173 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

Calpine Corp.; 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. EL16-49-003
v.	
PJM Interconnection, L.L.C.	
PJM Interconnection, L.L.C.	EL18-178-003
PJM Interconnection, L.L.C.	ER18-1314-003 ER18-1314-004 ER18-1314-006 (Consolidated)

ORDER ON COMPLIANCE, GRANTING WAIVER REQUEST, ADDRESSING ARGUMENTS RAISED ON REHEARING, AND SETTING ASIDE PRIOR ORDER, IN PART

(Issued October 15, 2020)

Paragraph Numbers

1. On March 18, 2020, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to the PJM Open Access Transmission Tariff (Tariff) in compliance with the requirements of the Commission's December 19, 2019 order, along with a request to waive the Tariff provisions that prescribe set dates or timelines for conducting certain capacity auctions and pre-auction activities.[1] On June 1, 2020, PJM submitted proposed revisions to the Tariff in compliance with the requirements of the Commission's April 16,

[1] *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (December 2019 Order).

2020 order on rehearing.[2] As discussed below, we find that PJM complies in part, and accordingly we accept PJM's compliance filings, in part, to be effective as of the date of this order. We also reject PJM's compliance filings in part and direct PJM to submit a compliance filing within 30 days of this order, as detailed below.

2. On May 18, 2020, the Pennsylvania Public Utility Commission (Pennsylvania Commission), Energy Harbor LLC (Energy Harbor),[3] Northern Virginia Electric Cooperative, Inc. (NOVEC), Vistra Companies (Vistra), and National Rural Electric Cooperative Association and East Kentucky Power Cooperative (NRECA/EKPC) submitted requests for rehearing and/or clarification of the Rehearing Order. The Market Monitor filed a request for clarification on May 18, 2020 of the Rehearing Order, and on May 15, 2020, Exelon Corporation filed a request for clarification of the Rehearing Order. Pursuant to *Allegheny Defense Project v. FERC*,[4] the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act,[5] we are modifying the discussion in the Rehearing Order and continue to reach the same result in this proceeding,[6] as it relates to the rehearing requests by NOVEC and NRECA/EKPC. As to the rehearing requests by

[2] *Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) (Rehearing Order).

[3] Energy Harbor LLC was formally known as FirstEnergy Solutions Corporation having changed its name upon emerging from Chapter 11 bankruptcy protection on February 27, 2020.

[4] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

[5] 16 U.S.C. § 825*l*(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter."). A number of petitions for review have been filed in the U.S. Court of Appeals for the Seventh Circuit and in the U.S. Court of Appeals for the District of Columbia Circuit relating to the Commission's prior orders in this proceeding. The U.S. Court of Appeals for the Seventh Circuit granted a motion by the Commission to hold these petitions in temporary abeyance, pending the outcome of this order. *See* Order, Case No. 20-1645 (7th Cir. July 10, 2020).

[6] *See Allegheny Def. Project*, 964 F.3d at 16-17.

Energy Harbor, Vistra and the Pennsylvania Commission, we set aside the order, in part, as discussed below.[7]

I. Background

3. Acting on a complaint filed by Calpine Corporation and additional generation entities[8] and a filing by PJM to amend its Tariff, the Commission issued an order on June 29, 2018, finding that PJM's Tariff was unjust and unreasonable because it failed to protect the integrity of competition in PJM's wholesale capacity market against unreasonable price distortions and cost shifts caused by out-of-market support to keep existing uneconomic resources in operation, or to support the uneconomic entry of new resources.[9] In the June 2018 Order, the Commission also *sua sponte* initiated a proceeding under section 206 of the Federal Power Act (FPA)[10] and established a paper hearing to determine a just and reasonable replacement rate. Upon review of the testimony filed in the paper hearing, the Commission issued the December 2019 Order directing PJM to implement a replacement rate, consistent with the Commission's guidance in that order.[11] Specifically, the December 2019 Order directed PJM to retain its current mitigation of new natural gas-fired resources under the pre-existing Minimum Offer Price Rule (MOPR), while extending the MOPR to include both new and existing

[7] *Id.*

[8] Calpine Corporation was joined by 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.

[9] *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236, at P 150 (2018) (June 2018 Order).

[10] 16 U.S.C. § 824e.

[11] December 2019 Order, 169 FERC ¶ 61,239.

resources, internal and external, that receive, or are entitled to receive, State Subsidies,[12] subject to certain exemptions.[13]

4. On April 16, 2020, the Commission issued orders on rehearing of the June 2018 Order[14] and the December 2019 Order.[15] The Rehearing Order directed further compliance from PJM on several issues, as explained below.

II. Notice and Responsive Pleadings

5. Notice of PJM's first compliance filing was published in the *Federal Register*, 85 Fed. Reg. 16,936 (Mar. 25, 2020) with interventions and protests due on or before April 22, 2020. On March 25, 2020, PJM filed an errata, which was published in the *Federal Register*, 85 Fed. Reg. 17,872 (Mar. 31, 2020) with interventions and protests due on or before April 15, 2020. On March 31, 2020 the Commission issued a notice extending the comment deadline to May 15, 2020. Timely-filed motions to intervene were submitted by Lendlease Energy Development LLC, GlidePath Development LLC, Leeward Renewables Energy Development, LLC, Hillcrest Solar I, LLC, the Interstate Gas Supply, Inc. and Electricity Consumers Resource Council.[16] On September 13, 2020 and

[12] The December 2019 Order defined State Subsidy 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 allowing a resource to clear in any PJM capacity auction." December 2019 Order, 169 FERC ¶ 61,239 at P 67.

[13] *Id.* P 2.

[14] *Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,034 (2020) (June Rehearing Order).

[15] Rehearing Order, 171 FERC ¶ 61,035.

[16] For a listing of previously granted interventions in this proceeding, *see* December 2019 Order, 169 FERC ¶ 61,239 at app. 1; June 2018 Order, 163 FERC ¶ 61,236 at apps. 1 & 2.

October 13, 2020, Rodan Energy Solutions (USA) Inc. (Rodan) filed untimely motions to intervene. Entities filing comments are listed in Appendix 1 of this order.

6. Notice of PJM's second compliance filing was published in the *Federal Register*, 85 Fed. Reg. 35,084 (June 8, 2020) with interventions and protests due on or before June 22, 2020. Comments on PJM's second compliance filing were submitted by the entities reflected in Appendix 1.

7. Exelon, EKPC/SMECO, Advanced Energy Entities, Clean Energy Associations, NOVEC, the Market Monitor and PJM filed motions for leave to answer and answers to comments and protests related to PJM's first or second compliance filing.

III. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we deny Rodan's late filed motions to intervene as Rodan did not demonstrate the requisite good cause having advanced no argument in support of its late filed motions to intervene.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest or answer. We accept the answers filed by Exelon, EKPC/SMECO, Advanced Energy Entities, Clean Energy Associations, NOVEC, the Market Monitor and PJM because they have provided information that assisted us in our decision-making process.

10. The Ohio Commission filed comments in support of the Pennsylvania Commission's request for rehearing. Rule 713(a)(2) of the Commission's Rules of Practice and Procedure[17] prohibits answers to a request for rehearing, and we will, therefore, reject the Ohio Commission's comments.

IV. Substantive Matters

11. We accept in part, reject in part, and specify modifications to PJM's proposed Tariff revisions to implement the expanded MOPR and related exemptions, and direct a further compliance filing. The accepted Tariff revisions will be effective as of the date of this order. Except as discussed below, we accept the proposed Tariff revisions without modification. We direct PJM to submit a further compliance filing within 30 days of the date of this order, as discussed below.

[17] 18 C.F.R. § 385.713(d)(1) (2020).

A. Resources Subject to the Expanded MOPR

1. Compliance Directives

12. The December 2019 Order directed PJM to apply the MOPR to all new and existing, internal and external, State-Subsidized Resources that participate in the capacity market, regardless of resource type, with certain exemptions.[18] The order further found that a capacity resource should be considered to be entitled to receive a State Subsidy if the resource previously received a State Subsidy and has not cleared a capacity auction since that time.[19] The December 2019 Order also found that any uprates (i.e., incremental increases in the capability of existing resources) should be treated as new for the purposes of the expanded MOPR.[20] The Rehearing Order clarified that the definition of State Subsidy and the MOPR exemptions apply to each co-owner's share of a resource, rather than the whole resource, such that only the portion of the resource receiving a State Subsidy will be subject to mitigation under the December 2019 Order.[21]

13. The December 2019 Order also granted a limited one-time exemption for existing demand-side resources that have paused participation in the capacity market due to Capacity Performance.[22] The Rehearing Order clarified that all resources not subject to the Capacity Performance must-offer requirement will be treated as new resources if they seek to re-enter the capacity market after choosing not to participate in a particular auction.[23] Finally, the Rehearing Order clarified that only the cleared portion of a resource is considered existing, unless otherwise specified in that order.[24]

2. PJM's Compliance Filings

14. PJM proposes Tariff revisions that will apply the MOPR to any capacity resource that receives or is entitled to receive State Subsidies (Capacity Resources with State Subsidy), while continuing to apply the pre-existing MOPR to new natural gas-fired

---

[18] December 2019 Order, 169 FERC ¶ 61,239 at P 50.

[19] *Id.* P 75.

[20] *Id.* P 149.

[21] Rehearing Order, 171 FERC ¶ 61,035 at P 247.

[22] December 2019 Order, 169 FERC ¶ 61,239 at P 209.

[23] Rehearing Order, 171 FERC ¶ 61,035 at P 60.

[24] *Id.* P 398.

combustion turbine (CT) and combined cycle (CC) resources.[25] PJM proposes to define Capacity Resource with State Subsidy as any capacity resource for which the relevant capacity market seller receives or is entitled to receive a State Subsidy.[26] PJM proposes that New Entry Capacity Resource with State Subsidies[27] shall refer to new Capacity Resources with State Subsidies (including new uprates) that have not cleared in a capacity auction pursuant to a sell offer at or above either the default new entry offer price floor or a resource-specific offer price floor,[28] other than resources that qualify for an exemption. New Entry Capacity Resources with State Subsidies will remain such, PJM states, until they clear an auction based on the applicable offer price floor and become Cleared Capacity Resources with State Subsidy.[29]

15. In addition to the general rule that capacity resources receiving or entitled to receive State Subsidies will be subject to the expanded MOPR, PJM states it identified three other scenarios in which a capacity resource will be considered subject to the expanded MOPR. First, PJM proposes, as directed by the December 2019 Order, that any resource that previously received a State Subsidy and has not cleared a capacity auction since that time will be subject to the expanded MOPR, regardless of whether the resource is still receiving or entitled to receive a State Subsidy.[30]

16. Second, PJM proposes that capacity market sellers that do not own the underlying generating facility, but may nonetheless benefit from any State Subsidy received by the resource's owner, will also be considered subsidized. PJM explains this includes, for

---

[25] PJM Compliance Filing to December 2019 Order Transmittal at 5-6 (First Transmittal); PJM Compliance Filing to Rehearing Order Transmittal at 3-4 (Second Transmittal).

[26] First Transmittal at 6; Second Proposed Tariff, Definitions C-D, L-M-N. We direct changes to PJM's proposed definition of Cleared Capacity Resource with State Subsidy and New Capacity Resource with State Subsidy *infra* IV.G.4.

[27] PJM initially proposed to combine the existing MOPR and the new expanded MOPR into one Tariff section but revised its proposal to separate the two in the second compliance filing. Second Transmittal at 3-4.

[28] PJM explains that, rather than Unit-Specific Exemption, PJM proposes to refer to the exemption as the Resource-Specific Exception. Similarly, resources that receive the exemption will offer pursuant to resource-specific offer price floors. First Transmittal at 3 n.10, 7. For simplicity, we use PJM's term in this order.

[29] *Id.* at 7-8.

[30] *Id.* at 19-20.

example, situations where a renewable resource sells Renewable Energy Credits (REC) to one buyer and capacity rights to another. PJM states that in this situation, although the seller of such a capacity resource may not technically be entitled to a State Subsidy because the contract only provides for capacity rights for the resource and not RECs, the resource should still be subject to the MOPR because the owner of such renewable resource may be able to sell the capacity rights to the capacity market seller for less than the actual costs due to other revenue derived from RECs. Accordingly, PJM proposes that a Capacity Resource with a State Subsidy will include any

> Capacity Resource that is the subject of a bilateral transaction (including but not limited to those reported pursuant to Tariff, Attachment DD, section 4.6) shall be deemed a Capacity Resource with State Subsidy to the extent the transacting owner of the facility supporting the Capacity Resource is entitled to a State Subsidy associated with such facility even if the Capacity Market Seller is not entitled to a State Subsidy.[31]

17. Third, PJM proposes that a State Subsidy provided to the owner of a jointly owned facility will not constitute a State Subsidy as to other resource owners (who do not receive a subsidy) if the joint ownership arrangement provides that the material rights and obligations of such generating facility are in *pari passu*, meaning allocated among owners pro rata based on ownership share. PJM thus states that jointly owned resources which do not allocate rights and obligations *pari passu* and have at least one owner entitled to a State Subsidy will be known as Jointly-Owned Cross-Subsidized Capacity Resources and subject to MOPR. PJM explains this is necessary because resources supported by the same facility are not truly independent in this instance, and the public benefits received by one owner can affect the ownership costs of the others, creating a cross-subsidy.[32]

18. Finally, PJM proposes that, to comply with the Rehearing Order,[33] only the cleared portion of a New Entry Capacity Resource with State Subsidy is eligible to become a Cleared Capacity Resource with State Subsidy. PJM explains it will use installed capacity (ICAP) to track which part of a resource has cleared, because, while sell offers

---

[31] First Transmittal at 20; *see* Second Proposed Tariff, Definitions C-D (definition of Capacity Resource with State Subsidy).

[32] *Id.* at 21-23; *see* First Proposed Tariff, Definitions I-J-K (definition of Jointly Owned Cross-Subsidized Capacity Resource).

[33] Rehearing Order, 171 FERC ¶ 61,035 at P 398.

are based on unforced capacity (UCAP), that value can change year to year based on a resource's forced outage rate.[34]

19. PJM also proposes revisions to comply with the Rehearing Order's findings regarding resources not subject to a must-offer requirement.[35] Specifically, PJM proposes changes to make clear that a resource will lose its status as a Cleared Capacity Resource with State Subsidy if no available MW from the resource is offered into a Base Residual Auction (BRA)[36] or included in a Fixed Resource Requirement (FRR)[37] capacity plan at the time of the BRA.[38] PJM states that the BRA is an appropriate threshold because it is the primary means for securing capacity commitments and sending entry and exit signals.[39] PJM also explains that it is necessary for the BRA to be the trigger, as opposed to any capacity auction, which would include incremental auctions, to avoid a resource having two different offer price floors for the same resource in the same delivery year. PJM also argues that applying this rule to any auction, instead of just the BRAs, would effectively impose a must-offer requirement for all capacity resources, despite the Commission not ordering any changes to that requirement. Further, PJM contends it would be "highly complex and unduly burdensome" to track resource participation between each auction. PJM explains that it understands the Rehearing Order as requiring only that a resource participate each year, and not as replicating the must-offer requirement for resources not currently subject to it. This means that the full

[34] Second Transmittal at 14-15.

[35] Rehearing Order, 171 FERC ¶ 61,035 at P 60.

[36] Base Residual Auction refers to PJM's annual capacity auction conducted three years prior to the start of the delivery year. PJM Tariff, Definitions A – B.

[37] The FRR Alternative provides an alternative to the capacity market by which an eligible load-serving entity to satisfy its capacity obligations. PJM Reliability Assurance Agreement, Schedule 8.1.A – The Fixed Resource Requirement (FRR) Alternative.

[38] Second Transmittal at 9-11. PJM clarifies that the capacity resource will be deemed a New Entry Capacity Resource with State Subsidy until it once again clears a capacity auction pursuant to its sell offer at or above its resource-specific offer price floor or the applicable default new entry offer price floor.

[39] *Id.* at 9-11.

MW capability of a resource does not need to be offered into a BRA to maintain its status as a Cleared Capacity Resource with State Subsidy.[40]

3. Comments, Protests, and Answers

20. Clean Energy Associations, EDF Renewables, and Buyers Group object to PJM's treatment of resources subject to bilateral agreements, arguing that PJM's proposal to exclude jointly-owned resources with in *pari passu* ownership arrangements should likewise apply to other commercial arrangements, including bilateral transactions. Clean Energy Associations argue that PJM's proposal should afford comparable treatment to transaction structures that would ensure that the rights and obligations associated with a State Subsidy are assignable and severable between multiple capacity market sellers. Clean Energy Associations assert that other transactions could create a relationship between multiple capacity market sellers that is comparable to that of jointly-owned cross-subsidized capacity resources with in *pari passu* ownership arrangements, even if the resource itself is not technically jointly owned between the capacity market sellers.[41]

21. In response to these protests, PJM agrees that it is reasonable to find that where a State Subsidy is assignable and the underlying resource has not received and will not receive any other form of State Subsidy, the seller can demonstrate it is not offering a State-Subsidized Resource. Specifically, PJM states that where the rights and obligations among multiple off-takers are in equal shares (similar to *pari passu* arrangements for jointly owned resources) and where the capacity resource is only entitled to the State Subsidies that are assignable, the underlying resource will not receive any form of State Subsidy. PJM states that, in order to avoid State Subsidies that are indirectly passed down, in practice, this scenario would only be possible when the resource generates RECs and receives no other form of State Subsidy because PJM believes there is no other form of State Subsidy that can be assignable among bilateral off-takers.[42]

22. In its answer, PJM thus proposes compliance language to modify the Competitive Exemption if the Commission so directs. This language would require a seller that is a party to a bilateral transaction to certify that the seller's share of the right to energy, capacity, and RECs of the underlying resources are pro rata and akin to joint owners of capacity resources where the rights and obligations are in *pari passu*. PJM further states

---

[40] *Id.* at 11. PJM also proposes that this rule should apply beginning with the BRA for the 2022/2023 delivery year. Second Transmittal at 11-12.

[41] Clean Energy Associations Comments on First Compliance Filing at 15-16; EDF Renewables Comments on First Compliance Filing at 1, 4-5; Buyers Group Comments on First Compliance Filing at 9-10.

[42] PJM June 3 Answer at 19-21.

that, pursuant to this language, the capacity market seller would also need to certify and demonstrate, if requested by PJM and the Market Monitor, that the underlying capacity resource did not receive, is not receiving, and will not be entitled to receive a State Subsidy used to support the construction, development, or operation of the resource.[43]

23. The Market Monitor argues PJM's proposal with regard to the must-offer requirement should be rejected, because it does not require market participants to offer their entire capacity into every auction, including incremental auctions. The Market Monitor argues that failure to participate in an incremental auction should be considered failure to participate, with the associated consequences, and that if a resource offers less than its full capability, only the offered MW should be considered participating. The Market Monitor also argues the Commission should reject PJM's proposal regarding FRR entities, contending that if a resource does not offer into the auction, it should lose its status as a Cleared Capacity Resource with State Subsidy, regardless of whether the resource participated in an FRR plan during that time.[44]

24. The Market Monitor states that PJM proposes that, for new resources, only the MWs, in installed capacity, that clear an auction will transition to existing for the purposes of the MOPR. The Market Monitor argues that PJM should specify exactly how the conversion to installed capacity would be calculated and that, for generators, the conversion should use the sell offer EFORd.[45] The Market Monitor also opposes PJM's proposal to only transition the cleared portion of a new resource to an existing resource prospectively. The Market Monitor argues that there is no rationale for applying two definitions of clearing for MOPR application purposes.[46]

25. In response to the Market Monitor's concerns about FRR plan participation, PJM argues the Market Monitor overlooks that the FRR Alternative is a valid, Commission-approved means for meeting the PJM region's capacity needs, and that the Market Monitor's proposed approach features various unworkable complexities and illogical consequences. PJM argues that a capacity resource's ability to retain its "Cleared" status should not be impacted regardless of whether it is satisfying capacity obligations in the PJM region through an FRR capacity plan or through the BRA. Instead, PJM notes, a

---

[43] *Id.* at 21 (proposing edits to Second Proposed Tariff, Attach. DD, § 5.14(h-1)(4)(A)).

[44] Market Monitor Comments on Second Compliance Filing at 2-3.

[45] EFORd is the equivalent demand forced outage rate. *See* PJM Reliability Assurance Agreement Schedule 5.

[46] Market Monitor Comments on Second Compliance Filing at 3-4; Market Monitor July 23 Answer at 5.

capacity resource's "Cleared" status should be reverted to "New" only if such resource elects not to participate in meeting the capacity needs of the PJM region. PJM also asserts that there is no opportunity for capacity market sellers to game PJM's approach since a New Entry Capacity Resource with State Subsidy cannot simply be included in an FRR capacity plan and subsequently return to a Reliability Pricing Model (RPM) auction with the benefit of being treated as a Cleared Capacity Resource with State Subsidy without first clearing an auction at or above the default new entry MOPR offer price floor.[47]

26. PJM states that to implement the Market Monitor's suggested approach, requiring participation in every auction and not only the BRA, PJM would need to track whether the resource participated in any later-occurring incremental auctions for prior delivery years to determine whether the applicable price floor for subsequent incremental auctions should be based on its avoidable cost rate or new entry costs. PJM states this approach would require substantial system changes in order to track the resources based on participation in both the BRA and incremental auctions. PJM reiterates its approach of only requiring participation in each BRA meets important objectives without illogical results, as it incents the largest number of resources possible participate in each BRA, which is the primary means for securing capacity commitments, and allows the BRA clearing price to send the entry and exit signal to the market.[48]

27. Finally, PJM argues that the Market Monitor erroneously contends that PJM's approach of considering all megawatts (MW) of capacity capability of a resource that cleared a capacity auction before the December 2019 Order as cleared should be rejected because it does not comply with the Commission's directives. PJM asserts that the Commission set December 19, 2019 as a clear demarcation line, and that PJM's approach is just and reasonable and compliant with the Commission's directives.[49]

28. In its July 23 answer, the Market Monitor argues that allowing resources to not offer in an auction because of FRR plan participation and then reenter the RPM market at an unmitigated sell offer is the type of behavior the Commission meant to address with its clarification in the Rehearing Order.[50] The Market Monitor argues that PJM fails to explain how tracking participation in incremental auctions would require more effort than tracking participation in BRAs or bilateral transactions or why it should be assumed that

---

[47] PJM July 7 Answer at 5-7.

[48] *Id.* at 7-9.

[49] *Id.* at 10-11.

[50] Market Monitor July 23 Answer at 3 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 60).

the net costs of a resource that skips an auction have not changed. Finally, the Market Monitor asserts that it is unreasonable that a resource can offer, for example, 0.1 MW of a 10 MW resource to remain an existing resource.[51]

29. In its August 5 answer, Exelon argues that resources committed through an FRR plan meet the must-offer obligation and are treated as committed capacity by PJM, and therefore cannot reasonably be viewed as skipping auctions. Exelon further argues that the FRR Alternative is a legitimate way to procure and supply capacity, and a capacity resource that previously cleared in the capacity market should not lose its "cleared" status because it subsequently participates in an FRR plan.[52]

4. Commission Determination

30. We accept in part, and modify in part, PJM's proposed Tariff revisions to apply the MOPR to any capacity resource that receives or is entitled to receive a State Subsidy and direct further compliance as discussed below. Specifically, we agree with commenters' proposal and PJM's answer thereto, that sellers involved in bilateral transactions should be allowed to elect the Competitive Exemption where the rights and obligations among multiple off-takers are in equal shares (similar to the *pari passu* arrangements for jointly-owned resources) and where the capacity resource is only entitled to the State Subsidies that are assignable. Consistent with the directives of the December 2019 Order, we reiterate that only the portion of the resource receiving a State Subsidy will be subject to mitigation.[53] We find that the proposal put forth in PJM's June 3 answer is a just and reasonable method of permitting resources with bilateral contracts and multiple off-takers that are not able cross-subsidize to certify that they are not State Subsidized. To the extent a capacity market seller can demonstrate that the underlying resource that is the subject of a bilateral transaction does not receive, is not receiving, and will not be entitled to receive a State Subsidy used to support the construction, development, or operation of the resource, we find that PJM's proposed certification through the Competitive Exemption is appropriate. We therefore direct PJM to submit a

[51] *Id.* at 4-5.

[52] Exelon August 5 Answer at 7-10.

[53] December 2019 Order, 169 FERC ¶ 61,239 at P 161 ("[R]esources that do not receive State Subsidies should be able to participate in the capacity market without mitigation, subject to PJM's existing buyer-side market rules.").

compliance filing implementing these Tariff revisions within 30 days of the date of this order.[54]

31. With that modification, we find that PJM's proposal is consistent with the prior orders and a reasonable implementation of the directives in the December 2019 Order regarding capacity resources subject to the expanded MOPR. In accordance with the December 2019 Order, PJM specifically proposes that any resource that previously received a State Subsidy and has not cleared the auction since that time will be subject to the expanded MOPR. We agree with and accept this provision as consistent with the December 2019 Order.

32. We likewise accept PJM's proposal to subject Jointly-Owned Cross-Subsidized Capacity Resources to the MOPR for those jointly-owned resources that do not allocate rights and obligations *pari passu* and have at least one owner entitled to a State Subsidy.[55] The Rehearing Order clarified that where a resource is jointly-owned, only the portion of the resource that is receiving a State Subsidy will be subject to the expanded MOPR; therefore PJM's proposal is consistent and reasonable as it ensures that jointly-owned resources are subject to the expanded MOPR as appropriate.[56]

33. We also accept PJM's proposal with regard to resources not subject to the must-offer requirement. We disagree with the Market Monitor that the entire capacity of such a resource must be offered into each auction, including incremental auctions, to maintain its status as an existing resource, because the Rehearing Order did not require that.[57] The Rehearing Order found that all resources not subject to the Capacity Performance must-offer requirement will be treated as new resources if they seek to re-enter the capacity market after choosing not to participate in a particular auction.[58] We agree with PJM that the BRA is an appropriate threshold because it is the primary means of securing capacity. We further agree that using the incremental auctions as a threshold would be burdensome. Therefore, we accept PJM's proposal as consistent with the prior orders.

---

[54] *See* PJM June 3 Answer at 21 (suggesting revisions to Second Proposed Tariff, Attach. DD, § 5.14(h-1)(4)(A) to implement this change).

[55] First Proposed Tariff, Definitions I-J-K.

[56] Rehearing Order, 171 FERC ¶ 61,035 at P 247.

[57] We direct modifications to PJM's proposed definition of Cleared Resource with State Subsidy and New Entry Capacity Resource with State Subsidy. *See infra* IV.G.4.

[58] Rehearing Order, 171 FERC ¶ 61,035 at P 60.

34. We disagree with the Market Monitor's argument regarding FRR resources. The Rehearing Order found that existing self-supply capacity within an FRR capacity plan qualified for the Self-Supply Exemption upon reentering the BRA.[59] Consistent with this directive, which treats State-Subsidized Resources participating in an FRR capacity plan as existing for the purposes of the exemptions to the expanded MOPR, we find that PJM's proposal that resources in FRR capacity plans will not lose their status as Cleared Capacity Resources with State Subsidy, should they have such status, solely because they participate in an FRR capacity plan instead of the BRA for a given auction is consistent with the prior orders.

35. Finally, we accept PJM's proposal that only the cleared portion of the resource will become existing. We agree with the Market Monitor that, for generators, the conversion should use the sell offer EFORd. However, we disagree with the Market Monitor that PJM should apply this rule retroactively, as the prior orders have already established that, for the purposes of applying the default and resource-specific offer price floors, any resource that has previously cleared an auction will be considered existing.[60] The Rehearing Order granted clarification, but not rehearing, that only the cleared portion of a resource would be considered existing. Therefore, PJM's proposal is consistent with the prior orders.

B. Definition of State Subsidy

1. General Matters

a. Compliance Directives

36. The December 2019 Order found that State Subsidy should be defined as follows:

> 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

[59] *Id.* P 245.

[60] December 2019 Order, 169 FERC ¶ 61,239 at P 2 n.5.

> the effect of allowing a resource to clear in any PJM capacity auction.[61]

b. PJM's Compliance Filings

37. PJM proposes to include the definition of State Subsidy from the December 2019 Order with what PJM characterizes as non-substantive modifications.[62] Specifically, PJM proposes the definition to be:

> a direct or indirect payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is a result of any action, mandated process, or sponsored process of a state government, political subdivision or agency of a state or an electric cooperatives formed pursuant to state law, and that (1) 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 (2) will support the construction, development, or operation of new or existing Capacity Resource; or (3) could have the effect of allowing a unit to clear in any PJM capacity auction.[63]

38. PJM also proposes seven programs that are categorically not State Subsidies, addressed further below.

c. Protest

39. Environmental Defense Fund states that Commission regulations specify that a filing may be rejected if it fails to comply with any "applicable statute, rule, or order,"[64] and therefore argues that PJM's first compliance filing should be rejected because, as a product of the December 2019 Order, it is not supported by substantial evidence, and is an arbitrary and capricious replacement rate that impedes upon state jurisdiction in violation of the FPA.[65] In the event the Commission does not reject the compliance

---

[61] *Id.* P 67.

[62] First Transmittal at 12.

[63] *See* Second Proposed Tariff, Definitions R-S, State Subsidy Definition.

[64] Environmental Defense Fund Protest of First Compliance Filing at 4-5 (citing 18 C.F.R. § 385.2001(b)).

[65] *Id.* at 2, 4-5.

filing, Environmental Defense Fund argues that the definition of State Subsidy incorporated by PJM on compliance is vague, creating a number of problems. Specifically, Environmental Defense Fund argues that the State Subsidy definition does not clearly and specifically describe what is or is not a subsidy, and thus violates the Commission's regulations requiring that tariffs "clearly and specifically" set forth all rates and charges and classifications, practices, rules and regulations affecting such rates.[66] Given the asserted vagueness of the State Subsidy definition, Environmental Defense Fund argues it also fails to provide sufficient notice of the meaning and effect of the term.[67]

40. Further, according Environmental Defense Fund, the lack in clarity in the State Subsidy definition can undermine the Commission's Office of Enforcement oversight, arguing that under Order No. 670,[68] the key component to the Commission's enforcement oversight is determining if the *purpose* of a market participant's action was to impair a well-functioning market, and it will be difficult to determine whether a market participant that fails to identify a State Subsidy does so for the purpose of fraudulent behavior.[69]

d. Commission Determination

41. We accept PJM's proposed definition of State Subsidy as consistent with the December 2019 Order. In that order, the Commission defined State Subsidy[70] and PJM proposes to incorporate the Commission's definition in its Tariff, with non-substantive

[66] *Id.* at 7 (citing 18 C.F.R. § 35.1(a) (2020)). For instance, Environmental Defense Fund states that West Virginia legislation providing tax incentives for the production and sale of coal may be considered a State Subsidy and would require PJM to identify all market participants that acquire coal from West Virginia to determine the market implications of the legislation.

[67] *Id.* at 7-9 (citing *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 3 (2008) ("[T]ariff rules must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations."), *order on reh'g*, 126 FERC ¶ 61,320 (2009)).

[68] *Prohibition of Energy Market Manipulation*, Order No. 670, 114 FERC ¶ 61,047 (2006).

[69] Environmental Defense Fund Protest of First Compliance Filing at 12.

[70] December 2019 Order, 169 FERC ¶ 61,239at P 67.

modifications.[71] Environmental Defense Fund's arguments that the Commission should reject PJM's definition lack merit. The question before the Commission in reviewing PJM's compliance filing is whether it is consistent with the underlying orders.[72] Because PJM incorporated the definition of State Subsidy as directed, we are not persuaded by Environmental Defense Fund's request to reject PJM's compliance filing on other grounds. Environmental Defense Fund does not argue that PJM's definition does not comply with Commission directives. Further, we reject Environmental Defense Fund's arguments that PJM's definition of State Subsidy is vague and therefore does not put market participants on notice of what is considered a State Subsidy and will allegedly frustrate the Office of Enforcement's oversight role. Environmental Defense Fund's arguments are essentially an out-of-time rehearing request of the December 2019 Order, which defined State Subsidy and are therefore out-of-scope of this compliance determination.[73]

2. General Industrial Development and Local Siting Support

a. Compliance Directives

42. The December 2019 Order adopted PJM's proposal from the paper hearing to exclude general industrial development and local siting support from those types of support that will be treated as a State Subsidy for purposes of the expanded MOPR. The

[71] *See* Second Proposed Tariff, Definitions R-S, State Subsidy Definition. PJM also proposes certain exceptions to the State Subsidy definition which we address below.

[72] *Midwest Indep. Transmission Sys. Operator, Inc.*, 167 FERC ¶ 61,128, at P 12 (2019) (rejecting proposed revisions that were not necessary to comply with the remedy required by the underlying proceeding); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157, at PP 303-304 (2016) (rejecting arguments as beyond the scope of the compliance filing, "which is limited to whether PJM complied with the directives in the" underlying order); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156, at P 57 n.51 (2008) ("The Commission has previously held that compliance filings must be limited to the specific directives order by the Commission. The purpose of the compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether or not they comply with the Commission's previously-stated directives.").

[73] *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,124, at P 18 (2017); *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277, at P 34 (2010) ("Protests to compliance filings are limited to whether the filing meets the Commission's compliance directive and cannot properly function as late rehearings of the initial order."); *Cal. Indep. Sys. Operator Corp.*., 120 FERC ¶ 61,147, at P 15 (2007) (rejecting certain protests to a compliance filing that should have been raised as a request for rehearing).

December 2019 Order found PJM's proposed exclusions reasonable given that the support at issue is available to all businesses and is not nearly directed at or tethered to the new entry or continued operation of generation and capacity in the PJM capacity market.[74] The Rehearing Order clarified that generic industrial development subsidies include payments (including payments in lieu of taxes), concessions, rebates, subsidies, or incentives designed to promote, or participation in a program, contract or other arrangement that uses criteria designed to incent or promote, general industrial development in an area. With respect to local siting, the Rehearing Order found these include payments, concessions, rebates, subsidies or incentives designed to promote, or participation in a program, contract or other arrangements from a county or other local government authority using eligibility or selection criteria designed to incent, siting facilities in that county or locality rather than another county or locality.[75]

b. PJM's Compliance Filings

43. PJM proposes that "payments, concessions, rebates, subsidies, or incentives designed to incent, or participation in a program, contract or other arrangement that uses criteria designed to incent or promote, general industrial development in an area or designed to incent siting facilities in that county or locality rather than another county or locality" are categorically not State Subsidies.[76]

c. Protest

44. Dominion argues that while PJM's language to exempt general industrial development from the State Subsidy definition provided certainty that incentives for general industrial development would not be considered State Subsides, the Rehearing Order removed this certainty by stating that an incentive for general industrial development could fit within the definition of State Subsidy if the incentive is not generally applicable.[77] Dominion argues that any type of local tax relief that incents an attribute somewhat related to electricity, like pollution controls, could be considered a State Subsidy, even if the provision is generally applicable. To clarify, Dominion proposes that PJM's exemption for general industrial development and local siting be modified to include language stating: "which may include electric generation resources

[74] December 2019 Order, 169 FERC ¶ 61,239 at P 83.

[75] Rehearing Order, 171 FERC ¶ 61,035 at P 107.

[76] First Transmittal at 13; *see* Second Proposed Tariff, Definitions R-S (subsection (3)(a) of State Subsidy definition).

[77] Dominion Protest and Comments on First Compliance Filing at 5 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 109).

but is generally applicable to other industrial development."[78] Dominion states this modification is consistent with the Commission's direction that the definition of general industrial development and local siting support is not intended to address other commercial externalities or opportunities and would ensure that generally applicable state or local tax relief received by generation facilities will not be considered a State Subsidy.[79]

d. Commission Determination

45. We accept PJM's compliance filing on this issue as it is consistent with the December 2019 Order, which directed PJM to exclude generic industrial development and local siting support from what would be treated as a State Subsidy.[80] We reject Dominion's proposed Tariff change as inconsistent with the prior orders. The December 2019 Order was specific as to what would be considered general industrial development or local siting support and PJM's proposed Tariff provisions reflect that specific definition.[81] Dominion incorrectly suggests that any subsidy that is widely available would be exempt, regardless of whether it met the criteria for general industrial development or local siting support subsidies laid out in the December 2019 Order. The December 2019 Order, as reiterated in the Rehearing Order, found that only payments which were designed to provide an incentive or promote general industrial development in an area or siting facilities in one locality over another are exempt.[82] A payment which otherwise meets the definition of State Subsidy, but is not designed to incent general industrial development in an area or siting facilities in one locality over another would not be exempt.

[78] *Id.* at 5.

[79] *Id.* at 5-6.

[80] December 2019 Order, 169 FERC ¶ 61,239 at P 83; Second Proposed Tariff Definitions R-S (State Subsidy definition, § (3)(a)).

[81] *See* December 2019 Order, 169 FERC ¶ 61,239 at PP 78, 83; Rehearing Order, 171 FERC ¶ 61,035 at P 107.

[82] *See* December 2019 Order, 169 FERC ¶ 61,239 at P 67; Rehearing Order, 171 FERC ¶ 61,035 at P 107.

3. State-Directed Default Service Auctions

a. Compliance Directives

46. The Rehearing Order found that state-directed default service auctions "meet the definition of State Subsidy to the extent they are a payment or other financial benefit that is a result of a state-sponsored or state-mandated process and the payment or financial benefit is derived from or connected to the procurement of electricity or electric generation capacity sold at wholesale, or an attribute of the generation process for electricity or electric generation capacity sold at wholesale, or 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."[83]

b. PJM's Compliance Filings

47. PJM proposes, as modified in its second compliance filing, that transactions or obligations associated with a state-directed default service auction where the underlying state auction is competitive and fuel-neutral will be excluded from the State Subsidy definition.[84] PJM states that its proposal includes strict limits on what would qualify as competitive and resource-neutral to safeguard against any potential abuse that could otherwise be used to support the uneconomic entry or operation of a capacity resource. PJM therefore proposes that to qualify, state-directed default service auctions must be subject to the oversight of a consultant or manager, independent of the market participants, who certifies that the auction was conducted through a non-discriminatory competitive bidding process.[85] Further, PJM proposes to define a competitive bidding process as auctions that:

> (i) have no conditions based on the ownership (except supplier diversity requirements or limits), location (except to meet PJM deliverability requirements), affiliation, fuel type, technology, or emissions of any resources or supply (except state-mandated renewable portfolio standards for which Capacity Resources are separately subject to the minimum offer price rule or eligible for an exemption);

---

[83] Rehearing Order, 171 FERC ¶ 61,035 at P 386.

[84] Second Transmittal at 19; *see* Second Proposed Tariff, Definition R-S (State Subsidy definition, § (3)(e)).

[85] Second Proposed Tariff, Definition R-S (State Subsidy definition, § (3)(e)).

> (ii) result in contracts between an Entity Providing Supply Services to Default Retail Service Provider and the electric distribution company for a retail default generation supply product and none of those contracts require that the retail obligation be sourced from any specific Capacity Resource or resource type as set forth in subsection (i) above; and
>
> (iii) establish market-based compensation for a retail default generation supply product that retail customers can avoid paying for by obtaining supply from a competitive retail supplier of their choice.[86]

48. PJM states that nothing in its proposed Tariff language related to state-directed default service auctions would exempt a capacity resource that would otherwise be subject to the expanded MOPR.[87] PJM further clarifies that targeted procurement requirements for certain types of capacity resources, like those beyond meeting the Renewable Portfolio Standards (RPS) already contemplated in the December 2019 Order, imposed by state-directed default service auctions, such as that in the District of Columbia, would not be deemed resource neutral under PJM's proposal.[88]

49. PJM argues its proposal would prevent price suppression caused by the uneconomic entry or retention of capacity resources, while still allowing reasonable bilateral transactions to be exempt from the MOPR. PJM explains that the Commission should adopt its proposal because the Commission's orders, if read to define any direct or indirect revenues resulting from state-directed default service auctions as State Subsidies, would subject the majority, if not all, capacity resources to the expanded MOPR, because winning bids in default service auctions are not tied to any particular generating resource. Further, PJM states that all state-directed default service auctions in the PJM region occur after the BRA, which means sellers would not know whether they are transacting with an entity that will accept a State Subsidy.[89] PJM argues that a "significant amount of efficient competitive commercial activity surrounds such auctions as they are conducted today – both in the submission of bids for tranches of services, but also importantly in the secondary bilateral activity conducted to hedge or supply such tranches of default service – all of which could be considered an indirect subsidy with very material consequences to

---

[86] *Id.* § (3)(e)(i)-(iii).

