

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

Calpine Corporation, Dynegy Inc., Eastern Generation, LLC, Homer City Generation, L.P., NRG Power Marketing LLC, GenOn Energy Management, LLC, Carroll County Energy LLC, C.P. Crane LLC, Essential Power, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, L.P., GDF SUEZ Energy Marketing NA, Inc., Oregon Clean Energy, LLC and Panda Power Generation Infrastructure Fund, LLC

Docket Nos. EL16-49-000

v.

PJM Interconnection, L.L.C.

PJM Interconnection, L.L.C.

**EL18-178-000
(Consolidated)**

**COMMENTS AND LIMITED PROTEST
OF THE MARYLAND PUBLIC SERVICE COMMISSION**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.211, and in conformity with the Commission's March 31, 2020 Notice of Extension of Time, the Maryland Public Service Commission ("Maryland PSC") hereby submits the following Comments and Limited Protest in response to PJM Interconnection, L.L.C.'s ("PJM") March 18, 2020 Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at Least 35 Days ("Compliance Filing").

I. BACKGROUND:

On June 29, 2018, the Commission issued an order¹ finding that PJM's Open Access Transmission Tariff ("Tariff") is unjust and unreasonable because its Minimum Offer Price Rule ("MOPR") fails to mitigate the impact of resources receiving out-of-market support pursuant to state policies such as renewable portfolio standards ("RPS") and zero emission credits ("ZECs"). The Commission initiated a Federal Power Act ("FPA") section 206 proceeding and set the matter for a paper hearing. On December 19, 2019, the Commission issued its Order Establishing a Just and Reasonable Rate,² which required PJM to make significant changes to the design of its capacity market to address the alleged "price suppression" caused by the participation of capacity resources supported by such state policies. The December 19 Order established a replacement rate, and provided parameters for addressing state policies by extending the Minimum Offer Price Rule ("MOPR") in PJM's capacity market to cover not just the new natural gas-fired generators subject to earlier versions of the MOPR, but to virtually all resources receiving state support outside of FERC-regulated wholesale markets. Specifically, the December 19 Order directed PJM to extend application of the MOPR to all Capacity Resources receiving or entitled to receive a State Subsidy,³ regardless of resource type, unless

¹ *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) ("June 2018 Order"). The Maryland PSC requested rehearing of the Commission's June 2018 Order after protesting PJM's FPA section 205 filing that proposed to either re-price capacity offers by certain state-sponsored generators, or alternatively expand the MOPR to include generators that receive certain state subsidies, and in response to the Commission's action (on its own motion) initiating a FPA section 206 proceeding after granting in-part and denying in-part Calpine's complaint in Docket EL16-49.

² *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) ("December 19 Order").

³ The Commission defined State Subsidy broadly as "a direct or indirect payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is (1) a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state, or an electric cooperative formed pursuant to state law, and that (2) is derived from or connected to the procurement of (a) electricity or electric generation capacity sold at wholesale in interstate commerce, or (b) an attribute of the generation process for electricity or electric generation capacity sold at wholesale in interstate commerce, or (3) will support the construction, development, or operation of a new or existing capacity resource, or (4) could have the effect of

such resources qualify for one of the exemptions set forth in the December 19 Order. For example, the MOPR will be applied to new renewable resources participating in state RPS programs, and new demand response, energy efficiency, and storage resources receiving state support, absent an applicable exemption.

On January 21, 2020, numerous parties, including the Maryland PSC, requested rehearing of the Commission's December 19 Order. The Maryland PSC asserted that the Order: (1) interferes unlawfully with the states' exclusive jurisdiction over generation and resource portfolio decisions, impeding or foreclosing the lawful right of each state to shape its generation mix pursuant to the FPA; (2) unlawfully and without justification asserts Commission authority over renewable energy credits ("RECs"), despite the Commission's previous finding that it did not possess jurisdiction over credits unbundled from wholesale energy; (3) improperly denies any safe harbor for accommodating state public policy programs by arbitrarily eliminating the Commission's previously endorsed resource-specific Fixed Resource Requirement ("FRR") Alternative option and rejecting without explanation the competitive carve out approach proposed by the Maryland PSC; and (4) improperly frustrates state policies to recognize externalities and value generation environmental attributes.

Prior to preparing its Compliance Filing, PJM held nine stakeholder meetings to discuss the contents of the filing, including four special meetings of PJM's Markets Implementation Committee. PJM also reached out to state public utility commissions and the Organization of PJM States ("OPSI") to discuss the ramifications of the December 19 Order and the contents of the Compliance Filing. The Maryland PSC would like to acknowledge PJM's efforts in reaching out to stakeholders and considering their perspectives when drafting its Compliance Filing.

allowing a resource to clear in any PJM capacity auction." December 19 Order at P 9.

