

Transmission Tariff (“PJM Tariff”): (1) PJM’s Minimum Offer Price Rule (“MOPR”) would be expanded (referred to as an “Expanded MOPR”) to “apply to new and existing resources that receive out-of-market payments, regardless of resource type, but would include few to no exemptions”; and (2) a new Fixed Resource Requirement (“FRR”) alternative (referred to as the “Resource-Specific FRR Alternative”) would be created “to accommodate state policy decisions and allow resources that receive out-of-market support to . . . choose to be removed from the PJM capacity market, along with a commensurate amount of load, for some period of time” such that these resources can remain operational.³ In accordance with Rule 211 of the Commission’s Rules of Practice and Procedure, the Nuclear Energy Institute (“NEI”) submits these Comments on the Commission’s proposed Expanded MOPR and Resource-Specific FRR Alternative.⁴

Assuming that the Commission determines that PJM should adopt an Expanded MOPR, the MOPR and the Resource-Specific FRR Alternative must be carefully designed so that together they appropriately balance the integrity of the PJM markets with the accommodation of legitimate state policies and preferences regarding capacity resources. These state policies and preferences address externalities, such as negative environmental impacts, and complement the wholesale power markets by attempting to account for the true economic costs and benefits associated with capacity resources that are not otherwise economically recognized within the wholesale power markets. Beyond developing an immediate replacement PJM Tariff, the Commission should encourage and foster the creation of market design structures in PJM to achieve these state policies and preferences in a manner that is economically efficient. Directly pricing the positive economic attributes of clean energy and fuel security in the PJM markets for

³ Order at P 8.

⁴ 18 C.F.R. § 385.211 (2018). NEI has separately intervened in EL16-49-000, ER18-1314-000, ER18-1314-001, and EL18-178-000.

electric energy, capacity, and ancillary services would be the clearest and best way to accomplish this goal because it would ensure that the PJM markets are truly economically efficient and workably competitive,⁵ while ultimately minimizing the need for an Expanded MOPR and the accompanying Resource-Specific FRR Alternative.

While these longer term market reforms are developed, however, if the Commission were to require PJM to impose a MOPR with “few to no exemptions” as it has suggested,⁶ it must ensure that the states retain a workable alternative to acquiring the resources they desire without having to pay for excess capacity. Given the broad application of an Expanded MOPR to *all* capacity resources receiving out-of-market support, the Commission should require that the Resource-Specific FRR Alternative be broadly available to any capacity resource that receives out-of-market support and that chooses not to participate in the PJM capacity market in any given year.⁷ Also, given the broad application of such an Expanded MOPR, the mitigation

⁵ The need to address negative environmental externalities associated with the generation of electric energy in the wholesale power markets was addressed in filings made by NEI and some of its members in Docket No. ER18-1314. *See, e.g.*, Motion to Intervene and Comments of the Nuclear Energy Institute, Docket No. ER18-1314 (May 7, 2018); Protest of Exelon Corporation, Docket No. ER18-1314 (May 7, 2018) (“Exelon Protest”); Protest and Motion to Reject of the PSEG Companies, Docket No. ER18-1314 (May 7, 2018); Motion for Leave to Answer and Answer of Exelon Corp. and the PSEG Companies, Docket ER18-1314 (May 22, 2018). The Exelon Protest included two attached reports from economic experts that addressed this issue in depth. *See* Institute for Policy Integrity, *Capacity Markets and Externalities: Avoiding Unnecessary and Problematic Reforms* (April 2018); Declaration of Robert D. Willig (May 7, 2018). Well-defined, quantifiable environmental objectives can easily be translated into products and services that can be bought and sold competitively through resource-neutral wholesale power markets and thereby help states and electricity consumers to pursue their environmental objectives more cost effectively. *See* The Brattle Group, *Harmonizing Environmental Policies with Competitive Markets: Using Wholesale Power Markets to Meet State and Customer Demand for a Cleaner Electricity Grid More Cost Effectively* (July 2018), available at http://files.brattle.com/files/14206_harmonizing_environmental_policies_with_competitive_markets_final.pdf.