[87] *Id.* § (3)(e).

[88] Second Transmittal at 20.

[89] *Id.* at 17-18, 21.

Capacity Resources (many of whom will not even have visibility into how or where their energy is being used)."[90]

c. Comments and Protests

50. Commenters agree with PJM's compliance proposal[91] to exclude competitive, fuel-neutral state-directed default service auctions from the definition of State Subsidy, and argue that PJM's proposal is consistent with the Commission's clarification in the Rehearing Order that state-directed default service auctions may meet the definition of State Subsidy to the extent they result in payments or financial benefits to a resource.[92] For example, Maryland Commission and Exelon contend that PJM's proposal complies with the December 2019 Rehearing Order because the Rehearing Order indicates that the MOPR should be applied to state auctions that benefit a particular generation source or that are used a vehicle to subsidize particular resources or technologies, which the state auctions do not.[93]

51. Commenters assert that PJM's second compliance filing proposal is sufficiently tailored to address any price suppression concerns without implicating long-standing commercial activities that are effectuated through competitive and non-resource specific

---

[90] *Id.* at 16.

[91] Edison Electric Institute Comments on Second Compliance Filing at 3; Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 4-5, 16-17, 26; Exelon Comments on Second Compliance Filing at 2-4; Maryland Commission Comments and Protest of First Compliance Filing at 7; New Jersey Board Comments and Protest of First Compliance Filing at 8-12; New Jersey Board Comments on Second Compliance Filing at 1-2; OCC Comments on Second Compliance Filing at 1; OPSI Comments on First Compliance Filing at 26; P3 Comments on Second Compliance Filing at 4-6, Ohio Commission Comments on Second Compliance Filing at 7; Calpine Comments on First Compliance Filing at 3; AEP Comments on Second Compliance Filing at 1-2; Pennsylvania Commission Comments on Second Compliance Filing at 3-5.

[92] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 4-5.

[93] Maryland Commission Comments and Protest of First Compliance Filing at 7-8 (stating that the Standard Offer Service auction is resource neutral, does not procure wholesale electricity from specific generators or require a particular fuel source); Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 4-5, 17-18 (citing June 2018 Order, 163 FERC ¶ 61,236 at P 1; Rehearing Order, 171 FERC ¶ 61,035 at P 26).

procurements.[94] OCC argues mitigating state-directed default service actions would add unnecessary costs on potential bidders, which could dissuade bidders from participating, interfere with legitimate transactions, and result in increased electricity prices for Ohio consumers.[95]

52. New Jersey states that its basic generation service program is voluntary. According to the New Jersey Board, basic generation service suppliers are often marketing companies and provide full requirement products for electric distribution companies to serve non-shopping customers. New Jersey Board explains that a supplier who offered into the auction below cost would risk not recovering sufficient revenue from its basic generation service contract to cover the variable price differentials in the PJM energy and capacity markets.[96] The New Jersey Board thus agrees with PJM that default service procurement programs do not provide "non-bypassable consumer surcharges" and there is no "tethering" of the basic generation service program to the capacity market since the revenue stream is separate from and determined after the annual capacity auction.[97]

53. Commenters argue that under a strict reading of the Commission's orders, how state default suppliers satisfy load obligations could result in every resource participating in PJM markets being considered State Subsidized.[98] Exelon explains there are no requirements that offers into the state-directed default service auctions be backed by specific capacity resources or capacity resources of any type, nor do state default suppliers dedicate any particular generator to satisfy load service obligations; thus,

---

[94] AEP Comments on Second Compliance Filing at 1-2; Calpine Comments on Second Compliance Filing at 2; Edison Electric Institute Comments on Second Compliance Filing at 4; Exelon Comments on Second Compliance Filing at 2-4; OCC Comments on Second Compliance Filing at 6; Ohio Commission Comments on Second Compliance Filing at 9-10 (arguing that the Commission should exempt nondiscriminatory and competitive default service auctions, or, in the alternative, accept PJM's proposal); P3 Comments on Second Compliance Filing at 4-6.

[95] OCC Comments on Second Compliance Filing at 1, 6.

[96] New Jersey Board Comments and Protest of First Compliance Filing at 9-10.

[97] *Id.* at 11; *see also* Pennsylvania Rehearing Request at 6-13 (describing the Pennsylvania default service auction similarly).

[98] *See, e.g.*, P3 Comments on First Compliance Filing at 6-8; Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 20 (requesting clarification of the Rehearing Order that the Commission did not mean to apply the expanded MOPR to all resources clearing the energy market).

Exelon argues, there is no direct or indirect link between the capacity resource and load served.[99] Joint Consumer Advocates further explain that market participants that win load obligations may not own generation or know the MW amount of their load obligation and thus typically establish supply contracts after their bids are selected in the auction.[100] Commenters state that the resources relied upon by default suppliers are purchases from the PJM day-ahead and real-time markets, which could result in all resources clearing the energy market being considered subsidized, or through bilateral transactions, going beyond the capacity market.[101] According to Environmental Defense Fund, applying the MOPR to state default service auctions implicates the Competitive Exemption because a resource may have elected the Competitive Exemption for the delivery year and then unknowingly receive a State Subsidy by virtue of clearing the energy market.[102]

54. Additionally, according to commenters, since the default service auctions occur after the BRA, it will be difficult to determine which resources are likely to receive default service auction revenue for the relevant delivery year.[103] P3 explains that most market participants in PJM's capacity auction do not know, at the time of that capacity auction, if they have load obligations under state default service auction because the auctions in these programs occur two years to six months prior to the delivery year.[104] Exelon states that, due to the competitiveness of these default service auctions, it is not reasonable to presume that an entity that is awarded a certain volume of default supply obligations one year would receive a similar award in the next auction.[105] Joint Consumer Advocates state it would be an administrative nightmare to apply MOPR to

---

[99] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 4-5, 17-18, 20-21; P3 Comments on First Compliance Filing at 7-8.

[100] Joint Consumer Advocates Protest of Second Compliance Filing at 6.

[101] Environmental Defense Fund Protest of First Compliance Filing at 5-6; Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 20.

[102] Environmental Defense Fund First Comments of First Compliance Filing at 6-7; *see also* Joint Consumer Advocates Protest of Second Compliance Filing at 6-8; OCC Comments on Second Compliance Filing at 5.

[103] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 21.

[104] P3 Comments on First Compliance Filing at 8.

[105] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 21-22.

state-directed default service auctions, provided that there are multiple, varying auction schedules across state programs that do not comport with each other or PJM's capacity market.[106]

55. Exelon also requests that, if the Commission rejects PJM's proposed exemption for state-directed default service auctions, the Commission direct PJM to tailor the State Subsidy definition to impact only those default auctions being used to subsidize specific resources or resource types by adding to the Tariff language that any revenue from a state-directed default service auction is excluded where the auction does not involve a resource-specific commitment to provide default service either directly or indirectly.[107]

56. In the event the Commission does not accept PJM's proposal or Exelon's modification, Exelon argues that the Commission should instruct PJM to exempt existing resources that offered into the PJM energy market prior to December 19, 2019 or that were owned by an entity or an affiliate of an entity that provided default supply prior to December 19, 2019, consistent with other existing resources exempted by the December 2019 Order and Rehearing Order. Exelon explains that the owners of such resources have invested in capital expenditures based on market rules that did not subject those resources to the default offer price floor.[108] Finally, Exelon argues that if the Commission views this exemption as too broad, then it must, at a minimum, provide an exemption from the expanded MOPR for such resources for the 2022/2023 delivery year because, as of December 19, 2019, the farthest default service obligations extended was into the 2022/2023 year.[109]

57. The Market Monitor supports an exemption for resources selected through competitive state-administered auctions, arguing such an exemption is consistent with the Commission's orders if it ensures competitive market rates are paid for resources in state auctions and that no subsidized resources may be part of the state auctions without being subject to MOPR rules. However, the Market Monitor contends that PJM's proposal must be modified to meet this objective. First, the Market Monitor would require that PJM and the Market Monitor regularly certify that the rules governing each state-directed default service auction are competitive, rather than leaving the decision of whether the

---

[106] Joint Consumer Advocates Protest of Second Compliance Filing at 7-8.

[107] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 22.

[108] Exelon Comments on Second Compliance Filing at 5, 22-23.

[109] *Id.* at 6-7.

auction is nondiscriminatory and competitive to the state auction managers, as proposed by PJM.[110]

58. The Market Monitor also asserts that PJM should include additional criteria that would result in application of the expanded MOPR. Specifically, the Market Monitor states that any resource sold to load-serving entities participating in state auctions to meet any state-sponsored or state-mandated requirement should be subject to the MOPR. The Market Monitor also objects to PJM's proposal that state-directed default service auctions may still be considered non-discriminatory and competitive if they include conditions on supplier diversity or deliverability. The Market Monitor states these criteria are not clearly defined and should not apply unambiguously and without exception. Rather, such criteria should be subject to review for consistency with competition in wholesale power markets, as the Market Monitor proposes to do.[111]

59. In its July 7 answer, PJM states if PJM or the Market Monitor believe a state-directed default service auction meets the criteria to be considered a State Subsidy, then that state-directed default service auction would be included in the list of programs that PJM and the Market Monitor jointly agree constitute a State Subsidy. Accordingly, there is no reason for PJM to adopt the Market Monitor's suggestion to regularly certify that the rules governing each state default service auction either meet or do not meet the Commission's standards.[112] In response, the Market Monitor argues that requiring market participants and states to wait to see whether a particular auction is on PJM's list is inefficient and will create confusion and uncertainty.[113]

60. The DC Attorney General and DC Commission argue both that state auctions generally should not be considered a State Subsidy and that the PJM proposal, applied correctly, would not apply to the District of Columbia's default service procurement program. First, The DC Commission maintains that the District of Columbia's default service procurement program should not be subject to the expanded MOPR because it is not a subsidy, but rather a retail ratemaking mechanism that is not subject to Commission jurisdiction.[114] The DC Attorney General argues that all competitive bilateral transactions providing state default services, regardless of whether such transaction is

---

[110] Market Monitor Comments on Second Compliance Filing at 5-6; Market Monitor July 23 Answer at 2-3.

[111] Market Monitor Comments on Second Compliance Filing at 6-7.

[112] PJM July 7 Answer at 4-5.

[113] Market Monitor July 23 Answer at 2-3.

[114] DC Commission Comments on Second Compliance Filing at 1-2, 8.

resource neutral, should be exempt from the MOPR so as not to significantly increase consumer costs for default retail energy purchases.[115]

61. Second, the DC Commission argues that under PJM's proposed criteria, the District of Columbia's default service auction would not be subject to the MOPR. The DC Commission argues that PJM misunderstands the District of Columbia's default service auction by subjecting revenues from the program to the expanded MOPR in their entirety.[116] The DC Commission explains that PJM appears to believe that revenues associated with the District of Columbia's default service auction would be subject to the expanded MOPR under PJM's proposal because the DC Commission has established a pilot program requiring that five percent of the default service load will be satisfied through long-term power purchase agreements for renewable energy starting on June 1, 2024. However, the DC Commission explains that this five percent will not impact the auction for the other 95% of default load because it will occur in a separate auction. Further, DC Commission states that delivery under the power purchase agreement will not commence until June 2024, meaning that the existing auction will continue to procure 100% of default service without this additional requirement until that time. Using PJM's proposed criteria, the DC Commission therefore states that its default service auction should not be subject to the MOPR as it is competitive and without discrimination, both now and once the new requirement is implemented.[117] The DC Commission continues that if the Commission finds that the renewable energy power purchase agreement is not competitive, only the revenue related to that portion of default service (five percent) should be subject to the MOPR.[118] The DC Commission states PJM's revised Tariff language for default service auctions is inconsistent with the Rehearing Order which reiterated that existing RPS resources are exempt from the expanded MOPR.[119]

62. Maryland Legislators oppose the Rehearing Order's decision that state default service auctions such as Maryland's Standard Offer Service auction should trigger the MOPR. Maryland Legislators argue that the Commission does not appear to have

---

[115] DC Attorney General Comments on Second Compliance Filing at 4.

[116] DC Commission Comments on Second Compliance Filing at 4-5 (citing Second Transmittal at 16, n.51, 20).

[117] *Id.* at 5-8.

[118] *Id.* at 8.

[119] *Id.* at 4-5 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 174 ("We reiterate that the December 2019 Order exempted certain existing renewable resources receiving support from state-mandated or state-sponsored RPS programs.")).

considered the implications of this policy, including making it more difficult for default suppliers to obtain affordable hedging arrangements and increasing costs to consumers.[120]

d. Requests for Rehearing and Clarification

63. Energy Harbor, Pennsylvania Commission, and Vistra seek rehearing of the Rehearing Order's finding that state-directed default service auctions may be considered a State Subsidy[121] as arbitrary and capricious.

64. Energy Harbor argues that stated-directed default service auctions do not confer a "subsidy" upon state auction participants, stating that a subsidy involves a payment or concession of some kind for the purpose of giving the recipient a competitive advantage.[122] Energy Harbor explains that winning a tranche of retail customers in a default service auction does not guarantee a net positive cash flow, as the winning load-serving entity becomes entitled to a fixed payment from the utility and the obligation to bear the PJM market cost of serving retail customers. A load-serving entity profits if the fixed payment exceeds the cost of serving its retail customers and loses money if the fixed payment is lower than the cost of serving retail customers, Energy Harbor argues, and therefore auction bidders are disciplined by competitive market forces.[123]

65. Energy Harbor argues that state-directed default service auctions provide a hedge, not a payment,[124] stating that payments earned in default service auctions are also typically unrelated to any particular wholesale sale of energy or capacity, are not tied to any specific resource, and winning bidders may not even own or contract for capacity. For these reasons, Energy Harbor also opines on the difficulty of determining to which resources PJM would apply the MOPR. If the Commission does not grant rehearing, Energy Harbor requests that the Commission clarify that the MOPR will not apply absent a direct link between the service contract and a specific capacity resource or resources.[125]

66. Pennsylvania Commission argues that, prior to the Rehearing Order, the Commission focused mitigation on state out-of-market payments like increasing Zero-

---

[120] Maryland Legislators Comments on First Compliance Filing at 8.

[121] Rehearing Order, 171 FERC ¶ 61,035 at P 386.

[122] Energy Harbor Rehearing Request at 3-4 (citing the Merriam-Webster Online Dictionary definition of subsidy).

[123] *Id.* at 5.

[124] *Id.*

[125] *Id.* at 6.

Emissions Credits (ZEC) and RPS programs supporting particular resources. Pennsylvania Commission continues that the expanded MOPR was supposed to address inequities in out-of-market payments that distort participation in the capacity market,[126] and that the Rehearing Order created a new principle that State Subsidies are not limited to state-required out-of-market payments, but also include nondiscriminatory payments as part of an auction where the payments are not state-required, but merely the auction is state-sponsored. Further, according to Pennsylvania Commission, the Rehearing Order abandoned the direct link requirement that the subsidy be "most nearly directed at or tethered" to new entry or continued operation of generating capacity and found that state default service auctions "meet the definition of State Subsidy to the extent they are a payment or other financial benefit that is a result of a state-sponsored or state-mandated process."[127] Without a limiting principle to the State Subsidy definition, Pennsylvania Commission contends that any cost component of a customer's electric bill could be mitigated, unlawfully reaching into retail ratemaking processes in violation of the FPA.[128] Pennsylvania Commission suggests that the Commission could appropriately limit the reach of the State Subsidy definition by only subjecting generation resources to the MOPR screen, and not rate-making models, thereby eliminating an additional MOPR screen for resources only serving state-directed default service auctions.[129]

67. Vistra likewise argues that the state-directed default service auction payments are not the types of payments intended to be covered by the State Subsidy definition and applying the MOPR to resources receiving payments through such auctions runs counter to the rationale underlying the expanded MOPR, which is to protect the capacity market from uneconomic entry and retention of resources by state programs that grant subsidies to particular resources. According to Vistra, typical state-directed default service auctions do not involve awarding a subsidy to a specific type of otherwise uneconomic resource, but rather involve arm's length transactions based solely on price, and because only the most cost-effective option will win an auction, they do not serve to prop up uneconomic resources. Therefore, Vistra contends, there is no reason to subject

[126] Pennsylvania Commission Rehearing Request at 3-4, 13-15 (citing December 2019 Order, 163 FERC ¶ 61,239 at PP 37-38, 68).

[127] *Id.* at 13-14 (citing December 2019 Order, 169 FERC ¶ 61,239 at P 68; Rehearing Order, 171 FERC ¶ 61,035 at P 386).

[128] Pennsylvania Commission Rehearing Request at 14-15.

[129] *Id.* at 15-16.

resources supporting awards in such auctions to the expanded MOPR so long as the auctions are competitive and based on price alone.[130]

68. Further, Vistra states that, because of how auction winners serve load, potentially through ownership, bilateral contracts, or carrying the obligation into the day-ahead or real-time markets, a winning bidder whose parent company also owns generation could be unfairly disadvantaged when participating in default service auctions compared to a power marketer whose parent company does not own generation, which may cause the default auction to become less competitive. Vistra argues that winning bidders may serve load through voluntary bilateral contracts, which the Commission has found do not warrant mitigation.[131] Vistra further notes that, unlike certain State Subsidy programs of concern, state-directed default service auctions are not designed for participation by only a subset of resources, but open to all resources, and therefore the auctions are not aimed at particular resources. Vistra contends that if the Commission is concerned that such auctions may, in the future, be structured to give preference to uneconomic resources, the Commission could find that state-directed default service auctions do not constitute a State Subsidy, provided they are neutral as to resource type and location and choose winners based solely on price.[132]

e. Commission Determination

69. We are persuaded by arguments raised on rehearing and therefore modify and set aside, in part, the Rehearing Order as it relates to state-directed default service auctions.[133] Based on the record in this proceeding, we find that competitive and non-discriminatory state-directed default service auctions—i.e., those state-directed default service auctions that qualify to be excluded from the definition of State Subsidy under PJM's proposal—do not require mitigation at this time, as explained below. We therefore accept PJM's proposal in its second compliance filing to exclude independently evaluated, non-discriminatory, fuel-neutral, competitive state-directed default service auctions from application of the expanded MOPR.[134]

---

[130] Vistra Rehearing and Clarification Request at 2-7.

[131] *Id.* at 7 (citing December 2019 Order, 169 FERC ¶ 61,239 at P 70).

[132] *Id.* at 9.

[133] Rehearing Order, 171 FERC ¶ 61,035 at P 386.

[134] Second Proposed Tariff, Definitions R-S (State Subsidy definition, § (3)(e)(i)-(iii)). While this order accepts the exemption that PJM has proposed, it does not constitute a ruling that any particular state-directed default service auction actually meets these requirements. For example, we note that the New Jersey Basic Generation Service

70. We agree with PJM that state-directed default service auctions that qualify to be excluded from the definition of State Subsidy under PJM's proposal (i.e., state-directed default service auctions that are non-discriminatory, competitive, resource neutral, and do not require a contract with a specific resource or type of resource to meet the obligation) do not provide State Subsidies to particular resource or technology types and therefore cannot be used to "support the entry or continued operation of preferred generation resources that may not otherwise be able to succeed in a competitive wholesale capacity market."[135] Such auctions do not give suppliers chosen through the auction the ability to offer resources into the market below cost, because, as PJM and commenters argue, the suppliers chosen through the auction are not required to identify the resources they will use to satisfy their obligations.[136]

71. We also agree with commenters that the link between a state-directed default service auction that would qualify for exclusion from the definition of State Subsidy under PJM's proposal and the resource ultimately receiving any subsequent payment is too attenuated to constitute a State Subsidy. Where a state-directed default service

---

(BGS) auction appears to give guidance that conflicts with the proposition it is "non-discriminatory" or "fuel neutral." Specifically, in the section on frequently asked questions (FAQs), FAQ-24 addresses the question whether Supplier Master Agreements (SMAs) submitted to the state BGS must comply with renewable portfolio requirements. *See* Frequently Asked Questions # 24, New Jersey Statewide Basic Generation Service Electricity Supply Auction, http://www.bgs-auction.com/bgs.faq.item.asp?faqId=1100 (last visited Sept. 26, 2020). FAQ-24 instructs that "[t]here is no exemption under the SMAs from future increases in RPS requirements." *Id*. Further, while FAQ-24 acknowledges that "in the past, the Legislature, when increasing solar requirements, exempted existing BGS Suppliers from the increase," it continues by stating that "there is no guarantee that future legislation, Board Orders, or other changes would continue to provide such an exemption for BGS Suppliers." *Id.* This guidance appears to conflict with the notion that the BGS auctions are either non-discriminatory or fuel neutral and may indicate that such auctions may be "for the purpose of supporting the entry . . . of preferred generation resources." June 2018 Order, 163 FERC ¶ 61,236 at P 1.

[135] June 2018 Order, 163 FERC ¶ 61,236 at P 1 (stating that PJM's capacity market was "threatened by the out-of-market payments provided by or required by certain states *for the purpose of supporting the entry or continued operation of preferred generation resources* that may not otherwise be able to succeed in a competitive wholesale capacity market") (emphasis added).

[136] It is not clear why a state would allow a supplier to meet its provider of last resort obligations without specifying what resources it will use to satisfy its supply obligations, but that question is beyond the scope of this proceeding.

auction does not require auction bids to be linked to a specific resource, because any resource could end up serving load through the PJM markets to satisfy default load obligations, the payment to such resources is too attenuated and indirect. As stated in the December 2019 Order, the State Subsidy definition is not intended to cover every form of state financial assistance that might indirectly affect Commission-jurisdictional rates or transactions; rather, the concern is with those forms of State Subsidies that are most nearly directed at or tethered to new entry or continued operation of generating capacity in the PJM capacity market.[137]

72. We disagree with the Market Monitor that PJM's proposal must be modified so that PJM and the Market Monitor regularly certify that the rules governing each state-directed default service auction are competitive and non-discriminatory, rather than independent managers doing so as PJM proposes. We do not believe this change is necessary at this time. As PJM states, PJM will work with the Market Monitor to determine a list of programs that are State Subsidies, so if the Market Monitor believes an individual state-directed default service auction does not meet the criteria outlined in the Tariff, then the Market Monitor can so state.

73. The Market Monitor requests that PJM be directed to specify in the Tariff that any resource sold to load-serving entities participating in state auctions to meet state-sponsored or state-mandated requirements, including RECs, ZECs, or any other mandate that limits participating capacity based on technology, fuel, location, or other attribute should be subject to the MOPR. We, however, do not find this language necessary at this time because it is already embodied in PJM's proposal, which requires that the auction must be free from conditions based on ownership, location, affiliation, fuel type, technology or emission of any resources or supply,[138] among other criteria, to be excluded from mitigation.

74. The Market Monitor further objects to PJM's proposal that state-directed default service procurement auctions may still be considered non-discriminatory and competitive if they permit conditions on supplier diversity or deliverability. We disagree with the Market Monitor that these conditions are not clearly defined, should not apply without exception, or must otherwise be modified.[139] For a state-directed default service auction to be considered the result of a non-discriminatory and competitive bidding process, as so certified by the independent managers, PJM proposes that it have "no conditions based on ownership (except supplier diversity requirements or limits)" and no conditions based on

---

[137] December 2019 Order, 169 FERC ¶ 61,239 at P 68.

[138] *See* Second Proposed Tariff, Definitions R-S (State Subsidy definition, § (3)(e)(i)).

[139] Market Monitor Comments on Second Compliance Filing at 7.

"location (except to meet PJM deliverability requirements)."[140] The former is reasonable because states may wish to insulate themselves against the risk of securing all of their default service capacity from one seller. We are not concerned with ownership requirements in this proceeding, but rather State Subsidies. The latter requirement, allowing restrictions to meet PJM deliverability requirements, is also appropriate as we see no reason to restrict the ability of states to design state-directed default service auctions that procure only deliverable service. Moreover, these criteria are necessary to ensure clear guidance to independent managers certifying auctions and consistent application of the rules. We disagree with the Market Monitor that PJM and the Market Monitor must evaluate each auction's rules on these two criteria separately and independently. The Market Monitor has not provided any explanation for how a restriction on ownership or deliverability could be used to support state-preferred resources.

75. Finally, we agree with the DC Commission and DC Attorney General that a pilot program requiring that five percent of the default load will be separately satisfied through long-term power purchase agreements for renewable energy, outside of the regular default service procurement auction, should not necessarily impact the regular default service auction. Where a state-directed default service auction is fuel-neutral and meets PJM's proposed criteria, but also has a specific fuel or technology type requirement, if the two procurements are severable into separate and independent processes, then there is no reason to subject both processes to mitigation. Rather, only the process that does not meet the criteria would be mitigated. To be clear, this only applies where the two procurement processes are clearly distinguished, meaning the procurement that does not meet the criteria is conducted separately from the state-directed default service auction that meets the criteria. Thus, in the case posed by the DC Commission, the auction that procures the default load to satisfy the five percent renewable energy requirement does not meet PJM's criteria because it is not fuel neutral, and therefore payments to resources procured therein would be subject to the MOPR. But the District of Columbia's general state default service auction could meet PJM's proposed criteria. We do not judge whether it does so here, but rather find that the District of Columbia's general state default service auction should not be categorically barred from qualifying for exclusion from the definition of State Subsidy under PJM's proposal merely because a severable portion of the District of Columbia's default service is required to be served by renewable energy.

[140] Second Proposed Tariff, Definitions R-S (State Subsidy definition, §(3)(e)(i)).

4. Bilateral Contracts with Self-Supply

a. PJM's Compliance Filings

76. PJM proposes to allow self-supply entities to be on the buying end of a bilateral contract without being mitigated if the transaction is: (1) one year or less or (2) long term but "the result of a competitive process that was not fuel-specific and is not used for the purpose of supporting uneconomic construction, development, or operation of the subject Capacity Resource, provided however that if the Self-Supply Entity is responsible for offering the Capacity Resource, the specified amount of installed capacity purchased by such self-supply entity shall be considered to receive a State Subsidy in the same manner, under the same conditions, and to the same extent as any other Capacity Resource of a Self-Supply Entity."[141] PJM explains this provision will protect the non-subsidized status of resources transacting with self-supply entities and ensure no improper subsidy transfer. PJM argues the provision is necessary to ensure viability and liquidity in the secondary markets for bilateral transactions with non-subsidized resources. PJM further explains that the exception's restrictions ensure the underlying non-subsidized resource does not gain a benefit from the State Subsidy because short-term transactions of less than one year are generally used to ensure sufficient capacity by a self-supply entity in the event a resource owned or contracted for by a self-supply entity becomes unavailable.[142] As noted, PJM states that long term transactions with a self-supply entity that are a result of a competitive fuel-neutral process, and not used to support the uneconomic construction development, or operation of the resource should also not be deemed a State Subsidy. PJM maintains this exception is consistent with the Commission's determination that voluntary, arm's length bilateral transactions do not raise subsidy concerns and ensures resources can contract with self-supply entities in the secondary market without "fear of tainting their resources as State Subsidized."[143]

---

[141] First Transmittal at 13-14; *see* Second Proposed Tariff, Definitions R-S (State Subsidy definition, § (3)(g)).

[142] First Transmittal at 17-18. PJM also proposes to allow State-Subsidized Resources to be used as replacement capacity because they have very limited opportunity to displace unsubsidized resources in the capacity auctions. First Transmittal at 18-19 n. 53. However, the Rehearing Order found that subsidized capacity could not serve as replacement capacity for unsubsidized capacity resources. Rehearing Order, 171 FERC ¶ 61,035 at P 400. We therefore direct modifications to the relevant Tariff language below (IV.N.4).

[143] First Transmittal at 18.

b. Comments, Protests, and Answers

77. OPSI and AEP argue that all voluntary bilateral contracts should be exempt from the expanded MOPR, not just bilateral contracts where a self-supply entity is the buyer as proposed by PJM.[144] These parties contend that only excluding from the MOPR bilateral transactions where a self-supply entity is the buyer, with other limitations, inappropriately narrows the scope of private, voluntary, arms-length bilateral transactions the Commission declined to mitigate in the December 2019 Order. AEP states that where neither the resource owner nor the off-taker in a bilateral transaction is entitled to a State Subsidy, the off-taker should be able to participate in the capacity market unmitigated.[145]

78. NOVEC states that the Commission should exclude from the definition of State Subsidy bilateral transactions with self-supply entities and reject PJM's compliance language.[146] NOVEC contends that competitively negotiated bilateral contracts would reflect market prices, and the seller would have no incentive to sell at below-market prices and thus the buying self-supply entity would not be receiving any "subsidized" resource that it could in turn use to suppress market prices by offering the resource at an artificially low level.[147] In its comments, NOVEC also argues that the Rehearing Order impermissibly expanded the definition of State Subsidy to include resources bilaterally contracted for self-supply entities after initially finding in the December 2019 Order that there is no record evidence to support such an expansion, rendering PJM's proposal regarding self-supply bilateral contracts infirm.[148]

79. NOVEC also urges the Commission to direct PJM to propose a method to exempt self-supply resources where the transactions are shown to be competitive and not create a subsidy. NOVEC states the solicitation for capacity could be provided to PJM and the Market Monitor to determine whether the transaction conveys a subsidy. If PJM and the

---

[144] *See* OPSI Comments on First Compliance Filing at 23; AEP Comments on First Compliance Filing at 4; *see also* NOVEC Comments and Protest of First Compliance Filing at 6.

[145] AEP Comments on First Compliance Filing at 4.

[146] NOVEC Comments and Protest of First Compliance Filing at 6-7; *see also* EKPC/SMECO June 1 Answer at 9-11 (arguing that all resources bilaterally contracted to an electric cooperative should be exempt from the MOPR).

[147] NOVEC Comments and Protest of First Compliance Filing at 7-8.

[148] NOVEC Protest of Second Compliance Filing at 4.

Market Monitor determine it does not, the market seller would not be subject to the MOPR.[149]

80. SMECO supports PJM's proposal as consistent with the December 2019 Order's statements on voluntary bilateral contracts, but requests clarification regarding the proposal that "if the Self-Supply Entity is responsible for offering the Capacity Resources, the specific amount of installed capacity purchased by the Self-Supply Entity shall be considered to receive a State Subsidy in the same manner, under the same conditions, and to the same extent as any other Capacity Resource of a Self-Supply Entity."[150] SMECO states that it interprets this clause as meaning that PJM's proposed exclusion will only apply to auction specific MW transactions found in PJM Tariff Attachment DD, section 4.6(b). SMECO explains that in an auction specific bilateral, the buyer, e.g., the purchasing self-supply entity, is not the entity "responsible for offering the Capacity Resource" in the capacity auction, rather the seller does. Thus, according to SMECO, PJM's proposed bilateral contract exemption appears to apply only when the bilateral contract is the auction specific type and not for unit-specific bilateral contracts found in PJM Tariff, Attachment DD, section 4.6(a), where the self-supply entity is responsible for offering the capacity resource. SMECO thus requests that PJM clarify, how the proposed exclusion will apply as between auction specific versus unit-specific bilateral contracts.[151]

81. If the Commission does not approve PJM's proposal regarding self-supply bilateral transactions, SMECO proposes, like NOVEC, that the Commission direct PJM to revise its Tariff to provide for the ability of self-supply entities to submit solicitation details to PJM and the Market Monitor. In turn, PJM and the Market Monitor can determine whether or not that solicitation conveys a subsidy for uneconomic construction, development, or operation of a resource.[152] SMECO maintains this alternative would not infringe on an existing RPM feature in Attachment DD, section 4.6(b), which states that an auction specific bilateral contract is not required to transfer the ultimate capacity resource used to satisfy the contract in the PJM RPM Capacity Exchange system until just prior to the relevant delivery year.[153] However, should the Commission reject PJM's proposal, and simply impose a default offer price floor on new

---

[149] NOVEC Comments and Protest of First Compliance Filing at 8-9.

[150] SMECO Comments on First Compliance Filing at 4 (citing First Transmittal at 13-14).

[151] *Id.* at 4-5.

[152] *Id.* at 5-6.

[153] *Id.* (citing PJM Tariff, Attach. DD, § 4.6(b); PJM Manual 18, § 4.6.6)).

self-supply bilateral transactions, SMECO asserts that section 4.6(b) would need to be amended to require up-front resource identification for mitigation purchases.[154]

82. ODEC states that the Commission should accept without modification PJM's proposal. ODEC further states that it disagrees with the Rehearing Order's statement that "public power self-supply entities cannot engage in voluntary, arms-length bilateral contracts with unaffiliated third parties without triggering the MOPR."[155] ODEC argues that taken literally, this statement would subject all voluntary, arms-length bilateral contracts entered into by public power to the MOPR, including energy-only power purchase agreements with third parties. ODEC contends that such a result would have a chilling effect on third parties' willingness to enter into bilateral transactions to sell power to self-supply entities because the sale of power will deem the third party's capacity resource to have received a State Subsidy and trigger the MOPR's application to that third party's resource. ODEC maintains that subjecting the third-party resource to the MOPR would not impact the self-supply entity's capacity sell offer since the self-supply entity purchasing only energy, and that these energy-only bilateral contracts are hedging mechanisms to limit exposure in the spot market.[156]

83. In their answers, EKPC/SMECO and NOVEC urge the Commission to reject PJM's proposal, arguing that all self-supply bilateral contracts should not result in mitigation. NOVEC argues that PJM provided no evidence that self-supply bilateral contracts longer than a year would have a negative impact on the capacity market by allowing a subsidy to travel upstream. NOVEC argues that PJM's proposal is unjust and unreasonable because self-supply entities cannot elect the Competitive Exemption and are thus not able to use any exclusion or exemption from the MOPR. To address this, NOVEC maintains that a case-by-case competitive process exemption should be implemented. For example, resources contracted by self-supply entities through a competitive process should be exempt from any MOPR requirements for resources that have cleared the RPM process.[157]

84. In reply, PJM reasserts that the Commission should adopt PJM's proposal as filed, explaining that transactions of less than a year or that are a product of a competitive process will not result in an otherwise unsubsidized capacity resource receiving a State Subsidy because the benefits of such subsidy would not be able to travel upstream to the

---

[154] *Id.* at 6.

[155] ODEC Comments on First Compliance Filing at 4-6 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 243).

[156] *Id.* at 5; *see also* EKPC/SMECO June 1 Answer at 8-11.

[157] NOVEC July 16 Answer at 4- 5.

capacity resource. PJM disagrees with commenters' alternative approach for PJM and the Market Monitor to review individual self-supply bilateral transactions to determine whether the transaction conveys a subsidy, arguing such an approach replaces clear parameters with a subjective, case-by-case analysis, and does not include particular data or standards by which PJM would differentiate between acceptable and unacceptable bilateral transactions.[158]

85. Exelon takes issue with PJM's explanation that exempting bilateral contracts of more than one year that are a product of a competitive process "will establish market parameters under which Capacity Market Sellers can confidently enter into commercially reasonable transactions in the secondary market."[159] Exelon does not believe PJM's assertion holds true for energy-only sales transactions, arguing that the term "competitive process" as proposed in PJM's Tariff is vague, subjective and provides no assurance to sellers that the buyer's solicitation process for long-term energy-only purchases will exempt capacity owned by that seller from the MOPR. This will result, Exelon argues, in sellers refraining from making energy-only sales to self-supply entities unless there is a formal Request for Proposal process in place. Furthermore, Exelon argues, requiring a formal Request for Proposal process would drive up transaction costs and limit bilateral trading in the energy-only market because municipalities and cooperatives routinely contact multiple sellers to informally solicit bids for energy-only service, while a Request for Proposal is more involved. Exelon explains that a Request for Proposal typically requires a written documentation of the request, a formal response addressing all of the requirements outlined in the request, and independent review of the bids. Therefore, Exelon requests that the Commission direct PJM to clarify what "competitive process" means as used in the proposed bilateral transaction exemption.[160]

86. Exelon agrees with commenters that energy-only bilateral transactions with a self-supply entity should not trigger application of the MOPR to capacity resources owned by the seller when the seller is unaffiliated with the buyer and the energy-only sale is fuel neutral.[161] Exelon thus requests that the Commission clarify that long-term energy-only sales to self-supply buyers will not be viewed as conveying a State Subsidy as long as the sales are fuel-neutral and conducted via a solicitation of offer from multiple potential sellers. According to Exelon, to the extent the Commission is concerned about self-supply subsidizing uneconomic resources through energy-only transactions, PJM's proposal should allay that concern as the proposal would mitigate bilateral transactions

---

[158] PJM June 3 Answer at 8.

[159] Exelon June 16 Answer at 8-9 (citing PJM June 3 Answer at 8).

[160] *Id*. at 10-11.

[161] *Id.*; s*ee also* EKPC/SMECO June 1 Answer at 7-11.

over one year that are used for the purpose of supporting uneconomic construction, development, or operation of capacity resources.[162] Finally, Exelon requests that the Commission clarify how it would calculate the term of a contract. Exelon explains that, for example, a bilateral transaction entered into two years in advance for a block of energy to be delivered over a period of 11 months should qualify as a short-term transaction, which is consistent with the Commission's Electric Quarterly Reports.[163]

c. Commission Determination

87. We accept PJM's proposal to exclude from the MOPR certain voluntary bilateral contracts entered into by self-supply entities.[164] We agree that, where the otherwise unsubsidized resource contracts with a self-supply entity and the transaction meets the requirements under PJM's proposal, the unsubsidized seller does not have the ability to enter into a contract below cost, nor would the unsubsidized resource have guaranteed cost recovery if it offered the capacity into the market below cost. As PJM notes, in these circumstances, an otherwise unsubsidized resource does not receive a State Subsidy because the benefits of the subsidy would not be able to travel upstream to the unsubsidized capacity resource.[165] In other words, the payment the resource receives from the self-supply entity does not transfer the self-supply entity's ability to offer the capacity below cost to the other party. In contrast, a self-supply entity offering bilaterally purchased capacity into the market would have the ability to offer below cost, because it has guaranteed cost recovery.

88. OPSI and AEP urge PJM to include an exemption for all bilateral transactions and argue that PJM's proposal that only certain self-supply bilateral transactions are exempt narrows the December 2019 Order's finding that "voluntary, arm's length bilateral transactions" are not subject to the MOPR at this time.[166] However, we find it to be unnecessary for the PJM Tariff to expressly identify all transactions or actions that are excluded from the MOPR, including private, voluntary bilateral transactions. Moreover, the Commission expressly found in the December 2019 Order that private, voluntary

---

[162] Exelon June 16 Answer at 11 n.25.

[163] *Id.* at 11-12.

[164] *See* First Transmittal at 13-14; Second Proposed Tariff, Definitions R-S (State Subsidy definition, § (3)(g)).

[165] First Transmittal at 17-18.

[166] December 2019 Order, 169 FERC ¶ 61,239 at P 70.

bilateral transactions did not need to be mitigated.[167] NOVEC argues that bilateral contracts by self-supply entities should be excluded entirely. NOVEC's protests on this matter are reiterated in its rehearing request, which we address below in section IV.P.1.

89. Exelon requests that the Commission direct PJM to replace the term "competitive process" with "request for offers from multiple unaffiliated third parties."[168] We do not see a need for PJM to revise subsection (g) to replace "competitive process" with Exelon's suggestion that competitive be based on bids from unaffiliated third parties. We find that PJM's requirement for a "competitive process" provides a sufficient level of specificity. Nevertheless, we clarify for purposes here that a competitive process includes multiple offers from unaffiliated sellers with no restrictions on fuel or resource type. We further note that some written record of the solicitation will be necessary to demonstrate compliance with the Tariff.