On March 18, 2020, PJM submitted its Compliance Filing. PJM's filing contains proposed Tariff provisions to comply with the December 19 Order, including application of the MOPR to State-Subsidized resources; guidance on application of the term State Subsidy; the exemption of certain resources from the MOPR, including self supply, intermittent, demand response, energy efficiency, capacity storage, and competitive exemption resources; MOPR floor offer prices based on net Cost of New Entry ("CONE"); MOPR floor offer prices based on Avoidable Cost Rate ("ACR"); the Resource-Specific Exception Process; procedures to address fraud or material misrepresentation; and the Base Residual Auction implementation schedule. PJM's proposed Tariff revisions include PJM's interpretations of certain elements of the December 19 Order that were left broad, including identification of resources that would not constitute state subsidization or that would be exempt from the MOPR.

While the Maryland PSC continues to object to the substance of the December 19 Order, given the present requirement for PJM to comply with that Order, the Maryland PSC generally supports (1) PJM's proposal to exempt from the definition of State Subsidy any state-directed default service procurement that is competitively procured and does not require a specific fuel type; (2) PJM's language that expands the MOPR exemption regarding certain Renewable⁴ Resources due to prior investment decisions, but requests this exemption also apply to specific Renewable Resources which, prior to December 19, 2019, have filed for and obtained authorization from a state public utility commission to receive a prescribed, long-term schedule of payments for the environmental attributes of a renewable energy project, pursuant to state

⁴ The Commission's December 19 Order limited the RPS Exemption to Intermittent Resources. However, in its April 16 Order on Rehearing, the Commission clarified that the resources eligible for the RPS Exemption include all existing resources that were included by an RPS standard as of the December 2019 Order. April 16 Order on Rehearing at P 279. Consistent with the Commission's determination, the Maryland PSC will utilize the term Renewable Resource in lieu of Intermittent Resource in the remainder of this document when discussing eligibility for the RPS Exemption.

legislation; (3) PJM's proposed language exempting voluntary RECs from application of the MOPR; (4) PJM's proposed language that provides additional flexibility regarding the resource-specific exception, especially with regard to allowing Capacity Market Sellers to submit a resource-specific justification of an asset life longer than 20 years, but asks that PJM provide similar flexibility regarding other standardized financial parameters; and (5) PJM's Tariff revisions that exclude the Regional Greenhouse Gas Initiative from the definition of a State Subsidy. Finally, the Maryland PSC requests that the Commission reject PJM's proposed auction implementation schedule, and direct PJM to delay conducting any future capacity auction to no earlier than May 2021.

II. COMMENTS AND LIMITED PROTEST

A. State-Directed Default Service Procurement Programs

PJM's Compliance Filing proposes to exempt from the definition of State Subsidy any state-directed default service procurement program that is competitively procured without regard to resource fuel type.⁵ PJM explicitly lists Maryland's Standard Offer Service ("SOS") program as a default service that would be exempt from the definition. PJM notes that Maryland's SOS is "competitive," "non-discriminatory," and "resource neutral," such that the RTO "does not see any basis for finding these auctions to represent state subsidies within the definition of subsidy in the [December 19] Order."⁶

Maryland has conducted competitive, non-discriminatory SOS auctions for approximately 20 years. The default service was established in the year 1999 through regulatory

⁵ PJM Compliance Filing at 13.

⁶ PJM Compliance Filing at 16-17.

proceedings following the passage of the Electric Customer Choice and Competition Act of 1999 by the Maryland General Assembly.⁷ The Act deregulated the pricing of electric generation and opened retail markets to competitive suppliers. Despite the development of retail competition, Maryland's General Assembly recognized that default service was necessary for those customers who did not choose a retail supplier, as well as those customers for whom the retail supplier discontinued retail service. Maryland law currently mandates that SOS be available to certain customer groups as a default service. For example, Public Utilities Article ("PUA") § 7-510(c)(4)(ii), *Annotated Code of Maryland*, requires that SOS be designed to obtain competitive prices for residential and small commercial customers in light of prevailing market conditions at the time of the procurement.

Maryland's investor-owned utilities ("IOUs")⁸ purchase SOS electricity from wholesale suppliers according to a competitive bidding process regulated by the Maryland PSC.⁹ Residential and small commercial SOS bidding auctions are conducted twice per year, through sealed bid procurements, with contracts awarded to the lowest bidders. Large commercial bids are received quarterly on the same bases. The Maryland PSC chose this structure to enable SOS rates for residential and small commercial customers to reflect long-term changes in market price, while still providing some protection from rate volatility and ensuring a certain level of

⁷ The Maryland PSC developed the preliminary rules for its SOS program in a series of IOU deregulation proceedings and settlements. See Case No. 8974, *Re Balt. Gas and Elec. Co.*, 90 Md. P.S.C. 137 (1999); Case No. 8975, *Re Delmarva Power & Light Co.*, 90 Md. P.S.C. 115 (1999); Case No. 8976, *Re Potomac Elec. Power Co.*, 90 Md. P.S.C. 329 (1999); and Case No. 8976, *Re Potomac Elec. Co.*, 90 Md. P.S.C. 439 (1999).

