not Needed, Except In One Limited Circumstance.**

The December 7<sup>th</sup> Proposal removes the unit-specific offer review process. The Market Monitor agrees that a generally available process for unit-specific review is not necessary for the MOPR to remain effective.

The Market Monitor strongly disagrees with the sentiments related by, but specifically not adopted by, PJM (at 10) that the unit-specific review process is inherently flawed. Those criticisms lack substance or foundation. Those views are inconsistent with the views of PJM at the time of the auction that are based on PJM's direct and nearly unique access to relevant market data.<sup>20</sup>

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<sup>19</sup> See RAA Schedule 8.1.

<sup>20</sup> Julien Dumoulin-Smith, UBS Investment Research, "MOPR and Economics of New Entry in PJM: Conference Call Transcript (Transcript from call with [PJM Chief Economist] Paul Sotkiewicz on PJM's MOPR Exception (June 14, 2012) at 7, 10 ("Question 4: You highlight that you are complying with the rules of the tariff, but is the tariff actually effective in doing what it's supposed to do? Paul

The Market Monitor repeatedly raised concerns about the unnecessary ambiguity of the standards included in the current MOPR rule.<sup>21</sup> Those issues remain to be addressed explicitly. The Market Monitor also raised issues about the respective roles of PJM and the Market Monitor in the review process. The Market Monitor considers those issues resolved. The Commission recently approved revisions clarifying and distinguishing the Market Monitor's review of offer levels for potential exercise of market power by the Market Monitor and PJM's non sequential review of offers for compliance with the tariff.<sup>22</sup>

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Sotkiewicz: I think the answer is yes, it is really doing what it's supposed to do. If I had gone and done this analysis after the fact and said, "Oh my, God, the publicly available data out there does not show that any of these units would have been economic. We got fooled." Then yes, I'd say we have a big problem, but that's not what the data is showing us. That's not what the data was showing us as we were going through this process. In fact, we're not looking at applications for a MOPR exception in isolation. We're looking at other available data out there to see if what is being presented to us make sense. Does it pass muster? And if the answer is yes, you know based on other benchmarks that are available to us, making phone calls to other developers, EPC contractors we know, you know whatever it takes, and if what we're getting is consistent with that or reasonably consistent with that, you know within certain bounds, then you know we're getting that - we're getting the right information and we're making a determination based on that information that says, "Yes, these units - you know these are their costs, and if they clear great, if they don't clear, oh well.").

<sup>21</sup> See June 2<sup>nd</sup> IMM Protest at 4 ("[T]he proposed additional standard of review also lacks merit. Some of the additional revisions are obscure, and others appear to directly contradict the Commission-approved standard by permitting consideration of revenues from sources other than PJM-administered markets. This new standard appears to directly contradict the Commission's required standard, appears to directly contradict the purpose of the MOPR and appears to permit the behaviors that PJM opposed in its initial filing (at 20-21). The best possible interpretation is that this additional standard reduces the clarity of the Commission-approved standard and introduces subjective and inconsistent standards of review."); IMM Motion for Clarification ("The Market Monitor requests that the Commission clarify that the approach to calculating the objective reference value is not within the Market Monitor's or PJM's discretion to change, and that unit specific review means a review based on the specific facts and circumstances of a particular project, using exactly the same modeling assumptions used to calculate the MOPR screen value."); IMM Complaint v. Unnamed Participant ("Selective use of favorable modeling assumptions could allow unit specific review to render the MOPR unable to protect the integrity and competitiveness of the PJM Capacity Market."); June 2<sup>nd</sup> IMM Protest *passim*.

<sup>22</sup> See Letter Order in Docket No. ER13-149-000 (November 28, 2012).

Except for the very limited exception of state procurement of new generation to meet local reliability conditions identified by PJM or based on information provided by PJM, the Market Monitor does not object to the removal of the provision for unit-specific offer reviews under the MOPR. The competitive supply exemptions are otherwise adequate. The default offer MOPR level set at 100 percent of net CONE is also appropriate, although the calculation of net CONE requires modification if it is to serve as a competitive benchmark.