90. Regarding Exelon's request to clarify how the Commission would calculate the term of a contract under PJM's proposal, we note that PJM proposes that a transaction that is "a short term transaction (one year or less)" would qualify under the exception,[169] so the term of the transaction specified in the contract must be one year or less. Exelon's specific example of an 11-month contract would therefore be considered short term, consistent with how they are treated in the Electronic Quarterly Reports.

91. Commenters request that the Commission clarify that energy-only sales to self-supply entities should not be viewed as conveying a subsidy as long as the sales are fuel-neutral and conducted via a solicitation of offers from multiple potential sellers.[170] We disagree that, as a general rule, energy-only bilateral sales to self-supply entities cannot convey a State Subsidy. Rather, if an energy-only bilateral contract entered into by a self-supply entity meets the requirements set forth in PJM's proposal,[171] then that contract is excluded from the definition of State Subsidy. Otherwise, as the Rehearing Order found, the expanded MOPR applies to bilateral contracts entered into by self-

---

[167] *Id.*

[168] Exelon June 16 Answer at 11.

[169] Second Proposed Tariff, Definitions R-S (State Subsidy definition, § (3)(g)(1)).

[170] *See* Exelon June 16 Answer at 11; ODEC Comments on First Compliance Filing at 5.

[171] *See* Second Proposed Tariff, Definitions R-S (State Subsidy definition, § (3)(g)).

supply entities.[172] The record provides no basis for generally distinguishing bilateral contracts for energy from other bilateral contracts entered into by self-supply.

92. Further, we deny requests to require PJM to allow a competitive exemption for self-supply transactions that are shown to be competitive or requests that PJM and the Market Monitor review self-supply contracts and determine whether the contract conveys a subsidy. The Rehearing Order found that an exemption for competitive procurement processes was not necessary for a just and reasonable replacement rate because if a State Subsidized Resource is truly competitive, the resource can use the Resource-Specific Exception to offer less than the default offer price floor, thereby permitting resources to show they are truly participating competitively and protect market integrity.[173]

5. FRR Revenue

a. PJM's Compliance Filings

93. PJM proposes that any revenue for providing capacity as part of an FRR capacity plan or through bilateral transactions with FRR entities will not be considered a State Subsidy.[174] PJM explains that participating in an FRR capacity plan is a Commission-approved means for providing capacity and therefore is not a State Subsidy.[175]

b. Comments, Protests, and Answers

94. The Market Monitor opposes PJM's proposal, explaining that FRR plans may compensate resources in a variety of ways, including those explicitly recognized as State Subsidies, and that FRR entities are effectively self-supply entities. The Market Monitor argues that, for any FRR capacity sold into the capacity market, FRR-related revenues should be considered a State Subsidy, and for resources leaving the FRR and returning to the capacity market, the projected net revenues should not include any FRR-related revenues. The Market Monitor also argues that the bilateral sale of capacity by an FRR entity should be treated the same as bilateral sales by any other State-Subsidized

---

[172] Rehearing Order, 171 FERC ¶ 61,035 at P 243.

[173] *Id.* P 301.

[174] First Transmittal at 13; *see* Second Proposed Tariff, Definitions R-S (State Subsidy definition, § (3)(f)).

[175] First Transmittal at 17.

Resource, and capacity from an FRR entity should not be used as replacement capacity for an unsubsidized resource.[176]

95. In its July 7 answer, PJM counters the Market Monitor's objections by noting the Market Monitor fails to identify any instance in which FRR revenues would meet the definition of State Subsidy. PJM states such a conditional and theoretical justification is not sufficient and fails to confront the fact that FRR participation is a Commission-approved means for providing capacity under PJM's Tariff. Conversely, PJM asserts, PJM's approach properly recognizes FRR participation as a valid means of providing capacity and appropriately reconciles the FRR Alternative with RPM.[177]

96. In its July 23 answer, the Market Monitor argues that FRR plans are a vehicle for State Subsidies and, by definition, forms of cost-of-service ratemaking. The Market Monitor further argues that the revenues under FRR plans are not capacity market revenues but are defined through negotiations with state authorities and are created for the purpose of permitting states to pay resources more than the capacity market clearing price.[178]

c. Commission Determination

97. We accept PJM's proposal that any revenue for providing capacity as part of an FRR capacity plan or through bilateral transactions with FRR entities will not be considered a State Subsidy. We agree with the Market Monitor that FRR resources can be compensated in a variety of ways, including those recognized as State Subsidies. The Rehearing Order recognizes that FRR resources may be subsidized and provides clarification for the treatment of such resources.[179] However, we disagree with the Market Monitor that any FRR revenue, even if it does not meet the definition of State Subsidy, should be considered a State Subsidy. We agree with PJM that the prior orders do not find that FRR revenue automatically meets the definition of State Subsidy. We therefore accept PJM's proposal that FRR revenue is not, in and of itself, a State Subsidy

[176] Market Monitor Comments on Second Compliance Filing at 7-8.

[177] PJM July 7 Answer at 14-15.

[178] Market Monitor July 23 Answer at 6.

[179] Rehearing Order, 171 FERC ¶ 61,035 at P 245 ("[A]ny new State-Subsidized Resources added to an FRR capacity plan after the date of the December 2019 Order will not be considered exempt either in re-entering the capacity market or offering excess capacity into the capacity market.").

as it is consistent with the December 2019 Order and Rehearing Order and see no need to modify it.

C. Market Seller Offer Cap Provisions

1. PJM's Compliance Filings

98. PJM proposes to allow sellers to choose to offer at either the default offer price floor or resource-specific level determined through the Resource-Specific Exception process, regardless of the applicable market seller offer cap, to avoid a disincentive to sellers seeking a resource-specific offer price floor. PJM argues that "the market is better served with a process that allows for PJM and the Market Monitor to gain experience with and compile resource-specific information rather than creating a disincentive for entities seeking to invoke this approach."[180] PJM notes that the default offer price floors will have been determined by the Commission to be just and reasonable, ensuring just and reasonable outcomes.[181] PJM proposes that, in the event PJM must mitigate a sell offer down to the applicable market seller offer cap, PJM would only mitigate the offer to the higher of the applicable market seller offer cap or offer price floor.[182]

2. Comments, Protests, and Answer

99. Exelon requests that the Commission clarify that, notwithstanding any similarity between the method that PJM uses to calculate default offer price floors and the Net Avoidable Cost Rate (ACR) formula used to establish existing resource market seller offer caps, nothing in the December 2019 Order, Rehearing Order, or the PJM compliance filing alters the existing rules applicable to market seller offer caps. Exelon states that the Net ACR formula, in addition to the default market seller offer cap, currently forms the upper bounds of an offer that is presumed not to reflect an exercise of seller market power. Exelon states while PJM's proposed section 6.4 of Attachment DD addresses both offer price floors and offers at the market seller offer cap, PJM's proposed Tariff is silent with respect to offers that fall within that range. Exelon therefore requests that the Commission clarify that offers between the existing market seller offer caps (i.e.,

[180] First Transmittal at 73.

[181] *Id.*

[182] *Id.* at 78.

default market seller offer cap and Net ACR) and the offer price floors (if applicable) are both just and reasonable and presumed competitive.[183]

100. The Ohio Commission supports PJM's proposal to mitigate the offer down to the higher of the applicable market seller offer cap or MOPR floor offer price in the limited instances where the MOPR floor offer price is higher than the market seller offer cap.[184]

101. OPSI opposes PJM's proposed revisions to the market seller offer cap. OPSI states that the Commission has acknowledged that the market seller offer cap serves a different function than the MOPR and argues that the market seller offer cap is therefore outside the scope of this proceeding. OPSI also contends that PJM cannot propose changes on compliance that the Commission did not order, and that the Commission would have to first find the market seller offer cap unjust and unreasonable before mandating changes in this proceeding.[185] Further, OPSI argues, there is no precedent permitting PJM to approve an offer at a price higher than the applicable market seller offer cap. OPSI contends that PJM's proposal would allow the exercise of market power and requests the Commission find that, even where the applicable default offer price floor exceeds the applicable market seller offer cap, PJM should not accept an offer higher than the market seller offer cap.[186]

102. Vistra likewise argues that PJM's proposal is beyond the scope of this proceeding, which is concerned with offer price floors alone, and should be rejected.[187] Even if not outside the scope of this proceeding, Vistra contends that the proposal is unnecessary as it seeks to solve a problem that does not exist. Vistra explains that, as stated by PJM, this circumstance happens only if a resource were to request a resource specific offer price floor and presented evidence of projected future energy and ancillary services (E&AS) revenues that could produce a number higher than its market seller offer cap. However, according to Vistra, to choose an option that a seller knows will yield a higher offer price

---

[183] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 3-4, 15-16, 26-27.

[184] Ohio Commission Comments on Second Compliance Filing at 15-16.

[185] OPSI Comments on First Compliance Filing at 13-14. OSPI argues that the Commission expressly acknowledged the possibility that the offer price floor could exceed the market seller offer cap, but still did not propose changes, which further demonstrates the market seller offer cap is outside of this proceeding. *Id.* at 16 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 194).

[186] *Id.* at 20-22.

[187] Vistra Comments on First Compliance Filing at 4-5.

floor is economically irrational. Vistra concludes that if the Commission allows PJM to make changes to the market seller offer cap rules, it should direct PJM to change its proposal so that a seller can elect to choose between historic and forecast E&AS revenues only where the choice yields a resource-specific offer price floor that is lower than the market seller offer cap.[188]

103. PJM answers that its proposal is well within the Commission's compliance directive because the proposed revisions impact the MOPR offer price floors and ensure that sellers are not left without a feasible offer if the offer price floors exceed the market seller offer cap. PJM explains that without this rule, some sellers may face a scenario where they are unable to submit a valid offer that comports with both the MOPR and the market seller offer cap rules. PJM reiterates that allowing a seller to choose either the default or resource-specific price level, regardless of the applicable market seller offer cap, prevents a disincentive for sellers to open their books with resource-specific information. PJM further argues that Vistra's proposal may not account for all scenarios where the MOPR offer price floor may exceed the market seller offer cap. For example, PJM notes that the default offer price floors for different resource types may increase over time so the offer price floor could exceed the market seller offer cap regardless of the resource-specific process.[189]

3. Commission Determination

104. We reject PJM's proposal because revisions to the market seller offer cap have never been a subject of this FPA section 206 proceeding and are therefore beyond the scope of the compliance directive.[190] Neither the December 2019 Order nor the Rehearing Order directed changes to the market seller offer cap provisions or found that sellers should be able to offer above the default market seller offer cap without a resource-specific review, as currently required by the Tariff.[191] We therefore reject PJM's proposed changes to Attachment DD, section 6.4 and 6.5.

105. However, and contrary to Vistra's contention that the problem PJM seeks to solve does not exist, we understand PJM's concern that sellers may be left without a valid offer under potentially conflicting Tariff provisions in circumstances where the default or resource-specific offer price floor for a particular resource is higher than the market seller offer cap for such resource. In such a circumstance, we find that the resource should

[188] *Id.* at 6.

[189] PJM June 3 Answer at 27-28.

[190] First Proposed Tariff, Attach. DD, §§ 6.4, 6.5.

[191] Tariff, Attach. DD, § 6.

submit an offer using the resource-specific review process.[192] We therefore direct PJM to file a compliance filing making the following change to Attachment DD, section (h-1)(2):

> (2) Minimum Offer Price Rule. Any Sell Offer for a New Entry Capacity Resource with State Subsidy or a Cleared Capacity Resource with State Subsidy that does not qualify for any of the exemptions, as defined in Tariff, Attachment DD, sections 5.14(h-1)(4)(8), shall have an offer price no lower than the applicable MOPR Floor Offer Price, unless the applicable MOPR Floor Offer Price is higher than the applicable Market Seller Offer Cap, in which circumstance the Capacity Resource with State Subsidy must seek a resource-specific value determined in accordance with the resource-specific MOPR Floor Offer Price[193] process to participate in an RPM Auction.

106. We confirm Exelon's clarification request that nothing in the December 2019 Order, Rehearing Order, or PJM's compliance filing alters the existing rules applicable to default market seller offer caps. With respect to Exelon's clarification request that offers between the market seller offer cap and the default offer price floor are both just and reasonable and presumed competitive, we clarify that such offers shall not, in and of themselves, be deemed an exercise of market power in the RPM market. However, the Market Monitor has the responsibility to review all sell offers for market power concerns.[194]

---

[192] In a separate proceeding, the Commission has found PJM's methodology for calculating the energy and ancillary services offset (E&AS Offset) unjust and unreasonable and directed PJM to adopt a forward-looking offset. *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,153, at P 308 (2020) (Reserves Order). With this change, we find that the resource-specific market seller offer cap will always be higher than the resource-specific offer price floor, and therefore PJM's proposal regarding resource-specific offers is moot.

[193] PJM proposes that MOPR Floor Offer Price shall mean a minimum offer price applicable to certain capacity resources under certain conditions, as determined in accordance with Tariff, Attachment DD., sections 5.14(h) and 5.14(h-1). Second Proposed Tariff, Definitions L-M-N (MOPR Floor Offer Price).

[194] PJM Tariff, Attach. M, § IV.E-1.

D. Self-Supply Exemption

1. Compliance Directives

107. The December 2019 Order, as modified by the Rehearing Order, directed PJM to include a Self-Supply Exemption for resources owned by self-supply entities that fulfill at least one of these criteria: (1) have successfully cleared an annual or incremental capacity auction prior to December 19, 2019; (2) have an executed interconnection service agreement, interim interconnection service agreement, interconnection construction service agreement, or Wholesale Market Participant Agreement on or before December 19, 2019; or (3) have an unexecuted interconnection service agreement, interim interconnection service agreement, interconnection construction service agreement, or Wholesale Market Participant Agreement filed by PJM for the resource with the Commission on or before December 19, 2019.[195] The Rehearing Order clarified that only resources currently owned or bilaterally contracted for by the self-supply entity qualify as "existing" for the purposes of the Self-Supply Exemption.[196]

2. PJM's Compliance Filings

108. PJM proposes, as modified by its second compliance filing, to exempt resources owned, or bilaterally contracted, by self-supply entities meeting the criteria for the Self-Supply Exemption[197] that: (a) have successfully cleared an RPM auction prior to December 19, 2019; (b) are the subject of an interconnection construction service agreement, interim interconnection service agreement, interconnection service agreement or equivalent agreement, or wholesale market participant agreement executed on or before December 19, 2019; or (c) are the subject of an unexecuted interconnection service agreement, interconnection construction service agreement, interim interconnection service agreement or wholesale market participation agreement filed by PJM with the Commission on or before December 19, 2019.[198] PJM also proposes language to clarify that the Self-Supply Exemption applies only to capacity resources that

---

[195] December 2019 Order, 169 FERC ¶ 61,239 at P 202; Rehearing Order, 171 FERC ¶ 61,035 at P 201.

[196] Rehearing Order, 171 FERC ¶ 61,035 at P 246.

[197] PJM's proposed Tariff refers to this as the Self-Supply Entity Exemption, but for simplicity we retain the term Self-Supply Exemption here.

[198] First Transmittal at 30. PJM clarifies that, while the December 2019 Order only specified resources owned by self-supply entities, PJM proposes that the exemption should also include resources bilaterally contracted by self-supply entities. *Id.* at 31; *see also* Second Transmittal at 38-39; Second Proposed Tariff, Attach. DD, §5.14(h-1)(5).

were owned or bilaterally contracted for by a self-supply entity as of December 19, 2019 and that remain owned or bilaterally contracted for by the same self-supply entity.[199]

109. PJM states that vertically integrated utilities, public power entities, and single customer entities will be considered self-supply entities for the purposes of the Self-Supply Exemption.[200] PJM states that self-supply entities need not affirmatively elect this exemption because PJM already has the information necessary to determine which resources should be eligible and PJM will provide a list of eligible resources to each self-supply entity.[201]

3. Comments

110. Dominion and ODEC support PJM's proposal that the exemption for self-supply resources under development also include "interim interconnection service agreements" and equivalent agreements.[202] ODEC also supports PJM's proposed definition of self-supply entity and proposed application of the Self-Supply Exemption to both resources owned by self-supply entities and resources that are bilaterally contracted for by self-supply entities. ODEC urges the Commission to accept, without revision, PJM's compliance proposal.[203]

111. SMECO supports PJM's proposal, but requests clarification that a bilateral contract executed prior to December 19, 2019 but for which capacity has not yet been offered by the seller in a capacity auction qualifies as "existing" for purposes of the Self-Supply Exemption.[204]

---

[199] Second Transmittal at 39.

[200] First Transmittal at 31. PJM explains that "vertically integrated utility means a utility that owns generation, includes such generation in regulated rates, and earns a regulated return on its investments in such generation or receives any cost recovery for such generation through bilateral contracts," and public power entities include cooperative and municipal utilities, including public power supply entities comprised of either or both of the same and rural electric cooperatives, and joint action agencies. PJM also clarifies that single customer entity refers to a load-serving entity majority owned by a municipality or cooperative that serves only retail customers. *Id*.

[201] First Transmittal at 32.

[202] Dominion Protest and Comments on First Compliance Filing at 6-7.

[203] ODEC Comments on First Compliance Filing at 3, 6-7.

[204] SMECO comments on First Compliance Filing at 7.

4. Commission Determination

112. We accept PJM's compliance proposal regarding the Self-Supply Exemption as consistent with the December 2019 Order and Rehearing Order,[205] and direct a modification as discussed below in the RPS Exemption section regarding eligibility.[206] The Rehearing Order found that eligible agreements include wholesale market participation agreements and interim interconnection service agreements for purposes of eligibility for the categorical exemptions enumerated in the December 2019 Order.[207] Likewise, the Rehearing Order explained why resources under contract to self-supply entities should be subject to mitigation, and found that resources that were under contract with self-supply entities prior to December 19, 2019 should qualify for the Self-Supply Exemption.[208]

113. We disagree with SMECO's clarification request because an executed bilateral contract alone is not one of the eligibility criteria for the exemption.

E. Renewable Portfolio Standard Exemption

1. Compliance Directives

114. The December 2019 Order, as modified by the Rehearing Order, directed PJM to include an RPS Exemption for renewable resources receiving support from state-mandated or state-sponsored RPS programs that fulfill at least one of these criteria: (1) have successfully cleared an annual or incremental capacity auction prior to December 19, 2019; (2) have an executed interconnection service agreement, interim interconnection service agreement, interconnection construction service agreement, or wholesale market participant agreement on or before December 19, 2019; or (3) have an unexecuted interconnection service agreement, interim interconnection service agreement, interconnection construction service agreement, or wholesale market participant agreement filed by PJM for the resource with the Commission on or before December 19, 2019.[209] The Rehearing Order clarified that the resource eligible for the

---

[205] *See* Second Proposed Tariff, Attach. DD, § 5.14(h-1)(5) (Self-Supply Entity Exemption).

[206] *See infra* IV.E.4.

[207] Rehearing Order, 171 FERC ¶ 61,035 at P 201.

[208] *See, e.g.*, *id*. PP 220, 243, 246.

[209] December 2019 Order, 169 FERC ¶ 61,239 at P 173; Rehearing Order, 171 FERC ¶ 61,035 at P 201.

RPS Exemption include all existing resources that were included in an RPS program as of the date of the December 2019 Order.[210]

2. PJM's Compliance Filings

115. PJM proposes, as amended in its second compliance filing, to exempt a capacity resource that "receives or is entitled to receive State Subsidies through renewable energy credits or equivalent credits associated with a state-mandated or state-sponsored [RPS] program or equivalent program as of December 19, 2019," and which has cleared an RPM auction prior to December 19, 2019; is the subject of an interconnection construction service agreement, interconnection service agreement, interim interconnection service agreement or wholesale market participation agreement executed on or before December 19, 2019; or is the subject of one of these agreements that is unexecuted and filed by PJM with the Commission on or before December 19, 2019.[211] PJM explains it already has information pertaining to which resources qualify for this exemption, making it unnecessary for resources to affirmatively elect the exemption. PJM states that it will provide a list of resources that qualify for the exemption to the relevant sellers.[212]

3. Comments, Protests, and Answers

116. Parties generally support PJM's compliance proposal.[213] Hillcrest Solar states it does not contest PJM's proposed Tariff language regarding the scope of the expanded MOPR or eligibility criteria for the RPS Exemption. However, Hillcrest Solar requests the Commission clarify that, in determining if a resource is subject to a qualifying agreement on or before December 19, 2019, PJM shall deem an agreement "executed" as of the date of the interconnection customer executed it, regardless of the timing of

---

[210] Rehearing Order, 171 FERC ¶ 61,035 at P 279.

[211] *See* Second Proposed Tariff, Attach. DD, § 5.14(h-1)(6).

[212] First Transmittal at 34.

[213] *See* Dominion Protest and Comments on First Compliance Filing at 6-7; Clean Energy Associations July 17 Answer at 7. Clean Energy Associations submitted comments in response to PJM's first compliance filing that have been rendered moot by the Rehearing Order and PJM's second compliance filing, so we do not include those comments. *See* Clean Energy Associations Comments on First Compliance Filing at 13-14; Clean Energy Associations July 17 Answer at 7.

countersignature by PJM or the transmission owner.[214] Hillcrest Solar notes that, while the PJM Tariff requires interconnection customers execute interconnection agreements within a proscribed time, there is no specific timeframe within which PJM or the transmission owner must countersign. Hillcrest Solar states that, absent clarification on this issue, Hillcrest Solar will be unjustly and unreasonably penalized for the fact that, while it had executed its interconnection service agreement by December 17, 2019, full execution by PJM and Duke Business Services, LLC for Duke Energy Ohio, Inc. did not occur until February 2020.[215] Hillcrest Solar concludes that the Commission made clear that it was directing PJM to exempt existing RPS-eligible resources from the expanded MOPR because the investors in those resources relied on "prior affirmative decisions" from the Commission and argues that Hillcrest Solar, by acting on its interconnection service agreement by December 17, 2019, committed to completing the interconnection process.[216]

117. In its June 3 answer, PJM states that it supports Hillcrest Solar's request, arguing it is reasonable and consistent with the intent of the December 2019 Order, because the customer can only control the timing of its own signature. Therefore, if directed by the Commission, PJM states it will so amend the RPS Exemption eligibility.[217]

118. The Maryland Commission and OPSI state that PJM should expand the eligibility criteria to include when a resource can demonstrate that, prior to December 19, 2019, it filed for and obtained authorization from a state public utility commission to receive a prescribed, long-term schedule of payment for the environmental attributes of a renewable energy project, pursuant to state legislation.[218] Maryland Commission argues that this would demonstrate significant financial and time commitments by the resource, as well as the commitment of the state public utility commission to dedicate state resources to the project, and avoid arbitrarily basing eligibility on an interconnection service agreement.[219] The Maryland Commission further asserts that this request is

---

[214] Hillcrest Solar Comments on First Compliance Filing at 4-5 (citing PJM Tariff, § 212.4(a)).

[215] *Id.* at 5-6.

[216] *Id.* at 6-7 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 280).

[217] PJM June 3 Answer at 9.

[218] Maryland Commission Comments and Protest of First Compliance Filing at 11, 13; OPSI Comments on First Compliance Filing at 25.

[219] Maryland Commission Comments and Protest of First Compliance Filing at 12-13, n. 22 (stating, for example, that Skipjack Offshore Energy, LLC received approval for a 120 MW offshore wind project on May 11, 2017 and agreed to proceed with the project

narrower than the request it made in its December 2019 Order rehearing request. The Maryland Commission and OPSI argue the proposed expansion is consistent with the reasoning of the December 2019 Rehearing Order[220] because obtaining authorization from the state public utility commission to receive long-term environmental attributes shows a financial commitment and good faith reliance on the prior MOPR rules as does an interconnection service agreement.[221]

119. Clean Energy Associations propose several amendments to PJM's proposed Tariff language describing the RPS Exemption, including to remove the term "Capacity Resource."[222]

120. PJM clarifies that PJM's proposed language in its second compliance filing was not intended to preclude the proposed modifications suggested by the Clean Energy Associations that any resource that had an executed interconnection or similar agreement (or unexecuted agreement but filed with the Commission) prior to the December 19, 2019 date should qualify for the exemption. PJM states that Clean Energy Associations' approach would include in the RPS Exemption any existing energy-only resources with an interconnection or similar agreement as of December 19, 2019, even if such resource may not have been a capacity resource as of that date. PJM asserts that it takes no position on this approach and does not object to making this clarification in the Tariff if directed by the Commission.[223]

121. In response to PJM's July 7 Answer, Clean Energy Associations state that they support PJM's RPS Exemption language filed in the second compliance filing, but request that the Commission clarify that an existing renewable energy resource need not have cleared a previous capacity market auction or have been a Capacity Resource as of December 19, 2019 to qualify for the RPS Exemption. Clean Energy Associations state they do not request further modification of PJM's proposed Tariff language but believe that an RPS resource need not have previously been a capacity resource to qualify for the

---

under extensive conditions on May 24, 2017, demonstrating a significant financial commitment to develop a project under prior MOPR rules).

[220] *Id.* at 13; OPSI Comments on First Compliance Filing at 25 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 282).

[221] Maryland Commission Comments and Protest of First Compliance Filing at 13 n.23.

[222] Clean Energy Associations Comments on First Compliance Filing at 13-14.

[223] PJM June 3 Answer at 19; PJM July 7 Answer at 19.

exemption. Clean Energy Associations contend that the plain language reading of the orders shows that no such requirement exists.[224]

4. Commission Determination

122. We accept, in part, PJM's proposed RPS Exemption as consistent with the directives in the December 2019 Order and the Rehearing Order, with a modification as directed below.[225]

123. We agree with PJM that "execution" for purposes of the RPS Exemption is met when the customer signed the relevant agreement prior to December 19, 2019. We find this reasonable and consistent with December 2019 Order because the customer has committed to the process and cannot control the actions of others. This should not just apply to the RPS Exemption, however, and we clarify it also applies in the context of the Self-Supply Exemption and Capacity Storage Exemption. We therefore direct PJM to modify the proposed Tariff language related to eligibility for those exemptions to state that a capacity resource may qualify for the exemption if it is the subject of an interconnection service agreement that is executed by the interconnection customer on or before December 19, 2019.[226]

124. We deny the requests by the Maryland Commission and OPSI to expand eligibility for the RPS Exemption to criteria beyond an executed or unexecuted interconnection service agreement or equivalent agreement. PJM's proposed Tariff language is consistent with the directives in the underlying orders. Furthermore, OPSI's and the Maryland Commission's proposals are inconsistent with the Rehearing Order, which rejected similar arguments by these parties.[227]

---

[224] Clean Energy Associations July 17 Answer at 3-4, 7.

[225] *See* Second Proposed Tariff, Attach. DD, §5.14(h-1)(6). PJM's exemption covers standards with procurement mandates that may not be labeled Renewable Portfolio Standards, such as Pennsylvania's Alternative Energy Standard, but are substantially similar. *See* Second Transmittal at 40. We agree that the program need not be labeled "renewable portfolio standard."

[226] This directive amends Second Proposed Tariff, Attach. DD, §§5.14(h-1)(5)((B); 5.14(h-1)(6)(B); 5.14(h-1)(8)(B).

[227] *PJM*, 133 FERC ¶ 61,277 at P 34 (stating that protests to a compliance order are limited to whether the filing meets the initial directive and "cannot properly function as late rehearings of the initial order, relitigating matters that are now final and non-appealable"); *see also* Rehearing Order, 171 FERC ¶ 61,035 at PP 280-282 (addressing parties' arguments about extending the RPS Exemption eligibility). In any event, despite

125. As to Clean Energy Associations' request regarding existing resources, we agree that the December 2019 Order found that a resource need not have cleared a capacity auction prior to December 19, 2019 to qualify for the exemption, but rather can qualify under the requirements related to executed and unexecuted interconnection service agreements and the like. However, we disagree that this exemption should apply to energy-only resources as well as capacity resources. The December 2019 Order dealt exclusively with the capacity market and capacity resources, and therefore there is no basis in the record to provide an exemption to energy-only resources who may later choose to request interconnection rights for the capacity market. The December 2019 Order only applied the MOPR to resources "that participate in the capacity market" and it is therefore reasonable to apply the exemptions only to capacity resources.[228] This is also consistent with other findings in the orders detailing that resources that have not consistently offered into the capacity market will be treated as new, including repowered resources,[229] resources that skip a capacity auction,[230] and uprates.[231] Energy-only resources that seek to enter the capacity market will therefore be treated as new resources for the purposes of the expanded MOPR.

F. Demand Response Resource and Energy Efficiency Resource Exemption

1. Compliance Directives

126. The December 2019 Order directed PJM to include a Demand Response, Energy Efficiency, and Storage Resource Exemption.[232] With respect to demand response and energy efficiency, resources that fulfill at least one of these criteria would be eligible: (1) have successfully cleared an annual or incremental capacity auction prior to December 19, 2019; (2) have completed registration on or before December 19, 2019; or (3) have a

---

arguments to the contrary, OPSI and the Maryland Commission's proposals on compliance are not appreciably different from their proposals in the Rehearing Order and therefore we are not persuaded that the proposals could be considered consistent with the Rehearing Order.

[228] December 2019 Order, 169 FERC ¶ 61,239 at P 50.

[229] *Id.* P 2 n.5.

[230] Rehearing Order, 171 FERC ¶ 61,035 at P 60.

[231] December 2019 Order, 169 FERC ¶ 61,239 at P 149.

[232] PJM's Tariff uses "Demand Resource and Energy Efficiency Resource Exemption." *See* Tariff, Attach. DD, § 5.14(h-1)(7).

measurement and verification plan approved by PJM for the resource on or before December 19, 2019.[233] The Rehearing Order also clarified that all demand response program participants, whether they participate in the capacity market individually or through an aggregator, and regardless of their size, would be subject to the expanded MOPR if they receive or are entitled to receive a State Subsidy.[234]

127. With respect to demand response aggregators and Curtailment Service Providers (CSPs), the Rehearing Order clarified that these providers would be eligible for the exemption if they met additional requirements. As to the first criterion of the exemption, individual demand response resources would be considered to have cleared a capacity auction if they cleared either on their own (i.e., individually) or as part of an offer from an aggregator or CSP. An individual demand response resource can be a single retail customer. The Rehearing Order explained that aggregators and CSPs will be considered to have previously cleared a capacity auction only if all the individual resources within the offer have cleared a capacity auction either on their own (i.e., individually) or as part of an offer from an aggregator or CSP.[235]

2. PJM's Compliance Filings

128. PJM states that it complied with the Commission's directive to exempt demand response and energy efficiency resources that have successfully cleared an auction prior to December 19, 2020.[236] PJM states that it will determine which demand response resources have cleared an auction by looking at individual customer location registrations or, for utility-based residential load curtailment programs, the total number of participating customers that participated as demand response resources and cleared in a capacity auction prior to December 19, 2020.[237] PJM explains that it is important to track the underlying participating end-use customer locations in determining whether a demand

[233] December 2019 Order, 169 FERC ¶ 61,239 at. P 208.

[234] Rehearing Order, 171 FERC ¶ 61,035 at P 264.

[235] *Id.* P 265.

[236] PJM states that it proposes to create a separate Capacity Storage Resource Exemption, rather than combine it with the Demand Response Resource and Energy Efficiency Resources Exemption, because the two exemptions have different qualifications. *See* First Transmittal at 41 n.98. No party filed comments on this aspect of PJM's proposal. We accept PJM's proposal for a Capacity Storage Resource Exemption as consistent with the December 2019 Order and Rehearing Order. *See* Second Proposed Tariff, Attach. DD, § 5.14(h-1)(8).

[237] First Transmittal at 35-38.

response resource is existing or not because those locations may change their CSP frequently. PJM therefore proposes to exempt any end-use customer or location that was included in a demand response resource registration prior to December 19, 2019 or was used to fulfill cleared capacity commitments prior to that date, in its entirety. PJM clarifies that this would not tie the customer's or location's exemption to the MW amount cleared for that location in a prior auction, as a customer's nomination value may change based on factors outside its control.[238]

129. With respect to utility-based residential load curtailment programs, PJM states these are more difficult to track because of the large number of residential customers and the frequency with which they switch participation. PJM explains that, rather than tracking those individual customer locations, PJM proposes to treat as exempt the total number of participating residential customer locations that were associated with a demand response resource that cleared prior to the December 19, 2019 date.[239] In its second compliance filing, PJM proposes to clarify the demand response resource registration rules to provide that only utility-based residential load curtailment programs may be aggregated into a single registration, and all other registrations must be composed of a single location. PJM explains it is necessary to allow utility-based residential programs to be aggregated because it would be unreasonably burdensome to register each participating residence separately.[240]

130. PJM further states that demand response resources that cleared a capacity auction prior to December 19, 2019 may not yet have end-use customer locations linked to the registrations associated with that resource. As such, PJM proposes to allow sellers to link any end-use customer in the registrations that correspond with demand response resources that cleared such auctions no later than 45 days prior to the BRA for the 2022/2023 delivery year. PJM therefore proposes that any end-use customers that support MWs cleared in any capacity auction conducted prior to December 19, 2019 be exempt.[241]

131. In its second compliance filing, PJM states that it proposes to continue to allow CSPs to offer based on a demand response resource sell offer plan that details assumptions about how the CSP plans to meet its commitment. However, PJM clarifies that only those registrations that are "pre-registered" to a demand response resource at the time the offer is submitted can qualify to become cleared and therefore existing

---

[238] *Id.* at 36-38.

[239] *Id.* at 38.

[240] Second Transmittal at 35.

[241] First Transmittal at 38.

resources. PJM explains this approach allows a potential gaming opportunity, such that CSPs could wait until the deadline to register end-use customer locations, shortly before the delivery year, and register State-Subsidized locations. Therefore, PJM proposes to apply the Competitive Exemption penalties to end-use customer locations that receive or are entitled to receive State Subsidies but are registered to a demand response resource commitment that was not offered at the appropriate default offer price floor.[242]

132. With regard to energy efficiency resources, PJM states that eligibility for the exemption should be determined in an aggregated manner because the nominated energy efficiency value submitted in the measurement and verification plans is not by location, but rather through an aggregated total of all energy efficiency projects that were installed in a zone or sub-zone during that installation period. PJM therefore proposes to exempt all sell offers up to a determined MW quantity calculated for each installation period, zone, and sub-zone, by using the greater of the latest approved post-installation measurement and verification report prior to December 19, 2019 or the maximum MWs cleared for a delivery year across all auctions conducted prior to December 19, 2019.[243]

133. For individual customer registration locations, PJM states it will develop a list of the end-use customers and locations that qualify for the Demand Response Resource Exemption, as well as a list of the post installation measurement and verification reports for the Energy Efficiency Exemption, and provide it to the relevant sellers for confirmation.[244]

3. Comments, Protests, and Answers

134. Exelon supports PJM's proposed Demand Response Resource Exemption, but requests clarification that the Commission's Rehearing Order finding that the application of a default offer price floor may require aggregators and CSPs to know all of their demand response resource end-users prior to the capacity auction does not change demand response resource qualification criteria generally, which Exelon argues are outside the scope of this order.[245] Specifically, Exelon requests the Commission clarify that the requirement that a demand response resource be known prior to the auction only

[242] Second Transmittal at 36-37.

[243] First Transmittal at 39-40.

[244] *Id.* at 40.

[245] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 23, 26 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 266).

applies to the extent that the resource seeks an exception to the application of the default offer price floor.[246]

135. Exelon also states that, if the Commission determines that an exemption based on total number of participating customers does not comply with the requirement in the Rehearing Order, that the Commission find that PJM would comply by directing PJM to strike the parenthetical phrase "(or for utility-based residential load curtailment program, based on the total number of participating customers)" from proposed Tariff, Attachment DD, section 5.14(h)(B)(7)(A).[247]

136. PJM-ICC supports PJM's proposal to track individual end-use customer locations, as opposed to applying the exemption based on the aggregate MWs that each CSP previously cleared. PJM-ICC also supports PJM's proposal to apply the MOPR exemption to any registered end-use customers that support cleared MWs in any capacity auction conducted prior to December 19, 2019.[248]

137. PJM-ICC contends that if the capability of a demand response resource is the same as the capability when that resource cleared an earlier capacity auction, then the demand response resource should be exempt from the MOPR for the entirety of its offer.[249] In PJM-ICC's comments on PJM's second compliance filing, PJM-ICC supports PJM's proposed Tariff language on capacity increases, explaining that PJM limits the potential loss of the exemption for an existing, cleared demand response resource to a scenario where the resource increases its capability to new investment. PJM-ICC states that it understands PJM's proposed Tariff language to mean that changes in the level of or type of State Subsidy of an existing, cleared demand response resource will not cause that resource to lose its exemption.[250]

138. The DC Attorney General states that the Commission's directive to apply the expanded MOPR at the end-user level will lead to inefficiencies in the capacity market and in the expansion of demand response programs. The DC Attorney General argues that because of the Commission's directive, CSPs and demand response aggregators must choose among being subjected to the expanded MOPR, avoiding end-users eligible for or participating in state programs to avoid the expanded MOPR, or forgoing capacity

---

[246] *Id.* at 25-26.

[247] *Id.* at 24, 26.

[248] PJM-ICC Protest and Comments on First Compliance Filing at 5-6.

[249] *Id.* at 7.

[250] *Id*. at 7-8.

payments for capacity that will nonetheless be provided by not bidding into the capacity market, leading to market inefficiencies. The DC Attorney General also contends that PJM's proposal to subject CSPs to the competitive exemption penalty precludes CSPs from drawing on the most efficient and widest array of end users.[251]

139. Ohio Commission argues that PJM's proposal that each demand response registration be associated with one end-use customer location and that each end-use customer location will be considered existing or new demand response based on whether the location is included for the first time in the demand response aggregator's or curtailment service provider's pre-registered sell offer for the applicable annual capacity auction is onerous and unnecessarily burdensome for demand response aggregators and curtailment service providers. Ohio Commission argues that the effect of PJM's proposal is to require aggregators and curtailment service providers to know all of their demand response end-use locations prior to the capacity auction, a requirement that does not exist today. Ohio Commission contends that demand response aggregators and CSPs are often not able to determine the customer locations they will use until just prior to the delivery year. Ohio Commission argues that PJM's proposal therefore unfairly requires classification of customer locations as new or existing based on when such information is provided to PJM, rather than the actual status of the customer location, which will have a chilling effect on the business plans of demand response aggregators and CSPs.[252]

140. The Market Monitor states that CSPs must have all end use customers under contract in order to effectively apply the expanded MOPR and should be required to do so. The Market Monitor also argues that, if load management locations were not linked to a cleared demand response resource offer prior to the December 2019 Order, they should not qualify for the exemption.[253] In its answer, PJM disagrees with the Market Monitor's comments regarding CSPs for purposes of eligibility for the Demand Response Resource Exemption. PJM believes the Market Monitor's comments appear to disadvantage CSPs for following long-standing rules prior to December 19, 2019 that did not require end-use customer contracts in order to submit a demand response resource sell offer into an RPM auction. PJM asserts that its proposal is reasonable and consistent with the Commission's objective of preventing price suppression.[254]

141. The Market Monitor responds that, contrary to PJM's assertion, it is not administratively burdensome to register customers in the same zip code to the same

---

[251] DC Attorney General Comments on Second Compliance Filing at 5.

[252] Ohio Commission Comments on Second Compliance Filing at 13-14.

[253] Market Monitor Comments on First Compliance Filing at 21-22.

