

the Commission must limit the impact of state subsidies on wholesale competitive markets. While states have the right to take actions that help them achieve their public policy objectives, if state subsidies are left unabated, the capacity and energy markets will no longer function as intended, especially as the level of subsidized sources increases.

NGSA does not believe either of the two options submitted by PJM are perfectly optimal solutions. However, as explained in more detail below, we feel that, on balance, the MOPR-Ex option will not have the adverse impacts on the functioning of the capacity market that the Capacity Repricing Proposal (CRP) will have. For that reason, NGSA asks the Commission to find that the status quo and the CRP are unjust and unreasonable, suspend MOPR-Ex, and direct parties to participate in settlement discussions as proposed by PJM. While NGSA favors the general approach of MOPR-Ex, we still believe that this proposed capacity market proposal can be significantly improved by carefully considering how exemptions are provided and the appropriateness of unit-specific exemptions, including exemptions provided for units subject to a renewable portfolio standard (RPS). NGSA is hopeful that settlement discussions can achieve the improvements required to achieve a workable and fair solution.

II. BACKGROUND

Relevant to these comments, PJM filed two options to address “supply-side state subsidies and their impact on the determination of just and reasonable prices in the PJM capacity market;”³ Option A – CRP and Option B – MOPR-Ex. Both options address a “Material Subsidy”⁴ provided by a state.

³ *Id.* at 1.

⁴ A Material Subsidy means (1) material payments, concessions, rebates, or subsidies directly or indirectly from any governmental entity connected to the construction, development, operation, or clearing in any RPM Auction, of the Capacity Resource, or (2) other material support or payments obtained in any state-sponsored or state-mandated processes, connected to the construction, development, operation, or clearing in any RPM Auction, of the Capacity Resource.

The two options diverge, however, on how to address a Material Subsidy provided by a state. The CRP takes no action against a unit with a Material Subsidy unless certain thresholds are met. Under CRP, there would be a two-round auction process. In the first round, all units could bid to obtain a capacity obligation, both subsidized units -- units receiving a Material Subsidy --, and unsubsidized units. Based on those bids, units that clear would receive a capacity obligation and a capacity price would be set.

After the first round is completed, PJM would then determine whether a second round is necessary to address the impact on the market from the unit with the Material Subsidy. If 5,000 MWs⁵ of bids from resources⁶ receiving a Material Subsidy clear PJM-wide⁷ in first round, then PJM will hold a second round. In the second round, the bids of the subsidized units would be repriced to a non-subsidized level and a new price set. In the second round, the subsidized units clearing in the first round would receive the reset price from the second round. As set forth further below, however, unsubsidized units that did not receive a capacity obligation in the first round, would not receive a capacity obligation in the second round even though their bid from the first

⁵ Throughout the stakeholder process, the CRP had a 3,000 MW repricing threshold. See *PJM Capacity Repricing Proposal* circulated January 15, 2018 at 8, describing materiality for purposes of repricing as “more than 3,000 MW of subsidized, unforced capacity was offered into and cleared the PJM capacity market.” PJM’s filed for CRP, however, includes a 5,000 MW pricing threshold. PJM provided no explanation for the 2,000 MW increase in the materiality threshold, *i.e.*, the threshold for taking further action by repricing in a second round despite the fact that PJM recognizes that “adding comparatively small quantities of subsidized offers disproportionately reduces the clearing prices paid to all resources.” *PJM Options Adam Keech Affidavit* at P 7 (the “2020/2021 Delivery Year, the 3,000 MW Outside MAAC” scenario adds zero-priced supply of less than 2%, but decreases clearing prices in the RTO unconstrained pricing area by roughly 10%).

⁶ The 5,000 MWs would not include bids from qualifying facilities, generation under 20 MW, generation from municipals, cooperatives or vertically integrated utilities and resources from which the Material Subsidy constitute less than 1% of revenues.

⁷ Repricing can occur by Local Deliverability Area (LDA) if the percentage of resources that would be subject to the 5,000 MW threshold is greater than 3.5% of the resources that clear in the LDA. For example, if only 4,900 MWs cleared PJM-wide, but the MWs that did clear by LDA was greater than 3.5% then repricing would occur within that LDA but not PJM-wide.

round would be less than the price resulting from non-subsidized bids resulting from the second round.