⁸ Those IOUs are Baltimore Gas and Electric Company, Delmarva Power & Light Company, Potomac Electric Power Company, and Potomac Edison Company.

⁹ The Commission described the Maryland SOS procurement process in *Allegheny Energy Supply, LLC*, 108 FERC ¶ 61,082 (2004), where the Commission examined and approved the § 205 application of Allegheny Energy Supply Company, requesting Commission authorization to make market-based rate sales to its affiliate, The Potomac Edison Company. That SOS process (as described in *Allegheny Energy Supply*) remains in place for all Maryland utilities.

gradualism in rate changes. In contrast, SOS for mid-sized non-residential customers is not intended to stabilize prices over an extended period of time, but rather to reflect market conditions on the most recent bid day. Default service for large commercial and industrial customers is an hourly-priced service based on PJM's hourly Locational Marginal Pricing.

For each SOS auction, the Maryland PSC retains a bid monitor to certify that the auction is conducted fairly according to applicable procurement regulations and the procedures provided in the request for proposals. The bid monitor also confirms that bids are competitive and reflect current market conditions, that appropriate security measures are in place for the duration of the bidding process, and that there are a sufficient number of qualified bidders to ensure a competitive outcome.

The Maryland PSC supports PJM's proposal to exempt from the definition of State Subsidy any state-directed default service procurement that is competitively procured and does not require a specific fuel type, as Maryland's SOS program does. Maryland's SOS program is competitive and non-discriminatory. The longstanding program procures default electric service from wholesale suppliers based on robust, competitive auctions that are closely monitored to ensure compliance with applicable rules and regulations. Moreover, Maryland's SOS program is resource neutral. It procures wholesale electric energy for retail customers, but does not request specific resources, and it does not conclude with a State contract with an individual generator.

In its April 16 Order on Rehearing, the Commission addressed the issue of whether state default service auctions should be considered State Subsidies that are subject to the MOPR. The Commission found that a default service auction may be subject to the MOPR "to the extent ... [the auction] will support the construction, development, or operation of a capacity resource, or

could have the effect of allowing a resource to clear in any PJM auction.”¹⁰ The Commission further clarified that “[i]f these auctions are truly competitive ... a winning resource ... may demonstrate that its costs are competitive through the Unit-Specific Exemption...”¹¹ The Commission’s language signifies that the MOPR should be applied to state auctions that benefit specific generation resources, and that those individual resources may seek exemption from the MOPR through the Unit-Specific Exemption. Maryland’s SOS auction, however, is resource neutral. As explained above, it does not procure wholesale electricity from specific generators or require a particular resource fuel type. PJM’s proposed Compliance Filing language regarding state default service auctions captures the nuance of the Commission’s distinction between auctions that are resource neutral, such as the Maryland SOS program identified in PJM’s compliance filing, and those that procure specific generation resources. The Maryland PSC therefore supports approval of PJM’s proposed language regarding state default service.

B. Exemption of Renewable Resources from MOPR Due to Prior Investment Decisions

In its December 19 Order, the Commission determined that the MOPR should not be applied to existing renewable resources receiving support from state-mandated or state-sponsored RPS programs, provided the resource meets at least one of the following criteria: (1) successfully cleared an annual or incremental capacity auction prior to the December 2019 Order; (2) had an executed interconnection construction service agreement on or before the date of the December 2019 Order; or (3) had an unexecuted interconnection construction service agreement filed by PJM for the resource with the Commission on or before the date of the

¹⁰ April 16 Order on Rehearing at 386.

¹¹ *Id.*

December 2019 Order.¹² The Commission determined that this exception was necessary because “decisions to invest in those resources were guided by our previous affirmative determinations that renewable resources had too little impact on the market to require review and mitigation.”¹³

In compliance with the Commission’s December 2019 Order, PJM states that it will categorically exempt certain Resources that qualify for a state-mandated or state-sponsored RPS program from the MOPR if the resource (1) has successfully cleared an RPM Auction prior to December 19, 2019; (2) is the subject of an interconnection service agreement (“ISA”) or equivalent agreement executed on or before December 19, 2019; or (3) is the subject of an unexecuted ISA or equivalent agreement filed by PJM with the Commission on or before December 19, 2019.¹⁴ PJM asserts that this criteria would “appropriately exempt *any* [] Resources where investment decisions were made prior to the December 2019 Order” and would be “consistent with the Commission’s rationale that such prior investment decisions” were based on the Commission’s previous MOPR policy.¹⁵ In particular, PJM explains that it expanded its language to exempt a resource that is the subject of an ISA, rather than just an interconnection construction service agreement.¹⁶ Additionally, PJM states that wholesale market participation agreements (“WMPAs”) should be included in the exemption, because they represent another type of agreement that allows a generator that is interconnected to non-jurisdictional facilities to participate in PJM’s markets, including the capacity market. PJM asserts that “[r]esources with a WMPA executed prior to December 19, 2019, reasonably expected to participate in the capacity

¹² December 19 Order at 173.

¹³ December 19 Order at 174.