[254] PJM June 3 Answer at 10-11.

registration. The Market Monitor asserts that all market participants have the administrative burdens associated with participating in PJM markets. The Market Monitor contends that all CSPs must know where their customers are located, which includes knowing the zip code of the customer. The Market Monitor asserts that CSPs have been exempt from providing the nodal location of each resource, which imposes an inappropriate administrative burden on PJM operating a nodal market. Therefore, the Market Monitor argues that CSPs should be required to provide the locations of their customers if they wish to participate in the PJM capacity market.[255]

142. In its July 7 answer, PJM reiterates that its proposal that all end-use customer locations must be registered to a demand response resource individually with the exception of utility-based residential load curtailment programs is just and reasonable. PJM states, contrary to the Market Monitor's assertions, requiring CSPs to register utility-based residential programs by zip codes would not yield additional operational flexibility since utility-based residential load curtailment programs may not have the operational capability to respond by zip codes or subzones.[256]

4. Commission Determination

143. We accept in part PJM's proposed Demand Response and Energy Efficiency Resource Exemption and direct further compliance on one aspect of the proposal that does not fully comply with the Commission's directives.[257] Specifically, we find that PJM's proposal regarding utility-based residential load curtailment programs does not comply with the Rehearing Order, and we further direct PJM to remove the parenthetical statement "(or for utility-based residential load curtailment program, based on the total number of participating customers)" from Attachment DD, Section 5.14(h)(7)(a).[258] The Rehearing Order requires aggregators and CSPs to be considered to have previously cleared a capacity auction only if all the individual resources within the offer have cleared a capacity auction either on their own (i.e., individually) or as part of an offer from an aggregator or CSP.[259] The Rehearing Order also clarified that an individual demand response resource can be a single retail customer and, with respect to retail demand response programs specifically, that any State Subsidized demand response

---

[255] Market Monitor July 23 Answer at 7.

[256] PJM July 7 Answer at 15.

[257] *See* Second Proposed Tariff, Attach. DD, §5.14(h-1)(7).

[258] We similarly reject PJM's proposed changes to Tariff, Attachment K Appendix sections 8.4 and 8.11 and Operating Agreement Schedule 1 sections 8.4 and 8.11.

[259] Rehearing Order, 171 FERC ¶ 61,035 at P 265.

resources would be subject to the MOPR, regardless of their size.[260] However, PJM's proposal for the utility-based residential load curtailment programs requires only that the total number of participating customers be considered, rather than ensuring that each retail customer within the offer previously cleared a capacity auction either on their own (i.e., individually) or as part of an offer from an aggregator or CSP.[261]

144. We reject arguments on compliance that tracking end-use customer locations is burdensome or inefficient as seeking to re-litigate issues already determined by the Commission. We have already found that demand response customers and locations must be tracked individually.[262] We therefore dismiss this argument as an impermissible request for rehearing of the Rehearing Order and as outside the scope of this compliance determination.

145. Finally, we reiterate that the Rehearing Order did not require PJM to modify the generic qualification criteria applicable to demand response resource participation in RPM.[263] In that order, we rejected the Market Monitor's request to order specific changes to the qualification criteria for demand response resources because those rules were not at issue in the December 2019 Order and therefore no record on which to base a change existed.[264] We once again reject the Market Monitor's request here as outside the scope of the proceeding.

G. Competitive Exemption

1. Compliance Directives

146. The December 2019 Order directed PJM to include a Competitive Exemption for both new and existing resources, other than new gas-fired resources, that certify to PJM that they will forego any State Subsidies.[265] The Rehearing Order clarified that the Competitive Exemption is available to State-Subsidized Resources receiving or entitled to receive a State Subsidy that certify they will forego the State Subsidy, noting that all

---

[260] *Id.* PP 264-265.

[261] First Transmittal at 35.

[262] Rehearing Order, 171 FERC ¶ 61,035 at P 265.

[263] *Id.* P 399.

[264] *Id.*

[265] December 2019 Order, 169 FERC ¶ 61,239 at P 161.

resources seeking to employ the Competitive Exemption must certify whether or not they receive, or are entitled to receive, a State Subsidy.[266]

147. Further, the December 2019 Order found two measures are necessary to ensure the Competitive Exemption does not present a gaming opportunity. First, the order directed PJM to include in its compliance filing a provision stating that if an existing resource claims the Competitive Exemption in a capacity auction for a delivery year and subsequently elects to accept a State Subsidy for any part of that delivery year, then the resource may not receive capacity market revenues for any part of that delivery year.[267] The December 2019 Order clarified, however, that the resource would be eligible for capacity market revenues for the relevant delivery year if it could demonstrate under the resource-specific process that it would have cleared in the relevant capacity auction.[268] Second, the December 2019 Order found that PJM's compliance filing should include a provision stating that, if a new resource claims the Competitive Exemption in its first year, then subsequently elects to accept a State Subsidy, that resource may not participate in the capacity market from that point forward for a period of years equal to the applicable asset life that PJM used to set the default offer price floor in the auction that the new resource first cleared.[269]

148. The Rehearing Order also clarified that purely voluntary REC transactions, meaning those that are not associated with state-mandated or state-sponsored procurement (Voluntary RECs), are not State Subsidies. Resources receiving Voluntary RECs may apply for the Competitive Exemption and certify that they will only sell their RECs through Voluntary REC arrangements and ensure that no broker or direct buyer will resell them for state purposes.[270]

2. PJM's Compliance Filings

149. PJM states that it has included a Competitive Exemption for capacity market sellers, other than self-supply entities or new CT or CC resources that have not yet cleared an RPM auction, to certify that they will elect to forgo accepting any State

---

[266] Rehearing Order, 171 FERC ¶ 61,035 at P 307.

[267] December 2019 Order, 169 FERC ¶ 61,239 at P 162.

[268] *Id.* P 162 n.312.

[269] *Id.* P 162.

[270] Rehearing Order, 171 FERC ¶ 61,035 at P 381.

Subsidy for the relevant resource.[271] PJM proposes that resources that are no longer entitled to a State Subsidy, but are subject to the MOPR because they have not cleared a capacity auction since they last received the State Subsidy, would not be eligible for the Competitive Exemption.[272]

150. PJM states that, consistent with the December 2019 Order, a seller of a Cleared Capacity Resource with State Subsidy or unsubsidized resource that elects the Competitive Exemption, clears the auction, and then subsequently accepts a State Subsidy for that delivery year will not receive any capacity revenues for that delivery year unless the seller can demonstrate that the resource would have cleared in the relevant auction at or above an offer consistent with its resource-specific offer price floor.[273] Further, for New Entry Capacity Resources that accept a State Subsidy in their first delivery year after electing the Competitive Exemption or certifying that they are not subsidized, PJM states that such resources will no longer be allowed to participate in any capacity auction or be eligible to be used as replacement capacity for a period of 20 years for all resources except battery resources, and 15 years for battery resources.[274] PJM explains that any such resources will not be able to receive capacity revenues for any part of the delivery year for which they accepted the State Subsidy, regardless of whether they would have cleared at a resource-specific MOPR offer price floor.[275] However, PJM proposes that during the 20 year period, the resource could provide capacity as part of an FRR capacity plan.[276]

151. PJM clarifies that resources that clear an auction before they receive or become entitled to receive a State Subsidy cannot be New Entry Capacity Resources.[277] PJM argues that this is reasonable because the market has a demonstrated need the resource

---

[271] First Transmittal at 43; Second Proposed Tariff, Attach. DD, § 5.14(h-1)(4).

[272] First Transmittal at 44.

[273] *Id.* at 46-47.

[274] *Id.* at 48-50.

[275] *Id.* at 49 (citing First Proposed Tariff, Attach. DD, § 5.14(h)(B)(i)).

[276] *Id.* at 49 n.126.

[277] *Id.* at 8 n.21, 9.

based on its economic merit[278] and that resources attempting to game this provision would be easily detectable given the public record.[279]

152. PJM proposes that any returned capacity revenues be returned to the load that bears the cost of the State Subsidy, or, if PJM is unable to identify the load, then to all load in the PJM region that is not under an FRR plan.[280]

153. In its second compliance filing, PJM proposes that resources not subject to the must-offer requirement re-entering the RPM and classified as New Entry Capacity Resources with State Subsidy would be subject to the penalties associated with misusing the Competitive Exemption if they had accepted a State Subsidy at any time prior to the year they apply for the exemption. PJM states "this effectively precludes resources re-entering RPM from electing the competitive exemption, and PJM does not believe that was the Commission's intent," but "PJM views remedying that consequence as beyond the scope of this compliance filing."[281]

154. PJM explains that sellers of resources that generate RECs or equivalent credits may elect the Competitive Exemption if they can demonstrate, upon request, that the credits will only be used and retired for voluntary obligations, as opposed to state-mandated renewable portfolio standards.[282] PJM states that it will modify the existing Generation Attribute Tracing System (GATs) to allow sellers to place limits on how their RECs may be used, such that a seller can dictate that their RECs may only be retired for voluntary purposes, and may not be retired for mandatory state RPS requirements in the GATs system.[283]

3. Comments, Protests, and Answers

155. In response to PJM's proposed Competitive Exemption structure that renders resources owned or contracted for by self-supply entities ineligible for the competitive exemption, Dominion asserts that vertically integrated utilities, such as Dominion Energy Virginia, own and develop resources that are outside of rate base, where the costs of

---

[278] *Id.* at 9.

[279] *Id.* at 8 n.24.

[280] *Id.* at 48, 51.

[281] Second Transmittal at 13.

[282] First Transmittal at 43.

[283] *Id.* at 44 n.107.

those resources is "ring fenced," or not recovered from ratepayers.[284] Dominion asserts that, if a self-supply entity can demonstrate that a resource it owns or is developing foregoes State Subsidies, and in the case of vertically integrated utilities, not recovering its costs from ratepayers, it should be eligible for the Competitive Exemption regardless of whether it is a self-supply entity. Accordingly, Dominion requests the Commission strike the proposed Tariff language stating that resources that "are owned or offered by Self Supply Entities" are not eligible for the Competitive Exemption.[285]

156. In response to Dominion's protest, PJM states that, if directed by the Commission, it can submit a compliance filing that would allow self-supply entities that own or control non-rate-based capacity resources to self-certify, subject to PJM and Market Monitor review, that their facility is ring-fenced from traditional rate-base regulation, and that the capacity resource will not accept a State Subsidy, including any financial benefit that is a result of being owned by a regulated utility.[286]

157. With regard to the provisions regarding gaming of the Competitive Exemption, the Market Monitor disputes PJM's proposed exception to the Competitive Exemption that permits resources that accept a State Subsidy after clearing the auction the opportunity to demonstrate the resource would have cleared consistent with the Resource-Specific Exception MOPR offer price floor for the relevant auction without the State Subsidy, recommending the Commission reject this aspect.[287] The Market Monitor states allowing such an exception invites strategic behavior and treats new and existing resources differently.[288]

158. NMA supports PJM's proposed compliance language regarding new resources accepting a State Subsidy in their first delivery year after requesting the Competitive Exemption.[289]

159. Vistra argues that PJM's proposed allocation of forfeited capacity revenues provides a perverse incentive and states that such forfeited revenues should be allocated across all load in PJM, rather than returned to the load that bears the cost of the subsidy

---

[284] Dominion Protest and Comments on First Compliance Filing at 7-8.

[285] *Id.* at 9-10 (citing PJM First Proposed Tariff, Attach. DD, § 5.14(h)(4)(A)).

[286] PJM June 3 Answer at 12.

[287] Market Monitor Comments on First Compliance Filing at 15-16.

[288] *Id.* at 16.

[289] NMA Comments on First Compliance Filing at 2.

collected by the resource. Vistra argues that giving the money back to the same state that issued the very subsidy that caused the forfeiture of revenues provides an incentive to game the rules.[290]

160. Exelon disagrees with Vistra's proposal that forfeited capacity market revenue should be returned to all load in the PJM region that is not under an FRR plan and asks the Commission to accept PJM's proposal. Exelon asserts that PJM's proposal discourages gamesmanship because the resource will be penalized for accepting a subsidy. Exelon continues that PJM's proposal ensures that customers that are not subsidizing the resource remain no worse off than they otherwise would have been had the resource not been subsidized, because they still receive the proportional benefit from the capacity provided by the new subsidized resource, and they pay the clearing price for that capacity based on an offer that did not reflect the subsidy. On the other hand, Exelon argues, customers bearing the cost of subsidy will pay an amount greater than the capacity revenue the resource would have received from the RPM because the resource would not accept a State Subsidy unless the amount was greater than the amount of capacity revenue the resource forfeits. Exelon states that Vistra's proposal, in contrast, would lead to an unjustified windfall to the rest of the RTO who would receive the reliability benefits associated with the capacity provided by the subsidized resource, but pay nothing for it.[291]

161. Exelon argues that, to the extent the Commission concludes some forfeited capacity revenue should be returned to load beyond those customers that provided the subsidy, the Commission should direct that forfeited capacity revenue be allocated to customers in proportion to the Minimum Internal Reliability Requirement for the zone in which the subsidized resource is located. Exelon further agrees with PJM's proposal that if the resource would have cleared at its resource-specific offer price floor, then it may keep the subsidy and objects to the Market Monitor's arguments regarding this aspect. Exelon notes that PJM was simply following the December 2019 Order's directive and thus the Market Monitor's arguments amount to an untimely rehearing and relitigation of a determination made in the underlying order.[292]

162. Commenters support PJM's proposal for voluntary RECs.[293] Buyers Group believes that PJM's proposed Competitive Exemption process for voluntary REC sales

---

[290] Vistra Comments on First Compliance Filing at 3-4.

[291] Exelon June 1 Answer at 8-10.

[292] *Id.* at 10-11.

[293] *See* Clean Energy Associations Comments on First Compliance Filing at 6, 8; EDF Renewables Comments on First Compliance Filing at 2-4; Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 5, 25-27;

provides a feasible pathway to ensure that such projects are not inappropriately subjected to MOPR.[294]

163. The Market Monitor argues that PJM should be required to provide the Market Monitor full access to the data in the GATs system in order for the Market Monitor to track compliance.[295] In its answer, PJM responds to the Market Monitor by noting that any such data that PJM obtains for this purpose will necessarily be available to the Market Monitor pursuant to the existing service level agreement between PJM and the Market Monitor.[296] PJM adds that it is unnecessary for the Commission to take any action on this issue.[297]

164. In its July 23 answer, the Market Monitor responds that PJM offers to provide only the data PJM relies on to ensure that voluntary RECs are not retired for state compliance requirements and not the full set of data that PJM has control over and access to. The Market Monitor asserts that it needs access to all of the data available to PJM in order to independently review compliance and to understand PJM's conclusions.[298]

4. Commission Determination

165. We accept, in part, reject, in part, and modify PJM's compliance to the Competitive Exemption and direct PJM to submit a compliance filing within 30 days of the date of this order. Except as noted below, and above (IV.A.4), we accept PJM's proposed Tariff language as consistent with the direction provided in the December 2019 Order and Rehearing Order.[299]

Maryland Commission Comments and Protest of First Compliance Filing at 14; P3 Comments on First Compliance Filing at 3; Virginia Department of Mines, Minerals and Energy Comments on First Compliance Filing at 4.

[294] Buyers Group Comments on First Compliance Filing at 4.

[295] Market Monitor Comments on Second Compliance Filing at 12.

[296] PJM July 7 Answer at 17 (citing PJM Tariff, Attach. M, § V.A.); PJM August 6 Answer at 5, 17-18.

[297] PJM July 7 Answer at 17; PJM August 6 Answer at 5, 17-18.

[298] Market Monitor July 23 Answer at 9.

[299] PJM Second Proposed Tariff, Attach. DD, § (h-1)(4) and PJM June 3 Answer at 21 (proposing edits to Second Proposed Tariff, Attach. DD, § 5.14(h-1)(4)(A)).

166. We agree with PJM that Dominion has provided an example of an instance where a self-supply entity could own a resource that may be sufficiently isolated from that self-supply entity's rate-based cost recovery, such that the resource could be considered to not receive a State Subsidy, regardless of whether it is owned or controlled by a self-supply entity. However, we reject Dominion's proposed remedy, which would amend the proposed Tariff language stating resources that "are owned or offered by Self Supply Entities" shall not be eligible under the Competitive Exemption. Eliminating this language would be an overly broad revision which would allow any self-supply entity to be eligible for the Competitive Exemption. We have already found that should not typically be the case.[300] Instead, we direct PJM to revise its proposed Tariff Attachment DD section 5.14(h-1)(4) language to address this specific scenario for self-supply resources as follows:

> (A) A Capacity Resource with State Subsidy may be exempt from the Minimum Offer Price Rule under this subsection 5.14(h-1) in any RPM Auction if the Capacity Market Seller certifies to the Office of Interconnection, in accordance with the PJM Manuals, that the Capacity Market Seller of such Capacity Resource elects to forego receiving any State Subsidy for the applicable Delivery Year no later than thirty (30) days prior to the commencement of the offer period for the relevant RPM Auction. Notwithstanding the foregoing, the competitive exemption is not available to Capacity Resources with State Subsidy that (A) are owned or offered by Self-Supply Entities, unless the Self-Supply Entity certifies, subject to PJM and Market Monitor review, that the Capacity Resource will not accept a State Subsidy, including any financial benefit that is the result of being owned by a regulated utility, such that retail ratepayers are held harmless, ...[301]

167. We also direct PJM to modify its proposal regarding the gaming provisions that dictate under what circumstances a resource that elects the Competitive Exemption and then accepts a State Subsidy will forfeit its capacity revenue. As a threshold matter, we reject the Market Monitor's protest that the seller of a Cleared Capacity Resource with State Subsidy or unsubsidized resource that elects the Competitive Exemption, clears the auction, and then subsequently accepts a State Subsidy for that delivery year should not be allowed to demonstrate that the resource would have cleared in the relevant auction at or above an offer consistent with its resource-specific offer price floor. The Market Monitor's argument seeks to re-litigate issues already determined by the Commission.[302]

---

[300] Rehearing Order, 171 FERC ¶ 61,035 at PP 306, 325.

[301] Second Proposed Tariff, Attach. DD, § 5.14 § (h-1)(4)(A).

[302] December 2019 Order, 169 FERC ¶ 61,239 at P 162 n.312.

We dismiss this argument as an impermissible request for rehearing of the December 2019 Order and accept this aspect of PJM's proposed Tariff.[303]

168. However, we reject two aspects of PJM's proposed application of the provision that if a new resource claims the Competitive Exemption in its first year, then subsequently elects to accept a State Subsidy, that resource may not participate in the capacity market from that point forward for a period of years equal to the applicable asset life that PJM used to set the default offer price floor in the auction that the new asset first cleared. First, PJM appears to have interpreted the Commission directive to be that a New Entry Capacity Resource triggers this provision only if that resource accepts a State Subsidy between the period it clears the auction and its first delivery year. This is inconsistent with the December 2019 Order, which directed "PJM to include in its compliance filing a provision stating that if a new resource claims the Competitive Exemption in its first year, then subsequently elects to accept a State Subsidy, that resource may not participate in the capacity market from that point forward for a period of years equal to the applicable asset life that PJM used to set the default offer price floor in the auction that the new asset first cleared."[304] The December 2019 Order therefore did not limit the application of this provision to the resource's first delivery year. We therefore reject this aspect of PJM's proposal and require further compliance to apply this provision to any year of a New Entry Capacity Resource's asset life, rather than just the resource's first delivery year. This means that, if a New Entry Capacity Resource enters the capacity market and is not subject to the MOPR (either under the Competitive Exemption or because it certifies that it is not State Subsidized), then subsequently elects to accept a State Subsidy at any point in its asset life, that resource may not participate in the capacity market from that point forward for a period of years equal to the remaining applicable asset life that PJM used to set the default offer price floor in the auction that the new asset first cleared (typically 20 years).

169. For clarity, we note that this provision should apply only during the applicable asset life that PJM used to set the default offer price floor in the auction that the new resource first cleared, which will typically be 20 years. Therefore, if a resource subject to the 20-year asset life were to accept a State Subsidy 21 years after first clearing the auction under the Competitive Exemption, this provision would not apply. In addition, this provision should be tied to the asset life, such that it does not extend beyond that time. For example, if a resource accepts a State Subsidy in first delivery year, it would not be able to participate in the capacity auction for 20 years. However, if the resource accepts a State Subsidy in its fifth delivery year, it would not be able to participate in the

[303] *See* Second Proposed Tariff, Attach. DD, § 5.14(h-1)(4)(B)(ii).

[304] December 2019 Order, 169 FERC ¶ 61,239 at P 162.

capacity auction for 15 years, as this accounts for the five delivery years the resource provided capacity without accepting a State Subsidy.

170. Therefore, we direct PJM to submit a compliance filing modifying Attachment DD, section 5.14(h-1)(4)(B)(i) of the second set of proposed Tariff revisions as shown:

> (B) (i) The Capacity Market Seller shall not receive a State Subsidy for any part of the relevant Delivery Year in which it elects a competitive exemption or certifies that it is not a Capacity Resource with State Subsidy. In furtherance of this prohibition, if a Capacity Resource that (1) is a New Entry Capacity Resource with State Subsidy that elects the competitive exemption in subsection (4)(A) above and clears an RPM Auction for a given Delivery Year, but prior to the end ~~of that Delivery Year~~ of the asset life that PJM used to set the applicable default New Entry MOPR Floor Price in the RPM Auction that the New Entry Capacity Resource with State Subsidy first cleared, elects to accept a State Subsidy ~~for the associated Delivery Year or an earlier Delivery Year~~ or (2) is not a Capacity Resource with State Subsidy at the time of the RPM Auction for the Delivery Year for which it first cleared an RPM Auction but prior to the end ~~of that Delivery Year~~ of the asset life that PJM used to set the applicable default New Entry MOPR Floor Price in the RPM Auction that the Capacity Resource first cleared, receives a State Subsidy ~~for the associated Delivery Year or an earlier Delivery Year~~, or (3) in the case of Demand Resource, is an end-use customer location MW that receives a State Subsidy and is included in a Demand Resource Registration pursuant to RAA, Schedule 6 to satisfy a Demand Resource commitment that was not designated as a Capacity Resource with State Subsidy at the time it cleared the relevant RPM Auction, then the Capacity Market Seller of that Capacity Resource or end-use customer location MW shall not receive RPM revenues for such resource or end-use customer location MW for any part of that Delivery Year and may not participate in any RPM Auction with such resource or end-use customer location MW, or be eligible to use such resource or end-use customer location MW as replacement capacity starting June 1 of the Delivery Year after the Capacity Market Seller or end-use customer location MW first receives the State Subsidy and continuing for the remainder of the asset life that PJM used to set the applicable default New Entry MOPR Floor Price in the RPM Auction that the Capacity Resource first cleared (~~a period of~~ 20 years, except for battery energy storage, for which such participation restriction shall apply for a period of 15 years).

171. Second, we reject PJM's proposal that, going forward, any capacity resource which cleared an auction before it received or became entitled to receive a State Subsidy shall be deemed a Cleared Capacity Resource with State Subsidy, rather than a New Capacity Resource with State Subsidy. Neither the December 2019 Order nor the Rehearing Order contemplated this. The December 2019 Order found that the Competitive Exemption would be available to resources "that certify to PJM that they will forego any State Subsidies, to avoid being subject to the applicable default offer price floor."[305] That order further required that any new resource claiming the Competitive Exemption in its first year, that later accepts a State Subsidy, may not participate in the capacity market from that point forward for a period of years equal to the applicable asset life that PJM used to set the default offer price floor in the auction that the new asset first cleared. The December 2019 Order explained this was necessary to close "a loophole whereby a resource may not be eligible for a State Subsidy at the time of the capacity market qualification process, but may become eligible for such a subsidy, and accept it, before or during the relevant delivery year."[306] PJM's proposal would not close that loophole, because it would limit the application of this provision to only those new resources which are eligible for a State Subsidy at the time of their first RPM auction. The December 2019 Order required it apply to any new resource that certified to PJM that it would forego any State Subsidy, but later accepts a State Subsidy. We therefore reject PJM's proposal as inconsistent with the underlying orders and direct PJM to submit a compliance filing which modifies the definition of Cleared Capacity Resource with State Subsidy in Definitions – C-D to remove this sentence:

> Notwithstanding the foregoing, any Capacity Resource that previously cleared an RPM Auction before it received or became entitled to receive a State Subsidy shall also be deemed a Cleared Capacity Resource with State Subsidy, unless, starting with the Base Residual Auction for the 2022/2023 Delivery Year, the Capacity Resource with State Subsidy was not the subject of a Sell Offer in the Base Residual Auction or included in an FRR Capacity Plan at the time of the Base Residual Auction for a Delivery Year after it last cleared an RPM Auction.[307]

[305] December 2019 Order, 169 FERC ¶ 61,239 at P 161.

[306] *Id.* P 162.

[307] Second Proposed Tariff, Definitions C-D (Cleared Capacity Resource with State Subsidy).

172. Similarly, we direct PJM to submit a compliance filing which modifies the definition of New Entry Capacity Resource with State Subsidy in Definitions – L-M-N to remove this sentence:

> Notwithstanding the foregoing, any Capacity Resource that previously cleared an RPM Auction before it became entitled to receive a State Subsidy shall not be deemed a New Entry Capacity Resource, unless, starting with the Base Residual Auction for the 2022/2023 Delivery Year, the Capacity Resource with State Subsidy was not the subject of a Sell Offer in a Base Residual Auction or included in an FRR Capacity Plan at the time of the Base Residual Auction for a Delivery Year after it last cleared an RPM Auction.[308]

173. Third, we agree with Vistra that PJM should allocate capacity revenues it collects from resources that forfeit them to all PJM load, not just the load of the state that subsidized the resource. We agree that allocating forfeited capacity revenues to the subsidizing load could create a perverse incentive because it does not ensure that states bear the costs of their action.[309]

174. Exelon argues that ratepayers not subsidizing the resource are no worse off, but we disagree. Under PJM's proposal, all ratepayers in the PJM region not under an FRR plan will pay for the capacity resource that would not receive capacity revenues because they accepted a State Subsidy in a delivery year, but the ratepayers that did not receive forfeited capacity revenues will end up paying more for that capacity relative to the subsidized zone, which will receive a discount for that capacity in the form of forfeited capacity revenues. Such an outcome would be inequitable and inconsistent with our underlying orders. Further, approving PJM's proposal may create an incentive for resources eligible for State Subsidies to seek capacity revenues to offset the cost of that subsidy to the zone subsidizing the resource, and such an incentive should be avoided. Therefore, we direct PJM to revise its proposed Tariff language to provide that capacity revenues forfeited from resources that accept a State Subsidy in a delivery year after clearing the auction should be allocated across all loads that are not part of a FRR plan in PJM, regardless of whether PJM can identify the load that subsidized the resource. We direct PJM to file a compliance filing that modifies proposed Attach. DD, § 5.14(h-1)(4)(B)(iii) as follows:

> (iii) Any revenues returned to the Office of the Interconnection pursuant to the preceding subsections (i) and (ii) shall be allocated ~~to~~

---

[308] Second Proposed Tariff, Definitions L-M-N (New Entry Capacity Resource with State Subsidy).

[309] *See* Vistra Comments on First Compliance Filing at 3-4.

> ~~the relevant load that paid for the State Subsidy (to the extent possible). If the Office of Interconnection cannot identify the relevant load responsible for the State Subsidy, then the returned revenues would be allocated~~ across all load in the RTO that has not selected the FRR Alternative. Such revenues shall be distributed on a pro-rata basis to such LSEs that were charged a Locational Reliability Charge based on their Daily Unforced Capacity Obligations.[310]

175. Fourth, we clarify that the Competitive Exemption penalties only apply prospectively. As noted above, PJM proposes that resources not subject to the must-offer requirement re-entering RPM would be subject to the penalties associated with misusing the Competitive Exemption if they had accepted a State Subsidy at any time prior to the year they applied for the exemption. PJM states "this effectively precludes resources re-entering RPM from electing the competitive exemption."[311] However, this is not consistent with the underlying orders in this proceeding. The December 2019 Order found that any new State-Subsidized Resource that claimed a Competitive Exemption in its first year could not *subsequently* accept a State Subsidy. The order did, as PJM suggests, require resources to certify that they had never previously received a State Subsidy. However, a resource that is not subject to the must-offer requirement that clears as a New Entry Capacity Resource with State Subsidy, and later accepts a State Subsidy for that resource, regardless of whether it was participating in the capacity auction that year or not, would not be able to participate in the capacity market from that point forward for the requisite number of years, even if that resource later skipped an auction and lost its status as a Cleared Capacity Resource with State Subsidy. This would not, as PJM suggests, preclude resources re-entering RPM from electing the Competitive Exemption, unless they had previously violated the terms of that exemption.[312]

176. Finally, we accept PJM's proposal to comply with the Rehearing Order's finding that resources receiving Voluntary RECs may apply for the Competitive Exemption and certify that they will only sell their RECs through Voluntary REC arrangements and ensure that no broker or direct buyer will resell them for state purposes.[313]

---

[310] Proposed Second Proposed Tariff, Attach. DD, § 5.14(h-1)(4)(B)(iii).

[311] Second Transmittal at 13.

[312] The revisions necessary to effectuate this change have already been directed in P 170.

[313] Rehearing Order, 171 FERC ¶ 61,035 at P 381.

177. With respect to the Market Monitor's request for additional information, we disagree that the Market Monitor must have full access to all GATs data to ensure that PJM and market participants have correctly identified which RECs are Voluntary RECs and to comply with the underlying orders.

H. Default Offer Price Floors

1. General New Resource Default Offer Price Floors

a. Compliance Directives

178. Generally, the December 2019 Order found that the default offer price floor for most resources that have not previously cleared a capacity auction should be 100% of the default Net Cost of New Entry (Net CONE) for each resource type.[314] The December 2019 Order did not, however, accept any Net CONE values previously filed in this proceeding and instead instructed PJM to provide additional detail as to how those values were calculated.[315] The December 2019 Order found that it is reasonable to maintain certain basic financial assumptions for the default values, including a 20-year asset life.[316]

179. The December 2019 Order also directed PJM to propose on compliance default offer price floors for all other types of resources that participate in the capacity market, including capacity storage resources and resources whose primary purpose is not energy production.[317] However, the Rehearing Order granted rehearing regarding the requirement for PJM to provide a default Net CONE and Net ACR for resources whose primary purpose is not energy production and stated that PJM may require these resources to use the Resource-Specific Exception instead.[318]

180. With respect to energy efficiency resources, the December 2019 Order directed PJM to establish objective measurement and verification requirements for new energy efficiency offers and to limit such offers to the verifiable level of savings.[319] However, the Rehearing Order granted rehearing to set the default offer price floor for new energy efficiency resources at Net CONE, noting that the default offer price floors for energy

---

[314] December 2019 Order, 169 FERC ¶ 61,239 at P 138.

[315] *Id.* P 143.

[316] *Id.* P 153.

[317] *Id.* P 146.

[318] Rehearing Order, 171 FERC ¶ 61,035 at P 191.

[319] December 2019 Order, 169 FERC ¶ 61,239 at P 147.

efficiency must account for the costs of measurement and verification necessary to establish a resource's verifiable level of savings.[320]

b. PJM's Compliance Filings

181. PJM states it developed proposed gross CONE values based on a review of cost data from publicly available sources such as the U.S. Energy Information Administration (EIA), for all technologies except solar, CT, CC, and demand response. PJM explains that the EIA data is the most recent publicly available source and is well-documented.[321] PJM states the CC and CT gross CONE values are the same as approved in the 2018 quadrennial review proceeding and that PJM employed the same financial assumptions used to calculate those numbers in calculating the other gross CONE values, with some minor exceptions.[322] For example, for wind and solar resources, PJM states it accounted for a federal Investment Tax Credit (ITC), which reduced the gross CONE values for those resources by approximately 30%.[323]

182. PJM states that it has not proposed a default offer price floor for hydroelectric resources or resources whose primary purpose is not energy production. With respect to the former, PJM states that such facilities are too site-specific to develop generic values. With respect to the latter, PJM states that it does not have the data necessary to propose default values. PJM explains that hydroelectric facilities are inherently site-specific and therefore there is no "generic" facility from which PJM can derive a default value. For resources with no default CONE value, PJM proposes that such resources submit an offer through the Resource-Specific Exception. If resources fail to do so and do not have a default CONE value, PJM will consider the offers incomplete and reject them, preventing the resource from clearing that auction.[324]

183. For energy efficiency resources, PJM states its consultant evaluated the energy efficiency programs in four utility regions, subtracting the estimated wholesale energy savings, as well as transmission and distribution savings from the gross CONE, and then determined the capacity-weighted average of each program's Net CONE. PJM proposes

---

[320] Rehearing Order, 171 FERC ¶ 61,035 at P 197.

[321] First Transmittal at 53-54.

[322] *Id.* at 54 (citing *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,029 (2019) (VRR Update Order)).

[323] *Id*. at 54.

[324] *Id*. at 65.

$64/MW-Day (ICAP) as the energy efficiency default Net CONE.[325] In its second compliance filing, PJM states that this methodology considers the costs of measurement and verification and therefore is consistent with the Rehearing Order.[326]

c. Comments, Protests, and Answers

184. Some parties urge the Commission to accept the proposed default offer price floors as just and reasonable and compliant with the December 2019 Order.[327] Public Interest Organizations supports PJM's proposal to base gross CONE on EIA data, arguing it effectively relies on objective and well-documented sources.[328] Exelon states that in approving PJM's proposed default offer price floors, the Commission should be aware that the default values do not necessarily represent the financial viability of any particular resource or a specific resource's expectations.[329]

185. The Pennsylvania Commission argues that, in recognition of the Commission's distinction between calculating a maximum price (offer cap) versus the default offer price floor, the default offer price floor should reflect actual costs of projects, as adjusted for projected unit cost increases or decreases by technology and changes in efficiency over time.[330] The Pennsylvania Commission asserts that, in calculating actual costs, adders should be excluded because the detailed cost build-up for each technology may already imbed such costs in the estimates to the extent they are based on historical actual plant, equipment, and labor costs. The Pennsylvania Commission argues that competitive projects that clear the auction should not be penalized for effectively minimizing such speculative cost elements. The Pennsylvania Commission asserts that PJM has not provided sufficient information to justify its contingency cost adjustments and such adjustments should be rejected absent additional testimony justifying the appropriateness of these cost adders. According to the Pennsylvania Commission, there are several such

---

[325] *Id.* at 59.

[326] Second Transmittal at 41.

[327] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 9, 26; Virginia Department of Mines, Minerals and Energy Comments on First Compliance Filing at 4.

[328] Public Interest Organizations Comments on First Compliance Filing at 3.

[329] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 12-13.

[330] Pennsylvania Commission Comments on First Compliance Filing at 4-5 (citing December 2019 Order, 169 FERC ¶ 61,239 at P 152).

adders, including the contingency fee of 10% of engineering, procurement, and construction, as well as owner-furnished equipment cost adders embedded in PJM's Gross CONE calculations.[331]

186. The Market Monitor recommends that, rather than calculating a default Net CONE value, the Commission should require that any new energy efficiency resources subject to the MOPR use the Resource-Specific Exception. The Market Monitor explains that the Net CONE values proposed in the Brattle Report vary from -$76/MW-day to $256/MW-day, demonstrating that a single value will not accurately estimate any participant's Net CONE.[332] The Market Monitor argues that the measurement and verification for energy efficiency resources should be included in the gross CONE calculation. The Market Monitor explains that these requirements generally rely on assumptions about usage rather than measurement and verification and that such costs for energy efficiency should include all of the costs associated with a verifiable measurement and verification program.[333]

d. Commission Determination

187. We accept PJM's proposed gross CONE values as consistent with the underlying orders, with the exception of the energy efficiency value, which we reject, as discussed below.[334] The Commission found PJM's methodology for calculating the E&AS Offset used in the capacity market unjust and unreasonable in a separate proceeding in Docket No. EL19-58 addressing PJM's reserves market.[335] The Commission found that the just and reasonable replacement rate is the adoption of a forward-looking E&AS Offset and directed PJM to submit a compliance filing to revise its Tariff with a forward-looking methodology.[336] That compliance filing is pending before the Commission and includes a new proposal for energy efficiency gross CONE. We therefore reject PJM's instant proposal as it pertains to energy efficiency gross CONE and defer this issue to the reserves proceeding. Similarly, we reject PJM's proposed Tariff revisions relating to

---

[331] *Id.* at 5-6.

[332] Market Monitor Comments on First Compliance Filing at 9 (citing *Gross Avoidable Cost Rate for Existing Generation & Net Cost of New Entry for New Energy Efficiency*, The Brattle Group, Table 15: Net CONE of EE Programs by Utility).

[333] Market Monitor Comments on Second Compliance Filing at 13.

[334] PJM Second Proposed Tariff, Attach. DD, § 5.14(h-1)(2)(A).

[335] Reserves Order, 171 FERC ¶ 61,153 at P 308.

[336] *Id.*

calculating E&AS Offsets. PJM states that it will update the methodology to calculate projected net E&AS revenues as it relates to this proceeding as part of its compliance filing in Docket No. EL19-58.[337]

188. We reject Pennsylvania Commission's arguments that various cost adders should not be included in the proposed gross CONE values. We acknowledge there may be more than one just and reasonable method of calculating gross CONE, but Pennsylvania Commission has failed to demonstrate that PJM's values are unjust and unreasonable. The default gross CONE value should be representative of expected costs and we find that it just and reasonable to include an adder for potential contingencies. Pennsylvania Commission's concerns that competitive resources will be penalized for minimizing costs related to unforeseen contingencies is misplaced. No resource will be forced to offer at the default offer price floor if that value is not reflective of the resource's costs, as determined by PJM and the Market Monitor through the Resource-Specific Exception, and therefore no truly competitive resource will be penalized. State-Subsidized Resources that are able to reduce their unforeseen contingency costs below the level of the adders proposed by PJM can apply for the Resource-Specific Exception.

189. Further, the Commission has already accepted the use of these adders in the gross CONE value used to set the Variable Resource Requirement (VRR) Curve. With respect to the contingency fee of engineering, procurement, and construction, the Commission found that adder "is intended to produce a reliable estimate and is necessarily a matter of judgment."[338] The Commission found 10% is a just and reasonable estimate. We reiterate that finding here.

190. We disagree with the Market Monitor that it is not appropriate to use a default offer price floor for energy efficiency resources, just because there is a large variation in potential costs.[339] The purpose of a default value is to serve as a threshold; it is not, as the Market Monitor suggests, to accurately reflect a particular participant's Net CONE. Further we have already directed PJM to establish a default offer price floor for energy efficiency resources, meaning Market Monitor's arguments amount to an untimely

---

[337] Second Transmittal at 6 n. 22. We decline to substantively discuss the protests here and reject as moot arguments regarding PJM's proposed E&AS Offsets. We further decline to require additional compliance, given that revised Tariff sheets are already pending before the Commission in Docket. No. EL19-58.

[338] VRR Update Order, 167 FERC ¶ 61,029 at P 78.

[339] We have rejected similar arguments before. *See* Rehearing Order, 171 FERC ¶ 61,035 at P 195 (rejecting arguments that energy efficiency resources were too varied to be subject to the MOPR).

rehearing and re-litigation of a determination made in the Rehearing Order.[340] We continue to find that it is just and reasonable, and administratively prudent, for PJM to use a default offer price floor to evaluate offers from State-Subsidized energy efficiency resources for competitiveness. We also reiterate that the Resource-Specific Exception will be available to prevent over-mitigation.

2. General Existing Resource Default Offer Price Floors

a. Compliance Directives

191. The December 2019 Order found that the default offer price floor for most existing resources should be the Net Avoidable Cost Rate (Net ACR) by resource type.[341] The December 2019 Order also directed PJM to provide additional explanation of its proposed Net ACR values on compliance, including workbooks and formulas, as appropriate, as well as additional justification for setting the default offer price floors for existing renewable resources at zero.[342]

192. The December 2019 Order also directed PJM to propose default offer price floors for all other types of resources, including energy efficiency, capacity storage, and resources whose primary function is not energy production.[343] The Rehearing Order granted rehearing to set the default offer price floor for existing energy efficiency resources at Net ACR, noting that the default offer price floors for energy efficiency must account for the costs of measurement and verification necessary to establish a resource's verifiable level of savings.[344] The Rehearing Order also granted rehearing regarding default offer price floors for resources whose primary function is not energy production, finding that if PJM cannot develop such values due to lack of information, the Resource-Specific Exception is a just and reasonable substitute.

b. PJM's Compliance Filings

193. PJM proposes to include in the Tariff default gross ACR values for existing generation resources. PJM states it will adjust those values annually using the 10-year

---

[340] *Id.* P 197 ("These must be default offer price floors, generally applicable to all new or existing energy efficiency resources, as appropriate . . . .").