⁶ Order at P 8.

⁷ As the Commission noted in the Order, the current FRR mechanism will remain in place and the Resource-Specific FRR Alternative would be a “new resource-specific option with distinct characteristics” from the existing FRR option. Order at n.10.

mechanism must be objective, transparent, and economically rational. And given that such capacity resources would be subject to mitigation under an Expanded MOPR if they choose to return to participating in the PJM capacity market, there should be no stay-out period.⁸

I. COMMENTS

A. **The Commission Should Encourage PJM To Develop Market Rules That Achieve State Clean Energy And Fuel Security Goals And Policies.**

The Commission should encourage PJM to design its wholesale electric markets in a manner that recognizes and integrates state policies and preferences that value the economic attributes of clean energy and fuel security. If the PJM markets properly accounted for the economic attributes of clean energy and fuel security more directly, then these markets would be more economically efficient and more competitive while at the same time making the bulk power system in PJM more reliable, resilient, and clean. Such market-based solutions in the PJM markets could be more effective and less costly than out-of-market support mechanisms. While efforts to consider market-based solutions for clean energy and fuel security within the PJM stakeholder process have largely stalled, the Commission should actively encourage PJM to pursue and implement such solutions. Directly pricing the economic attributes of clean energy and fuel security within the PJM markets would ultimately minimize the need for and role of an Expanded MOPR and Resource-Specific FRR Alternative in the PJM capacity market.

B. **An Expanded MOPR Should Apply To All Capacity Resources Receiving Out-Of-Market Support, But Mitigation Must Be Objective, Transparent, And Economically Rational.**

An Expanded MOPR should extend to all capacity resources that actually receive out-of-market support, regardless of fuel-source. The purpose of the Expanded MOPR is to prevent

⁸ As we discuss below, if the Commission were to decide that some sort of stay-out period is absolutely necessary, that period should be short (and certainly no longer than the stay-out period under the current FRR).

capacity resources that receive actual out-of-market support from bidding into the market at prices reflecting their out-of-market support by setting an offer price floor.⁹ Out-of-market support can, at least in theory, afford recipient capacity resources the ability to submit lower offer prices in the capacity market regardless of the nature or purpose of the out-of-market support they receive and even if such support is not tied directly to the capacity market. As all such capacity resources receiving actual out-of-market support at least in theory have this ability, an Expanded MOPR should extend to any and all capacity resources that receive actual out-of-market support, without exception. Given the broad application of such an Expanded MOPR, the Commission should be careful to ensure that mitigation under an Expanded MOPR is economically rational, and is set at levels that are objective and transparent. The Commission should not allow for an Expanded MOPR that determines mitigated offer prices through black box methods or any type of one-off processes that are not transparent and objectively verifiable.

C. The Resource-Specific FRR Alternative Should Be Available Broadly To Capacity Resources That Receive Out-Of-Market Support And Choose Not To Participate In The PJM Capacity Market.

If all capacity resources that receive out-of-market support are subject to an Expanded MOPR, the Resource-Specific FRR Alternative should be available to any such capacity resource that desires to not participate in the PJM capacity market through establishing a legal relationship with load (subject to locational requirements as discussed below). NEI is a signatory to and endorses the “Shared Principles for a Resource-Specific Fixed Resource Requirement” developed and filed in the above-captioned proceedings by a broad coalition of consumer advocates, environmental organizations, generation companies and representatives,

⁹ *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066, at P 3 (2015).

and load-serving entities (the “Shared Principles”).¹⁰ Several broad principles that should apply to the Resource-Specific FRR Alternative are discussed below, many of which are the subject of the Shared Principles.