¹⁴ PJM Compliance Filing at 33; Proposed Tariff, Attachment DD, section 5.14(h)(6).

¹⁵ PJM Compliance Filing, at 34 (emphasis added).

¹⁶ PJM Compliance Filing at 33-34.

market and are also not subject to the MOPR, consistent with the December 19 Order.”¹⁷ Finally, PJM acknowledges that an agreement other than an ISA could demonstrate that a resource reasonably expected to participate in the capacity market in reliance upon PJM’s historic MOPR by including language stating that the execution of an ISA “or equivalent agreement” or the filing by PJM of an ISA “or equivalent agreement” will merit the exemption.

The Maryland PSC supports PJM’s language that expands the application of the MOPR exemption to include Renewable Resources that qualify as existing resources because they have successfully cleared an RPM Auction prior to December 19, 2019, or are the subject of an ISA executed on or before December 19, 2019, or are the subject of an unexecuted ISA filed by PJM with the Commission on or before December 19, 2019. The Maryland PSC also agrees with PJM’s proposal to exempt Renewable Resources with WMPAs, because such resources reasonably expected to participate in the capacity market. Finally, the Maryland PSC supports PJM’s language that provides that an agreement “equivalent” to an ISA can suffice to demonstrate financial commitment.¹⁸ Each of these provisions is consistent with the Commission’s rationale in its December 19 Order.

Nevertheless, PJM’s Compliance Filing is deficient inasmuch as the filing fails to sufficiently apply the Commission’s rationale by limiting the Renewable Resources exemption to resources that have executed an ISA (or for whom PJM filed an unexecuted ISA) or equivalent agreement, despite PJM’s stated intention to apply the exemption to “any” Renewable Resources that justifiably relied on PJM’s historic MOPR to make investment decisions prior to December

¹⁷ PJM Compliance Filing at 33, n. 84.

¹⁸ To the extent the Commission rejects the Maryland PSC’s proposed Tariff language below, the Commission should interpret PJM’s language “or equivalent agreement” to include a state public utility commission order that authorizes a renewable energy project to receive a prescribed, long-term schedule of payments for the environmental attributes of the project.

19, 2019. While such specific resources may not have executed ISAs (or had unexecuted ISAs filed by PJM), they might have other equally, or more compelling documentation to merit application of this exemption.

The Maryland PSC contends that the MOPR exemption for Renewable Resources should capture resources that have made investment decisions, and demonstrated a significant financial commitment to develop generation projects, prior to December 19, 2019. The December 19 Order implicitly acknowledges that Renewable Resources in development prior to December 19, 2019, may have invested considerable monetary sums in reliance upon PJM's then-existing MOPR, which categorically exempted Renewable Resources from MOPR application. As the Commission recognizes, execution of an ISA (or the filing by PJM of an unexecuted ISA) prior to December 19, 2019, is one way of noting investment decisions and financial commitment. However, ISAs should not be considered the sole method of demonstrating commitment.

Another action that would meet the threshold of demonstrating that a resource reasonably expected to participate in the capacity market in reliance upon PJM's historic MOPR would be the demonstration by a specific Renewable Resource that, prior to December 19, 2019, it has filed for and obtained authorization from a state public utility commission to receive a prescribed, long-term schedule of payments for the environmental attributes of a renewable energy project, pursuant to state legislation. Such an action would demonstrate not only the significant financial and time commitments of the Renewable Resource to obtain necessary state approval, but also the commitment of the state public utility commission to dedicate state resources to the project and the reliance on that commitment by the project developer in moving forward towards project development—all anchored by PJM's MOPR rules as they existed prior to December 19, 2019.

As an example of a project that should qualify for this exemption, on November 30, 2016, Skipjack Offshore Energy, LLC (“Skipjack”) filed with the Maryland PSC an application for approval of a 120 megawatt offshore wind project to be located off the coast of Maryland in the Delaware wind energy area, pursuant to the Maryland Offshore Wind Energy Act of 2013.¹⁹ The Maryland PSC granted the application on May 11, 2017, thereby vesting Skipjack with the right to receive payments for offshore wind renewable energy credits in accordance with a 20-year price schedule.²⁰ On May 24, 2017, Skipjack accepted the extensive conditions contained in the Maryland PSC’s May 11, 2017 Order and agreed to proceed with the project. Skipjack demonstrated a significant financial commitment to develop generation resources in reliance upon PJM’s historic MOPR by filing an application for approval with the Maryland PSC, litigating an extensive regulatory proceeding and obtaining authorization to receive payments for offshore wind renewable energy credits, prior to December 19, 2019. It also made financial payments in support of business development in the State, as required by the Maryland PSC’s order.²¹ The company has justifiably relied on PJM’s pre-December 19, 2019 MOPR in making significant financial commitments to develop its project.²²

¹⁹ See Maryland PSC Case Number: 9431, *In the Matter of the Applications of US Wind, Inc. and Skipjack Offshore Energy, LLC for a Proposed Offshore Wind Project(s) Pursuant to the Maryland Offshore Wind Energy Act of 2013*.