[341] December 2019 Order, 169 FERC ¶ 61,239 at P 148.

[342] *Id.* P 149.

[343] *Id.* P 150.

[344] Rehearing Order, 171 FERC ¶ 61,035 at P 197.

average Handy-Whitman Index PJM currently uses to determine resource-specific market seller offer caps.[345] PJM notes this is different than the index PJM proposes to use for new resources, which includes construction costs. PJM states that the approach for determining default offer price floors aligns with the approach in its Tariff for determining ACR for resource-specific market seller offer caps. However, PJM explains that it omitted the Capacity Performance Quantifiable Risk premium and the investment described as part of the Avoidable Project Investment Recovery Rate for the purposes of determining default offer price floors.[346]

194. PJM states that it does not propose a default offer price floor for hydroelectric resources, because such resources are too site-specific for a generic value to be useful. PJM also states that it does not propose a default offer price floor for resources whose primary function is not energy production because PJM does not have adequate data to do so. As with new resources without a default CONE value, PJM proposes that existing resources for which there is no default offer price floor must use the Resource-Specific Exception to submit offers.[347]

c. Comments and Protests

195. Some commenters support PJM's proposed gross ACR values and encourage the Commission to accept them.[348] Exelon states PJM's compliance proposal strikes an appropriate balance for purposes of mitigation, while accommodating a number of the resources being promoted by state programs. Specifically, Exelon asserts that the removal of the 10% adder for cost uncertainty/operational risk and the adjustment to zero out the Capacity Performance Quantifiable Risk (CPQR) component are reasonable and appropriate modifications to the default market seller offer cap formula contained in section 6.8 of Attachment DD to create default offer price floor.[349]

196. Commenters argue that PJM's proposed default offer price floors for existing resources are too low and will not prevent State-Subsidized Resources from distorting

---

[345] First Transmittal at 66-67 (citing PJM Tariff, Attach. DD, § 6.8(a)).

[346] *Id*. at 67-68.

[347] *Id.* at 71.

[348] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 12, 26; ODEC Comments on First Compliance Filing at 8-9; Virginia Department of Mines, Minerals and Energy Comments on First Compliance Filing at 4.

[349] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 10-12.

auction clearing prices.[350] Cogentrix contends that, instead of debating the appropriate default offer price floor, PJM should use a calculation that adds the resource's specific subsidy to the Net ACR to reflect the true amount of revenue the resource requires.[351] J-POWER urges the Commission to expeditiously accept PJM's compliance filing without modification, but voices concern that the default offer price floors proposed by PJM could be substantially lower than the costs of State-Subsidized Resources.[352]

197. Eastern Generation argues using a representative plant is misleading because of the significant cost variability among resources in a particular resource class, especially when the calculation is based on average cost per MWh data that is not normalized for plant size. Eastern Generation contends that the Commission should direct PJM to determine default offer price floors based on the high-cost data in the representative plant cost calculations for each resource type, which Eastern Generation argues would prevent a larger number of uneconomic resources from submitting offers below their actual costs.[353]

198. For example, Eastern Generation states that the proposed gross ACR of $80/MW-day for existing coal generation resources is in the lower range of potential cost per MW-day, which allows resources with higher than average costs that receive State Subsidies to offer below their costs.[354] Eastern Generation argues the data used to support PJM's average cost per MW-day for coal generation resources is skewed too low because of assumptions based on the age and location of facilities. Eastern Generation explains that the Brattle Report finds that the oldest coal plant in PJM was constructed in 1942, but then proposes a representative coal plant that is only 45 years old, which is a full 35 years younger. Eastern Generation also argues that location is one of the primary drivers of cost variability for coal plants, but that the Brattle Report chose a relatively low-cost location, West Virginia, for the representative plant.[355]

199. As another example, Eastern Generation argues that Brattle used a report from the Nuclear Energy Institute for average costs of nuclear units across the country on a per-

---

[350] Cogentrix Comments on First Compliance Filing at 5; Eastern Generation Protest of First Compliance Filing at 5-6.

[351] Cogentrix Comments on First Compliance Filing at 6.

[352] J-POWER Comments on First Compliance Filing at 4-5.

[353] Eastern Generation Protest of First Compliance Filing at 7-8.

[354] *Id.* at 3-4.

[355] *Id.* at 4-5.

MWh basis, but Eastern Generation contends that the report does not provide a breakdown by plant size in MW terms. Eastern Generation explains that using an average of all plants does not accurately estimate the costs of small plants, and that using national data may not be representative of plants in the PJM region.[356] Eastern Generation contends these types of deficiencies in the default offer price floors would allow less efficient resources to offer below their costs.[357]

200. The Pennsylvania Commission asserts that PJM has provided no quantitative analysis to support the proposed 10% Adjustment Factor to provide a margin of error for understatement of costs in section 6.8 (a) of PJM's Tariff and it should be rejected absent further historical empirical evidence applicable to each technology.[358]

d. Commission Determination

201. We accept PJM's proposed gross ACR values as just and reasonable and consistent with the underlying orders.[359] As above, we reject the Tariff language pertaining to the E&AS Offsets because it is pending in the reserves proceeding. We reject Cogentrix's argument that PJM should add the subsidy to the Net ACR to reflect the resource's true revenue as untimely rehearing request of the December 2019 Order, which found that the default offer price floors for most existing resources should be Net ACR.[360]

202. We disagree with commenters' arguments that PJM should determine default offer price floors using the highest cost plant or data, as opposed to a representative plant or data. A default offer price floor should not be so high that it effectively requires all but the most expensive resources in any class to use the Resource-Specific Exception. This would defeat the purpose of having a default value. Rather, the default offer price floor should represent a reasonable estimate of a competitive offer for a representative resource of that type. It is therefore inappropriate to use data that is not representative of a typical resource. We find that PJM has appropriately chosen to use a resource which is representative of a typical resource's costs. For example, Eastern Generation argues that the reference coal plant is 35 years younger than the oldest coal plant in PJM. However, the oldest coal plant is not representative of coal plants in PJM generally. Rather, PJM

---

[356] *Id.* at 5-6.

[357] *Id.* at 6-8.

[358] Pennsylvania Commission Comments on First Compliance Filing at 8.

[359] PJM Second Proposed Tariff, Attach. DD, § 5.14(h-1)(2)(B).

[360] December 2019 Order, 169 FERC ¶ 61,239 at P 148.

proposes to use a plant that is 45 years old, because over half of the coal capacity in PJM is 35 to 55 years old.[361] Similarly, Eastern Generation argues that West Virginia is not a good choice for the representative unit because it is relatively low cost. However, the Brattle Report also indicates that there are more MWs of coal plants in West Virginia than any other state in PJM.[362] We similarly reject Eastern Generation's arguments regarding the values for nuclear resources. It is not unreasonable to use national values rather than PJM-specific values, nor is it unreasonable to use average costs.

203. Lastly, we reject Pennsylvania Commission's protest that the Commission should direct changes to section 6.8(a) of PJM's Tariff. Neither the December 2019 Order nor the Rehearing Order directed changes to that section and therefore any such changes are outside the scope of this proceeding. Further, changes to that section are pending in Docket No. EL19-58-000.

3. Escalation Values for New Resources

a. Compliance Directives

204. The December 2019 Order directed PJM to update the values annually and as part of PJM's quadrennial review of its demand curve and CONE values.[363]

b. PJM's Compliance Filings

205. PJM states that for each BRA, PJM will adjust the Tariff-stated gross CONE values for CT and CC resources for subsequent delivery years using the same Applicable Bureau of Labor Statistics (BLS) Composite Index mechanism used for adjusting the CONE value on which the Variable Resource Requirement Curve (VRR Curve)[364] is based.[365] PJM explains that the Tariff requires the values be adjusted annually based on "a composite of the BLS Quarterly Census of Employment and Wages for Utility System Construction (weighted 20%), the BLS Producer Price Index for Construction Materials

---

[361] *See* First Transmittal, Attach. D, Ex. 2 at 10.

[362] *Id.* at 11, fig. c.

[363] December 2019 Order, 169 FERC ¶ 61,239 at P 143.

[364] The VRR Curve is a series of maximum prices that can be cleared in a BRA for unforced capacity, corresponding to a series of varying resource requirements based on varying installed reserve margins. PJM Tariff, Definitions T – U – V.

[365] First Transmittal at 55 (citing First Proposed Tariff, Attach. DD, § 5.14(h)(2)(A)).

and Components (weighted 55%), and the BLS Producer Price Index Turbines and Turbine Generator Sets (weighted 25%)."[366]

206. For other resource types, PJM will replace the "BLS Producer Price Index Turbines and Turbine Generator Sets" index with the "BLS Producer Price Index for Goods Less Food and Energy, Private Capital Equipment" index, with no change to the relative weight of each index.[367] PJM explains it is reasonable to rely on the turbines index for CC and CT, but not other resource types, because CC and CT resources are heavily dependent on that specific technology. However, PJM states, it is reasonable to rely on a broader index for other resource types which use a wider range of equipment.[368]

c. Comments and Protests

207. Several commenters object to PJM's proposed escalation values for various resource types, arguing that it is not necessary to escalate the Net CONE values for inflation. The Pennsylvania Commission points out that, between delivery years 2014 and 2022, gross CONE values for CC resources have decreased between 16% and 28% depending on the CONE area within PJM, while PJM has continued to use indices to escalate gross CONE values.[369] The Pennsylvania Commission states that gross CONE was adjusted downward twice during that period, but argues that the upward trend is still clear. The Pennsylvania Commission contends that PJM's proposed escalation factor is therefore inappropriate because nominal CC gross CONE does not increase over time in correlation with any established composite indices, due to economics of scale, competition, and technological advancements. The Pennsylvania Commission argues that PJM's proposal to use existing or slightly modified Bureau of Labor Statistics escalators to establish gross CONE values for CC resources is therefore not just and reasonable and should be rejected. The Pennsylvania Commission instead recommends that such costs be held constant until the next formal review of CC gross CONE costs, unless PJM provides compelling facts to demonstrate that economics of scale, industry competition, technology innovation, or other major cost factors will be altered over the next four years.[370]

---

[366] *Id.* (citing Tariff, Attach. DD, § 5.10(a)(iv)(B)(1)).

[367] *Id.*

[368] *Id*. (citing Keech Aff. ¶ 22).

[369] Pennsylvania Commission Comments on First Compliance Filing at 17-18.

[370] *Id.* at 18.

208. Public Interest Organizations argue that PJM's proposed inflation adjustment will systemically overestimate the costs of solar, storage, and wind resources because the cost of these technologies has been decreasing, rather than increasing. Public Interest Organizations argue that PJM should be required to either (1) recalculate gross CONE for storage, solar, and wind resources annually rather than every four years, or (2) use a more specific cost index than the proposed "Producer Price Index for Goods Less Food and Energy, Private Capital Equipment" index. Public Interest Organizations state that such systematic error is discriminatory as it would consistently overestimate the costs of storage, solar and wind resources.[371]

209. The Pennsylvania Commission contends that PJM could adjust gross CONE values annually on a percent of change basis when annual updates to actual values are published.[372] The Pennsylvania Commission asserts that, to reflect the decline in costs of wind generators and batteries, PJM should be required to determine a reasonable de-escalation value for each resource type, consistent with historical trends, so that gross CONE values will not be overstated between quadrennial review periods. The Pennsylvania Commission also contends that PJM should incorporate annual energy gains for solar generation into the annual Net CONE determinations.[373] According to the Pennsylvania Commission, historical gains in solar energy generation have been 5.7% to 11.5% every four years. The Pennsylvania Commission argues that such an abrupt update to solar module efficiencies every four years would result in significant overstatement of Net CONE values for solar PV units in the intervening years.[374] The Pennsylvania Commission explains that these gains can have substantial impacts on Net CONE because variable costs are essentially zero.[375]

210. The Pennsylvania Commission states that PJM proposes to use the BLS indices historically used as escalation factors for gross CONE for CT and CC resources for other resources as well, including solar, wind, and battery resources, but has not presented any data or testimony establishing that these indices appropriately reflect historical escalation factors or going forward cost trends for any of these resources.[376] The Pennsylvania Commission asserts that, using the same references provided by PJM in their filing,

---

[371] Public Interest Organizations Comments on First Compliance Filing at 4.

[372] Pennsylvania Commission Comments on First Compliance Filing at 15.

[373] *Id.* at 15-16.

[374] *Id.* at 13, 15.

[375] *Id.* at 15.

[376] *Id.* at 10-11.

historical data shows that gross CONE values are consistently declining for solar, wind, and battery resources. The Pennsylvania Commission contends that it is unreasonable for PJM to assume that prices will increase for battery, solar, and wind technologies, and PJM's proposal to limit review of prices and efficiency assumptions to every four years will result in unjust and unreasonable prices for consumers and create unjustified barriers to entry.[377]

d. Commission Determination

211. We accept PJM's proposal to adjust the Tariff-stated gross CONE values for CT and CC resources annually using the Applicable BLS Composite Index.[378] The Commission has previously accepted the index as a method for annually adjusting the CT CONE value on which the VRR Curve is based.[379] We find that it is just and reasonable for CC resources as well, because CC resources face similar types of costs (e.g., construction and labor costs) which are increasing year over year. Some resource owners may be able to build at a cost below the default offer price floor if they are able to take advantage of economies of scale and advancements, as Pennsylvania Commission argues. However, this does not make escalating the default gross CONE value year over year unjust and unreasonable.

212. We also accept PJM's proposal to adjust the Tariff-stated gross CONE values for other resources.[380] Pennsylvania Commission states that PJM proposes to use the two of the same indices to adjust gross CONE values for CC and CT resources as for other resources types, but that PJM has not provided evidence showing that the proposed indices appropriately reflect historical escalation factors or going forward costs trends for any of these resources. However, the indices PJM proposes to use are not specific to CC and CT resources. Rather, the indices PJM proposes to use for all resource types are indices of employment and wages for utility system construction and construction materials and components. These indices are broadly applicable to many types of energy resource construction. Further, the Commission has previously accepted a similar index-based methodology in ISO-NE, to adjust its technology-specific Offer Review Trigger Price in the years when it does not file a full recalculation with the Commission.[381]

---

[377] *Id.* at 11-14.

[378] PJM Second Proposed Tariff, Attach. DD, § 5.14(h-1)(2)(A).

[379] *See* VRR Update Order, 167 FERC ¶ 61,029; Tariff, Attach. DD, § 5.10(a)(iv)(B)(1).

[380] PJM Second Proposed Tariff, Attach. DD, § 5.14(h-1)(2)(A).

[381] ISO-NE Tariff, § III.A.21.1.2(e) (54.0.0).

While we acknowledge that there may be other just and reasonable methods of updating default gross CONE and ACR values in between quadrennial reviews, we find that it is appropriate, just and reasonable, and administratively efficient to use a common index.

213. We further reject, as an impermissible attempt to relitigate issues already decided by the Commission, requests that PJM should update the default Net CONE values for certain resources annually. The Commission has already rejected similar arguments.[382] We disagree with commenters' arguments suggesting that PJM's proposal will consistently overestimate the gross CONE values of certain resources, as historical resource cost trends provide a speculative estimate of future resource costs. It is not necessary or practical to completely recalculate default values every single year. We have already directed PJM to update them quadrennially, consistent with how PJM updates other key parameters in the capacity market. Further, the Resource-Specific Exception will continue to be an option for sellers who believe their costs are below the default value.

4. Demand Response Resources

a. Compliance Directives

214. With respect to demand response resources backed by generation (generation-backed demand response resources), the December 2019 Order found that PJM should propose Net CONE values for new resources on compliance and noted that it may be appropriate to use resource-type specific values as for other types of generation resources.[383] The December 2019 Order also found that the default offer price floor for existing generation-backed demand response resources should be set at Net ACR for the appropriate generation type.[384] The Commission disagreed with PJM's argument that it was not feasible to calculate default values, explaining that "the scale may be different for behind-the-meter generation, but the fundamental elements of the analysis are the same."[385]

215. The Rehearing Order found that behind-the-meter generators should not receive special treatment and that parties failed to present evidence "why a specific type of generator should have fundamentally different going-forward or construction costs

---

[382] *See* Rehearing Order, 171 FERC ¶ 61,035 at P 160.

[383] December 2019 Order, 169 FERC ¶ 61,239 at P 144.

[384] *Id.* P 148.

[385] *Id.* PP 13, 144.

depending on whether it exists behind- or in-front-of-the meter."[386] The Commission further explained that the December 2019 Order "subjects all State-Subsidized Resources of the same technology type to the same default offer price floor, precisely because they are *of the same technology type*. They should face similar construction and going-forward costs, regardless of the purpose for which they are used, and therefore it is just and reasonable to use the same default offer price floor."[387] Similarly, the Rehearing Order stated that, "if a generation-backed resource receives a State Subsidy, then that resource is subject to the applicable MOPR *for its resource type*."[388]

216. For new demand response resources that commit to cease using wholesale power, rather than shift to behind-the-meter generation, (load-backed demand response resources), the December 2019 Order found that PJM should average the last three years' load-backed demand response offers to determine the default offer price floor value for resources that have not previously cleared a capacity auction.[389] For existing load-based demand response resources, the December 2019 Order directed PJM to propose a default offer price floor.[390]

217. The Rehearing Order denied clarification that demand response resources should be considered existing if they have previously cleared an auction, regardless of how many MWs they cleared. Instead, the Rehearing Order found that demand response resources increasing the number of MWs they offer year-to-year "must explain why the increased quantity they intend to offer is not connected to any increased costs or State Subsidies that make the uprate possible."[391]

---

[386] Rehearing Order, 171 FERC ¶ 61,035 at P 187.

[387] *Id.*

[388] *Id.* P 188 (emphasis added).

[389] December 2019 Order, 169 FERC ¶ 61,239 at P 145.

[390] *Id.* P 150.

[391] Rehearing Order, 171 FERC ¶ 61,035 at P 172.

b. PJM's Compliance Filings

218. PJM states it uses a similar methodology as to front-of-the-meter generation to calculate gross CONE for generation-backed demand response resources, using data for a 0.5 MW diesel resource.[392]

219. For new load-backed demand response resources, PJM states it will determine the MW-weighted average offer price of load-backed demand response resources from the three most recent BRAs for each Locational Deliverability Area.[393]

220. PJM states that PJM was unable to determine any material avoidable costs to carry forward the load reduction capability for either existing load-backed demand response resources or existing energy efficiency resources beyond the initial investment. PJM therefore proposes a default offer price floor of $0/MW-day for both load-backed existing demand response resources and existing energy efficiency resources.[394]

221. PJM proposes to comply with the Commission's directive in the Rehearing Order regarding demand response resource nomination values by adding a provision to the Tariff language governing the exemption stating that "'any MW increase in the nominated capacity' of an exempt end-use customer location that 'is due to an investment made for the sole purpose of increasing the curtailment capability of the location in the capacity market' will not qualify for the exemption."[395] PJM also proposes that each demand response resource registration must be associated with one end-use customer location so that PJM can track MW increases that may result from such investments.[396]

c. Comments, Protests, and Answers

222. The Market Monitor argues that a given type of generation resource should have the same costs regardless of whether it is in front of or behind the meter and that the floors should therefore be the same. However, the Market Monitor recommends

---

[392] First Transmittal at 59 (citing *Lazard's Levelized Cost of Energy Analysis – Version 11.0*, Lazard (November 2017) https://www.lazard.com/media/450337/lazard-levelized-cost-of-energy-version-110.pdf).

[393] *Id.* at 56.

[394] *Id.* at 69-70.

[395] Second Transmittal at 34.

[396] *Id.* at 35.

calculating resource-specific generator costs for generation-backed demand response rather than using a default value.[397]

223. EKPC/SMECO disagree with the Market Monitor and ask that the Commission approve PJM's proposed Net CONE methodology and value for generation-backed demand response. EKPC/SMECO explain that the decision to install behind-the-meter generation is not based solely on the desire to participate in the capacity market, but rather for reasons related to continuity of business operations. These customers, EKPC/SMECO state, bear the cost of installing the generators regardless of capacity market participation, and therefore EKPC/SMECO argue that it is reasonable to take a different approach for behind-the-meter versus front-of-the-meter generation and calculate a different default Net CONE value for behind-the-meter generation that represents less than the full costs of the behind-the-meter generator.[398]

224. With respect to load-backed demand response, the Market Monitor argues that gross ACR should set to gross CONE because there is no meaningful difference between initial and avoidable costs for generation-backed demand response. The Market Monitor explains that this is because the cost of a load-backed demand response resource is the cost of taking the actions to interrupt and not the cost of creating the capability to interrupt. The Market Monitor states this is consistent with the offer behavior of demand response resources.[399]

225. Several commenters disagree with the Market Monitor. In their comments on the second compliance filing, the Pennsylvania Commission argues that the Market Monitor's assertions are not supported by the practical business considerations of operating a demand response program. The Pennsylvania Commission asserts that starting a demand response program requires installing various systems, including one-time program development costs, potential pricing systems, automated load control equipment, energy monitoring systems, communication equipment, customer marketing, recruitment and education-related expenses, as well as back office capability. The Pennsylvania Commission argues that most of these costs are not continuing in nature or are significantly reduced going forward. The Pennsylvania Commission argues that the Market Monitor conflates offer behavior with going forward costs and that capacity offers may not reflect actual going forward costs.[400]

---

[397] Market Monitor Comments on First Compliance Filing at 8-9.

[398] EKPC/SMECO June 1 Answer at 5-6.

[399] Market Monitor Comments on First Compliance Filing at 9.

[400] Pennsylvania Commission Comments on Second Compliance Filing at 8-9.

226. EKPC/SMECO contend that the Rehearing Order recognized that it is just and reasonable to have different default offer price floors for new and existing resources.[401] EKPC/SMECO explain that, once a customer makes the investment in metering and control technology necessary to be a load-backed demand response capacity resource, there is no on-going investment anticipated to achieve the reduction of the same MW level supported by the initial investment, resulting in a meaningful difference between initial and avoidable costs for load backed demand response.[402]

227. Advanced Energy Entities state that sell offers would not be expected to include the costs for taking action to interrupt load, contrary to the Market Monitor's contention, because demand response resources are compensated through the energy market for the cost of taking action during interruptions. Further, Advanced Energy Entities argue that planned and existing demand response resources meaningfully differ because new resources have installation and other costs that existing resources do not, and that demand response resource offer behavior differs for planned and existing resources, in that existing resources usually submit lower offers than planned resources.[403]

228. PJM-ICC requests that the Commission clarify the Rehearing Order to confirm that only the new uprate portion in capability for an existing demand response resource would be considered a new demand response resource.[404]

d. Commission Determination

229. We accept in part, and reject in part, PJM's proposal regarding default offer price floors for generation-backed demand response.[405] Specifically, we accept PJM's proposed gross CONE and ACR values for generation-backed demand response diesel resources, but reject PJM's proposal to use these values for other types of behind-the-meter generation because it is not consistent with prior orders.

---

[401] EKPC/SMECO June 1 Answer at 6 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 158); *see also* Advanced Energy Entities Answer at 6.

[402] *Id.* at 7; *see also* Exelon June 1 Answer at 11.

[403] Advanced Energy Entities Answer at 4-6.

[404] PJM-ICC Protest and Comments on First Compliance Filing at 7.

[405] *See* PJM Second Proposed Tariff, Attach. DD, § 5.14(h-1)(2)(A).

230. We have already found that behind-the-meter generators should have the same costs as front-of-meter generators of the same type.[406] The Rehearing Order found that behind-the-meter generators should not receive special treatment and that parties failed to present evidence "why a specific type of generator should have fundamentally different going-forward or construction costs depending on whether it exists behind- or in-front-of-the meter."[407] The order further explained that the December 2019 Order "subjects all State-Subsidized Resources of the same technology type to the same default offer price floor, precisely because they are *of the same technology type*. They should face similar construction and going-forward costs, regardless of the purpose for which they are used, and therefore it is just and reasonable to use the same default offer price floor."[408] Similarly, the Rehearing Order states that "if a generation-backed resource receives a State Subsidy, then that resource is subject to the applicable MOPR *for its resource type*."[409]

231. We therefore reiterate that, to the extent a behind-the-meter resource is of a technology type for which a default offer price floor is enumerated in the proposed Tariff,[410] that default offer price floor will apply. Any generation-backed demand response resource that does not fit into one of those two categories (either diesel or having a gross CONE/gross ACR approved elsewhere in this order) would have to use the Resource-Specific Exception.

232. We therefore direct PJM to modify the chart of default gross Net CONE values in Attachment DD, section (h-1)(2)(A) to clarify that the generation-backed demand

---

[406] *See* December 2019 Order, 169 FERC ¶ 61,239 at PP 13, 144; Rehearing Order, 171 FERC ¶ 61,035 at PP 187, 188.

[407] Rehearing Order, 171 FERC ¶ 61,035 at P 187.

[408] *Id.*

[409] *Id.* P 188 (emphasis added).

[410] We recognize that this order does not approve any specific default offer price floors, due to the pending Reserves Order. We clarify that we are accepting PJM's proposal to establish default offer price floors for the following types of generation: nuclear – single, nuclear – dual, coal, CC, CT, solar PV, onshore wind, offshore wind, and battery energy storage. We are now accepting PJM's proposed default offer price floor for generation-backed demand response resources only for diesel generators. If a generation-backed demand response resources uses one of those generation technologies, it will be subject to that default offer price floor.

response value applies only to generation-backed demand response diesel resources. We further direct PJM to add the following to that section:

> For generation-backed Demand Resources that are not powered by diesel generators, the default New Entry MOPR Floor Offer Price shall be the default New Entry MOPR Floor Offer Price applicable to their technology type. Generation-backed Demand Resources using a technology type for which there is no default MOPR Floor Offer Price provided in accordance with this section must seek a resource-specific value determined in accordance with the resource-specific MOPR Floor Offer Price process in Tariff, Attachment DD, section 5.14(h-1)(3) below to participate in an RPM Auction.

233. Similarly, we direct PJM to modify the chart of default gross ACR values in Attachment DD, section (h-1)(2)(B) to clarify that the generation-backed demand response value applies only to generation-backed demand response diesel resources. We further direct PJM to add the following to that section:

> For generation-backed Demand Resources that are not powered by diesel generators, the default Cleared MOPR Floor Offer Price shall be the default Cleared MOPR Floor Offer Price applicable to their technology type. Generation-backed Demand Resources using a technology type for which there is no default MOPR Floor Offer Price provided in accordance with this section must seek a resource-specific value determined in accordance with the resource-specific MOPR Floor Offer Price process in Tariff, Attachment DD, section 5.14(h-1)(3) below to participate in an RPM Auction.

234. We accept PJM's proposed gross CONE and ACR values for load-backed demand response resources. We disagree with the Market Monitor that demand response resources do not face costs to create the capability to interrupt service. The Market Monitor has presented no evidence to support that position and we find it reasonable to assume, as PJM proposes, that such resources will face some up-front establishment costs that will not continue. Therefore, we find PJM's proposed approach to calculate Net CONE and Net ACR separately just and reasonable and consistent with the prior orders.

235. With regard to EKPC/SMECO's argument that PJM calculates Net CONE based on incomplete costs for behind-the-meter generation, because those generators are not built for the same purpose as front-of-meter generation, we have previously rejected the idea that behind-the-meter and front-of-meter generation should be treated differently.[411] Further, EKPC/SMECO appear to conflate PJM's proposal regarding calculating Net

[411] Rehearing Order, 171 FERC ¶ 61,035 at P 187.

CONE for generation-backed demand response resources with PJM's proposal for calculating resource-specific offers for generation-backed demand response resources, which we reject elsewhere in this order,[412] because EKPC/SMECO use a cite to the Resource-Specific Exception section of the first transmittal and first proposed Tariff sheets to support their argument regarding default Net CONE.[413] However, PJM does not appear to have calculated Net CONE in the manner which EKPC/SMECO state; rather PJM states it used "complete cost data for a small (0.5 MW) diesel generator."[414] The Rehearing Order was explicit in their findings that behind-the-meter and front-of-meter generation should be treated the same.[415]

236. Finally, we agree with PJM-ICC that only the new uprate portion of an existing demand response resource would be considered a new demand response resource. This is consistent with our treatment of uprates generally.[416]

5. Wind and Solar Resources

a. Compliance Directives

237. The December 2019 Order directed PJM to propose on compliance default offer price floors for new and existing wind and solar resources.[417] The December 2019 Order further instructed PJM to provide additional detail as to how those values were calculated.[418]

---

[412] *See infra* IV.J.1.d.

[413] EKPC/SMECO June 1 Answer at 2 ("PJM's calculations of Net CONE and Net ACR considered the "resource's costs related to participation in the Reliability Pricing Model and meeting a capacity commitment" rather than the full cost of the generating unit." (citing First Transmittal at 76, quoting First Proposed Tariff, Attach. DD, § 5.14(h)(3)(B))).

[414] First Transmittal at 59.

[415] Rehearing Order, 171 FERC ¶ 61,035 at PP 187, 188.

[416] December 2019 Order, 169 FERC ¶ 61,239 at P 149.

[417] *Id.* PP 146, 150.

[418] *Id*. P 143.

b. PJM's Compliance Filings

238. PJM proposes an initial default gross CONE of $420/MW-Day for onshore wind and $1,155/MW-Day for offshore wind.[419] PJM states it used publicly available Energy Information Administration (EIA) data to develop these values.[420] With respect to existing resources, PJM proposes an initial gross ACR of $83/MW-day for onshore wind.

239. PJM proposes an initial default gross CONE value of $290/MW-Day for tracking solar PV and $271/MW-Day for fixed solar PV.[421] In its second compliance filing, PJM states that the first set of proposed Tariff revisions inverted the fixed and solar Gross CONE values, but that the error has been fixed in the revised Tariff sheets.[422] For existing solar resources, PJM proposes an initial default gross ACR of $40/MW-day for both fixed and tracking solar PV.[423]

c. Comments, Protests, and Answers

240. The Market Monitor comments that PJM's gross CONE significantly understates the cost to build new entrant onshore and offshore wind and solar installations.[424] The Market Monitor recommends that PJM apply the location adjustment specified in the EIA report to account for regional variations in costs.[425]

241. The Market Monitor also recommends PJM include various additional costs in the default gross CONE values for wind and solar resources. With respect to onshore wind and solar, the Market Monitor recommends that the default gross CONE include costs it states are excluded from the EIA report, including industry standard O&M line item expenses such as insurance, general and administrative, O&M management fee, property tax, and property lease.[426]

---

[419] First Transmittal at 64.

[420] *Id.* at 53-54.

[421] *Id.* at 64.

[422] Second Transmittal at 41.

[423] First Transmittal at 69; Second Proposed Tariff, Attach. DD, § 5.14(h-1)(2)(B).

[424] Market Monitor Comments on First Compliance Filing at 4, 6, 7.

[425] *Id.* at 4-5, 6, 8.

[426] *Id.* at 5, 7.

242. The Market Monitor states that the following items are excluded from the EIA capital cost for onshore and offshore wind resources: electric interconnection and system upgrades; BOP equipment spares; owner's contingency; financed startup expenses; land reservation payment; development expenses; legal and accounting fees; financial/closing fees; interest during construction; decommissioning bond costs; land lease upfront payment; environmental impact statement, zoning and plant use permits.[427]

243. With respect to solar resources, the Market Monitor recommends that PJM account for the following standard capital cost line items not included in the EIA costs: electric interconnection and system upgrades; initial spare parts inventory; plant startup expenses; one year construction period land lease; development expenses; legal and accounting fees; financing and closing fees; interest during construction; and environmental impact statement, zoning and plant use permits. The Market Monitor also states that PJM's reference resource for solar is 150 MW, which would require nearly 500 acres. The Market Monitor argues that the large land requirement makes it unlikely that such a large facility would be sited in the eastern zones, and that PJM therefore underestimates the costs of building a typical solar resource, since larger units have lower costs per MW than smaller units. The Market Monitor states that while PJM calculated Gross CONE for a 100 MW fixed solar resource using a ratio of the tracking unit, the Market Monitor calculated its value for a 10 MW solar unit from the ground up based on supplier quotes and standard new entrant analysis.[428]

244. In response to the Market Monitor's contention that the proposed net CONE values are too low, PJM argues that the Market Monitor did not provide any record support for alternative higher values. PJM asserts that the Market Monitor is incorrect that PJM's CONE estimates ignore certain traditional plant capital cost line items, because the 2020 U.S. Energy Information Administration report that PJM used to develop the default price floors includes most of the costs the Market Monitor deems absent. PJM also states that the Market Monitor's objection that PJM should prepare multiple separate zonal and sub-regional CONE estimates does not render PJM's estimates unjust and unreasonable. PJM explains that its estimates rely on public information which do not capture sub-regional details and the Market Monitor's approach would entail heavy reliance on non-public, non-transparent information. PJM further contends that attempting sub-regional estimates seems unlikely to add much value to the estimates.[429]

---

[427] *Id.* at 6 n.10, 8 n.13.

[428] *Id.* at 5-6

[429] PJM June 3 Answer at 15-17.

245. With respect to offshore wind, the Market Monitor argues that for offshore wind of the scale reviewed, there is so much uncertainty that PJM should use the Resource-Specific Exception rather than setting a default offer price floor. However, should the Commission set a default offer price floor, the Market Monitor recommends $1,946/MW-Day ICAP, as a reasonable MOPR floor value.[430] The Market Monitor explains this value is higher than PJM's because, in addition to the reasons discussed above, the Market Monitor uses a higher engineering, procurement and construction cost estimate.[431] In addition, the Market Monitor recommends that PJM calculate Net CONE only for zones which could feasibly build an offshore wind installation. The Market Monitor states that PJM's filing includes offshore wind values for zones where offshore wind is not feasible.[432]

246. EDF Renewables argues that, while PJM's compliance filing allows the ITC to reduce gross CONE, PJM does not provide comparable treatment to other types of federal subsidies, which should also be excluded from the calculation of gross CONE.[433] EDF Renewables contends that the Commission should clarify that PJM must account for all types of federal subsidies, including the Production Tax Credit (PTC), in calculating gross CONE and resource-specific offer price floors.[434]

247. In response to Clean Energy Associations' request that the Commission clarify that PJM should evaluate the impacts of the PTC when calculating default gross CONE values for wind resources as PJM proposed to do with the ITC, PJM states that sellers may use either the PTC or ITC through the Resource-Specific Exception process.[435] PJM states that it would not be appropriate to use both the ITC and PTC in developing the default CONE value as it would account for excess credits that a resource would otherwise not be eligible to claim based on the existing tax rules. PJM explains that it

---

[430] Market Monitor Comments on First Compliance Filing at 8.

[431] *Id.* at 7. The Market Monitor explains that it used a value developed by Stantec ($6,762/kW) while PJM used the EIA value ($4,227/kW). *Id.*

[432] *Id.* at 8.

[433] EDF Renewables Comments on First Compliance Filing at 1, 5-6. NOVEC supports PJM's inclusion of the Investment Tax Credit in their calculation of Net CONE for wind projects. NOVEC Comments and Protest of First Compliance Filing at 10.

[434] EDF Renewables on First Compliance Filing Comments at 6; *see also* Clean Energy Associations Comments on First Compliance Filing at 11-12.

[435] PJM June 3 Answer at 26-27.

selected the ITC in developing the Gross CONE values for solar and wind resources consistent with the Market Monitor's methodology.[436]

248. The Pennsylvania Commission argues that the EIA value PJM selected for onshore wind facilities' default gross CONE is an outlier, 14% higher than any alternative published value, because PJM chose to use a default project size of 50 MW, which is significantly smaller than the average project size in PJM's interconnection queue as of May 6, 2020 – 205 MW. The Pennsylvania Commission asserts that, absent PJM providing further evidence of a proper and more realistic wind farm size for future project, PJM should use a Gross CONE value for onshore wind facilities for a 200 MW facility, which the Pennsylvania Commission contends would use the EIA 2019 value of $1,265/kW.[437]

249. Maryland Legislators argue that the proposed default offer price floors for new offshore wind and solar resources are so far above recent clearing prices that even resource-specific floors reflecting project-specific financial data are unlikely to be low enough to allow the project to clear.[438] Maryland Legislators argue that the Resource-Specific Exception is not sufficient to address these concerns because it is not guaranteed and the process is opaque.[439] Further, Maryland Legislators argue that, even if some resources are able to secure the Resource-Specific Exception and clear the auction, the

[436] *Id.* at 27.

[437] Pennsylvania Commission Comments on First Compliance Filing at 9.

[438] Maryland Legislators Comments on First Compliance Filing at 6. Maryland Legislators also argue that the replacement rate will increase costs for consumers and that the Commission must develop an estimate of how much the MOPR will cost consumers in order to evaluate whether the compliance filing results in just and reasonable rates. Maryland Legislators Comments on First Compliance Filing at 7. These arguments are dismissed as an out-of-time rehearing request of the December 2019 Order. Moreover, the Maryland Legislators are not a party to this proceeding, and these arguments do not address whether PJM complied with the underlying orders in this proceeding. The Rehearing Order responded to rehearing requests that the Commission should provide a cost-benefit analysis, recognizing the potential cost impacts from the replacement rate, but stating that a quantitative cost-benefit analysis was not necessary for the replacement rate to be just and reasonable. Rehearing Order, 171 FERC ¶ 61,035 at 140.

[439] Maryland Legislators Comments on First Compliance Filing at 5-6.

overall clearing price may still be higher than if the resource was not subject to mitigation, resulting in higher costs for Maryland consumers.[440]

d. Commission Determination

250. We accept PJM's proposed gross CONE and ACR values for wind and solar resources and find them just and reasonable.[441] We disagree with the Market Monitor's comments that the proposed default offer price floors must include location adjustments. Though it is unclear what the Market Monitor is requesting, to the extent the Market Monitor requests that PJM create a different default value for each state, we find that such an adjustment is unnecessary. It is reasonable, for administrative efficiency and regulatory certainty, to create one default value for the region. This ensures that all resources are treated equally and held to the same standards. The default value cannot, by definition, be representative of every resource in PJM. Rather, the prior orders in this proceeding tasked PJM with establishing a just and reasonable default value for the offer price floors. We find that PJM has done that here and accept PJM's proposal. Further, while it is not necessary, or reasonable, for the default value to include every possible additional cost variation, we accept PJM's answer explaining that PJM actually has accounted for the costs the Market Monitor deems absent.

251. We disagree with the Market Monitor that there is too much uncertainty regarding offshore wind for PJM to calculate a default offer price floor. First, the Market Monitor seeks to re-litigate issues already determined by the Commission and we dismiss this argument as an impermissible request for rehearing of the December 2019 Order, which found that PJM must establish default offer price floors for new resources at Net CONE and existing resources at Net ACR.[442] Further, the Market Monitor has not provided evidence to support that conclusion. We therefore continue to find that a default offer price floor is necessary and appropriate, and we accept PJM's proposed value as just and reasonable and consistent with the prior orders.

252. The Market Monitor also states that PJM should only calculate a default offer price floor for offshore wind for zones in which such an installation could exist. We agree that it is not necessary to include default offer price floors for zones in which it is not possible to build offshore wind. The Market Monitor also states it chose to use a higher engineering, procurement and construction cost estimate than PJM, but does not

---

[440] *Id.* at 6.

[441] PJM Second Proposed Tariff, Attach. DD, §§ (h-1)(2)(A) and (B).

[442] December 2019 Order, 169 FERC ¶ 61,239 at PP 138, 148.

argue the proposed value is unjust and unreasonable. We therefore accept PJM's proposed value.

253. We grant EDF Renewables' requested clarification that any federal subsidy a resource receives may be used to reduce that resource's gross CONE. Federal subsidies are not mitigated under the prior orders in this proceeding and are therefore "permissible out-of-market revenues" which the Commission has found may continue to be incorporated during resource-specific review.[443] However, we find that no changes to PJM's proposed methodology for accounting for federal subsidies in the default offer price floors are needed. We accept PJM's proposal to reduce gross CONE for certain resources to allow for the ITC, which such resources may receive. However, it would not be reasonable to allow a default value to be so flexible as to accommodate any future federal subsidy which may be created. Further, any resource may request a Resource-Specific Exception. Therefore, we reject EDF Renewables' request that the Commission direct PJM to make its gross CONE methodology flexible enough to accommodate any future federal subsidy.