In contrast, MOPR-Ex mitigates the impact on the market from a unit receiving a Material Subsidy unless that unit is exempt from mitigation. Under MOPR-Ex all units receiving a Material Subsidy are required to bid at the Minimum Offer Price Rule (MOPR) rate unless that unit has received an exemption to bid below the MOPR rate. A unit receiving a Material Subsidy can be exempt from bidding at the MOPR rate if (i) the unit is owned by an entity that is either self-supplying its capacity needs (Self Supply Exemption) or is a public power entity (Public Power Exemption) or (ii) the unit is not receiving a subsidy (Competitive Supply Exemption.). In addition and as discussed further below, a unit receiving a Material Subsidy can be exempt from bidding at the MOPR rate if (i) if the unit could show that its actual (unsubsidized) costs were less than the MOPR rate (Unit-Specific Exemption) or (ii) the unit is a renewable resource and the process by which the renewable resource was procured met certain criteria (RPS.)

PJM asks the Commission to accept and suspend for further proceedings either CRP or MOPR-Ex and adopt a paper hearing to address any outstanding issues. Further, PJM asks the Commission to provide the option for the parties to use settlement judge procedures to address any identified issues.

III. COMMENTS

State subsidies, such as those at issue in this proceeding, conflict with market principles for which efficient well-functioning, regional, organized wholesale power markets were created and that the Commission has long embraced. While states have the right to take actions that help them achieve their public policy objectives, those choices should not impact competitive market outcomes. If state actions that interfere with the wholesale market are unabated, the capacity and energy markets will no longer function as intended. This is especially true as the number of

subsidized units participating in FERC jurisdictional markets increases. Thus, NGSAs support competitive markets for electricity that are fuel-neutral and free from the market distortions created by state subsidies.

If state subsidies persist, steps must be taken to find fuel-neutral competitive market solutions that attempt to accommodate state subsidies. For that reason, NGSAs agree with PJM that the time is now to address state subsidies given that the number of subsidies in the market continue to grow. That need for mitigation is readily apparent in the new law recently passed in New Jersey. That law will pay \$300 million annually⁸ in subsidies to the Salem and Hope Creek⁹ nuclear facilities. These two subsidized facilities will add another sizable amount of subsidized capacity in PJM's market¹⁰ and result in the 5,000 MW threshold for materiality established by PJM being exceeded.¹¹

NGSAs disagree, however, that CRP is the proper approach for addressing state subsidies. CRP penalizes unsubsidized units that will not be able to obtain a capacity obligation because of an accepted bid from a subsidized unit. Further, the CRP is likely to incentivize more state subsidies and thereby more market distortion, because of the market advantage subsidized resources are provided by effectively guaranteeing that those units will obtain a capacity

⁸ See *Controversial Nuclear Bailout is Headed to [N.J. Gov.] Murphy's Desk, Rates Could Go Up*, New Jersey Real-Time News Updated April 13, 2018. The two nuclear facilities would be credited for each MW of energy produced at an amount determined by the New Jersey Board of Public Utilities. The credit would be based on financial information provided by the nuclear facilities to the New Jersey Board of Public Utilities. Ratepayers would pay a \$0.004 per kilowatt-hour charge to recover the cost paid to the subsidized units.

⁹ These units have a capacity of 3,550 MW, 2,282 MW for Salem and 1,268 MW for Hope Creek.

¹⁰ *New Jersey Passes Nuclear Subsidies, Boosts Renewables Target to 50%*, Greentech Media, April 13, 2018,

¹¹ PJM estimates there are 3,079 MWs of subsidized generation currently in the market. *PJM Options* at 92. With the addition of the 3,550 MW in subsidized generation from Salem and Hope Creek, the 5,000 MW threshold will be exceeded.

obligation. This result runs contrary to the intent of PJM's effort to lessen the impact that subsidized resources have on unsubsidized market participants.

Rather than stopping states from subsidizing certain fuels, CRP will incentivize states to subsidize, which creates more, not fewer, market distortions. To date, states subsidizing resources have been concerned that their ratepayers will be penalized by paying twice; once for the subsidy itself and twice if the subsidized unit does not receive a capacity obligation. PJM's CRP proposal eliminates the double payment concerns of the states by effectively guaranteeing that the subsidized unit clears in the first round because the subsidized resource will be able to use its subsidy to out-bid non-subsidized resources. This is unacceptable.

Further, the CRP is not fuel-neutral because it sets up a structure that guarantees the subsidized unit will clear at the expense of non-subsidized unit that would have otherwise cleared if the subsidized resource would have been required to bid its true costs. A non-subsidized does not have a subsidy which would allow it to bid below its costs.

There is a further inequity to unsubsidized units. Under PJM's CRP proposal, the subsidized units that cleared in the first round will be repriced. But the capacity obligations established in the first round will not change as a result of the second round. Thus, a situation can easily arise where a non-subsidized unit would not receive a capacity obligation, even though its bid in the first round was less than the final clearing price determined in the second round. While PJM euphemistically refers to this result as "[t]his sub-optimal clearing result,"¹² to NGSAs it is a fundamental flaw with CRP and another example of why the CRP should be rejected as inconsistent with NGSAs's core principles for competitive electric markets. To effectively accommodate state subsidies, who clears the capacity market is just as important as the prices paid

¹² PJM Options at p. 57.

to subsidized and non-subsidized resources, particularly when such subsidies place unsubsidized generation at a competitive disadvantage in obtaining a capacity obligation.