²⁰ Maryland PSC Case No. 9431, Order No. 88192 at 86; Appendix B.

²¹ For example, within 60 days after issuance of the Maryland PSC’s May 11, 2017 order, Skipjack contributed \$2 million to the Maryland Offshore Wind Business Development Fund, which was established pursuant to Md. Code, State Gov’t Article § 9-20C-03. The company made another \$2 million contribution one year later and committed itself to making a final \$2 million deposit two years after its initial deposit. See Maryland PSC Order No. 88192 at Appendix B, Section V(A)(1).

²² The arbitrary nature of basing the MOPR Exemption for Renewable Resources entirely upon execution of the ISA is shown through comparison of Skipjack to another offshore wind developer, US Wind, Inc. On November 21, 2016, the Maryland PSC docketed a combined regulatory proceeding to investigate the offshore wind applications of both Skipjack and US Wind. The Maryland PSC issued an order approving each of these applications on May 11, 2017, finding that it was in the public interest for each project to move forward, and approving for each a long-term price schedule for payments related to the projects’ respective environmental attributes. Both companies expended considerable time and expense prior to December 19, 2019, in order to bring the projects closer to fruition, including by making financial payments per State requirements. Skipjack’s project is ahead of US Wind’s in some ways,

In order to be consistent with the Commission's rationale in the December 2019 Order, and so as not to conflict with the April 16 Order on Rehearing,²³ the Maryland PSC requests that the Commission direct PJM to amend the exemption criteria for Renewable Resources in Proposed Tariff, Attachment DD, section 5.14(h)(6) by adding the following:

(D) prior to December 19, 2019, has filed for and obtained authorization from a state public utility commission to receive a prescribed, long-term schedule of payments for the environmental attributes of a renewable energy project, pursuant to state legislation.

C. Voluntary RECs

In its Compliance Filing, PJM distinguished between state-mandated or state-sponsored RECs, in which state law or regulation mandates that a specific percentage of renewable resources be purchased each year, and voluntary RECs, which involve purely voluntary bilateral transactions. PJM proposed that voluntary RECs, unlike state-mandated or state-sponsored RECs, be exempted from the MOPR. Specifically, PJM proposed that Capacity Market Sellers

including having a projected commercial operation date of December 2023 (compared to US Wind's December 2024 date), and having filed a Construction and Operations Plan with the Bureau of Ocean Energy Management on April 24, 2019 (which US Wind has not yet done). See Maryland PSC Case No. 9629, Maillog No. 229849; Case No. 9628 Maillog No. 228881, and Case No. 9431 Maillog No. 225145. Nevertheless, PJM has an ISA for US Wind's project, while Skipjack has not yet executed an ISA. To the extent the ISA is the only mechanism for determining whether a company has justifiably relied on PJM's pre-December 19, 2019 MOPR for investing in projects, an arbitrary result will occur that will treat very similar project developers in a disparate way.

²³ See April 16 Order on Rehearing, at P 282, denying exemption for a broader category of resources being built. In its April 16 Order on Rehearing, the Commission denied the Maryland PSC's request to base eligibility for the RPS Exemption on whether resources are "built pursuant to existing legislation or otherwise anticipated by the state before the date of the December 2019 Order." April 16 Order on Rehearing at P 282. The Commission stated that "market participants are now on notice that any new State-Subsidized renewable resources will be subject to the MOPR" and that "[f]uture investment in renewable resources intending to participate in the capacity market should be guided by this new precedent." *Id.* In accordance with that Order, the Maryland PSC has proposed language herein that is considerably narrower and will apply only to specific resources that have invested significant time and monetary resources prior to December 19, 2019 by demonstrating that they have filed for and obtained authorization from a state public utility commission to receive a prescribed, long-term schedule of payments for the environmental attributes of a renewable energy project. As discussed below, fulfillment of that test would demonstrate at least as much financial commitment (and good-faith reliance on PJM's pre-December 19, 2019 MOPR) as execution of an ISA.

who generate RECs or equivalent credits be allowed to elect the Competitive Exemption if they certify that the credits will only be used and retired for voluntary obligations as opposed to state-mandated renewable portfolio standards.²⁴ In support of that proposal, PJM stated that it will modify its Generation Attribute Tracking System (“GATS”) to “to ensure that any capacity market sellers’ self-imposed limitations on use of the RECs can be effectuated.”²⁵ Utilizing GATS, PJM stated that REC generating resources electing the Competitive Exemption will only be used for voluntary obligations.

In its Order on Rehearing, the Commission granted clarification that purely voluntary transactions for RECs are not State Subsidies and affected resources may “certify that they will only sell their RECs through voluntary REC arrangements, meaning those which are not associated with state-mandated or state-sponsored procurement.”²⁶ The Commission also found that such new and existing resources must ensure that no broker or direct buyer will resell voluntary RECs to state compliance purchasers.