254. We similarly reject EDF Renewables' and Clean Energy Associations' request that the Commission direct PJM to include the PTC, as well as the ITC, in the default gross CONE. The default value is exactly that – a default value; it cannot possibly reflect every possible outcome. PJM has proposed to include the ITC, instead of the PTC, which we find to be one just and reasonable approach. We acknowledge that it may also have been just and reasonable to include the PTC, rather than the ITC, but that does not make including only the ITC unjust and unreasonable. Market participants that accept the PTC, rather than the ITC, for a given resource and believe that such choice reduces their competitive offer below the default offer price floor PJM has proposed may request a Resource-Specific Exception.

255. We disagree with Pennsylvania Commission's contention that it is not reasonable to use 50 MW as the default project size for onshore wind facilities. While we acknowledge that there may be more than one just and reasonable choice, that does not make PJM's proposal unjust and unreasonable, nor does the presence of larger proposed generators in the interconnection queue make a definitive statement about the currently existing generators. Further, these are default values and cannot represent every resource in the region. We accept 50 MW as one just and reasonable option for the default onshore wind resource. Further, we have directed PJM to update the default offer price floors every four years. Should the larger wind projects which Pennsylvania Commission states are currently in PJM's interconnection queue come to fruition, we encourage PJM to reevaluate whether 50 MW continues to be a reasonable choice for a default project size.

---

[443] Rehearing Order, 171 FERC ¶ 61,035 at P 193.

256. We further find that it is just and reasonable and consistent with the prior orders for PJM to use a 150 MW reference unit to establish the default offer price floor for solar resources. As with wind resources, while we acknowledge that there may be more than one just and reasonable choice, that does not make PJM's proposal unjust and unreasonable. The Market Monitor has not provided any evidence to support its conclusion that a 150 MW project is so unlikely to be built as to render it an unjust and unreasonable reference size. Further, these are default values and cannot represent every resource in the region. We accept 150 MW as one just and reasonable option for the default solar resource. Similarly, we acknowledge that the Market Monitor suggests an alternative method for calculating the gross CONE value for a fixed solar resource, but as the Market Monitor has not provided evidence to support one value over the other, we find that PJM's value is just and reasonable.

257. We acknowledge Maryland Legislators' concern that certain resources may not be able to clear the auctions but note that we already addressed this concern the Rehearing Order.[444] While it is possible that no State-Subsidized offshore wind resource will be able to clear the market based on its costs, that is just and reasonable and consistent with the prior orders. We address arguments regarding the Resource-Specific Exception below.

6. Commercially Aggregated Resources

a. PJM's Compliance Filings

258. For commercially aggregated resources where one or more resources that constitute such sell offer is eligible for a State Subsidy, PJM proposes that the minimum offer price floor be equal to the time-and-MW-weighted average of the applicable default offer price floors of the aggregated resources in such sell offer. For instance, PJM explains that if a State-Subsidized, summer-only solar resource is commercially aggregated with a State-Subsidized, winter-only wind resource, the capacity market seller of such commercially aggregated resources can submit an offer that is no lower than the time-and-MW-weighted average of the aggregated resources.[445]

b. Comments, Protests, and Answer

259. The Market Monitor argues that PJM's proposed minimum offer price floor methodology for commercially aggregated resources where one or more of the underlying resources is eligible for a State Subsidy undercuts the expanded MOPR and

[444] Rehearing Order, 171 FERC ¶ 61,035 at PP 160, 194.

[445] First Transmittal at 7 (citing PJM First Proposed Tariff, Attach. DD, § 5.6.1(h)).

provides a gaming opportunity for market participants to artificially lower the applicable minimum offer price floor for a subsidized resource. The Market Monitor recommends that the minimum offer price floor for commercially aggregated resources where one or more of the underlying resources is eligible for a State Subsidy be set to the higher of the applicable floors.[446]

260. In its answer, PJM reiterates support for its proposal to calculate minimum offer price floors for commercially aggregated capacity resources by using the time-and-MW-weighted value of each aggregated resource, noting that the Commission accepted the same approach in New England.[447] PJM argues that the Market Monitor's alternative proposal to set the floor for aggregated resources at the higher of the applicable floors is not necessary and flawed because using the higher value as a minimum floor would over-state the offer price floor when viewing the resources as an aggregate, forcing a capacity resource to offer higher merely because it is aggregated.[448]

c. Commission Determination

261. We accept PJM's proposal to calculate default offer price floors for commercially aggregated capacity resources by using the time-and-MW-weighted value of each aggregated resource as just and reasonable and consistent with the underlying orders.[449] In the December 2019 Order, the Commission directed PJM to develop resource-type specific default offer price floors, and PJM's proposal to use the time-and-MW-weighted value of each aggregated resource is consistent with that directive. PJM's proposal acknowledges that different resource types can aggregate to form a Capacity Performance resource and does not subject all resources in a commercially aggregated resource to the default offer price floor of only one resource type. It would be inappropriate to do so. Accordingly, we reject the Market Monitor's proposal to use the higher of the applicable floors because it is not consistent with the Commission's directive and would result in over-mitigation.

---

[446] Market Monitor Comments on First Compliance Filing at 19.

[447] PJM June 3 Answer at 23 (citing *ISO New England, Inc.*, 147 FERC ¶ 61,109 (2014)).

[448] *Id.* at 24.

[449] PJM First Proposed Tariff, Attach. DD, § 5.6.1(h).

I. Resources Not Subject to the Must-Offer Requirement

1. Compliance Directives

262. The December 2019 Order directed PJM to propose on compliance default offer price floors for all other types of resources that participate in the capacity market.[450] The Rehearing Order clarified specifically that PJM should propose default offer price floors for seasonal resources on compliance.[451]

2. PJM's Compliance Filings

263. PJM proposes Tariff revisions to address the Commission's directive that the expanded MOPR should apply to seasonal resources by clarifying that only one default offer price floor will be determined for each resource and that it will be applied consistently to each MW-day offered into an RPM auction. PJM explains that this means the same default offer price floor applies whether the resource is offered annually or seasonally.[452] PJM contends this approach will facilitate PJM's validation of sell offers during the offer window, as well as the determination of the appropriate offer price floor for commercially aggregated resources subject to the MOPR before the offer window opens.[453]

264. PJM explains that the Market Monitor protested this approach in comments on the first compliance filing, arguing that determining a seasonal resource's offer price floor based on its full capability on an annual basis would result in artificially low sell offers for resources that are offered on a seasonal or less than full capacity capability basis. PJM questions how the Market Monitor's approach could be applied in various circumstances and argues that it is not consistent with the Commission's finding that only the cleared portion of a new State-Subsidized Resource becomes existing. PJM explains that, for a seasonal resource that is only partially offered into the capacity market, the Market Monitor's proposed approach would increase the applicable offer price floor in an attempt to reflect the resource's full costs, instead of the costs of the offered capacity.

---

[450] December 2019 Order, 169 FERC ¶ 61,239 at PP 146, 150.

[451] Rehearing Order, 171 FERC ¶ 61,035 at P 195 (citing December 2019 Order, 169 FERC ¶ 61,239 at P 146).

[452] Second Transmittal at 26.

[453] *Id.* at 27.

PJM notes that it is not clear what floor would then be applied to the remaining MWs, should they be offered in a subsequent auction.[454]

265. PJM also argues the Market Monitor's proposal would create inefficient incentives because it would decrease the offer price floor with each additional MW offered, instead of increasing it, as is traditionally the case. PJM argues that this would also create an improper incentive for resources to offer their full capacity in order to secure a lower offer price floor, even if the seller is not certain the resource can reliably deliver at its full capacity. PJM explains this would introduce unnecessary reliability risk.[455]

3. Comments, Protests, and Answers

266. The Market Monitor objects to PJM's proposal to apply the same default values to seasonal offers as annual offers. Further, the Market Monitor argues that, especially in the case of resources not subject to the must offer requirement, the resource-specific minimum offer price floor should be calculated in a way that considers the amount of capacity offered in the auction.[456] The Market Monitor asserts that if a resource did not offer its full accredited capacity value into the auction, but the full accredited capacity value was used in determining the resource's offer, the resulting offer would be artificially low.[457] The Market Monitor contends that using an incorrect denominator in the calculation is contrary to the concept of the revenue requirement, which is the basis for the MOPR calculation.[458] The Market Monitor argues that it is reasonable to assume that the offered capacity represents the capacity market seller's expectation of the actual capability of the resource.[459]

267. In response to the Market Monitor's concerns regarding seasonal resources, PJM charges that the Market Monitor fails to confront the practical problems with its desired approach. Specifically, PJM states, the Market Monitor's approach would add unnecessary complexity and raise concerns for determining the appropriate default offer price floors for portions of capacity that are not offered in the BRA but are offered in the incremental capacity auctions for the same delivery year. Next, PJM argues the Market

---

[454] *Id.* at 27-28.

[455] *Id.* at 29-30.

[456] Market Monitor Comments on First Compliance Filing at 17.

[457] *Id.* at 17; Market Monitor Comments on Second Compliance Filing at 10.

[458] Market Monitor Comments on First Compliance Filing at 17.

[459] Market Monitor Comments on Second Compliance Filing at 11.

Monitor's proposed approach of focusing on a resource's cost recovery, instead of the cost of the offered capacity, conflicts with the Commission's directive that only the MW portion of a New Entry Capacity Resource with State Subsidy that clears at or above Net CONE becomes a Cleared Capacity Resource with State Subsidy.[460] Finally, PJM argues the Market Monitor's approach would require increasing the default offer price floor for each MW of the resource's capacity capability not included in a sell offer or, to the extent the resource is offered on a seasonal basis, inverting traditional offer curves and creating improper incentives. In short, PJM states, its proposal is a workable approach that complies with the Commission's directive, does not conflict with any other directive, and allows the seller to recover the cost of providing each MW of capacity offered.[461]

268. The Market Monitor argues that its approach does not conflict with the Commission's directive that the cleared portion of a resource becomes existing because PJM assumes incorrectly and without evidence that a resource would offer the remaining portion in an incremental auction or elsewhere.[462]

4. Commission Determination

269. We accept PJM's proposal as consistent with the underlying orders and just and reasonable.[463] We find PJM's proposal that the offer price floor should be applied regardless of the actual sell offer quantity or the resource's status as a Seasonal Capacity Performance Resource, for both the default offer price floors and the resource-specific offer price floors, is consistent with the prior orders. We agree with PJM to base the offer price floor on the capacity resource's full capacity capability ensures cost recovery, and no more, for each MW-day offered and cleared. We disagree with the Market Monitor's assertion that PJM's proposal will apply different definitions of the revenue requirement and default offer price floors to certain resources and we decline to adopt the Market Monitor's proposal, which would allow a resource to recover all of its costs when only offering a portion of its capacity. This would leave a resource with an opportunity to recover more than its costs by offering its remaining capacity in an incremental auction or contract.

---

[460] PJM July 7 Answer at 12-13.

[461] *Id.* at 13-14.

[462] Market Monitor July 23 Answer at 5-6.

[463] *See* PJM Second Proposed Tariff, Attach. DD, §§ 5.14(h-1)(2)(A) and (B); Attach. DD, § 5.14(h-1)(3).

J. Resource-Specific Exception

1. General

a. Compliance Directives

270. The December 2019 Order directed PJM to maintain the Unit-Specific Exemption, now termed the Resource-Specific Exception, but expand it to cover existing and new State-Subsidized Resources of all resource types, to permit any resource that can justify an offer lower than the default offer price floor to submit such offers for review.[464] The Rehearing Order granted clarification that PJM should not necessarily use a 20-year asset life as the default depreciation period when including capital expenditures in setting resource-specific offer price floors for existing resources.[465]

b. PJM's Compliance Filings

271. PJM proposes that sellers requesting the Resource-Specific Exception for new resources will be able to submit a justification of an asset life other than the current default 20-year assumption, but that asset life terms will be capped at 35 years.[466] PJM proposes that for new generation-backed demand response resources, the resource-specific determination will consider only costs related to participation in the capacity auction and meeting a capacity commitment. PJM explains that costs unrelated to participation as a demand response resource, including costs associated with the installation and operation of the generating unit, will be incurred regardless of participation in the capacity market, will therefore not be considered. PJM states this recognizes that these generation units are needed primarily for purposes other than participating in the capacity market, such as for resilience or to meet regulatory requirements for hospitals. However, PJM explains, if the seller chooses to include all costs associated with the generation unit, PJM will then consider demand charge management benefits at the retail level as an additional offset.[467]

272. For new energy efficiency resources, PJM proposes that the resource-specific offer price floor will be determined considering the nominal-levelized annual cost to implement the program or install the load-reduction measures and the useful life of the equipment, as well as any offsetting savings, including avoided wholesale energy costs.

---

[464] December 2019 Order, 169 FERC ¶ 61,239 at P 214.

[465] Rehearing Order, 171 FERC ¶ 61,035 at P 173.

[466] First Transmittal at 75; Second Proposed Tariff, Attach. DD, §5.14(h-1)(3).

[467] First Transmittal at 76-77.

For Cleared Capacity Resources with State Subsidy, PJM proposes to use generally the same going-forward cost data currently used to determine resource-specific market seller offer caps under the existing Tariff, except that the evaluation would not consider the 10% gross up for uncertainty which is used in that calculation. For E&AS Offsets, PJM proposes to allow Cleared Capacity Resources with State Subsidies to use either historical or forward-looking energy revenues, as the Unit-Specific Exception currently allows for new resources.[468]

c. Comments, Protests, and Answers

273. Some commenters support PJM's proposal in whole or in part. Clean Energy Associations and EDF Renewables support PJM's proposed Resource-Specific Exception.[469] Cogentrix states that PJM's standardization of financial modeling assumptions for the review process is a reasonable objective basis for the analysis.[470] Ohio Commission states that resources should be given flexibility to demonstrate their actual costs but only when adequately demonstrated and verified.[471]

274. Exelon states it is unclear how the Market Monitor and PJM would impose the use of common modeling assumptions for projected energy and ancillary services revenue or Capacity Performance Quantifiable Risk without substituting their judgment for that of the resource owner.[472]

275. Commenters support PJM's proposal to permit capacity resources to justify the use of an asset life of more than 20 years for purposes of calculating a resource-specific offer price floor.[473] J-POWER asserts that PJM's proposal is consistent with the actual

---

[468] *Id.* at 76-78.

[469] Clean Energy Associations Comments on First Compliance Filing at 4-6; EDF Renewables Comments on First Compliance Filing at 2.

[470] Cogentrix Comments on First Compliance Filing at 7.

[471] Ohio Commission Comments on Second Compliance Filing at 17.

[472] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 14.

[473] J-POWER Comments on First Compliance Filing at 2; Maryland Commission Comments and Protest of First Compliance Filing at 16-17; Maryland Legislators Comments on First Compliance Filing at 10; NOVEC Comments and Protest of First Compliance Filing at 10; Ohio Commission Comments on Second Compliance Filing at 17; Pennsylvania Commission Comments on First Compliance Filing at 21; Pennsylvania Commission Comments on Second Compliance Filing at 7; Public Interest Organizations

decisions of generation developers and investors, who may develop and obtain financing for their generation resources based on financial assumptions that are longer than 20 years.[474] Ohio Commission explains that resources have every incentive to maximize revenues received through proactive and optimized maintenance and scheduling, which may enhance an asset's useful life relative to a baseline assumption.[475]

276. On the other hand, the Market Monitor asserts that, while it is true that generation assets based on a range of technologies have a physical life substantially longer than 20 years, there has been no demonstration that any asset type has a financial life longer than 20 years. The Market Monitor states that it is open to demonstrations that the financial life of any asset is longer than 20 years but argues that it should be limited to a reasonable financial life of 25 or, at most, 30 years. The Market Monitor asserts that there has been no demonstration that investors in some asset types are subjectively more willing to take investment recovery risk than investors in other asset types, which the Market Monitor argues would be inconsistent with rational capital markets.[476]

277. PJM responds to the Market Monitor's comments regarding the ability of a Capacity Market Seller to justify an asset life different than 20 years, capped at 35 years, asserting that the proposal is reasonable. PJM argues that the Market Monitor offered no justification that a reasonable financial life is at most 30 years and, by contrast, 35 years as a maximum asset life in the Resource-Specific Exception process corresponds to the currently approved Tariff's use of a 35 year maximum asset life to determine Avoidable Project Investment Recovery.[477] PJM further states that the December 2019 Order implied that an asset's economic life could reasonably extend for 35 years.[478]

278. The Maryland Commission generally supports PJM's proposed language regarding the Resource-Specific Exception, but states that PJM should provide greater flexibility regarding all standardized financial parameters, not just the 20-year asset life, as PJM's rationale that different resource types have different characteristics applies equally well to other financial parameters, such as residual value. The Maryland

---

Comments on First Compliance Filing at 5-8; SMECO Comments on First Compliance Filing at 7-8.

[474] J-POWER Comments on First Compliance Filing at 3.

[475] Ohio Commission Comments on Second Compliance Filing at 17.

[476] Market Monitor Comments on First Compliance Filing at 16.

[477] PJM June 3 Answer at 5-6 (citing Tariff, Attach. DD, § 6.8(a)).

[478] *Id.* at 6 (citing December 2019 Order, 169 FERC ¶ 61,239 at P 531 n.301).

Commission therefore requests that the Commission direct PJM to expand the flexibility of the Resource-Specific Exception by allowing sellers to demonstrate actual costs with regard to all standardized financial parameters.[479] OPSI argues that additional flexibility would be consistent with the Commission's statements regarding the Resource-Specific Exception in the December 2019 Order and Rehearing Order, as well as prior Commission precedent.[480]

279. The Pennsylvania Commission argues that the Commission should provide maximum flexibility under PJM's Resource-Specific Exception, including flexibility for the following financial modeling assumptions: (1) nominal levelization of gross costs; (2) asset life of 20 years; (3) no residual value; (4) all project costs included with no sunk costs excluded; (5) use of first year revenues; and (6) weighted average cost.[481] The Pennsylvania Commission argues that, in the past, the Commission has recognized the use of a real levelization method and that, with respect to asset life, the Pennsylvania Commission supports PJM's proposal to allow up to 35 years.[482] With respect to residual value, the Pennsylvania Commission asserts that PJM should provide flexibility for the recognition of residual values, especially with regard to unique situations where real estate or capacity injection rights can be sold at the end of a project life, or upon re-firing or repowering of a generation unit.[483]

d. Commission Determination

280. We accept PJM's proposed methodology and Tariff language for the Resource-Specific Exception, as it is consistent with the December 2019 Order, in part, subject to modification, and reject it in part, as explained below.[484] Specifically, we direct modifications to PJM's proposal regarding generation-backed demand response resources

---

[479] Maryland Commission Comments and Protest of First Compliance Filing at 17; *see also* OSPI Comments on First Compliance Filing at 9-12.

[480] OSPI Comments on First Compliance Filing at 9-11, 11 n.31 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 3 (2011) (permitting project sponsors the opportunity to justify the use of a real levelized method with respect to their specific processes in determining a unit-specific offer price floor).

[481] Pennsylvania Commission Comments on First Compliance Filing at 21.

[482] *Id.* at 21 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 33, *reh'g denied*, 138 FERC ¶ 61,160 (2012)).

[483] *Id.*

[484] *See* PJM Second Proposed Tariff, Attach. DD, § 5.14(h-1)(3).

as inconsistent with the prior orders. In addition, we reject PJM's proposal as it relates to E&AS Offsets, given the pending reserves proceeding.

281. We accept PJM's proposal regarding asset life.[485] We acknowledge the Market Monitor's concern that there has been no demonstration that any resource is actually financed over 35 years, but as that demonstration must be made before a resource could use 35 years in its resource-specific offer, we disagree that PJM must cap the asset life at 25 or 30 years. We similarly reject arguments that PJM's Tariff must specifically allow for sellers to use alternate assumptions for other aspects of a resource-specific offer. The purpose of the Resource-Specific Exception is to allow sellers to use alternative assumptions, so long as they can be justified to PJM's and the Market Monitor's satisfaction. Therefore, we find that codifying that flexibility in the Tariff is not necessary in order to find PJM's proposal just and reasonable and consistent with the underlying orders.

282. We reject PJM's proposal regarding generation-backed demand response resources.[486] PJM proposes two options for sellers of such resources seeking the Resource-Specific Exception: (1) an offer that considers only costs related to participating in the capacity market and meeting a capacity commitment and (2) an offer that considers all costs and permissible revenues. The first option is not consistent with the Rehearing Order which found that behind-the-meter resources should not be treated differently solely because they are behind-the-meter and directed that all resources of a particular technology type should be treated the same.[487] We accept PJM's second option as consistent with our orders, however, as this treatment aligns with PJM's treatment of front-of-the-meter generation resources in determining resource-specific offer price floors. We therefore direct PJM to submit a further compliance filing that would delete the first method for calculating a resource-specific offer price floor for generation-backed demand response, for both New Entry and Cleared Capacity Resources with State Subsidy, as follows:

> For generation-backed Demand Resources, the determination of a resource-specific MOPR Floor Offer Price shall ~~only~~ consider ~~the resource's costs related to participation in the Reliability Pricing Model and meeting a capacity commitment. The Capacity Market Seller must provide supporting documentation (at the end-use customer level) of the cost associated with participation as a Demand Resource and an attestation from the Demand Resource that~~

[485] *See id*. § 5.14(h-1)(3)(B).

[486] *See id*.

[487] Rehearing Order, 171 FERC ¶ 61,035 at P 187.

~~all other costs are not related to participation as a Demand Resource, such as the costs associated with installation and operation of the generation unit, and will be accrued and paid regardless of participation in the Reliability Pricing Model. To the extent the Capacity Market Seller includes~~ all costs associated with the generation unit supporting the Demand Resource, and ~~then~~ demand charge management benefits at the retail level (as supported by documentation at the end-use customer level) may also be considered as an additional offset to such costs. Supporting documentation (at the end-use customer level) may include, but is not limited to, historic end-use customer bills and associated analysis that identifies the annual retail avoided cost from the operation of such generation unit or the business case to support installation of the generator or regulatory requirements where the generator would be required absent participation in the Reliability Pricing Model.[488]

2. Transparency

a. Compliance Directives

283. The December 2019 Order directed PJM to provide more explicit information about the standards that will apply when conducting the resource-specific review as a safeguard against arbitrary ad hoc determinations that market participants and the Commission may be unable to reliably predict or reconstruct.[489] The December 2019 Order explained that the factors listed in the Tariff language PJM proposed as part of the paper hearing appeared to represent a reasonable objective basis for this analysis for new resources.[490] These factors included (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.[491]

[488] *See* PJM Second Proposed Tariff, Attach. DD, §§ 5.14(h-1)(3)(B) and (C).

[489] December 2019 Order, 169 FERC ¶ 61,239 at P 216.

[490] *Id.* P 216 n.451.

[491] *Id.* P 16 n.36 (citing PJM Initial Testimony at 42 (filed Oct. 2, 2018)).

b. PJM's Compliance Filings

284. PJM states it is proposing Tariff language to require that the resource-specific review process be "open and transparent"[492] as between the seller, Market Monitor, and PJM, in order to comply with the Commission's directive that PJM "safeguard against arbitrary ad hoc determinations."[493] PJM states that this change should not affect the data required by sellers or how requests are processed, but rather ensures that PJM and the Market Monitor are kept apprised of each other's review, maximizing information sharing, analysis, and dialogue between PJM, the Market Monitor, and sellers.

c. Comments and Protests

285. Some commenters argue PJM has not met the Commission's requirement to provide additional information regarding the standards that will be used to evaluate resource-specific offers.[494] Calpine states that PJM proposes to delete language that would require sellers to provide support for cost and revenue estimates at a level of detail comparable to that used to support the default Net CONE values.[495] Calpine argues that more transparency is needed and requests that the Commission clarify that PJM and the Market Monitor must conduct their review in a manner that is consistent with the underlying spirit and intent of the expanded MOPR, meaning in manner that is appropriately stringent to prevent offers below a competitive price.[496] Calpine argues that its requested clarification will help safeguard the integrity of the review process, while giving PJM and the Market Monitor needed flexibility.[497]

286. Vistra argues that the resource-specific review process outlined in PJM's compliance filing fails to specify the standard used to judge the sufficiency of resource-specific review submissions. Vistra contends that, for example, there is no Tariff requirement that submitted documentation be commercially reasonable or consistent with market expectations, nor that PJM's and the Market Monitor's determinations be

---

[492] First Transmittal at 79 (citing First Proposed Tariff, Attach. DD, § 5.14(h)(3)(F)).

[493] *Id.* (citing December 2019 Order, 169 FERC ¶ 61,239 at P 216).

[494] Calpine Comments on First Compliance Filing at 3; Eastern Generation Protest of First Compliance Filing at 9.

[495] Calpine Comments on First Compliance Filing at 3.

[496] *Id.* at 5 (citing June 2018 Order, 163 FERC ¶ 61,236, at P 158).

[497] *Id.* at 6.

consistent with reasonable business judgment and not be based on a specific viewpoint that is not widely held by market participants.[498] Vistra further argues that the Tariff also does not explain the standard by which PJM and the Market Monitor will judge submitted documentation supporting an asset life greater than 20 years or require that the E&AS revenue forecast models be econometrically sound, consistent with E&AS projections generally supported, or consistent with the expectations of market participants broadly.[499]

287. Several parties argue that discussion of a particular resource-specific offer should not be limited to PJM, the Market Monitor, and the market participant, but should rather include any stakeholder who desires to be included. Cogentrix argues that "the Commission should direct PJM and the Market Monitor to provide sufficient information on the inputs and resulting analysis of each unit specific review process to maintain broad stakeholder confidence."[500]

288. Eastern Generation contends that while some resource cost data may be sensitive, revenue assumptions are not because they are based on public data. Eastern Generation argues that more transparency regarding the offers submitted would help stakeholders ensure that PJM and the Market Monitor are not accepting inflated revenue assumptions.[501] Eastern Generation contends that the Commission should direct PJM to incorporate information on the Resource-Specific Exception process consistent with certain New York Independent System Operator, Inc. (NYISO) requirements related to exemptions from MOPR, including examples to clarify how the mitigation exemption test and offer price floor calculations are implemented.[502] Eastern Generation also argues the Commission should direct PJM to disclose the resources seeking the Resource-Specific Exception, and whether those resources chose to use the resource-specific offer price floor or applicable default offer price floor. Additionally, Eastern Generation argues the Commission should direct PJM to disclose, without identifying the relevant resource, any

---

[498] Vistra Comments on First Compliance Filing at 7; *see also* Eastern Generation Protest of First Compliance Filing at 10.

[499] Vistra Comments on First Compliance Filing at 8; *see also* Eastern Generation Protest of First Compliance Filing at 10.

[500] Cogentrix Comments on First Compliance Filing at 6-7.

[501] Eastern Generation Protest of First Compliance Filing at 11.

[502] Eastern Generation Protest of First Compliance Filing at 12 (citing *Astoria Generation Co., L.P. v. N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,244, at P 44 (2012)).

resource-specific offer price floor that is at least 25% lower than PJM's default offer price floor.[503]

289. Public Interest Organizations argue that the obscured nature of the process creates a potential for resource types to be treated differently in ways that are not justified. Public Interest Organizations conclude that, to provide assurance against undue discrimination, the Commission should require PJM to regularly submit a report summarizing each of the resource-specific offers approved or rejected for each auction. Public Interest Organizations state that such a report would permit the Commission to detect uneven implementation of the standards applied and even to propose methodology updates for the default offer price floors where a large percentage of resources of a particular type are able to demonstrate departures from default assumptions. Public Interest Organizations assert that such data, along with more accurate default offer price floors, will help the public and state policymakers understand how the expanded MOPR is being implemented and affecting different resource types.[504]

290. Maryland Legislators argue that the resource-specific offer price floor process is idiosyncratic, opaque, and unpredictable, and therefore cannot be relied upon by policymakers attempting to weigh various legislative proposals.[505]

291. The Market Monitor argues that PJM's modifications to make the resource-specific offer review process open and transparent constrain how the Market Monitor conducts its independent reviews for market power concerns and PJM's administrative compliance review. The Market Monitor contends that changing PJM's and the Market Monitor's roles, and how PJM and the Market Monitor interact within those roles, exceeds the scope of the compliance directive and such changes should be rejected.[506]

292. Furthermore, the Market Monitor argues that PJM's proposal to ensure that PJM and the Market Monitor are kept apprised of each other's review is not consistent with the independence of the market monitoring function. The Market Monitor also argues that the Tariff language concerning implementation of the market monitoring function must be contained solely within Attachment M of PJM's Tariff.[507] Accordingly, the

---

[503] Eastern Generation Protest of First Compliance Filing at 12-13; *see also* Vistra Comments on First Compliance Filing at 8-9.

[504] Public Interest Organizations Comments on First Compliance Filing at 19-20.

[505] Maryland Legislators Comments on First Compliance Filing at 6.

[506] Market Monitor Comments on First Compliance Filing at 18.

[507] *Id.* at 18 (citing *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071, at P 312 (2008) ("Given the critical nature

Market Monitor asserts that the proposed Tariff language in Attachment DD, section 5.14(h)(3)(F) that interferes with market monitoring processes should be rejected.[508]

d. Commission Determination

293. We accept PJM's proposal as consistent with our prior orders. We find that PJM has complied with the directives of the prior orders by including, as directed, the following specific criteria into the proposed Tariff language dictating how PJM will evaluate new resource requests for the Resource-Specific Exception: (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.[509]

294. We disagree with Calpine that the new Resource-Specific Exception Tariff section must include language requiring sellers to provide support for their estimates at a level of detail comparable to the cost and revenue estimates used to support PJM's proposed default values. The Tariff requires that sellers provide documentation to support the departure from the default, which we find requires at least a level of detail comparable to the cost and revenue estimates used to support the default values.

295. As to Calpine's requested clarification that PJM and the Market Monitor must conduct their review in a manner consistent with the underlying spirit of the expanded MOPR, PJM's Tariff revisions provide sufficient transparency that we are satisfied that PJM will conduct its review in a manner consistent with the Commission's orders.

296. With respect to arguments that PJM has not provided adequate information regarding the Resource-Specific Exception, we disagree. First, we did not require PJM to modify the existing Tariff language in creating the new exemption. On the contrary, the December 2019 Order specifically directed PJM to include certain factors from the previously proposed Tariff into the next iteration of Tariff revisions, which PJM has done.[510] We disagree with Eastern Generation that PJM must be more specific about how

---

of MMU duties, the Final Rule requires RTOs and ISOs to include in their tariffs ethical standards for their MMUs. The Final Rule also requires RTOs and ISOs to consolidate all of their MMU provisions into one section of their tariffs.")).

[508] *Id.* at 19.

[509] *See* PJM Second Proposed Tariff, Attach. DD, § 5.14(h-1)(3)(B).

[510] December 2019 Order, 169 FERC ¶ 61,239 at P 216 n.451 (citing *id*. P 16 n.36).

it will evaluate resource-specific offers, including mandating the types of models a seller may use to justify price and revenue forecasts or dictating what level of financing information will be considered sufficient to justify an offer. The Resource-Specific Exception is meant to provide flexibility to the MOPR and ensure that sellers that can justify offers below the default offer price floors are able to offer competitively.

297. We similarly disagree with Vistra's argument that PJM has not sufficiently defined the standards by which resource-specific offers will be reviewed. PJM and the Market Monitor are independent entities and there is no reason to believe, as Vistra suggests, that they will not consider whether a seller's resource-specific offer is commercially reasonable, consistent with market expectations, or consistent with market participant expectations.

298. We also disagree with commenters' arguments that PJM must provide additional information on its website or in reports, or otherwise involve additional parties in the evaluation of resource-specific offers. First, we rejected similar requests in the December 2019 Order.[511] Further, the Commission did not require PJM, as protestors argue, to make confidential information regarding the offers of specific resources public. Rather, the Commission's concern was with whether market participants had sufficient information to justify their resource-specific offers to PJM. The December 2019 Order laid out clear instructions for how to ensure that outcome, and PJM has met those criteria. There is not information in the record to support a finding regarding what types of information should be confidential or public, nor what gaming opportunities that may create.

299. While we acknowledge that the Commission may, in the past, have required other RTO/ISOs to provide additional information to stakeholders that PJM may not provide, the record in this proceeding does not demonstrate a need for PJM to release such information at this time. We find PJM's proposal just and reasonable without these changes, and, moreover, PJM complied with the directives with the December 2019 Order.

300. Public Interest Organizations argue that additional reporting could allow the Commission to detect uneven implementation of the standards used to determine resource-specific offers and propose methodology updates where a large percentage of resources of a particular type are able to demonstrate departures from the assumptions. PJM and the Market Monitor are independent entities tasked with oversight over many aspects of the markets, including participants' bids and offers. Any concern that PJM and the Market Monitor would not review offers consistently is unfounded, especially given

---

[511] December 2019 Order, 169 FERC ¶ 61,239 at P 40 ("We also reject Illinois AG's proposal to require the release of offer data. Offer data is sensitive commercial information, which we decline to make generally available.").

that both PJM and the Market Monitor will review requests for the Resource-Specific Exception. In addition, while we disagree that the fact that a large percentage of resources of a particular type are able to demonstrate departures from the default values would suggest a problem in how PJM applies the exemption, we note that PJM and stakeholders can propose updates to the methodology as needed. We would expect that the majority of resources applying for the Resource-Specific Exception depart from the norm in some way—otherwise they would simply use the default offer price floor. We therefore disagree with Public Interest Organizations that PJM should be required to report on the implementation of the Resource-Specific Exception.

301. Maryland Legislators and Public Interest Organizations argue that additional transparency regarding the Resource-Specific Exception will help state policymakers attempting to weigh various legislative proposals. The goal of the Resource-Specific Exception is to ensure all resources are able to offer competitively rather than aid state policymakers' decision-making.

302. We reject the Market Monitor's argument that PJM's proposed Tariff language requiring that the Market Monitor and PJM shall conduct their review of resource-specific offers in an "open and transparent manner" with the seller and each other constrains the Market Monitor's ability to conduct such reviews. The Tariff language merely requires that the Market Monitor be open about its findings and methodology with the seller and PJM. This is neither a change in the Market Monitor's role nor exceeds the scope of the compliance directive. The Market Monitor should generally be open with the seller regarding the Market Monitor's evaluation of its resource-specific offer under the pre-existing Unit-Specific Exception. Rather, the proposed Tariff language merely clarifies this role under the new Resource-Specific Exception. Further, PJM's proposed change is squarely within the scope of the compliance directive, as PJM proposes to add the language only to the new Tariff section created at the direction of the Commission.

303. We also disagree with the Market Monitor's argument that it is inappropriate to have this Tariff language outside of Attachment M. Similar language governing the role of the Market Monitor in evaluating resource-specific offers already exists in Attachment DD, section 5.14(h)(5).[512] As we have found, above, that PJM's proposed addition is a clarification and not a change in the Market Monitor's role, it is appropriate to keep the language in Attachment DD.

---

[512] *See, e.g.*, Attach. DD, § 5.14(h)(5)(iv)("The Market Monitoring Unit shall review the information and documentation in support of the request and shall provide its findings whether the proposed Sell Offer is acceptable, in accordance with the standards and criteria hereunder, in writing, to the Capacity Market Seller and the Office of the Interconnection by no later than ninety (90) days prior to the commencement of the offer period for such auction.").

K. Certification

1. PJM's Compliance Filings

304. PJM proposes that each seller inform PJM whether its resource is State-Subsidized during the pre-auction registration process.[513] Specifically, PJM proposes that, by no later than 120 days prior to the annual capacity auction, for each seller other than demand response and energy efficiency resources, the seller must certify whether or not each capacity resource the seller intends to offer qualifies as a Capacity Resource with a State Subsidy and identify the State Subsidy. For demand response resources and energy efficiency resources, the seller shall certify whether such resource is a Capacity Resource with a State Subsidy no later than 30 days prior to the auction.[514] PJM asserts that this allowance for demand response and energy efficiency resources is appropriate, given the other deadlines applicable to such resources, which arise closer in time to PJM's auctions.[515] PJM argues that the self-certification is appropriate because sellers are in the best position to know whether their resources receive, or are entitled to receive, a State Subsidy.[516]

305. PJM states that it will work with the market monitor to develop a non-exhaustive list of programs that PJM and the Market Monitor consider to be State Subsidies based on information provided by sellers and post the list as a guidance document.[517] Given the number of state and local programs that exist and that such programs may change over time, PJM states it is impractical to include a list of specific State Subsidies in the Tariff. PJM states, however, that regardless of the guidance document, the seller remains ultimately responsible for ensuring that it correctly certified whether it is State Subsidized to PJM.[518]

306. Further, PJM states that sellers will have a continuing obligation to notify PJM and the Market Monitor of changes in their status. Specifically, PJM states that a seller that becomes or ceases to be State-Subsidized would be required to notify PJM within five days of such change. PJM adds that a resource's status would remain unchanged, even if

---

[513] First Transmittal at 24, 26 n.69.

[514] Second Proposed Tariff, Attach. DD, § 5.14(h-1)(C)(i).

[515] First Transmittal at 24-25.

[516] *Id.* at 24.

[517] *Id.* at 27.

[518] *Id.* at 28; *see* Second Proposed Tariff, Attach. DD, § 5.14(h-1)(1)(C)(i).

there is a change in the identity of the seller, unless: (i) the seller of the resource notifies PJM of a change; (ii) PJM affirmatively changes the resource's status; or (iii) the Commission issues an order directing the change to the resource's status. Sellers that do not timely certify their status will be subject to the applicable default offer price floor and precluded from using the Resource-Specific Exception, absent the receipt of a waiver or prior receipt of a Resource-Specific Exception.[519]

2. Comments, Protests, and Answers

307. The Market Monitor recommends that sellers certify for all resource types by the 120-day deadline, rather than permitting demand response resources and energy efficiency resources to certify their subsidy status no later than 30 days prior to the annual capacity auction. The Market Monitor argues this would permit resources sufficient time for the Commission to resolve any issues that are identified prior to an auction clearing. Additionally, the Market Monitor requests that certification status also be made available to the Market Monitor, as these certifications are related to the application of market power mitigation rules.[520]

308. AEP and Advanced Energy Entities object to PJM's proposal regarding capacity market sellers' duty to notify PJM of changes in subsidy status with a five-day deadline, asserting that 30 days is reasonable.[521] Additionally, Advanced Energy Entities suggest that the Commission direct PJM to establish procedures that allow a capacity seller to update its State Subsidy status at any point up until five days before the start of the RPM auction if it discovers that a material change has occurred in the period after the self-certification deadline.[522]

309. PJM states it supports commenter' proposal to increase the proposed five-day deadline to notify PJM of a material change in the resource's subsidy status to 30 days. Further, as recognized by the parties, PJM states that a five-day period is appropriate when the material change in a State Subsidy occurs within 30 days of the commencement

---

[519] First Transmittal at 26-27; Second Proposed Tariff, Attach. DD, § 5.14(h-1)(1)(C)(i), (iii). PJM clarifies that, under its proposal, such resources will be required to offer at the default offer price floor, if applicable, and that, for resource types for which there is no default offer price floor, such resources will be barred from participating in the auction. *Id*. at 26 n.68, 27 n.71.

[520] Market Monitor Comments on First Compliance Filing at 19.

[521] AEP Comments on First Compliance Filing at 2; Advanced Energy Entities Comments on First Compliance Filing at 3-5.