**D. Other Proposed Changes Enhance the MOPR, or Are Reasonable.**

The December 7<sup>th</sup> Proposal includes a number of changes that the Market Monitor welcomes or to which it has no objection.

**1. Setting the Default MOPR Offer Equal to CONE Enhances the MOPR.**

The December 7<sup>th</sup> Proposal sets the default MOPR equal to 100 percent of the net CONE in the applicable CONE Area for the applicable resource type. Although the gross CONE represents the gross competitive cost of new entry at five PJM areas in the PJM region, the net CONE calculation uses a three year historical average of net revenues which is not an accurate method for estimating expected net revenues in the first year of project life.<sup>23</sup> Given the potential that a net CONE set at a level too high would pose a barrier to competitive new entry and a net CONE set too low would encourage noncompetitive new entry, it is critical to establish in the RPM rules the most accurate net CONE possible.

**2. Exempting from MOPR Increases Smaller than 20 MW Is Reasonable.**

The December 7<sup>th</sup> Proposal exempts from the MOPR new entry rated less than 20 MW. The Market Monitor appreciates the need to relieve smaller projects from MOPR compliance. At the same time, the Market Monitor has concerns that this limitation has potential for abuse. The Market Monitor does not object to this aspect of the December 7<sup>th</sup> Proposal, but, if approved, recommends continued evaluation of its effect on the market.

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<sup>23</sup> See IMM March 4<sup>th</sup> MOPR Comments at 10–11.

### **3. Extending the MOPR to Three BRAs Is Reasonable.**

The December 7<sup>th</sup> Proposal applies the MOPR until a subject resource has obtained an exemption or cleared three RPM Auctions for three consecutive Delivery Years. The current MOPR requires that a resource clear one RPM auction. The Market Monitor supports this aspect of the December 7<sup>th</sup> Proposal, but, if approved, recommends continued evaluation of its effect on the market.

### **4. Application of MOPR to PJM Region Enhances the MOPR.**

The December 7<sup>th</sup> Proposal applies the MOPR to any investment in the PJM region. Because the potential for the exercise of market power exists throughout the PJM region, it is appropriate to apply the protection afforded by the MOPR to the entire PJM region. The Market Monitor has advocated applying the MOPR to all areas in the PJM region regardless of whether they are constrained and welcomes the inclusion of this rule in the December 7<sup>th</sup> Proposal.<sup>24</sup>

### **E. Other Additional Changes Would Further Enhance the MOPR.**

#### **1. The MOPR Should Apply to All Plant Types.**

The December 7<sup>th</sup> Proposal applies only to natural gas fired generating units. No MOPR applies to any other resource type, regardless of the level of subsidization or its impacts on PJM markets. Most new plants built under the currently prevailing market conditions are expected to be natural gas fired, but those conditions may not persist and it may not take many MW of another resource type to have an anticompetitive impact. The Market Monitor continues to view to all exercise of monopsony power as unacceptable, regardless of the technology on which entry is based.<sup>25</sup> The MOPR rules should be robust

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<sup>24</sup> See IMM March 4<sup>th</sup> MOPR Comments at 17–18.

<sup>25</sup> *Id.* at 21.

enough and based on the appropriate economics so that any competitive offer will pass the MOPR test and any noncompetitive offer will not pass.

