

approved now should be rejected. PJM can submit a reformed and just and reasonable MOPR that adds the unit specific exception and other enhancements under Section 205.

I. ANSWER

A. Commission Correctly Determined That a MOPR Proposal Lacking a Process for Unit-Specific Cost Review Is Not Just and Reasonable.

The Minimum Offer Price Rule (“MOPR”) exists in its current form as the result of orders issued in this proceeding on May 2, 2013 and October 15, 2015.³ The orders approved certain reforms proposed by PJM, which included the addition of a default offer floor, the MOPR Floor Offer Price, and certain categorical exemptions from the requirement to offer at the default offer floor value.⁴ One categorical exemption proposed by PJM was for self supply, which is available to sellers, typically cost of service utilities, building to serve a load obligation and meeting certain tests intended to show that the level of supply matches the load obligation.⁵ The second categorical exemption proposed by PJM was for competitive entry, which is available to sellers who show that their offers raise no competitive concerns. Sellers can meet the competitive entry test by showing that the offer relies entirely on the market for revenues and for financing and does not rely on direct or indirect subsidies. Sellers can also meet the competitive entry exemption test by showing that the resource was procured through a demonstrably competitive state procurement process.⁶

The current MOPR includes a unit specific cost review exception that PJM did not propose and in fact opposed. The Commission refused to approve PJM’s MOPR proposal

³ OATT Attachment DD § 5.14(h); *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (“2013 Order”), *reh’g denied*, 153 FERC ¶ 61,066 (2015).

⁴ See OATT Attachment DD § 5.14(h)(3) & (5).

⁵ See OATT Attachment DD § 5.14(h)(6).

⁶ See OATT Attachment DD § 5.14(h)(7).

except on condition that provision for unit specific review be retained.⁷ PJM consented to the change and included the unit-specific exception in a compliance filing, which the Commission approved.⁸

On appeal, the United States Court of Appeals for the District of Columbia Circuit reversed the 2013 Order and remanded the matter to the Commission. The Court held that FERC exceeded its authority to change proposals filed under Section 205, even with PJM's consent, and remanded the matter to the Commission. The Court made no finding that relates to the substance of the current MOPR. The Court did not require any change to the current MOPR or otherwise address the status of the rule during the period for remand.

In its 2013 Order, the Commission explained its reason for rejecting PJM's proposal as filed:

PJM's proposed changes are not just and reasonable standing alone, and therefore we accept the filing subject to PJM's retention of its unit-specific review process. While we find, as discussed above, that PJM's proposed reliance on categorical exemptions is just and reasonable, subject to conditions, we find that there may be resources that have lower competitive costs than the default offer floor, and these resources should have the opportunity to demonstrate their competitive entry costs.⁹

PJM now moves that the Commission reverse its finding that PJM's original proposal, lacking unit specific review, is unjust and unreasonable. PJM moves that the Commission "simply accept PJM's original section 205 proposal, unchanged, as just and

⁷ The MOPR preceding the current rule relied upon a unit specific review process administered by the Market Monitor and PJM. *See PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at P 118 (2011) (2011) (rejecting PJM's proposal to permit sellers whose sell offers have been mitigated to seek unit-specific review from the Commission), *order on compliance filing, rehearing, and technical conference*, 137 FERC ¶ 61,145 (2011), *order on reh'g*, 138 FERC ¶ 61,194 (2012), *aff'd*, *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014)).

⁸ 153 FERC ¶ 61,066; OATT Attachment DD § 5.14(h)(8).

⁹ 2013 Order at P 141.

reasonable,” and allow a MOPR that relies solely on the default offer floor and exemptions for self supply and competitive entry. The motion should be denied for the same reasons that the Commission denied it initially.

The Commission was correct to determine that the MOPR is not just and reasonable when it fails to provide an opportunity to demonstrate that an offer based on unit specific costs is competitive.

PJM markets should include all competitive offers. Rules that operate to prevent such offers should be avoided. Provision for unit specific cost review means that every seller has an opportunity to establish a competitive offer floor relevant to the particular circumstances of its unit. The exemptions serve primarily as a means to avoid the administrative costs of unit specific review when it is not needed.

When there is no unit specific offer review, a seller must either offer using a defined MOPR floor value that may be higher than a competitive offer for its unit or it must satisfy the requirements for exemptions that must be strictly applied to ensure competitive behavior. A unit with a competitive offer lower than the defined MOPR floor and unable to meet the stringent criteria for exemptions would be prevented from making a competitive offer in an RPM Auction and may fail to clear as a result.

The Commission was correctly concerned with this loss of opportunity. The Market Monitor’s concern is to protect the efficiency and competitiveness of the markets by ensuring that no obstacles prevent the submittal of competitive offers while preventing the submittal of subsidized offers. It is unjust, unreasonable and unduly discriminatory to sellers to deny them the opportunity to offer into auctions at demonstrably competitive levels.

B. Experience with the Current MOPR Confirms the Commission’s Judgment.

The Commission’s reasoning in the 2013 Order was logical. Experience with the current MOPR has vindicated the Commission’s refusal to accept a MOPR with no unit specific cost review.

Even under the best circumstances, a defined MOPR offer floor value necessarily compromises accuracy when applied to a particular unit without regard to its particular characteristics and circumstances. A reasonably accurate defined MOPR offer floor that can serve as proxy for most units is the most that can be expected. The defined MOPR offer floor for new units, which equals the Net Asset Class Cost of New Entry (CONE), falls short of reasonable expectations.¹⁰ The Market Monitor believes that the net CONE (gross CONE minus net revenue) is overstated because the gross CONE is overstated compared to actual market data and the net CONE is overstated because the operating parameters of the new entrant unit that are assumed in the net CONE analysis are less flexible than actual units, which understates the energy net revenues and therefore overstates net CONE.¹¹ As a result, the defined MOPR offer floor is too high and would require units without an exemption that fail the MOPR screen to offer above competitive levels.

The Commission found PJM's proposal unjust and unreasonable because it did not include the option for unit specific review. The Court did not reverse or even address this determination. PJM, which opposed the unit specific exception in the first place, offers no reason for the Commission to reverse its holding. The Commission's original holding should be enforced and PJM's proposal should be rejected without prejudice to PJM's filing a just and reasonable proposal under Section 205 including a unit specific exception.

II. 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.

¹⁰ OATT Attachment DD § 5.14(h)(3). The tariff generally provides that "the gross Cost of New Entry component of the Net Asset Class Cost of New Entry shall be adjusted ... in the same manner as set forth for the cost of new entry in section 5.10(a)(iv)(B)."

¹¹ See 2016 State of the Market Report for PJM, Vol. 2 (March 9, 2017), Section 5: Capacity at 217.

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

Respectfully submitted,



Jeffrey W. Mayes

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

Dated: November 14, 2017

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 14th day of November, 2017.



Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

jeffrey.mayes@monitoringanalytics.com