The Maryland PSC supports PJM’s proposed language exempting voluntary RECs from application of the MOPR. Voluntary RECs include a wide range of bilateral transactions unrelated to state policy initiatives, and include power purchase agreements, virtual or financial power purchase agreements, market REC purchases, utility REC programs, and utility green tariff programs. Capacity Market Sellers who generate RECs or equivalent credits should be exempt from the MOPR by certifying that their credits will only be used and retired for voluntary obligations. The use of GATS should facilitate such Market Seller’s self-imposed limitations.

²⁴ PJM Compliance Filing at 43.

²⁵ PJM Compliance Filing at 44, n. 107.

²⁶ April 16 Order on Rehearing at 183.

D. Resource-Specific Exception

The Commission's December 19 Order directed PJM to "maintain the Unit-Specific Exemption, expanded to cover existing and new State-Subsidized Resources of all resource types" to operate as an "alternative to the default offer price floor."²⁷ The unit-specific exception allows Capacity Market Sellers to demonstrate that the costs of their specific resources are less than the applicable default MOPR floor price, and thereby re-set the resource's applicable MOPR floor price down to a level that represents that resource's actual costs.

In its Compliance Filing, PJM renamed the unit-specific exception the resource-specific exception, in recognition of the fact that the RTO has expanded the scope of the MOPR to apply to all types of resources (including Energy Efficiency Resources and Demand Resources) and not just generation units. PJM stated that "any resource subject to the MOPR can demonstrate that its actual costs are lower than the applicable default MOPR Floor Offer Price, and if so, such resource is permitted to offer at that lower price."²⁸ PJM's proposed rules would allow a resource-specific floor to be determined for all renewable resources using input values for financial modeling that differ from the standard values used by PJM to determine the default values.

PJM clarified that its proposed Tariff language will allow the Capacity Market Seller to choose to offer at either the default or the resource-specific price level. It stated that it would allow this election "so as not to act as a disincentive for Capacity Market Sellers willing to open their books with resource-specific information."²⁹

²⁷ December 19 Order at P 214.

²⁸ PJM Compliance Filing at 73.

²⁹ PJM Compliance Filing at 73.

PJM further stated that it will generally keep the standardized financial modeling assumptions of: (i) nominal levelization of gross costs, (ii) asset life of 20 years, (iii) no residual value, (iv) all project costs included with no sunk costs excluded, (v) use first year revenues, and (vi) weighted average cost of capital based on the actual cost of capital for the entity proposing to build the Capacity Resource. Nevertheless, PJM provided flexibility for Capacity Market Sellers to submit a resource-specific justification of an asset life other than the current default 20-year assumption. PJM observed that “20 years may not, in all instances, be appropriate as different resource types have different inherent characteristics that may allow them to remain economic for a longer period of time.”³⁰ PJM’s proposal caps the permissible term at 35 years.

The Maryland PSC generally supports PJM’s proposed language that provides additional flexibility regarding the resource-specific exception. Default MOPR floor prices for certain renewable facilities in PJM have been estimated to be relatively high, which may make it difficult for those resources to be accepted below the capacity market clearing price. Given the default offer floors in PJM’s filing and historic market clearing prices, it appears that only tracking-type solar PV resources will be able to clear a BRA auction. However, those estimates are based on existing renewable facilities in PJM and on standard assumptions about technologies, financing costs, capacity factors and revenues. Pursuant to PJM’s Compliance Filing, new renewable resources that are competitive based on their current actual costs will be able to demonstrate that fact through requests for resource-specific exceptions to the default MOPR floor prices. PJM’s proposed Tariff provisions appropriately recognize the rapidly decreasing costs of developing large-scale renewable projects and provides developers the ability to prove the competitiveness of their projects.

³⁰ PJM Compliance Filing at 74.

In particular, the Maryland PSC supports PJM's proposal to add flexibility to the resource-specific exception by allowing Capacity Market Sellers to submit resource-specific justifications of an asset life other than the default 20-year assumption. Asset life may vary by resource, and Capacity Market Sellers should have the discretion to demonstrate that their asset life will be longer than the default 20-year assumption and thereby lower their actual costs.

Nevertheless, while PJM is proposing some flexibility with respect to the 20-year life element, the RTO is not proposing any flexibility regarding any of the other standardized financial parameters (such as residual value, etc.) The Maryland PSC contends that PJM's Compliance Filing is deficient in that regard and should be revised to provide greater flexibility regarding all standardized financial parameters. The rationale provided by PJM for the increased flexibility regarding the 20-year life - "different resource types have different inherent characteristics" - should apply to the other financial parameters as well. Given that PJM is requiring documentation of all resource-specific submissions, and PJM reserves the right to calculate the resource cost in the resource-specific review context, it is not clear why any standardized parameters should be specified in the Tariff. It is also unclear why PJM has not provided similar flexibility to the other elements, even when the resource owner can document differences with respect to the other elements. The Maryland PSC therefore requests that FERC direct PJM to further expand the flexibility of the resource-specific exception by allowing Capacity Market Sellers to demonstrate actual costs with regard to all standardized financial parameters.