[522] Advanced Energy Entities Comments on First Compliance Filing at 3-5.

of the RPM auction. PJM therefore proposes specific Tariff revisions to Attachment DD, section 5.14(h-1)(1)(C)(iii) to effectuate these changes. PJM further clarifies that the requirement to notify PJM of a material change in State Subsidy status outside the pre-auction requirements applies only when the material change results in an unsubsidized capacity resource becoming a subsidized capacity resource and vice versa.[523]

310. Environmental Defense Fund argues that PJM's proposal to require market participants to self-certify runs counter to the market monitoring delineated for regional transmission organizations in Order No. 2000[524] by relegating PJM's responsibility for market oversight to market participants.[525] According to Environmental Defense Fund, the onus is on PJM to include "tools to deter clearly identified abuses and to promote proper behavior," which Environmental Defense Fund claims PJM's proposal does not do.[526] Public Interest Organizations likewise argue that PJM's self-certification proposal lacks clarity, transparency, and accountability, while imposing undue risks on market participants by delegating to resource owners the complex legal question of whether their revenues or benefits are, in fact, a State Subsidy. Public Interest Organizations assert that, given the broad reach of the Commission's definition and the possible exceptions thereto, differences of interpretation are certain to arise across the PJM footprint in a manner that will introduce discriminatory treatment of resources.[527]

311. To enhance market certainty, transparency, and integrity, Clean Energy Associations, EDF Renewables, Environmental Defense Fund, and Public Interest Organizations argue that, if a seller has a question pertaining to whether a particular program is a State Subsidy, it should be able to seek guidance on this issue from PJM or the Market Monitor and to rely on such guidance when certifying whether a particular resource is eligible to receive a State Subsidy.[528] Clean Energy Associations argue that

---

[523] PJM June 3 Answer at 4-5.

[524] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[525] Environmental Defense Fund Protest of First Compliance Filing at 9-10 (citing 18 C.F.R. § 35.34(k)(6)).

[526] *Id*. at 10 (*Cal. Indep. Sys. Operator Corp*., 106 FERC ¶ 61,179, at P 29 (2004)).

[527] Public Interest Organizations Comments on First Compliance Filing at 15.

[528] Clean Energy Associations Comments on First Compliance Filing at 8-9; EDF Renewables Comments on First Compliance Filing at 6-7; Environmental Defense Fund

such an allowance is appropriate because "PJM is ultimately responsible for the administration of its tariff."[529] Clean Energy Associations add that, if capacity market sellers cannot receive and rely on this guidance, sellers will face unnecessary, and in some instances insurmountable, compliance risks when seeking to participate in PJM's capacity market.[530] Clean Energy Associations argue therefore that the Commission should direct PJM to create a process to allow market participants to seek binding guidance from PJM and, if applicable, the Market Monitor, at any time and not tied to any given auction.[531]

312. Environmental Defense Fund requests that the Commission direct PJM to include Tariff language that permits sellers to request clarification from PJM regarding whether particular state policies are State Subsidies, and, within seven days following the deadline to submit subsidy certifications, requiring PJM to file a report with the Commission listing, by zone, all State Subsidies identified by sellers, with any entity objecting to the inclusion or omission of such listings permitted to file a written objection. Environmental Defense Fund further proposes that, if no objections are filed within 14 days after PJM's submission of the report, the list be deemed final.[532]

313. Public Interest Organizations argue that a public method must be in place to resolve uncertain questions regarding subsidies that would: (i) give all participants a public reference to those policies triggering the MOPR; (ii) allow any party to submit a policy for consideration or comment on a determination and set clear timelines for the decision-making process; and (iii) provide a clear path for determinations to be clarified

---

Protest of First Compliance Filing at 9-11; Public Interest Organizations Comments on First Compliance Filing at 15.

[529] Clean Energy Associations Comments on First Compliance Filing at 9 (citing *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,250, at PP 143, 160 (2009)).

[530] Clean Energy Associations Comments on First Compliance Filing at 10; *see also* EDF Renewables Comments on First Compliance Filing at 7 (asserting that such a process will promote greater compliance, reduce commercial risk, and help avoid situations in which PJM believes a stakeholder has engaged in fraud or misrepresentation); Environmental Defense Fund Protest of First Compliance Filing at 11.

[531] Clean Energy Associations Comments on First Compliance Filing at 10.

[532] Environmental Defense Fund asserts this process is consistent with processes already incorporated in PJM's Tariff at Attachment DD, section 6.2(C). Environmental Defense Fund Protest of First Compliance Filing at 13-15 (citing *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 115 (2006)).

by, or challenged at, the Commission, including an allowance for third-party challenges from the public or other interested parties. In addition, Public Interest Organizations argue that asset owners and other parties should be allowed to submit comments to PJM on self-certification determinations, or submit their own requests for opinions, which should be made public.[533]

314. Environmental Defense Fund and Public Interest Organizations take issue with PJM's proposed guidance document, arguing that it does not cure the problem that sellers need certainty as to State Subsidies, or provide for independent submissions, input, verification, or challenges from the pubic or interested parties, which, according to Public Interest Organizations, undermines confidence in the process and likely results in inconsistent application of the expanded MOPR.[534] Environmental Defense Fund argues that stakeholders have no opportunity to provide input on the guidance document and no opportunity to challenge before the Commission PJM's inclusion or omission of a State Subsidy from the guidance document and suggest that this renders PJM's proposal unjust and unreasonable.[535]

315. ODEC approves of PJM's proposal to post a guidance document representing a non-exhaustive list of programs that PJM and the Market Monitor consider to be State Subsidies. ODEC notes that, while guidance was not specifically required by the December 2019 Order, it will avoid the need for market sellers to submit individual requests.[536]

316. On the other hand, Ohio Commission requests that the Commission reject PJM's proposal to provide a guidance document of potential State Subsidies, arguing it would be superfluous to PJM's certification requirements given the "self-explanatory nature of most state programs," and would raise questions regarding the guidance document's reliability and authority. Ohio Commission states that the guidance document will

---

[533] Public Interest Organizations Comments on First Compliance Filing at 18.

[534] *Id.* at 16-18.

[535] Environmental Defense Fund Protest of First Compliance Filing at 9-10 (citing *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231, at P 96 (2014) (directing CAISO to continue working with stakeholders to develop a business practice manual); *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at PP 118-120 (2013) (finding that the absence of structed informal or formal challenge procedures to MISO's formula rate protocol rendered the protocols unjust and unreasonable and requiring a set procedure through which interested parties can informally challenge formula rate inputs).

[536] ODEC Comments on First Compliance Filing at 3.

become the subject of scrutiny, protracted examination, and potential litigation for negligible value.[537]

317. In its June 3 answer, PJM disagrees with Public Interest Organizations, Environmental Defense Fund, EDF Renewables, and Clean Energy Associations that stakeholders should be able to definitively rely on PJM or Market Monitor guidance on which programs constitute a State Subsidy. PJM insists that sellers, not PJM or the Market Monitor, are in the best position to know what subsidies their resources are eligible to receive. PJM argues that, if a seller is uncertain whether it is receiving a State Subsidy, the seller may file a petition for declaratory order with the Commission.[538]

318. PJM continues that it intends the non-binding guidance document to be a guide, not a substitute for the requirement that sellers do due diligence to ensure truthful certification as required by the proposed Tariff. Notwithstanding this, PJM adds that it is developing a process, along with the Market Monitor, that will allow sellers to submit individual state and local programs to PJM and the Market Monitor for review and guidance.[539] PJM states that, after reviewing specific programs, it would maintain a publicly available list of programs that both PJM and the Market Monitor agree should be deemed a State Subsidy. PJM cautions, however, that this guidance should not be considered a substitute for the requirements of individual due diligence, as contemplated by PJM's self-certification proposal. PJM also seeks clarification that the non-binding guidance that PJM and the Market Monitor may provide will not foreclose PJM from finding that any particular program does or does not meet the PJM Tariff definition of State Subsidy.[540]

319. In response, Clean Energy Associations disagree with PJM that sellers should be ultimately responsible for determining whether they are State Subsidized, stating that it is a commonly accepted practice for market participants to request clarification and guidance from PJM regarding PJM's interpretation of its Tariff. Clean Energy Associations argue that the ability to seek a declaratory order from the Commission is not an adequate substitute for PJM guidance, especially for routine questions regarding compliance with PJM's Tariff.[541]

---

[537] Ohio Commission Comments on Second Compliance Filing at 11-12.

[538] PJM June 3 Answer at 22.

[539] *Id.* at 22-23; *see also* PJM July 7 Answer at 4-5.

[540] PJM June 3 Answer at 22-23.

[541] Clean Energy Associations June 18 Answer at 3-6.

3. Commission Determination

320. We accept PJM's certification proposal,[542] in part, as consistent with PJM's compliance obligations under the December 2019 Order.[543] We also modify PJM's proposal, in part, as directed below. PJM's proposal requires capacity market sellers to inform PJM of the status of their resources under a prescribed timetable: 120 days for sellers other than demand response resources and energy efficiency resources, and 30 days for demand response resources and energy efficiency resources.

321. We disagree with the Market Monitor that demand response resources and energy efficiency resources should be required to certify 120 days prior to the auction rather than 30 days as proposed by PJM. PJM explains this timing distinction is necessary to be consistent with certain pre-existing deadlines for demand response and energy efficiency resources that occur closer to the auctions.[544] Therefore, we find the 30 day certification deadline for demand response resources and energy efficiency resources is reasonable to ensure that sell offers by these resources contain the necessary information. We also agree with the Market Monitor that resources' certification status should be made available to the Market Monitor.

322. Environmental Defense Fund and Public Interest Organizations disagree with PJM's certification proposal, arguing it assigns market monitoring functions to market participants, rather than PJM, and delegates to resource owners the legal question of whether certain revenues or benefits are a State Subsidy, introducing discriminatory treatment of resources given differing interpretations of what constitutes a State Subsidy. We disagree. The State Subsidy definition is available to all and codified in the Tariff, and, as PJM maintains, sellers are in the best position to determine whether a subsidy falls into that definition. PJM still retains the responsibility, with advice and input from the Market Monitor, to review that certification and to take appropriate action when it finds fraud and material representations, as discussed below.

323. Environmental Defense Fund, EDF Renewables, Public Interest Organizations, and Clean Energy Associations argue that capacity sellers should be able to rely on guidance from PJM regarding the status of their resources during the pre-auction process and in submitting their certifications. PJM conversely argues that sellers are responsible for conducting due diligence and truthfully certifying the status of their resources, and

---

[542] *See* Second Proposed Tariff, Attach. DD, § 5.14(h-1)(1)(C).

[543] The December 2019 Order directed PJM to extend the MOPR to new and existing resources that receive, or are entitled to receive, State Subsidies, unless exempted. December 2019 Order, 169 FERC ¶ 61,239 at PP 2, 9.

[544] First Transmittal at 25.

that a declaratory order from the Commission is the appropriate mechanism to resolve uncertainty regarding whether a particular state policy is a State Subsidy. We understand commenters' concern that sellers need certainty regarding the status of their certification. We disagree, however, that PJM's certification proposal is unjust and unreasonable. Under PJM's proposal, the seller has to make a good faith determination as to whether it is receiving a State Subsidy. PJM then proposes that, once a seller has certified a capacity resource with a state subsidy, the status of such capacity resource will remain unchanged until the seller provides certification of a change in such status, PJM removes such status, or the Commission changes it by order.[545] PJM maintains the ability to change the certification status only in the case of fraud or material misrepresentation.[546] Therefore, based on PJM's proposed Tariff, a seller can rely on the certification it provides in good faith, and such status will not be changed by PJM unless the seller engages in fraud or misrepresentation. We find these procedures provide necessary certainty for sellers to submit certifications in good faith. Moreover, State Subsidy is specifically defined in the Tariff, providing sufficient transparency and clarity for sellers to certify.

324. Commenters seek a process by which sellers can seek guidance from PJM on whether particular state programs are a State Subsidy before the certification process. PJM states that it is developing a process, along with the Market Monitor, by which sellers may submit state and local programs for review and guidance. PJM states that, after reviewing the specific programs, it will maintain a publicly available list of programs that PJM and the Market Monitor agree should be deemed a State Subsidy.[547] We decline to mandate procedures for the development and upkeep of such a list, but agree with commenters that such a process would help sellers in the certification process. As stated by PJM, however, the guidance document will be non-binding and is not to be viewed as the exclusive list of what is considered a State Subsidy. There could be state policies that qualify as State Subsidies not included on the list merely because a seller did not seek guidance as to whether it is a State Subsidy. We confirm, as PJM requests, that the guidance document does not foreclose PJM from finding that any particular program does or does not meet the Tariff definition of a State Subsidy if good reason exists to do so.

325. Environmental Defense Fund and Public Interest Organizations object to PJM's proposed guidance document, arguing that stakeholders do not have an opportunity to provide input on the guidance document or to challenge it before the Commission,

---

[545] Second Proposed Tariff, Attach. DD, § 5.14(h-1)(1)(C)(iii).

[546] *Id*., § 5.14(h-1)(9); First Transmittal at 26; *see supra* IV.L (addressing PJM's fraud and material misrepresentation proposal).

[547] PJM June 3 Answer at 22-23; *see also* PJM July 7 Answer at 4-5.

rendering it unjust and unreasonable. We disagree. As an initial matter, we find PJM's certification process consistent with the December 2019 Order and just and reasonable without the guidance document; while additional processes may be just and reasonable, we do not find PJM's approach unjust and unreasonable, as discussed above. Moreover, regardless of what programs are on the guidance document, State Subsidy is specifically defined in PJM's Tariff, and, if interested parties do not believe that PJM is following its Tariff regarding what is or is not a State Subsidy, the interested parties can file a complaint with the Commission. Environmental Defense Fund cites the Commission's finding in the MISO formula rate order that the absence of structured informal or formal challenge procedures rendered the protocols unjust and unreasonable.[548] However, the challenge procedures in the MISO formula rate case were required in the context of determining the actual formula rate. In contrast, here, the question is not the rate to be charged, but rather the certification process for sellers to indicate whether the resources they intend to offer are State Subsidized.

326. Public Interest Organizations and Environmental Defense Fund request that any party be allowed to submit comments to PJM regarding a seller's certification or challenge a certification before PJM, and that PJM be required to file a report with the Commission listing all subsidy certifications for review and challenge. We do not believe this is necessary for PJM's proposal to be consistent with the underlying orders or just and reasonable. PJM and the Market Monitor will be reviewing certifications consistent with their market implementation and oversight functions. Moreover, as discussed above, PJM states that the guidance document will be publicly available and based on clarification requests from sellers, so interested parties will be able to view the guidance document. And, sellers will have an opportunity to weigh in on whether particular programs should be included on the list. Parties are certainly free to explore changes in the PJM stakeholder process. Further, if a seller or entity believes the list in in error, it may file a complaint or seek a declaratory order from the Commission. These would be publicly noticed processes. We see no reason, however, to believe, as the Ohio Commission suggests, that the guidance document will be the subject of endless litigation. Rather, the guidance document will provide a helpful tool to guide market participants in their certifications.

327. With regard to PJM's proposed five-day deadline to notify PJM of changes in State Subsidy status, PJM states it supports extending this timeframe and adding a provision for notification within 30 days of an auction if directed by the Commission. We believe it is appropriate and reasonable to do so, and therefore direct PJM to file within 30 days of the date of this order a compliance filing revising Tariff Attachment

[548] *See* Environmental Defense Fund Protest of First Compliance Filing at 11 (citing *MISO*, 143 FERC ¶ 61,149 at P 118).

DD, section 5.14(h-1)(1)(C)(iii) as proposed by PJM in its answer.[549] This language provides 30 days for sellers to notify PJM of a material change in subsidy status, and, if such material change occurs within 30 days of the auction, sellers will have five days to notify PJM of the change.

328. Finally, we direct PJM to clarify one sentence in its proposed Tariff. Specifically, PJM proposes that a resource will be deemed State Subsidized if the seller offering it into the auction fails to timely certify whether or not resource is entitled to a State Subsidy, "unless the Capacity Market Seller receives a waiver from the Commission or the Capacity Resource previously received a resource-specific exception pursuant to [the Tariff]."[550] PJM explains this provision to mean that if a seller fails to certify a resource, the resource cannot elect the Resource-Specific Exception unless the sellers receives a Commission waiver or the resource "previously received a resource-specific exception."[551] However, sellers must submit a Resource-Specific Exception request each year, and the deadline for applying for the Resource-Specific Exception is 120 days prior to the auction, the same time that most sellers are required to certify the status of their resources. Under these circumstances, it is unclear what the proposed Tariff means by "previously received a resource-specific exception." Based on PJM's first transmittal, we believe it means that if a seller submitted a Resource-Specific Exception request 120 days prior to the auction, as required by the Tariff, but failed to timely certify the status of its resource, and PJM subsequently approves the resource-specific offer price floor, then the resource could use such floor regardless of whether it timely certified.[552]

329. Based on this, we direct PJM to make the following modification to proposed Tariff, Attachment DD, section 5.14(h-1)(1)(C)(1)(i): "unless the Capacity Market Seller receives a waiver from the Commission or the Capacity Resource ~~previously received~~ sought for the relevant delivery year a resource-specific exception pursuant to Tariff Attachment DD, section 5.14(h-1)(3)."

---

[549] PJM June 3 Answer at 5 (proposing revisions to the proposed Tariff language regarding obligation to notify PJM of material change in subsidy status).

[550] Second Proposed Tariff, Attach. DD, § 5.14(h-1)(1)(C)(i).

[551] First Transmittal at 26, n.68.

[552] *See id*.

L. Fraud or Material Misrepresentations

1. PJM's Compliance Filings

330. PJM proposes special procedures in the case of fraud or material misrepresentation, which it characterizes as a necessary corollary to its compliance proposals, as summarized above. PJM states that its proposal is modeled on the provisions accepted by the Commission in Docket No. ER13-535-000, *et al.*,[553] to address the consequences if PJM reasonably believes that a previous determination of whether a resource is a Capacity Resource with a State Subsidy was based on fraudulent or material misrepresentations or omissions. Specifically, PJM proposes that, if it or the Market Monitor suspect misrepresentation or omission in the relevant certification, either may request additional information, which must be provided within five business days. PJM would also be authorized to alter the status of the resource upon written notification to the seller no later than 65 days before the start of the auction. PJM adds that sellers would be permitted to challenge any such change in status at the Commission. PJM states that, if it is not able to make the determination at least 65 days before the auction, it will file the suspect certification with the Commission. PJM notes that, in that instance, it will run the auction consistent with the Commission's determination.[554]

2. Comments, Protests, and Answers

331. Cogentrix generally supports PJM's proposal.[555] The Market Monitor supports PJM's proposal, in part, but argues that PJM's proposed language should not characterize the Market Monitor's role as being limited to "advice and input." The Market Monitor states it is not a subordinate of PJM, but rather an independent monitor, and labeling its role as advice and input improperly characterizes the Market Monitor's function. The Market Monitor therefore asks that PJM be directed to remove all such references, including at proposed Tariff Attachment DD, sections 5.14(h)(9), (h)(3)(F), and in section 1 (Definitions).[556]

332. PJM opposes the Market Monitor's request that PJM be ordered to delete any Tariff language referencing the Market Monitor's advice and input function, as it relates to PJM's implementation of its market rules. PJM disagrees that the relevant language mischaracterizes the Market Monitor's role and notes that the Commission has previously

---

[553] *See PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at P 115 (2013)).

[554] First Transmittal at 79-81.

[555] Cogentrix Comments on First Compliance Filing at 7.

[556] Market Monitor Comments on First Compliance Filing at 20-21.

accepted near-identical language in PJM's governing documents. PJM adds that the relevant language provides clear guidance to stakeholders that before acting on a specific request, PJM will seek the advice and input of the Market Monitor. PJM asserts that this is an important procedural step and that its inclusion in PJM's compliance proposal ensures an orderly and reasonable process.[557]

3. Commission Determination

333. We accept PJM's compliance proposal, as it relates to fraud and material misrepresentations, as consistent with the requirements of the December 2019 Order.[558] We agree with PJM that these provisions are a necessary corollary to the broader compliance proposal to deter prohibited behavior.

334. We decline to direct PJM to remove Tariff references describing the Market Monitor's role as "advice and input." Contrary to the Market Monitor's contention, stating that the Market Monitor will provide advice and input to PJM does not mean that the Market Monitor's role as independent evaluator is diminished or change the fundamental roles between PJM and the Market Monitor related to the capacity market. Rather, we agree with PJM that the advice and input language reasonably puts market participants on notice that PJM will seek the Market Monitor's input.

M. Waiver Request and Auction Schedule

1. Compliance Directives

335. The December 2019 Order directed PJM to provide revised dates and timelines for the BRA associated with delivery year 2022/2023 (2019 BRA) and related incremental auctions, along with revised dates and timelines for the BRA associated with delivery year 2023/2024 (2020 BRA) and related incremental auctions, as necessary.[559]

2. PJM's Compliance Filings

336. PJM proposes that the date for the next BRA should be tied to the date of the Commission's order on its first compliance filing, such that the 2019 BRA will run six and a half months after the date of the Commission's acceptance of the compliance filing.[560] PJM states it will post the specific schedule for the affected auctions by the later

---

[557] PJM June 3 Answer at 25-26.

[558] *See* Second Proposed Tariff, Attach. DD, § 5.14(h-1)(9).

[559] December 2019 Order, 169 FERC ¶ 61,239 at P 4.

[560] First Transmittal at 84.

of June 15, 2020, or 14 days after a Commission order accepting this compliance filing. For the three delivery years following 2022/2023, PJM proposes a four-and-a-half-month pre-auction schedule for the BRAs, with six weeks between posting the results of one auction and beginning the schedule for the next.[561]

337. To allow for the proposed auction schedule, PJM requests waiver of Tariff provisions relating to the timing of the BRA and pre-auction process deadlines to allow for the compressed auction timelines for the 2019 through 2022 BRAs (delivery years 2022/2023 through 2025/2026). PJM adds its waiver request covers relevant incremental auctions, as well as cancellation of the first and second incremental auctions if they are scheduled within 10 months of the rescheduled BRA.[562] PJM explains that the specific auctions canceled would depend on the date of the Commission's order, but states that the third incremental auction will not be canceled for any delivery year.[563]

338. Also, due to the proposed compressed schedule for the next four BRAs, PJM requests waiver of three requirements in the PJM Reliability Assurance Agreement (RAA) that PJM calculate certain parameters used in determining capacity obligations. Specifically, PJM requests waiver of: (1) RAA, Schedule 8, section (B) and RAA, Schedule 8.1(D)(3) to allow PJM to use the most recent available "Zonal Weather-Normalized Summer Peak Load" instead of one "for the summer season concluding four years prior to the commencement of such Delivery Year;" and (2) RAA Schedule 8.1(D)(4), which requires all demand response and similar load management programs included in an FRR capacity plan "be submitted three years in advance" of the delivery year to permit the FRR entity to submit them closer to the BRA.[564]

339. PJM notes that the Commission previously granted PJM's request to waive certain Tariff requirements for the 2019 BRA.[565] PJM states the waiver is warranted because PJM has acted in good faith, the problem is concrete, the waiver is of limited scope, and the waiver will not have undesirable consequences. Specifically, PJM states that the

---

[561] *Id.* at 86-87.

[562] *Id.* at 89. See PJM filing Attachment A for a complete list of Tariff provisions that PJM seeks waiver of pursuant to this waiver request.

[563] *Id.* at 89.

[564] *Id.* at 89-90, n.276.

[565] *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,153 (2018) (2018 Waiver Order). PJM states that it views the Commission's forthcoming order on its compliance filing in this docket as completing the Commission's action on that previously filed waiver request. First Transmittal at 89-90.

BRAs and incremental auctions for the four impacted delivery years cannot be held under the Tariff-prescribed timing because the rules governing the auctions are not yet fully resolved, the BRA for the prior year has not been held, and PJM, the Market Monitor, and market participants have insufficient time to prepare for the consecutive conduct of those auctions. PJM states that the compressed auction schedule will still allow parties sufficient time to make pre-auction decisions. PJM asserts that the requested Tariff waiver will allow PJM to proceed on a deliberate path to resume the consecutive BRAs as required by the Tariff.[566]

340. PJM states that OPSI has proposed PJM delay the 2019 BRA until May 2021 to allow for states to work on legislation regarding the December 2019 Order. PJM states that, if such legislation is enacted before June 1, 2020, and upon request of a state public utility commission, PJM would have limited ability to extend the schedule for the 2019 BRA to no later than March 31, 2021.[567]

3. Comments and Protests

341. Some parties support PJM's auction timeline,[568] and others, while generally supporting PJM's auction schedule, urge the Commission to direct PJM to run the 2019 BRA as soon as possible to give market participants certainty and permit developers and other market participants to make necessary investment decisions in advance of the 2022-2023 delivery year.[569] Several commenters assert that uncertainty around PJM's auction schedule has negatively impacted investors and hindered investment.[570] Absent capacity market price signals, NRG Power Marketing states that it will blindly face investment decisions for commitment years that are rapidly approaching and that the lack of auction

---

[566] First Transmittal at 91.

[567] *Id.* at 86.

[568] Dominion Protest and Comments on First Compliance Filing at 10-11; ODEC March 24 Comments at 5 (supporting PJM's proposed timeline, but also stating it would support a longer auction timeframe).

[569] API Comments on First Compliance Filing at 2; Cogentrix Comments on First Compliance Filing at 8; EPSA Comments on First Compliance Filing at 6-7; EPSA Comments on Second Compliance Filing at 3, 5-7; J-POWER Comments on First Compliance Filing at 1; Market Monitor Comments on First Compliance Filing at 22; NRG Power Marketing Comments on First Compliance Filing at 3-4.

[570] EPSA Comments on First Compliance Filing at 6; NRG Power Marketing Comments on First Compliance Filing at 3.

certainty jeopardizes development projects. Commenters also argue that the delay in running the capacity auction has impacted state default service auctions.[571]

342. P3 argues that it does not believe PJM needs six months to prepare for and conduct an auction, as demonstrated by PJM's proposed four and a half month timeline to prepare and conduct the capacity auctions following the May 2019 capacity auctions.[572] P3 explains the delayed capacity auctions have resulted in significant impacts such as (1) preventing investment and maintenance decisions, (2) stalling the financing or refinancing of projects, (3) causing utilities to change default procurement programs in response to uncertainty in forward price signals, and (4) downgrading of market participants' credit ratings due to increased uncertainty in the capacity market investments.[573]

343. Several commenters urge the Commission to delay the auction schedule to allow participants more time to adapt to the changes.[574] The Maryland Commission and the New Jersey Board contend that PJM's proposed auction schedule for the next BRA is unworkable and should be rejected.[575] Commenters argue that the next capacity auction should be held no earlier than May 2021, which they argue will allow state legislators enough time to make changes in response to the replacement rate.[576] Maryland

---

[571] NRG Power Marketing Comments on First Compliance Filing at 4-5; *see also* Cogentrix Comments on First Compliance Filing at 8.

[572] P3 Comments on First Compliance Filing at 5; *see also* EPSA Comments on First Compliance Filing at 7-8 (requested that the auction be held as expeditiously as possible); NRG Power Marketing Comments on First Compliance Filing at 6.

[573] P3 explains PJM stated this at an April 2020 stakeholder meeting. P3 Comments on First Compliance Filing at 4-5.

[574] Maryland Commission Comments and Protest of First Compliance Filing at 20; Virginia Department of Mines, Minerals and Energy Comments on First Compliance Filing at 4.

[575] Maryland Commission Comments and Protest of First Compliance Filing at 20-21; New Jersey Board Comments on Second Compliance Filing at 2-3.

[576] Joint Consumer Advocates Comments on First Compliance Filing at 5; Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 6-8, 26; Maryland Commission Comments and Protest of First Compliance Filing at 20; Maryland Legislators Comments on First Compliance Filing at 8-10, 11; OPSI Comments on First Compliance Filing at 4; Public Interest Organizations Comments on First Compliance Filing at 8-11.

Legislators note this date would also allow PJM to use an updated load forecast to reflect changing economic conditions.[577]

344. Exelon argues that extending the timeline for the 2019 BRA to the end of May 2021 will not present reliability concerns, since PJM has a significant surplus capacity with a the reserve margin of 21.5% for the 2021/2022 BRA (which ran in 2018), which is 5.7% higher than the target reserve margin of 15.8%. Exelon asserts that PJM does not suggest that a delay is problematic, but rather PJM argues that the waiver to implement its proposed delay "will not have undesirable consequences."[578]

345. Maryland Legislators request that the Commission increase the time between subsequent auctions, because PJM's proposal does not permit enough time in between each auction to allow for legislatures or public utility commissions to assess and respond to the impact of the expanded MOPR on consumers and state policies, especially given that the deadline for utilities to elect the FRR Alterative would occur only about two months after the auction results are available. Maryland Legislators recommend eight to nine months instead.[579]

346. With respect to specific planning parameters, the Joint Consumer Advocates support PJM's proposal to post the planning parameters for the 2019 BRA, as well as the three following BRAs, 100 days prior to the auction date, but argue that additional updated forecasts are necessary. Joint Consumer Advocates explain that, under the normal timeline for the May auction, PJM posts the load forecast report in January and the planning parameters in February, with updates posted no later than one month prior to the first and second incremental auctions. Joint Consumer Advocates further states that final RTO and zonal peak load forecasts are posted no later than one month prior to the third incremental auction. Joint Consumer Advocates argue that PJM must continue to

---

[577] Maryland Legislators Comments on First Compliance Filing at 8-10, 11; *see also* Public Interest Organizations Comments on First Compliance Filing at 10-11 (arguing a May 2021 auction date also allows PJM time to update its load forecast prior to the auction); Joint Consumer Advocates Comments on First Compliance Filing at 5 (arguing two-month delay is appropriate and would allow PJM to retain its proposed load forecast release date, while still allowing for a sufficient auction date buffer).

[578] Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 8.

[579] Maryland Legislators Comments on First Compliance Filing at 10; *see also* Public Interest Organizations Comments on First Compliance Filing at 8-10 (arguing the subsequent auctions should be held at least eight months apart, instead of six months apart); Exelon Protest, Comments, and Request for Clarification of First Compliance Filing at 2-3 (supporting Maryland Legislators' proposal).

post updated load forecasts at regular intervals in relation to each auction, despite the compressed schedule and canceled incremental auctions. Specifically, Joint Consumer Advocates request that PJM be required to provide a load forecast similar to the one it would be required to provide, under PJM Manual 18, at least 150 days prior to both the 2019 and 2021 BRAs. Joint Consumer Advocates add that updated forecasts, similar to the updates that would be provided prior to the first and second incremental auctions, should be completed 130 days prior to both the 2020 and 2022 BRAs. Joint Consumer Advocates assert that, by continuing to update its load forecasts, PJM will help ensure that the planning parameters for each of the four BRAs, even if conducted in relatively quick succession, will be based on the most current and accurate models available. Joint Consumer Advocates that this approach would ensure consistency among load forecasts, eliminate overlapping forecasts, be easily adaptable for the 2021 BRA, and allow for a smooth transition once PJM returns to a traditional auction schedule.[580]

a. Comments on PJM's Proposal Regarding State Legislation

347. Some commenters oppose PJM's proposal that, if a state enacts legislation pertaining to the December 2019 Order before June 1, 2020, PJM could extend the schedule for the 2019 BRA to no later than March 31, 2021, upon request of a state public utility commission and instead favor running the auction sooner, arguing there should be no delay for state legislators to act.[581]

348. Others support some kind of delay but argue that PJM's proposal is not sufficient, stating that the pandemic and legislative schedules have made it impossible for states to act by June 1, 2020.[582] Exelon points out that the overall package of compliance proposals, i.e., those reflecting the Commission's additional guidance in its Rehearing Order, were not available until well after the deadline for legislative action on June 1, 2020. Public Interest Organizations argue that there will be no final Commission order by June 1, 2020, meaning states will not know, or be able to react to, the final approved

[580] Joint Consumer Advocates Comments on First Compliance Filing at 2-5.

[581] NRG Power Marketing Comments on First Compliance Filing at 2-3, 5; EPSA Comments on First Compliance Filing at 4-6.

[582] OPSI Comments on First Compliance Filing at 4-6; *see also* Exelon Protest, Comments, and Request for Clarification of First Compliance Filing 2, 6-8; Exelon June 1 Answer at 4-7; Maryland Commission Comments and Protest of First Compliance Filing at 21; New Jersey Board Comments and Protest of First Compliance Filing at 5-8; Public Interest Organizations Comments on First Compliance Filing at 8-10.

capacity market rules implementing the December 2019 Order, which could limit the range of potential state action.[583]

349. OPSI states that some states may be able to take regulatory action in response to the MOPR changes, rather than legislative action as contemplated in PJM's proposal.[584] OPSI requests specifically that if "the Commission issues its final compliance order prior to November 15, 2020, and no PJM state informs PJM prior to four and a half months after the order is issued that it has enacted relevant enabling energy legislation (or issued an administrative/regulatory directive for states not needing legislation), PJM may hold [the 2019 BRA] six and a half months after the order is issued, but no earlier than March 31, 2021." Similarly, based on the same order date, OPSI requests that if a state does so inform PJM, "then PJM shall extend [the 2019 BRA] as requested by the state, but by no more than sixty days (not to extend beyond May 31, 2021)." However, if the Commission issues its final compliance order after November 15, 2020, OPSI requests the Commission find that PJM may hold the 2019 BRA no earlier than six and a half months after the order date. Regardless of those requests, OPSI asks the Commission to ensure that if the 2019 BRA is conducted before May 31, 2021, the 2020 BRA be conducted no earlier than December 1, 2021.[585]

350. OPSI contends that PJM's proposal does not comport with the PJM RAA provision regarding "State Regulatory Structural Changes," which allows parties in states where certain regulatory changes have been made to provide notice to PJM regarding FRR election two months before the BRA, rather than four months.[586] OPSI also argues that the State Regulatory Structural Changes provision is insufficient given the short timeframe PJM proposes between the Commission's order and the auction and the disruption to state processes caused by the coronavirus outbreak.[587]

---

[583] Public Interest Organizations Comments on First Compliance Filing at 8-10; *see also* Maryland Legislators Comments on First Compliance Filing at 9.

[584] OPSI Comments on First Compliance Filing at 7-8; *see also* New Jersey Board Comments and Protest of First Compliance Filing at 5-8.

[585] OPSI Comments on First Compliance Filing at 8-9.

[586] *Id.* at 6-7; *see also* Maryland Commission Comments and Protest of First Compliance Filing at 20-21.

[587] OPSI Comments on First Compliance Filing at 6-7.

4. Answers

351. With regard to auction timing, PJM cautions against decreasing the pre-auction schedule given the amount and complexity of new rules being implemented. PJM argues the timelines for the 2019 BRA and subsequent BRAs are similar, but already compressed.[588]

352. In response to generators arguing that the auction should occur sooner than next spring, Exelon contends that no party has identified any investments in environmental controls that it already made or any concrete decisions that must be made between March and May 2021 that would be affected by BRA results.[589]

353. PJM states it agrees with Joint Consumer Advocates that there may be justifiable grounds to update the load forecast closer to the conduct of the BRA than proposed in PJM's first compliance filing, especially given recent economic volatility and uncertainty related to COVID-19. In particular, PJM supports reducing the number of days that planning parameters must be posted from 100 to 60 days prior to the impacted BRAs.[590] PJM explains this would mean PJM uses the most updated load forecast approximately 90 days prior to the BRA in order to develop the planning parameters.[591]

354. Exelon disagrees with PJM's proposal to post planning parameters 60 days prior to the auction, instead of 100 days as PJM originally proposed in its first compliance filing, arguing it would result in undesirable consequences.[592] Exelon argues that planning parameters contain critical market information that market participants use to prepare for participation in the auction, including the demand levels that may drive competitive pricing decisions, whether to accept or appeal must-offer exception determinations or unit-specific market seller offer cap determinations (notice of which is due 80 days prior to the auction), or to terminate an FRR election (notice of which is due 61 days prior to the auction).[593] Exelon argues PJM's proposed change would be particularly challenging for FRR entities, noting that FRR plans are due 30 days prior to the auction. On the whole, Exelon contends that PJM's proposal does not appropriately balance the need to

---

[588] PJM June 3 Answer at 31.

[589] Exelon June 1 Answer at 4-7.

[590] PJM June 3 Answer at 28-29 (citing First Compliance Filing, Attach. 2).

[591] *Id.* at 29.

[592] Exelon June 16 Answer at 3-7.

[593] *Id.* at 4 (citing PJM Tariff, Attach. DD, §§ 5.14, 6.6; RAA, Schedule 8.1.C).

incorporate updated load forecasts with the burden posting the planning parameters later would impose on market participants. Finally, Exelon complains that PJM's proposal in its answer is procedurally improper because, in its first compliance filing, PJM requested waiver of its Tariff to permit the deadlines specified in that filing, but PJM's answer changes one of those deadlines, effectively modifying the request for waiver, which has not been noticed.[594]

355. In its July 7 answer, PJM states that, given the economic volatility and uncertainty related to the novel coronavirus pandemic, PJM continues to support amending the date by which the planning parameters be posted no later than 60 days prior to the conduct of the next three BRAs. PJM states that it would also support leaving the requirement at 100 days, as originally proposed, but that PJM should retain the modest ability to update the load forecast 90 days prior to the BRA, and post the updated planning parameters 60 days before the auction, in the event of a significant change in the economic forecast. PJM argues that this approach would ensure that market participants will have access to the planning parameters at least 100 days prior to the next BRA while retaining the flexibility for PJM to update the load forecast, if necessary.[595] Additionally, in its August 6 answer, PJM clarifies that its ability to update the planning parameters should be limited only to significant changes to the load forecast that could not have been foreseen at the time the load forecast was developed.[596]

356. The Market Monitor states that PJM should be able to update planning parameters closer to the capacity auctions if there are significant changes to the parameters. The Market Monitor asserts that this would ensure that the capacity auction correctly reflects economic fundamentals. As an example, the Market Monitor argues that the forward-looking energy and ancillary services offset should be updated as close to the auction as possible.[597] In response to the Market Monitor's example, PJM argues that updating the forward-looking energy and ancillary services offset closer to the BRA is not logical or reasonable because there would be too little time for capacity market sellers to submit, and for PJM and the Market Monitor to review, a resource-specific exception request.[598]

357. In its August 5 answer, Exelon reiterates its objection to changing any aspect of the planning parameters after the initial 100-day posting, but states that, to the extent the

---

[594] *Id.* at 7-7.

[595] PJM July 7 Answer at 18.

[596] PJM August 6 Answer at 3.

[597] Market Monitor July 23 Answer at 9.

[598] PJM August 6 Answer at 3-4.

Commission grants the Market Monitor's request for PJM to update the E&AS Offset in a supplemental posting of the planning parameters, the Commission should be clear that PJM must use the new forward-looking E&AS methodology for both the initial calculation of the planning parameters posted 100 days prior to the BRA, as well as for the supplement posting 60 days prior to the BRA. Exelon argues that the same should be true for any other pre-auction activities requiring use of the E&AS Offset, such as the posting of the default MOPR offer price floors 150 days prior to the BRA. Exelon states that neither PJM nor the Market Monitor address how PJM should adjust the timing of the pre-auction activities that rely on the use of the new E&AS Offset methodology in the event the Commission has not yet approved that methodology when a particular pre-auction activity is required. Exelon argues that the Commission should condition its acceptance of the proposed pre-auction schedule on PJM pausing pre-auction activities requiring use of the E&AS Offset methodology until Commission ruling on it and resuming the pre-auction schedule on a day-for-day basis once the E&AS Offset methodology has been approved by the Commission.[599]

5. Commission Determination

358. We grant PJM's request for waiver, as requested in the first compliance filing.[600] The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.[601] We find that these conditions are satisfied here and therefore grant PJM's request for a waiver of the Tariff provisions listed in Attachment A of PJM's filing, relating to the timing and pre-auction processes for the BRAs and incremental auctions for delivery years 2022/2023, 2023/2024, 2024/2025, and 2025/2026, as well as PJM's request to waive RAA, Schedule 8, section (B), Schedule 8.1(D)(3); and Schedule 8.1(D)(4).

359. First, we find that PJM requested waiver in good faith to comply with the directive in the December 2019 Order and provide market participants with certainty as to when the auctions will be run. Second, we find that the request is of limited scope, because it will alter deadlines only for the auctions which have been impacted by the delay of the 2019 BRA. Third, we find that the waiver remedies the concrete problem that PJM, the Market Monitor, and market participants need time to prepare for the resumption of the

[599] Exelon August 5 Answer at 4-7.