1. *Legal Relationships Between Capacity Resources Receiving Out-Of-Market Support And Load-Serving Entities Can Be Established Pursuant To State Programs.*

Vertically-integrated utilities that have rate-based electric generation resources and that are subject to state regulation could establish this legal relationship directly between such generation and load-serving utilities. Capacity resources that are located in states with retail choice should be permitted to establish a legal relationship with a load-serving entity pursuant to specific programs established by each state within PJM. While states should be free to design their own parameters for establishing the relationship between the capacity resource receiving out-of-market support and load being served, the state-authorized transaction must cover the capacity obligation of a load-serving entity (or entities). Regardless, any PJM rules that permit capacity resources to not participate in the PJM capacity market by way of the Resource-Specific FRR Alternative established pursuant to out-of-market support programs should provide for flexibility in the nature of the relationship between the capacity resource and the corresponding load to account for differences across such programs. Such flexibility would allow, for example, an arrangement between one or more load-serving entities, or an intermediary, and a resource receiving out-of-market support.

¹⁰ See Joint Brief of Consumer Advocates, NGOs, and Industry Stakeholders (Oct. 1, 2018), Exh. A, Shared Principles for a Resource-Specific Fixed Resource Requirement.

2. *The Commission Must Allow For A Transition Period For The Resource-Specific FRR Alternative To Be A Viable Option.*

As discussed in the Shared Principles, developing programs to facilitate legal relationships between capacity resources receiving out-of-market support and load-serving entities will take time, including the likely development and enactment of new legislation or regulation in different states. Such legislation and regulation is unlikely, if not impossible, to be completed by the commencement of the 2019 Base Residual Auction for the 2022/2023 Delivery Year. Therefore, in order to effectively establish a Resource-Specific FRR Alternative that accommodates already existing state policies and preferences that provide out-of-market support mechanisms, the Commission must allow for an orderly transition period. Under the current FRR, load-serving entities selecting the FRR must have their FRR Capacity Plan finalized before the commencement of the relevant Base Residual Auction. For the new Resource-Specific FRR Alternative to be a viable option given the broad application of an Expanded MOPR, the Commission should provide for a transition period in which capacity resources receiving out-of-market support are able to select the Resource-Specific FRR Alternative and establish the legal relationship with load-serving entities. This will ensure that the Commission is accommodating legitimate out-of-market support programs, such as those that reflect state policies and preferences, and will not require loads that are directly or indirectly providing out-of-market support payments to preferred capacity resources to pay twice for capacity.¹¹

¹¹ *See id.*, Exh. A at 1 (“Without a workable [Resource-Specific FRR Alternative] that provides an alternative way to compensate these resources for their capacity, customers will be forced to buy excess capacity through the PJM capacity market to ‘replace’ the renewable and nuclear energy supported by the states but ignored by the capacity market. A workable [Resource-Specific FRR Alternative] would prevent these increased costs.”).

3. *Capacity Resources Subject To The Resource-Specific FRR Alternative Must Comply With Certain PJM Locational And Reserve Requirements And With Capacity Performance Requirements.*

As discussed in the Shared Principles, in order to ensure that locational resource adequacy requirements are satisfied while certain capacity resources that receive out-of-market support and load opt for the Resource-Specific FRR Alternative, any capacity resource subject to the Resource-Specific FRR Alternative must ensure that the resource is deliverable to the corresponding load, as understood under PJM's current capacity market rules. In addition, to ensure that required reserves for load in each region are satisfied, the capacity resource electing the Resource-Specific FRR Alternative should be required to include the necessary reserve percentage under its state-sponsored capacity supply obligation. For example, if there is a 15% reserve requirement, a capacity resource opting for the Resource-Specific FRR Alternative with respect to 115 MW of capacity could enter into a legal relationship with a load-serving entity under which the capacity resource would be obligated to supply 100 MW of capacity and 15 MW of reserves. Thus, PJM can ensure that each capacity resource electing the Resource-Specific FRR Alternative is also meeting the necessary reserve requirement.

Also, capacity resources electing the Resource-Specific FRR Alternative should be subject to PJM's Capacity Performance obligations and associated penalties. The Capacity Performance construct can and should be applied to these capacity resources such that they are subject to Non-Performance Charges for failure to perform as specified in the PJM Tariff, Attachment DD § 10A. However, given that capacity resources electing the Resource-Specific FRR Alternative should not be required to stay out of the PJM capacity market for any period of time, they should not be permitted to elect to be subject to physical non-performance assessments (*i.e.*, procuring additional capacity in the future) that are available to entities under the current FRR mechanism.