E. Regional Greenhouse Gas Initiative

PJM's filing contains proposed Tariff revisions that define State Subsidy to exclude any state action "that imposes a tax or assesses a charge utilizing the parameters of a regional

program on a given set of resources notwithstanding the tax or cost having indirect benefits on resources not subject to the tax or cost.”³¹ PJM specifically lists the Regional Greenhouse Gas Initiative (“RGGI”)³² as a type of program that would be excluded from the definition of State Subsidy pursuant to this Tariff provision.

The Maryland PSC supports PJM’s Tariff revisions that exclude RGGI from the definition of a State Subsidy. RGGI represents a critical multi-state effort to combat the negative effects of global warming through a market-based approach to reducing power sector carbon emissions. As PJM correctly observes, RGGI does not provide a “payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit” directly or indirectly to a resource.³³ Indeed, RGGI does not single out specific resources for favored treatment through direct payment or any other means.³⁴ Instead, RGGI imposes a regional cap on carbon emissions that is applicable to all power plants within the participating region. RGGI’s carbon emissions cap is comparable to other environmental regulations that limit power plant emissions for environmental reasons (such as nitrous oxide and sulfur dioxide emissions limitations). Although such emissions limitations can impose environmental compliance costs on affected resources, and may indirectly benefit other non-emitting resources, the limitations in no way

³¹ PJM Compliance Filing at 13

³² RGGI represents the first mandatory market-based program in the United States to reduce greenhouse gas emissions. It is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont to cap and reduce CO₂ emissions from the power sector.

³³ PJM Compliance Filing at 14, citing December 19 Order at P 19.

³⁴ RGGI’s cap and trade system works by requiring generating resources in participating RGGI states to purchase emissions allowances sufficient to cover their emissions above the cap through either regional auctions or secondary market transactions.

constitute a subsidy and should not trigger application of the MOPR. PJM's Tariff revisions therefore appropriately clarify an issue that was left unclear in the December 19 Order.³⁵

F. Auction Implementation Schedule

In its Compliance Filing, PJM does not propose a specific schedule for the next and subsequent BRAs. However, upon approval by the Commission of the proposed Tariff language appended to its Filing, PJM proposes a timeline that would include two components for the next BRA (for the 2022/2023 Delivery Year): (1) an initial adjustment and preparation period during the first two weeks after approval of its Compliance Filing, and (2) a six-month period condensing the steps routinely taken under its prior auction schedules—without pre-auction deadlines.³⁶ The proposed schedule for subsequent BRAs would include (1) an adjustment and preparation period of approximately six weeks, and (2) a four and a half month period for pre-auction activities. This proposed schedule for subsequent BRAs would progress serially through the BRAs for the 2025/2026 Delivery Year.

In its Compliance Filing, PJM suggested that, given its proposed timeline, if the Commission were to issue an order approving its proposed Tariff changes by mid-May 2020, the BRA for the 2022/2023 Delivery Year could proceed before the end of 2020.³⁷ However, in deference to states considering alternatives to having their preferred resources subjected to the Replacement Rate, PJM proposed extending the date of the BRA to as late as March 31, 2021.

³⁵ In its April 16, 2020 Order on Rehearing and Clarification, the Commission clarified that RGGI is not considered a State Subsidy because RGGI does not provide payments, concessions, rebates, or other financial benefits to resources. Nevertheless, the Commission observed that if RGGI revenues were paid directly to certain resources, it would be considered a State Subsidy. *Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) (“April 16 Order on Rehearing”) at P 390. PJM's Tariff revisions are consistent with the Commission's December 19 Order as well as its Order on Rehearing and should be accepted.

³⁶ PJM Compliance Filing at 85.

³⁷ PJM Compliance Filing at 85.

PJM conditioned this provision upon a state enacting legislation prior to June 1, 2020, directly applicable to new elections of the FRR Alternative mechanism currently in its Tariff.³⁸

PJM's proposed auction schedule for the next BRA for Delivery Year 2022/2023, including the provision for extending the auction to March 31, 2021, is unworkable, and should be rejected.

The Maryland PSC requested that PJM be directed to delay conducting any future capacity auction to no earlier than May 2021,³⁹ which is the schedule that PJM should be required to pursue. As noted in its Request for Rehearing, this delay—which is eminently reasonable—would allow the various applicable state legislatures, including the Maryland General Assembly, enough time to consider options to protect state-preferred resources that will be effectively excluded from clearing the PJM capacity market, and to propose alternatives to the Commission's required Replacement Rate in the interest of their citizens.⁴⁰

Since the time when the Maryland PSC first proposed the “no earlier than May 2021” schedule, this imperative has become even more pronounced. On March 18, 2020, the Maryland General Assembly adjourned early without completing its full session (for the first time since the Civil War), due to the state of emergency announced by the Governor concerning the coronavirus (i.e., COVID-19) pandemic. Prior to the abrupt adjournment of the legislative session, Maryland legislators were actively engaged (along with the Maryland PSC, other state agencies, PJM, and Maryland utility stakeholders) in exploring the implications of the Commission's December 2019 Order with respect to the future of state preferred (clean energy) resources, which would be subjected to the Replacement Rate MOPR and potentially excluded

³⁸ PJM Compliance Filing at 86.