While the best solution to these distortions is eliminating state subsidies, relatively speaking, NGSAs believe that the MOPR-Ex has a greater potential to appropriately and non-discriminatorily lessen the impact of subsidies on the competitive market than CRP. MOPR-Ex, unlike CRP, would require all units receiving a Material Subsidy to bid at the Minimum Offer Price Rule (MOPR) rate unless that unit has received an exemption to bid below the MOPR rate.

MOPR-Ex ensures that units participating in the PJM capacity market will be economic without subsidies. To obtain a capacity obligation, the subsidized unit must first bid a non-subsidized rate, *i.e.*, the Minimum Offer Price Rule (MOPR) rate, unless the subsidized unit has been exempted from such bidding. If the subsidized unit is not economic at the MOPR rate, then the unit will not clear and obtain a capacity obligation. If a unit is not economic, then the state's ratepayers should pay twice for the state's actions subsidizing resources. Such an outcome, unlike CRP, would be fuel-neutral and not incentivize states to subsidize resources.

The MOPR-Ex is also the preferable option because it clearly delineates the units that will be exempt from the MOPR rate. MOPR-Ex, should be improved, however, because it inappropriately allows for unit-specific exemptions as well as exemptions for resources that are part of a RPSd.

NGSA believes that the unit specific exemption needs to be carefully reviewed and that the process for such exemptions must be more transparent in a manner that permits other market participants to understand the basis for the exemption. The process for determining a unit-specific exemption, however, will not clearly delineate why a unit is exempt. As PJM has told the Commission, "[t]he market knows that the MOPR permits PJM wide discretion to make unit-

specific exemption determinations, including determining the mitigated offer levels, but the market is not aware of which determinations PJM makes, or how PJM makes or supports those determinations.”¹³ For this reason, PJM has concluded “that the unit-specific MOPR exception process is not serving the long-term interests of the capacity market and should be replaced as soon as possible.”¹⁴ NGSA agrees with PJM that it is important to carefully consider the process and types of exemptions as parties work to improve upon the MOPR-Ex proposal during settlement discussions.

NGSA also opposes the renewable portfolio exemption because it provides a market advantage for particular resources over others and is not applied consistently with the rest of the exemptions provided in the MOPR-Ex proposal. Except for RPS exemptions, MOPR-Ex exemptions are fuel-neutral and based only on the type of entities that own the subsidized asset, Public Power entities, Self-Supplying entities, Competitive Entry entities, *etc.*, not the fuel involved. For example, under MOPR-Ex, a nuclear unit that is not owned by one of these entities, but which receives a subsidy, would receive the MOPR rate. To ensure that there is no fuel preference in the RTO capacity market structure, all subsidized units not owned by these entities should pay the MOPR rate regardless of the fuel involved.

New Jersey is a prime example of how the RPS exemption is inappropriate. At the same time as the New Jersey legislature subsidized nuclear facilities, it increased New Jersey’s renewable portfolio standard to 35 percent by 2025 and 50 percent by 2030.¹⁵ MOPR-Ex

¹³ *PJM Interconnection, L.L.C.*, Docket No. ER13-535-000, March 4, 2013 Response of PJM to the Commission’s February 5, 2013 Information Request at 2.

¹⁴ *PJM Interconnection, L.L.C.*, filed December 7, 2012 in Docket No. ER13-535 at 9.

¹⁵ *New Jersey Passes Nuclear Subsidies, Boosts Renewables Target to 50%*, Greentech Media, April 13, 2018

would mitigate the nuclear subsidies and there is simply no basis for the MOPR-Ex to not also treat resources in the RPS in the same manner.

NGSA asks the Commission to find that the status quo and the CRP are unjust and unreasonable. Consistent with PJM's request, the Commission should accept and suspend MOPR-Ex for the maximum period and direct that any outstanding issues to improve MOPR-Ex be addressed as part of a settlement process. NGSA agrees with PJM that "if the Commission makes the outstanding issues more manageable" by accepting MOPR-Ex, "a good faith consensual effort could be the most productive means of resolving those outstanding issues [with MOPR-Ex]."¹⁶

IV. CONCLUSION

Wherefore, for the reasons set forth above, the Commission should reject PJM's Capacity Repricing Proposal and accept and suspend MOPR-Ex subject to further settlement proceedings.

Respectfully submitted,

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Dated: May 7, 2018

¹⁶ *Id.*