4. *Partial Capacity Resources Should Be Permitted To Elect The Resource-Specific FRR Alternative.*

For capacity resources receiving out-of-market support, there is no economically rational reason to require the entire capacity resource to select the Resource-Specific FRR Alternative. For example, there may be capacity resources with multiple owners where some, but not all, of the owners receive out-of-market support with respect to that capacity resource. Moreover, there may be legitimate business reasons that only a portion of a capacity resource may want to select the Resource-Specific FRR Alternative, while the remainder may choose to participate in the PJM capacity market. For example, even for a capacity resource with multiple owners where all of the owners receive out-of-market support with respect to that capacity resource, each owner may have different business models or risk profiles and therefore may prefer different mechanisms for selling their capacity. There should be no requirement for such capacity resources to sell all of their capacity through the Resource-Specific FRR Alternative. If any portion of such a capacity resource chooses to participate in the PJM capacity market, it will be subject to mitigation through an Expanded MOPR and therefore the capacity market will be adequately protected.

5. *There Should Be No Stay-Out Period For Capacity Resources Selecting The Resource-Specific FRR Alternative.*

NEI understands that some parties may propose that any capacity resource that elects the Resource-Specific FRR Alternative should be forbidden from participating in the PJM capacity market for the remaining life of the capacity resource. Others may propose other stay-out hurdles (e.g., imposing a MOPR on returning resources targeted at the capital investment made during the time the resources participated in the Resource-Specific FRR Alternative). Such proposals to undermine a reasonably accessible Resource-Specific FRR Alternative would be overly punitive and should be rejected. A capacity resource may receive out-of-market support

for only a short period. Restricting such a capacity resource from ever participating in the PJM capacity market again—effectively eliminating its ability to sell capacity in the future—is not reasonable and may result in significant excess capacity in the PJM region.

The current FRR mechanism in PJM requires that entities choosing the FRR make the election for a minimum of five consecutive Delivery Years. This five-year requirement exists to prevent entities from toggling back and forth between the FRR option and the PJM capacity market to take advantage of market conditions.¹² But no such toggling concerns exist with respect to capacity resources receiving out-of-market support that are subject to an Expanded MOPR. If such a resource elects the Resource-Specific FRR Alternative in one year, but chooses to participate in the capacity market in a subsequent year, it will be subject to mitigation pursuant to an Expanded MOPR, protecting the integrity of the market. Thus, as recognized in the Shared Principles, there does not appear to be any economic rationale for requiring capacity resources receiving out of market support to stay out of the PJM capacity market for *any* minimum period of time.

If, however, capacity resources electing the Resource-Specific FRR Alternative are required to remain out of the capacity market for a certain period, that period should be no longer than the duration of its out-of-market support. Requiring capacity resources selecting the Resource-Specific FRR Alternative to stay out of the PJM capacity market longer would

¹² *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at P 90 (2009) (PJM entities that choose to procure capacity through the FRR should not be allowed to release capacity when load forecasts decrease at the time of the incremental auction).

inappropriately discourage legitimate out-of-market support programs, such as those that reflect states' legitimate policy interests and preferences, and could result in stranded capacity.¹³

II. CONCLUSION

For the foregoing reasons, NEI respectfully requests that the Commission consider these comments in its evaluation of how to accommodate state policies and preferences regarding capacity resources through an Expanded MOPR and Resource-Specific FRR Alternative.

Respectfully submitted,

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¹³ If the Commission feels inclined to require resources electing the Resource-Specific FRR Alternative to stay out of the capacity market for a specific time period, that period should be no longer than the five years as provided for under the current FRR.

Certificate of Service

I certify that on this 2nd day of October, 2018, I have caused a copy of the foregoing document to be served electronically on each person listed on the Secretary's official service list for the above-referenced proceeding.

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