³⁹ Maryland PSC Request for Rehearing (Jan. 21, 2020) at 5.

⁴⁰ Maryland PSC Request for Rehearing (Jan. 21, 2020) at 5 n8.

from the capacity market. And the adjournment preceded the April 16 Order, which will no doubt require even further assessment. The Maryland General Assembly is scheduled to reconvene on January 13, 2021,⁴¹ with little time to consider, let alone draft any necessary legislative solutions that could be implemented prior to a May 2021 BRA.

PJM's proposed schedule is also unworkable in light of the Commission's recent April 16 Order on Rehearing, which requires PJM to submit a further compliance filing by June 1, 2020.⁴² It should be noted that June 1, 2020, is the exact date PJM proposed for requiring state legislatures to enact applicable statutes directly applicable to new elections of the FRR Alternative. Even without a state of emergency, this deadline would be unreasonable. PJM, expecting a Commission order on compliance by mid-May 2020, was effectively alerting states that if they could not enact enabling legislation within two weeks, the BRA would move forward. Additionally, the June 1, 2020 deadline is an arbitrary date. PJM's Reliability Assurance Agreement ("RAA") requires applicable parties to notify the RTO of plans to adopt the FRR Alternative four months prior to an auction.⁴³ And PJM's RAA enables a utility electing the FRR alternative for the first time pursuant to "State Regulatory Structural Change"⁴⁴ – i.e., changes that initiate, expand, or terminate retail choice programs – to provide PJM with notification of such election no later than two months prior to an auction,⁴⁵ rather than the four-month prior notice that would otherwise apply to states not required to pursue such changes to their retail choice programs in order to adopt the FRR alternative. Assuming the BRA were to be

⁴¹ Maryland Constitution, Article III, Section 14.

⁴² April 16 Order on Rehearing at PP 197, 203. The Maryland PSC reserves its right to further supplement its comments and/or protest upon PJM's filing of its additional compliance filing.

⁴³ PJM Reliability Assurance Agreement, Schedule 8.1.C.1.

⁴⁴ RAA, Article 1, Definitions

⁴⁵ PJM Reliability Assurance Agreement, Schedule 8.1.C.3.

held at the end of 2020, the June 1, 2020 date would be inconsistent with schedules allowed in PJM's RAA.

Given that a Commission order on a second compliance filing is not expected until July 2020,⁴⁶ it would be impossible for state legislatures to weigh the Commission's decision on the compliance order against the need for an alternative path, even if they still were in session. For those reasons, the Maryland PSC stands by its recommended "no earlier than May 2021" schedule for PJM's next BRA for the 2022/2023 Delivery Year.

III. CONCLUSION

For the foregoing reasons, the Maryland Public Service Commission respectfully requests that the Commission accept the Compliance Filing of PJM, subject to the proposed revisions discussed in the body of these Comments and Limited Protest. In particular, the Maryland PSC requests that the Commission (1) accept PJM's proposal to exempt from the definition of State Subsidy any state-directed default service procurement that is competitively procured and does not require a specific fuel type; (2) accept PJM's language that expands the MOPR exemption regarding certain Intermittent Resources due to prior investment decisions, but requests that this exemption apply to Renewable Resources which, prior to December 19, 2019, have filed for and obtained authorization from a state public utility commission to receive a prescribed, long-term schedule of payments for the environmental attributes of a renewable energy project, pursuant to state legislation; (3) accept PJM's proposed language exempting voluntary RECs from application of the MOPR; (4) accept PJM's proposed language that provides additional

⁴⁶ This assumed date reflects the June 1, 2020 deadline for PJM's second compliance filing, time for parties to file comments on that compliance filing, and time for the Commission to consider and address the compliance filing and comments in a compliance order.

flexibility regarding the resource-specific exception, especially with regard to allowing Capacity Market Sellers to submit a resource-specific justification of an asset life longer than 20 years, but require PJM to provide similar flexibility regarding other standardized financial parameters; (5) accept PJM's Tariff revisions that exclude the Regional Greenhouse Gas Initiative from the definition of a State Subsidy; and (6) reject PJM's auction implementation schedule, and direct PJM to delay conducting any future capacity auction to no earlier than May 2021.

Respectfully submitted,

H. Robert Erwin, Jr.
General Counsel

Miles H. Mitchell
Deputy General Counsel

/s/ Ransom E. Davis

Ransom E. Ted Davis
Associate General Counsel
Public Service Commission of Maryland
6 St. Paul Street – 16th Floor
Baltimore, MD 21202
Tel: (410) 767-8076
Ransom.Davis@Maryland.gov

Dated: May 15, 2020.

Document Content(s)

MDPSC Protest PJM Compliance (final).PDF.....1