## **2. The Exemption Review and Fraud Provision Procedures Are Mostly Reasonable, but Could Be Improved.**

The Market Monitor supports the provision included in the December 7<sup>th</sup> Proposal for the review process applied by PJM and the Market Monitor to exemptions from MOPR review, with three exceptions.<sup>26</sup>

The IMM recommends deletion of the sentence in Attachment DD § 5.14(h)(8)(i) that provides, “Requests for additional documentation will not extend the deadline by which the Office of the Interconnection or the Market Monitoring Unit must provide their determinations of the exemption request.” This sentence is unnecessary and may create administrative confusion. No issue arises when a Capacity Market Seller submits an exemption for review on its deadline because the Capacity Market Seller cannot under the rules cure a deficient request after the deadline and the Market Monitor’s deadline is binding.<sup>27</sup> However, if a Capacity Market Seller submits a request well in advance of the tariff specified deadlines, there is an opportunity to cure or resubmit. It should not matter whether the Capacity Market Seller submits a new request or provides additional information needed to complete the request. But in either case, the time period for a Market Monitor determination for an early request should not begin to run until a complete request has been received. If the Market Monitor requests information additional to what is included in a complete initial request, this would not extend the deadline for the Market Monitor’s determination. The sentence in the December 7<sup>th</sup> Proposal creates confusion on this issue. Because this provision is unnecessary, the best correction is to delete it.

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<sup>26</sup> See December 7<sup>th</sup> Proposal, OATT Attachment DD § 5.14(h)(8)&(9), Attachment M–Appendix § II.D.1.

<sup>27</sup> A Capacity Market Seller can, of course, petition the Commission for a waiver of PJM rules.

The IMM recommends deletion of the sentence in section 5.14(h)(8)(i) that provides, “If the Office of the Interconnection does not provide its determination by no later than sixty-five (65) days after receipt of the exemption request, the exemption request shall be deemed granted.” First, the tariff need not specify a default result for every possible instance where PJM (or the Market Monitor) could miss a deadline. The operative assumption should be that neither PJM nor the Market Monitor will miss a deadline. If there must be a default result, however, that result should not be to grant the exemption. The MOPR serves a serious purpose, an exemption should not be granted except on the basis of substantive judgment. There is also no point in potentially burdening the Commission with litigation because a MOPR exemption is granted by default.

In section 5.14(h)(9), the Market Monitor recommends inserting “based on direct information or information received from the Market Monitoring Unit or other party” after “In the event the Office of the Interconnection reasonably believes...” This change clearly authorizes PJM to implement pre-specified responses to fraud where the fraud occurs in interactions between a participant and the IMM. It would enhance the clarity of the rules and their ability to deter fraud, if it is clear that PJM has the discretion to take action on fraud even if the fraud is directed to the Market Monitor and not directly to PJM.

In Attachment M-Appendix § II.D.1, the Market Monitor recommends inserting “or in the PJM manuals” after “with all of the required supporting documentation as specified in section 5.14(h) of Attachment DD...” The proposed MOPR review, based on whether a Capacity Market Seller meets the criteria for exemptions rather than whether unit-specific costs support an offer lower than the applicable default value is a significantly different approach, and the Market Monitor and PJM may determine that they need additional information in order to perform an effective review. Rather than burden the administrative process with tariff filings, this change would allow PJM to add details on the information needed in the PJM manuals.

Approval of the MOPR with these changes to the December 7<sup>th</sup> Proposal would facilitate implementation of an orderly and efficient review process.

### **3. Reference to PMSS Is Obsolete and Should Be Removed.**

The December 7<sup>th</sup> Proposal proposes to add Attachment DD § 5.11(x), which provides for PJM's posting of the Preliminary Market Settlement Screen ("PMSS"). The Commission recently approved PJM's removal of the PMSS as unnecessary, by order issued November 28, 2012, in Docket No. ER13-149. Moreover, the PMSS never applied to new entrants, which is the concern of the MOPR.

We have raised this issue with PJM, and PJM has explained that its inclusion of this language was inadvertent and that it plans to confirm this in a later pleading. Accordingly, this provision serves no useful purpose, and it should be rejected.

### **III. CONCLUSION**

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

Respectfully submitted,



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Dated: December 28, 2012

### **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 28<sup>th</sup> day of December, 2012.



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