[600] However, we direct PJM on compliance to file an updated auction timeline that removes the dates pertaining to the Resource-Specific Carve Out within 30 days.

[601] *See, e.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

annual capacity auctions, and that each annual auction should run consecutively thereafter. Finally, we find based upon the record here that the requested waiver does not have undesirable consequences, as discussed further below.

360. PJM states that it expects to begin the pre-auction process two weeks after the Commission issues this order, with the next annual auction to be conducted 6.5 months after this order. However, the reserves proceeding pending before the Commission influences the default offer price floors and therefore, some pre-auction activities cannot be conducted until a final order in that proceeding is issued. Specifically, and as noted above, the Commission has found PJM's existing E&AS Offset methodology unjust and unreasonable and directed PJM to file new methodologies on compliance, including proposing an implementation schedule that will allow the new E&AS Offsets to be effective for the 2019 BRA.[602] That compliance filing is pending before the Commission. The default offer price floors, and therefore the auction date, cannot be established until the Commission has issued an order on PJM's compliance filing in the reserves proceeding. Therefore, we grant PJM's requested waiver, but not PJM's proposal to start the pre-auction process contingent on this order.

361. Commenters urge the Commission to either extend or shorten the timeline for the 2019 BRA auction schedule. However, we find that PJM's proposal appropriately balances the need for stakeholder and investor certainty against the need to ensure that all market participants can prepare for the auction rules that will be in effect for the next auction,[603] and PJM adequately justified the proposed auction timeline. The auction has already been delayed and we agree with commenters arguing that the auction should run as soon as reasonably possible. PJM's proposed schedule balances the need for accurate price signals with the need for market participants to make decisions in the auction. If the schedule is too rushed, market participants will not be able to make informed decisions regarding their offers, which would degrade the value of the price signal resulting from the auction. We similarly accept PJM's proposal to slightly shorten the auction schedules for the following BRAs, relative to the 2019 BRA as PJM has appropriately balanced implementing new Tariff provisions and the importance of running an auction as soon as possible, as well as putting forth a schedule to ensure the orderly resumption of BRAs. While commenters argue that additional time between auctions is necessary for states to process the auction results and take responsive action,

---

[602] Reserves Order, 171 FERC ¶ 61,153 at P 22.

[603] The Commission previously found the auction should be delayed until the Commission establishes a replacement rate, and PJM's Tariff changes implementing that rate are made effective by this order. August Auction Order, 168 FERC ¶ 61,051 at P 14. Given PJM's proposed schedule and the Commission's agreement thereof, there is insufficient time to run the 2019 BRA in 2020, as suggested by some commenters.

this concern is speculative at this point and, in light of the need to restore normal auction activities, PJM cannot propose a schedule on something that might occur.

362. Some commenters request that the auction be delayed for states to take action in response to the expanded MOPR directed in the December 2019 Order, stating further that PJM's proposed schedule to delay the auction if states make regulatory changes is unworkable. Because the auction date cannot be currently determined, these requests are moot. Further, states have had and continue to have additional time to consider regulatory action given that the Commission must still act on PJM's compliance filing in the reserves proceeding.

363. With respect to planning parameters, we are not persuaded by Joint Consumer Advocates' proposal to post the load forecasts 150 days to 130 days prior to the relevant auction. Under an already compressed auction schedule, Joint Consumer Advocates request additional time with the load forecasts, which even under the typical auction schedule, is not present. We also reject PJM's proposal to reduce the number of days that planning parameters must be posted from 100 to 60 days prior to the impacted BRAs, a change that re-orders the deadlines to allow PJM to post the planning parameters after certain other deadlines have passed. This proposal would cause harm to third parties, because market participants would not have the planning parameters until after other deadlines had passed, including the deadline to accept or appeal must-offer exception determinations or unit-specific market seller offer cap determinations, and to terminate an FRR election. PJM has not provided any justification for why market participants would not be harmed, as Exelon alleges, by changing the planning parameters so close to the auction. Further, we find that changing the date the planning parameters are posted does not remedy a concrete problem. PJM suggests in its June 3 and July 7 answers that flexibility is needed due to the unprecedented impacts of the coronavirus and potentially significant changes in economic forecasts,[604] but proposes that the change to the planning parameters deadline should apply to the next four BRAs. PJM has not demonstrated that the impact of the coronavirus on load will continue to be unpredictable and unprecedented for that duration, but rather such changes are speculative at this point. If such a change occurs, PJM may request a waiver from the Commission detailing the need to use an updated load forecast in the auction at that time.

364. OPSI contends that PJM's timeline does not comport with the RAA provision regarding "State Regulatory Structural Changes," which allows parties in states where certain regulatory changes have been made to provide notice to PJM regarding FRR election two months before the BRA, rather than four months. The prior orders did not direct changes to this provision, nor has PJM proposed changes here. Therefore, the State Regulatory Structural Changes provision continues to apply regardless of the timing established in the waiver request, just as it would apply normally. To the extent OPSI

[604] PJM June 3 Answer at 29; PJM July 7 Answer at 8.

requests that we change the existing State Regulatory Structural Changes provision, we decline to do so here as it is beyond the scope of PJM's waiver request. If market participants see a need to seek waiver of this provision in the future, they are free to seek a waiver request at that time.

N. Replacement Capacity

1. Compliance Directives

365. The Rehearing Order clarified that capacity from State-Subsidized Resources cannot serve as replacement capacity bilaterally procured to fulfill a capacity commitment for an unsubsidized resource.[605]

2. PJM's Compliance Filings

366. PJM proposes to disallow any bilateral transaction for replacement capacity to satisfy the buyer's capacity obligations where the resource providing the replacement capacity is receiving a State Subsidy but the resource being replaced is not. PJM explains that a Capacity Resource with State Subsidy can provide bilateral replacement capacity to a resource that is not a Capacity Resource with State Subsidy only to the extent the seller of the replacement capacity has certified that it will forego a State Subsidy for the relevant delivery year or is otherwise categorically exempt from the MOPR.[606]

367. PJM further proposes that this rule only apply to bilateral transactions that are for one year or less, arguing that any transaction longer than one year is likely not meant as replacement capacity (to replace a capacity commitment for all or part of a delivery year), but rather to move a resource from the account of one seller to another (such as long-term power purchase-type agreements) or to permit the recording of a joint ownership or off-taker arrangement.[607]

368. PJM also states that it understands the Commission's clarification "to concern only replacement capacity procured bilaterally where the buyer and seller are different entities."[608] Therefore, PJM states, it is not proposing any restrictions with regard to a

---

[605] Rehearing Order, 171 FERC ¶ 61,035 at P 400.

[606] Second Transmittal at 23.

[607] *Id.*

[608] *Id.* at 25.

seller using any capacity, whether subsidized or not, within its portfolio to replace the capacity commitment of another one of its resources.[609]

3. Comments, Request for Clarification, and Answers

369. The Market Monitor filed a request for clarification of the Rehearing Order's finding on replacement capacity. Specifically, the Market Monitor requests clarification that replacement capacity restrictions for State-Subsidized Resources include transactions within a portfolio as well as bilateral transactions. The Market Monitor believes that allowing a State-Subsidized Resource to serve as replacement capacity for an unsubsidized resource within an entity's portfolio would create a loophole, because the market participant could offer and clear an unsubsidized resource and later swap the commitment to a subsidized resource, thereby allowing that subsidized resource to bypass the default offer price floor.[610]

370. However, should the Commission direct that the restriction on replacement capacity apply only to bilateral transactions, the Market Monitor argues that the Commission should clarify how bilateral transactions will be defined and what types of transactions, or series of transactions, would be subject to this rule. The Market Monitor explains that the bilateral transaction type used in PJM's capacity application is not equivalent to the Commission's definition because it is used to handle joint ownership. Therefore, the Market Monitor argues that PJM's proposal would allow some replacement transactions to bypass the Commission's directive.[611] The Market Monitor asserts that PJM acknowledges that its proposal would allow some replacement transactions to bypass the Commission's directive and the Market Monitor argues that PJM's proposal should, therefore, be rejected.[612]

371. In its answer, PJM reiterates that limiting the restriction to transactions of one year or less is consistent with the underlying purpose of buying replacement capacity, as the buyer is seeking to replace its capacity commitment for all or part of a delivery year. PJM argues that excluding all bilateral transactions, without regard to the timeframe,

---

[609] *Id*.

[610] Market Monitor Clarification Request at 2; Market Monitor Comments on Second Compliance Filing at 8.

[611] *Id.* at 9.

[612] Market Monitor July 23 Answer at 8-9.

would inhibit the ability for capacity market sellers of jointly-owned resources to replace resources within their own portfolios.[613]

4. Commission Determination

372. We accept in part, and modify, in part, PJM's proposal regarding replacement capacity. Specifically, with regard to PJM's proposed revisions to Attachment DD section 4.6(e), we direct PJM to make the following modifications:

> (e) Effective with the 2022/2023 Delivery Year, any ~~short-term~~ bilateral transaction ~~(one year or less)~~ provided for in this section 4.6 for replacement capacity shall be given no effect in satisfying the buyer's obligations under this Attachment DD to the extent that the resource that is the subject of the transaction is a Capacity Resource with State Subsidy for which the Capacity Market Seller has not elected to forego receipt of any State Subsidy for the relevant Delivery Year and does not qualify for one of the categorical exemptions described in Tariff, Attachment DD, sections 5.14(h-1)(5) through 5.14(h-1)(8) and the purchased capacity is then used to replace capacity from a Capacity Resource that (1) is not a Capacity Resource with State Subsidy or (2) is a Capacity Resource with State Subsidy for which the Capacity Market Seller elected the competitive exemption pursuant Tariff, Attachment DD, section 5.14(h-1)(4) or reported that it will forego receipt of any State Subsidy for the relevant Delivery Year, all as in accordance with the PJM Manuals.

373. We find that it is not consistent with the prior orders to allow a State-Subsidized Resource to evade the MOPR through a bilateral transaction, regardless of the term of that transaction. We acknowledge PJM's concern that this change would inhibit the ability for capacity market sellers of jointly-owned resources to replace resources within their own portfolios. However, we find that this provision, as modified, is just and reasonable, because we agree with the Market Monitor that this provision should extend to replacement capacity within portfolios as well. It is not consistent with the prior orders, or just and reasonable, to allow a supplier to game the expanded MOPR by switching the capacity obligations within its portfolio to alternative resources.

[613] PJM July 7 Answer at 16.

O. Other

1. Compliance Directives

374. The Rehearing Order also clarified that the December 2019 Order did not order any changes to PJM's pre-existing MOPR and that PJM's compliance filing should not contain any substantive changes to that section unrelated to the replacement rate. However, with respect to the expanded MOPR, the Rehearing Order explained that State-Subsidized Resources should be subject to the MOPR regardless of their location.[614]

2. PJM's Compliance Filings

375. PJM states that it has updated the gross CONE values pertaining to new resources that are not Capacity Resources with State Subsidy to reflect the CONE data for CT and CC resource types that the Commission accepted in the most recent quadrennial review of the VRR Curve.[615] PJM clarifies that this change is appropriate because it retains the previously effective MOPR provisions.[616] PJM further proposes to update several inputs to reflect the values the Commission accepted during the last quadrennial update, including the relative weighting of the individual indices that comprise the applicable Bureau of Labor and Statistics Composite Index used to annually adjust the Tariff-stated gross CONE for CT resources, as well as heat rate, variable operations and maintenance expenses, and stated ancillary service revenues for the CC energy and ancillary services offset. Finally, PJM proposes to update the Tariff language to apply those values for the 2022/2023 and subsequent delivery years, while the CONE values used in the BRA for the 2021/2022 delivery year will apply in the incremental auctions for that delivery year.[617]

---

[614] Rehearing Order, 171 FERC ¶ 61,035 at P 397.

[615] Second Transmittal at 4 (referencing Docket No. ER19-105-000).

[616] *Id.* at 4-5. PJM also proposes that the updated CONE values will apply for the auctions pertaining to delivery year 2022/2023 and later, while the CONE values used in the 2021/2022 delivery year BRA will continue to apply for those incremental auctions. Second Transmittal at 5.

[617] *Id.* at 5-6. PJM acknowledges that the Commission has recently found the existing energy and ancillary services revenue estimating methodology to be unjust and unreasonable and states it will update the methodology as it relates to the instant proceeding as part of its compliance filing in that docket. *Id.* at 6 n.22 (citing Reserves Order, 171 FERC ¶ 61,153).

376. PJM clarifies, however, that it is not proposing to similarly alter the CONE values for Capacity Resources with State Subsidy. PJM proposes that the rules for New Entry Capacity Resources with State Subsidy will apply to any resource that meets the definition.[618]

3. Commission Determination

377. The Rehearing Order clarified that the December 2019 Order did not order any changes to PJM's existing MOPR and that PJM's compliance filing should not contain any substantive changes to that section unrelated to the replacement rate.[619] Therefore, we accept only the proposed changes to existing Attachment DD section 5.14(h) which are related to the replacement rate. Specifically, to avoid confusion with the new Attachment DD section 5.14(h-1), we accept PJM's proposal to change the name of Attachment DD section 5.14(h) to "Minimum Offer Price Rule for Certain New Generation Capacity Resources that are not Capacity Resources with State Subsidy," as well as the addition to Attachment DD section 5.14(h)(1). We reject all other proposed changes in this section as outside the scope of this compliance filing.

P. Requests for Rehearing and Clarification

1. Bilateral Contracts by Self-Supply Entities

a. Rehearing Requests

378. NOVEC and NRECA/EKPC argue that the Commission's finding that self-supply bilateral contracts are within the definition of State Subsidy is arbitrary and capricious because it is not supported by record evidence and is an unexplained reversal of the December 2019 Order.[620] NOVEC contends that the December 2019 Order only subjected resources owned by self-supply entities to the default offer price floors and explicitly excluded voluntary, arms-length bilateral contracts,[621] and, therefore, the Rehearing Order reversed its prior determinations by subjecting self-supply bilateral

---

[618] *Id.* at 6.

[619] Rehearing Order, 171 FERC ¶ 61,035 at P 397.

[620] NOVEC Rehearing Request at 3-7 (citing December 2019 Order, 163 FERC ¶ 61,236 at P 70; Rehearing Order, 171 FERC ¶ 61,035 at P 243); NRECA/EKPC Clarification and Rehearing Request 5.

[621] *Id.* (citing December 2019 Order, 169 FERC ¶ 61,239 at PP 70, 202-203).

transactions to mitigation.[622] NOVEC states that the Commission's reasoning that states guarantee cost recovery for self-supply bilateral agreements is without record support because each bilateral agreement is different and not in the record, a fact NOVEC contends the Commission recognized when it excluded voluntary, arm's-length transactions from mitigation. NOVEC further argues that not all bilateral contracts guarantee cost recovery, especially where the costs are not deemed prudent. Further, according to NOVEC, if the self-supply entity is offering the capacity under a voluntary, private, and competitively negotiated contract, the self-supply entity would be the buyer under the contract, and the seller would have no incentive to sell at below-market prices. Therefore, NOVEC argues, the self-supply entity would not be receiving a subsidized resource that it could then use to suppress capacity market prices.[623]

379. NRECA/EKPC argue that electric cooperatives meet their load-serving obligations in a cost-effective manner, including through bilateral purchases with third parties outside the capacity auctions. These bilateral agreements, NRECA/EKPC argue, are voluntary, arm's length bilateral transactions and should therefore not trigger application of the MOPR.[624]

b. Commission Determination

380. We disagree with parties' arguments on rehearing that the Rehearing Order erred in finding that public power self-supply entities cannot engage in voluntary, arm's length bilateral contracts with unaffiliated parties without triggering the MOPR.[625] The December 2019 Order found that private, voluntary, arm's length bilateral transactions need not be subject to the expanded MOPR at this time.[626] The Rehearing Order explained that public power is sanctioned by state law and therefore not private. Because the December 2019 Order's finding was limited to private, voluntary, arm's length transactions, the Rehearing Order was not a reversal or unexplained departure from the December 2019 Order.[627]

---

[622] *Id.* (citing Rehearing Order, 171 FERC ¶ 61,035 at P 243.

[623] *Id.* at 6-7.

[624] NRECA/EKPC Clarification and Rehearing Request at 16-18.

[625] Rehearing Order, 171 FERC ¶ 61,035 at P 243.

[626] December 2019 Order, 163 FERC ¶ 61,236 at P 70.

[627] Rehearing Order, 171 FERC ¶ 61,035 at P 243; *see also id*. P 325.

381. Further, the Commission's finding that resources procured through bilateral contracts with self-supply entities should be subject to the default offer price floors is supported by the record, as explained in the prior orders. The December 2019 Order found that self-supply resources, including public power, would be subject to the MOPR because these resources have the ability to suppress capacity market prices.[628] The Rehearing Order affirmed this finding, explaining that resources owned and contracted for by self-supply entities can offer below cost because the self-supply entity enjoys guaranteed cost recovery.[629] The Rehearing Order rejected arguments that subjecting self-supply entities to mitigation was without record evidence, reiterating that out-of-market support gives resources the ability to suppress capacity market prices and that the Commission cannot assume that there is any "substantive difference among the types of resources participating in PJM's capacity market with the benefit of out-of-market support."[630] For these reasons, we also disagree with NOVEC that the Rehearing Order was not based on substantial evidence or that the prior orders distinguished between resources owned by self-supply entities versus resources contracted for by self-supply entities for purposes of the MOPR. There is no material difference between resources owned and contracted for by self-supply entities with regard to the self-supply entities' ability to offer the resource below cost.[631] Nor are we persuaded that bilateral contracts by self-supply entities should be exempt because seller is selling at the market price. Although an unsubsidized seller in a bilateral contract with a self-supply buyer may not have an incentive to sell at below-market prices, this does not mean that a self-supply entity would not be able to offer below cost because, no matter what the contract price is, the self-supply entity still has guaranteed cost recovery and therefore the ability to offer the resource into PJM's capacity market below cost.[632]

382. NOVEC argues that public power entities are not guaranteed cost recovery for all bilateral contracts because imprudent expenses will be denied. This misses the point that

---

[628] December 2019 Order, 163 FERC ¶ 61,236 at PP 203-204.

[629] Rehearing Order, 171 FERC ¶ 61,035 at P 220, 222, 225, 233.

[630] *See, e.g.*, *id*. PP 223, 224 (dismissing arguments the lack of record evidence justifying the mitigation of self-supply entities).

[631] We note that PJM did not read the Commission's December 2019 Order as limiting the Self-Supply Exemption to resources owned by self-supply entities. *See* First Transmittal at 30; proposed Tariff, Attach. DD, § 5.14(h)(5) (describing resources currently owned and contracted for by self-supply entities as exempt under the Self-Supply Exemption).

[632] December 2019 Order, 163 FERC ¶ 61,239 at PP 203-204; *see also, e.g.*, Rehearing Order, 171 FERC ¶ 61,035 at PP 220, 222, 225, 233.

self-supply entities have the ability to make below cost offers because, like other resources subject to the expanded MOPR, resources owned and contracted for by self-supply entities operate with the benefit of State Subsidies.[633] Imprudently incurred costs have no bearing on whether an entity has the ability to offer a resource below cost.

2. Additional Requests for Rehearing and Clarification

a. NRECA/EKPC Rehearing and Clarification Request

383. NRECA/EKPC argue that the Commission failed to engage in reasoned decision-making by finding that the MOPR applies to sell offers for resources owned or bilaterally contracted for by electric cooperatives. NRECA/EKPC state that they requested clarification of the December 2019 Order that electric cooperative agreements that are free from financial benefits provided or required by states are not within the definition of State Subsidy, but that the Commission treated this clarification request as a rehearing request and rejected it, finding that the activities of electric cooperatives were within the definition of State Subsidy.[634] NRECA/EKPC argue that the Rehearing Order failed to adequately explain how electric cooperative agreements, made outside the PJM capacity market and divorced from state direction, are a state action which is "directed at or tethered" to the PJM wholesale capacity construct. Because all businesses are formed pursuant to state law, NRECA/EKPC assert that it is improper to mitigate the activities of electric cooperatives based on the reasoning that they are created by state law. NRECA/EKPC reiterate that subjecting sell offers of electric cooperatives to the MOPR impedes the long-standing business model, which includes long-term agreements. Agreements entered into outside the capacity market, according to NRECA/EKPC, are free from payments provided or required by the state and are not directed at or tethered to preferred generation resources, nor do long-term supply agreements typically mandate the use or support of a particular resource.[635] For example, NRECA/EKPC point to ODEC's wholesale power contracts, which are on file with the Commission, and obligate ODEC to sell its power to its members and members to purchase power. NRECA/EKPC state that ODEC's wholesale power contracts are not required by the state and are indifferent with respect to which resources meet the obligations. NRECA/EKPC contend

[633] December 2019 Order, 169 FERC ¶ 61,239 at PP 203-204; Rehearing Order, 171 FERC ¶ 61,035 at PP 220, 222.

[634] NRECA/EKPC Clarification and Rehearing Request at 10-15 (citing Rehearing Order, 171 FERC ¶ 61,035 at PP 79-81, 220).

[635] *Id.* at 12-14.

that these Commission-jurisdictional contracts are based on the cost of service and not intended to create a subsidy.[636]

384. NRECA/EKPC request rehearing of the Rehearing Order's finding that electric cooperatives are excluded from the Competitive Exemption,[637] arguing the decision is arbitrary and capricious because it fails to fully consider the impact on electric cooperatives. NRECA/EKPC assert that the Commission's determination is unworkable and unjustified and that electric cooperatives should be able to use all applicable exemptions rather than being categorically barred from the Competitive Exemption.[638]

385. Finally, NRECA/EKPC seek clarification that resources owned or bilaterally contracted for by electric cooperatives will be treated as existing resources for purposes of the default offer price floors if they have previously cleared a capacity auction.[639] If the Commission does not grant this clarification request, NRECA/EKPC seek rehearing.[640]

b. Commission Determination

386. We dismiss NRECA/EKPC's rehearing request regarding whether electric cooperative utilities should be included within the definition of State Subsidy. As NRECA/EKPC recognize in their rehearing request, they already sought rehearing on this issue, raising the same arguments they make here.[641] The Commission denied rehearing, explaining why the activities of electric cooperatives are a State Subsidy and should be subject to the default offer price floors in order to preserve capacity market integrity.[642]

---

[636] *Id.* at 15.

[637] *Id.* at 18 (citing Rehearing Order, 171 FERC ¶ 61,035 at P 306).

[638] *Id.* at 18-19.

[639] *Id.* at 6-8.

[640] *Id.* at 20.

[641] *See* Request for Clarification and Rehearing of the National Rural Electric Cooperative Association and East Kentucky Power Cooperative, Inc., Docket Nos. EL16-49-000 and EL18-178-000 (filed January 21, 2020).

[642] *See, e.g.*, Rehearing Order, 171 FERC ¶ 61,035 at PP 81, 220-222, 225, 229, 231-232, 234-235.

Therefore, this renewed request amounts to an improper request for rehearing of a rehearing order.[643]

387. Regarding NRECA/EKPC's rehearing request that the Commission erred in finding that electric cooperatives are excluded from the Competitive Exemption, we disagree. As explained in the December 2019 Order and Rehearing Order, the purpose of the expanded MOPR is to ensure that resources with the benefit of State Subsidies do not suppress capacity market prices. Resources that do not receive and are not entitled to receive State Subsidies should be able to participate without mitigation.[644] Electric cooperatives operate with the benefit of State Subsidies and therefore cannot elect the Competitive Exemption.[645] Electric cooperatives are not without options and are free to seek the Resource-Specific Exception should they wish to offer a resource at something other than the default offer price floor.

388. Finally, we grant NRECA/EKPC's clarification regarding how resources owned or contracted for by self-supply entities are treated for purposes of the default offer price floors. Existing for purposes of the default offer price floors is distinct from what is considered existing for purposes of the exemptions laid out in the December 2019 Order. If a self-supply entity contracts for or purchases a resource that has previously cleared a capacity auction, that resource is an existing resource for purposes of the default offer price floors.[646] For purposes of qualification for the Self-Supply Exemption, only resources owned or contracted for by a self-supply entity as of December 19, 2019, are eligible, if they meet the exemption criteria. Therefore, if a self-supply entity purchases or contracts for a resource that has previously cleared a capacity auction after December 19, 2019, the Self-Supply Exemption would not apply,[647] but that resource would be treated as existing for purposes of the default offer price floors.

---

[643] *Southwestern Pub. Serv. Co.*, 65 FERC ¶ 61,088, at 61,533 (1993).

[644] December 2019 Order, 163 FERC ¶ 61,236 at P 161; Rehearing Order, 171 FERC ¶ 61,035 at P 301.

[645] Rehearing Order, 171 FERC ¶ 61,035 at P 306.

[646] December 2019 Order, 163 FERC ¶ 61,236 at P 2, n.5 ("'existing' refers to resources that have previously cleared a PJM capacity auction").

[647] Rehearing Order, 171 FERC ¶ 61,035 at P 246.

The Commission orders:

(A) In response to the requests for rehearing by NOVEC and NRECA/EKPC, the Rehearing Order is hereby modified and the result sustained, as discussed in the body of the order.

(B) In response to the requests for rehearing by Energy Harbor, Pennsylvania Commission, and Vistra, the Rehearing Order is hereby modified and set aside, in part, as discussed in the body of this order.

(C) PJM's request for waiver is granted, as discussed in the body of this order.

(D) PJM's compliance filings are hereby accepted, effective as of the date of this order, subject to a further compliance filing, as discussed in the body of this order.

(E) PJM is hereby directed to submit a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix 1

Entities Filing Comments

Advanced Energy Buyers Group (Buyers Group)*
Advanced Energy Economy and Advanced Energy Management Alliance (Advanced Energy Entities)*
American Electric Power Service Corporation (AEP)*+
American Petroleum Institute (API)*
American Wind Energy Association, Solar Energy Industries Association, Advanced Energy Economy, and the Solar Council (Clean Energy Associations)*
Calpine Corporation (Calpine)*+
Cogentrix Energy Power Management, LLC (Cogentrix)*
District of Columbia Attorney General (DC Attorney General)+
District of Columbia Public Service Commission (DC Commission)+
Dominion Energy Services, Inc. (Dominion)*
Eastern Generation, LLC (Eastern Generation)*
EDF Renewables, Inc. (EDF Renewables)*
Edison Electric Institute+
Electric Power Supply Association (EPSA)*+
Environmental Defense Fund*
Exelon Corporation (Exelon)*+
Hillcrest Solar I, LLC (Hillcrest Solar)*
J-POWER USA Development Co., LTD (J-POWER)*
Maryland Legislators*
Maryland Public Service Commission (Maryland Commission)*
Monitoring Analytics, Inc., acting as PJM Independent Market Monitor (Market Monitor)*+
National Mining Association (NMA)*
Natural Resources Defense Council, Sierra Club, and Sustainable FERC Project (Public Interest Organizations)*
New Jersey Division of Rate Counsel, the Office of the People's Counsel for the District of Columbia, the Maryland Office of People's Counsel, the Delaware Division of the Public Advocate, Citizens Utility Board, and the Pennsylvania Office of Consumer Advocate (Joint Consumer Advocates)*+
New Jersey Board of Public Utilities (New Jersey Board)*+
Northern Virginia Electric Cooperative, Inc. (NOVEC)*+
NRG Power Marketing, LLC (NRG Power Marketing)*
Ohio Consumers' Counsel (OCC)+
Old Dominion Electric Cooperative (ODEC)*
Organization of PJM States, Inc. (OPSI)*
Pennsylvania Public Utility Commission (Pennsylvania Commission)*+

PJM Industrial Customer Coalition (PJM-ICC)*+
PJM Power Providers Group (P3)*+
Public Utilities Commission of Ohio (Ohio Commission)*+
Southern Maryland Electric Cooperative (SMECO)*
Virginia Department of Mines, Minerals and Energy*
Vistra Energy Corp. and Dynegy Marketing and Trade, LLC (Vistra)*

* Filed comments on first compliance filing
+ Filed comments on second compliance filing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Calpine Corp.; 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. EL16-49-003
v.	
PJM Interconnection, L.L.C.	
PJM Interconnection, L.L.C.	EL18-178-003
PJM Interconnection, L.L.C.	ER18-1314-003 ER18-1314-004 ER18-1314-006 (Consolidated)

(Issued October 15, 2020)

GLICK, Commissioner, *dissenting*:

1. At this point, there is not that much left to say. This proceeding has been one of the Commission's all-time worst, both in the baffling decisions it reached[1] and the bumbling way in which it got there.[2] Today's order only digs the hole deeper.

[1] *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (December 2019 Order); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018), *reh'g denied*, 171 FERC ¶ 61,035 (2020) (April 2020 Rehearing Order) (Glick, Comm'r, dissenting at PP 1, 98) (criticizing the Commission's approach as "illegal, illogical, and truly bad public policy").

[2] *Calpine Corp. v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,051 (2019) (Glick, Comm'r, concurring at P 1) (criticizing the Commission's "absence of leadership that has caused us to drift rudderless" through the proceeding for more than a year at that

Accordingly, I continue to dissent as strongly as possible for the reasons detailed in my earlier statements.[3]

2. That said, one aspect of today's order deserves further mention: The Commission's treatment of state default service auctions.[4] The conclusion in the April 2020 Rehearing Order that the Commission would apply a minimum offer price rule (MOPR) based on payments from state default service auctions was always a harebrained idea.[5] Even parties that have cheered on the Commission's general MOPR zealotry have balked at applying MOPRs to default service auctions.[6] In that sense, today's limited grant of rehearing and potential exemption of certain default service auctions from the definition of State Subsidy could have been good news. All else equal, anything that limits the Commission's creeping administrative pricing regime is potentially a good thing.

3. But what the Commission gives with one hand it appears to quickly take away with the other. In a bizarre footnote, the Commission goes out of its way to suggest that New Jersey's default service auction—the Basic Generation Service or BGS auction—would constitute a State Subsidy based on the possibility that the auction winners would have to comply with the requirements of the state's renewable portfolio standard.[7] It is

---

point).

[3] *See* April 2020 Rehearing Order, 171 FERC ¶ 61,035 (Glick, Comm'r, dissenting); December 2019 Order, 169 FERC ¶ 61,239 (Glick, Comm'r, dissenting); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (Glick, Comm'r, dissenting).

[4] As PJM explained in its initial compliance filing, state default service auctions "are mechanisms by which load-serving entities in retail choice states acquire obligations to provide energy and related services to retail customers." *See* PJM Interconnection, L.L.C. First Compliance Filing at 16 (filed Mar. 18, 2020).

[5] *See* April 2020 Rehearing Order, 171 FERC ¶ 61,035 (Glick, Comm'r, dissenting at PP 48-51); *see also id.* P 51 (explaining that the Commission's approach to default service auctions was at odds with its "reputation for focusing on the technical and arcane elements of providing reliable electricity at just and reasonable rates rather than on making broad policy pronouncements").

[6] *See, e.g.*, Vistra Energy Corp. & Dynegy Marketing and Trade, LLC Rehearing Request at 2-3, 4-10 (filed May 18, 2020).

[7] *Calpine Corp. v. PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,061, at n.134 (2020) (Order) (noting that "the New Jersey Basic Generation Service (BGS) auction appears to give guidance that conflicts with the proposition it is 'non-discriminatory' or

hard to know exactly what the Commission's cursory review of BGS Auction FAQ sheets might mean in future proceedings or how the Commission will apply that discussion to other states' default service auctions.

4. Nevertheless, the Commission's discussion of the BGS auction provides every reason to believe that the grant of rehearing on state default service auctions will end up being almost meaningless. Several other PJM states' descriptions of their default service auctions also mention renewable portfolio standards or similar programs applying to entities that provide default service.[8] Taken seriously, the Commission's discussion of the BGS auction would seem to suggest that payments from those other states' auctions would also trigger the MOPR.[9] That would severely, if not entirely, undercut any benefits from today's limited grant of rehearing.

5. Perhaps the only thing that the Commission's discussion of state default service auctions actually makes clear is the extent to which the majority is laser-focused on

---

'fuel neutral'" and pointing to frequently asked question (FAQ) sheets that state that the BGS auction agreements are clear that it is a BGS supplier's responsibility to comply with New Jersey's renewable portfolio standard) (citing *Frequently Asked Questions # 24*, New Jersey Statewide Basic Generation Service Electricity Supply Auction, http://www.bgs-auction.com/bgs.faq.item.asp?faqId=1100 (last visited Oct. 24, 2020)).

[8] *See, e.g.*, FirstEnergy Corp., *FirstEnergy's Pennsylvania Default Service Program*, https://www.fepaauction.com/Home.aspx (last visited Oct. 24, 2020) ("As Default Service Suppliers, winning bidders must . . . provide certain Alternative Energy Credits ('AECs') pursuant to the Alternative Energy Portfolio Standards Act ('AEPS')."); The Potomac Edison Co., *2021 Request for Proposals for Full Requirements Wholesale Electric Power Supply* (Sept. 11, 2020), https://www.firstenergycorp.com/content/dam/upp/files/md/power/mdsosrfp/supplierdocs/2021-PE-RFP.pdf (describing the full requirements service requested as "generally including energy, capacity, ancillary services, renewable energy obligations and losses").

[9] I recognize that taking the majority's discussion at face value in this proceeding has proved a risky proposition. As expected, the Commission has already tried multiple times to use rehearing and compliance to wiggle out from under its overbroad rulings, with state default service auctions being only the latest, especially predictable example. *See* December 2019 Order, 169 FERC ¶ 61,239 (Glick, Comm'r, dissenting at PP 23-25) (pointing to the example of state default service auctions as an example of where the Commission would try "to wiggle out from under its own definition of subsidy in ruling on PJM's compliance filing"). But it is hard to read any other meaning into the Commission's nearly page-length footnote explaining why the BGS auction FAQ sheets "appear[] to conflict with the notion that the BGS auctions are either nondiscriminatory or fuel neutral." Order, 172 FERC ¶ 61,061 at n.134.

punishing states' exercise of their reserved authority under the FPA.[10] Today's order acknowledges as much, explaining that the Commission is not concerned with default service auctions *per se*—even though it concluded that they fall neatly within the Commission's overbroad definition of State Subsidy[11]—but only with the possibility that a state might use a default service auction to further its public policy goals.[12] Today's order indicates that a state default service auction will trigger the MOPR only if it could conceivably be construed as an exercise of the state's reserved authority over generation facilities.[13] And, as if to underscore that point, the Commission clarifies that states may impose certain restrictions that the majority deems "reasonable" on default service auctions without triggering the MOPR, as long those restrictions do not appear to be attempts to shape the resource mix.[14]

6. The upshot of all this is that the only way a state's default service auction can escape the MOPR is if the state either has no renewable portfolio standards or if the state exempts the default service providers from complying with those standards, which would seem to give those providers a preference of a different sort. Why that is a desirable outcome, much less something that should concern this Commission, is never explained. Instead, the discussion of default service only reinforces the extent to which this

---

[10] Section 201(b) of the Federal Power Act reserves for the states exclusive jurisdiction over, as relevant here, retail rates and generation facilities. 16 U.S.C. § 824(b); *see* April 2020 Rehearing Order, 171 FERC ¶ 61,035 (Glick, Comm'r, dissenting at PP 5-25); December 2019 Order, 169 FERC ¶ 61,239 (Glick, Comm'r, dissenting at PP 7-17).

[11] April 2020 Rehearing Order, 171 FERC ¶ 61,035 at P 386.

[12] Order, 172 FERC ¶ 61,061 at P 71.

[13] And, as if we needed any more evidence of the Commission's contempt for states' exercise of their reserved authority, its gratuitous and self-evidently out-of-scope swipe at how certain states run their default service auctions tells you all you need to know. *Id.* n.136 ("It is not clear why a state would allow a supplier to meet its provider of last resort obligations without specifying what resources it will use to satisfy its supply obligations, but that question is beyond the scope of this proceeding."). I, for one, suspect that the states know a great deal more about how to regulate retail service than this Commission.

[14] For example, the Commission clarifies that limitations on ownership and deliverability of resources used to satisfy state default service auctions are "reasonable" and not the focus of this proceeding. Order, 172 FERC ¶ 61,061 at P 74.

proceeding is part of a concerted campaign to stamp out state efforts to shape the resource mix.

7. Finally, perhaps the most egregious shortcoming in today's order is the Commission's failure to wrestle with the eventual fall out from subjecting default service auctions to the MOPR—a result that seems likely, if not inevitable, given its suggestions about the BGS auction.[15] Numerous parties detailed the litany of problems that having default service auctions trigger the MOPR would cause. Those problems include everything from the fact that default service auctions typically take place after the relevant Base Residual Auction (BRA), making it impossible to know at the time of that BRA which resources are "subsidized,"[16] to the near impossibility of tracing payments from a default service auction to individual generators.[17] Today's order does not discuss, much less resolve, those issues even as it indicates that the MOPR will apply to at least some states' default service auctions. True to form in this proceeding, the Commission is again kicking the most important can down the road, further undermining what is left of

---

[15] Order, 172 FERC ¶ 61,061 at n.134; *see supra* PP 3-4.

[16] *See, e.g.*, Exelon Corp. Limited Protest, Comments, and Request For Clarification at 21-22 (filed May 15, 2020) (explaining that default service auctions often take place after the relevant BRA has been conducted); Pennsylvania Public Utility Commission Rehearing Request at 17 (filed May 18, 2020) (explaining that default service auctions are "temporally incapable" of "affecting BRA price signals"); Vistra Energy Corp. & Dynegy Marketing and Trade, LLC Rehearing Request at 8 ("[I]t will often be the case that at the time of a three-year-forward Base Residual Auction, these default service auctions will not yet have taken place."); *see also* April 2020 Rehearing Order, 171 FERC ¶ 61,035 (Glick, Comm'r, dissenting at P 50) (explaining that the timelines and increments for "default service auctions generally do not align with PJM's annual single-delivery-year capacity auctions").

[17] *See, e.g.*, Exelon Corp. Limited Protest, Comments, and Request For Clarification at 20 (filed May 15, 2020) ("If the Commission intends in its Order on Rehearing and Clarification to define all indirect payments to resources offering into the PJM energy market at the same time as default load is being served (*i.e.*, all the time) as State Subsidies, *then the entire PJM fleet of capacity resources would be deemed to receive a State Subsidy and be subject to the MOPR*."); Energy Harbor LLC Rehearing Request at 7 (filed May 18, 2020) ("Ultimately the April Order, if read broadly, could implicate the majority of generation capacity in PJM."); *see also* April 2020 Rehearing Order, 171 FERC ¶ 61,035 (Glick, Comm'r, dissenting at P 50) (questioning whether the Commission's statements in that order "mean[t] that PJM, the Market Monitor, or someone else will have to chase down every resource power marketers use to satisfy a default service auction contract?").

its once-well-deserved reputation for the sort of careful, detailed analysis needed to make modern electricity markets work.[18]

* * *

8. It is becoming increasingly clear that the PJM MOPR saga will ultimately be remembered as a model case of egregious Commission overreach. The majority has taken MOPRs, already a controversial topic, and thoroughly weaponized them as a tool for increasing prices and stifling state efforts to promote clean energy. The result is an unsustainable construct that will eventually collapse under its own weight. The Commission's contortions on default service auctions and its failure to address the most important questions implicated by today's order are just the latest indicator of that inevitable result. At this point, the only real question remaining is how much damage the Commission's arrogant approach to the states will do in the meantime.

For these reasons, I respectfully dissent.

_____

Richard Glick
Commissioner

[18] April 2020 Rehearing Order, 171 FERC ¶ 61,035 (Glick, Comm'r, dissenting at P 51) ("This Commission has rightly enjoyed a reputation for focusing on the technical and arcane elements of providing reliable electricity at just and reasonable rates rather than on making broad policy pronouncements. Today's orders will do much to damage that reputation. It makes clear that the Commission is uninterested in the effects its orders may have on how states carry out their basic responsibilities."); *id.* (Glick, Comm'r, dissenting at P 50) (criticizing the Commission for "mak[ing] no effort to wrestle with the practical challenges of its edicts").

Document Content(s)