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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PJM Interconnection, L.L.C. Docket No. ER11-2875-000

PJM Power Providers Group

v. Docket No. EL11-20-000

PJM Interconnection, L.L.C.

(Unconsolidated)

ORDER ACCEPTING PROPOSED TARIFF REVISIONS, SUBJECT TO CONDITIONS, AND ADDRESSING RELATED COMPLAINT

(Issued April 12, 2011)

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Appendix

I. <u>Introduction</u>

1. On February 11, 2011, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to its Open Access Transmission Tariff (OATT), pursuant to section 205 of the Federal Power Act (FPA).[1] PJM states that its proposed tariff changes are designed to update and simplify its existing capacity procurement minimum offer price mechanism, the Minimum Offer Price Rule (MOPR), consistent with reforms implemented by the New York Independent System Operator, Inc. (NYISO)[2] and ISO New England Inc. (ISO-NE).[3] PJM also proposes to add to its tariff a date-certain for PJM to file changes, as determined necessary in a stakeholder process, to PJM's New Entry Price Adjustment, a provision intended to provide sufficient revenue assurances to support new entry. PJM states that the impetus for the instant filing grew out of an informational conference call for stakeholders on February 9, 2011, in response to a complaint filed against PJM.

2. In that complaint, filed by the PJM Power Providers Group (P3)[4] on February 1, 2011, P3 argues that PJM's MOPR is ineffective in deterring buyer marker power. P3 asserts that the MOPR must be revised on an expedited basis, given the advent of recent initiatives in New Jersey and Maryland to support new generation entry through out-of-market payments to generators.[5] P3 proposes reforms to be considered immediately and

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[1] 16 U.S.C. § 824e (2000).

[2] *See New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 (NYISO Mitigation Order), *order on reh'g and compliance*, 124 FERC ¶ 61,301 (2008) (NYISO Mitigation Reh'g Order); *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 (2010) (NYISO Mitigation Enhancements Order), *reh'g pending*.

[3] *See ISO New England, Inc. and New England Power Pool Participants Committee,* 131 FERC ¶ 61,065 (2010) (ISO-NE Capacity Market Revisions Order), *reh'g pending*.

[4] P3 is a non-profit organization made up of twelve member companies, namely Calpine Corporation; Constellation Energy Group; DPL Energy; Edison Mission Energy; Exelon; GenOn Energy Management, LLC; International Power America; NextEra Energy Resources, LLC; North American Energy Alliance LLC; NRG Energy; PPL Parties; and PSEG Energy Resources & Trade LLC. P3 states that the content of its complaint represents the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

[5] *See* S. 2381, 214th Leg. (N.J. 2011) (New Jersey Statute), authorizing the establishment of a Long –Term Capacity Agreement Pilot Program (LCAPP); *In re Whether New Generating Facilities are Needed to Meet Long-Term Demand for Standard Offer Service*, No. 9214, Request for Proposals for Generation Capacity

(continued…)

enumerates other issues to be deferred and addressed in a subsequent PJM compliance filing.[6]

3. For the reasons discussed below, we accept PJM's proposed tariff revisions, to become effective April 13, 2011, subject to conditions. We also address the issues raised by P3 for immediate consideration, but we deny P3's request without prejudice on the deferred issues, as discussed below.[7] Nor will we prejudge or impose any additional obligations or requirements on PJM. We leave to the discretion of PJM and its stakeholders the determination of whether to raise these issues in a stakeholder process.

II. Background

A. PJM's Capacity Market

4. In December 2006, the Commission found that PJM's existing capacity market was unjust and unreasonable because it failed to procure sufficient capacity to ensure the reliable operation of PJM's transmission system.[8] As a replacement, the Commission accepted a settlement proposal establishing the Reliability Pricing Model (RPM) for the procurement and pricing of unmet capacity obligations on a multi-year, forward basis.[9] To date, PJM has conducted seven capacity auctions for delivery years 2007 through

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Resources Under Long-Term Contract (M.P.S.C. Dec. 29, 2010) (Maryland RFP Initiative).

[6] Issues that P3 requests for deferral include: (i) whether all resources, without exception, should be subject to buyer market power mitigation; (ii) if mitigation is indeed applied to long lead time resources as P3 proposes, whether a determination should be made at the time the interconnection agreement is signed if the resource is offering economically; and (iii) whether a Reference Resource (combustion turbine) cost of new entry is a better approach to use in place of asset-class benchmarks.

[7] On April 11, 2011, Commissioner Moeller issued a memorandum to the file in Docket Nos. ER11-2875-000 and EL11-20-000 documenting his decision, based on a memorandum from General and Administrative Law dated April 5, 2011, not to recuse himself from considering matters in these proceedings.

[8] *See PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 (2006) (PJM Capacity Market Order).

[9] *See PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006) (2006 RPM Settlement Order).

2014. PJM's next base residual auction, which will procure capacity for the 2014-15 delivery year, will be conducted in May 2011.

5. Since the implementation of the RPM, the Commission has considered the performance of the market, including issues relating to capacity prices, new entry, and reliability.[10] The Commission has also considered whether RPM has met its intended goals and has accepted RPM revisions, such as auction parameters, participating resources, and mitigation.[11]

B. The Minimum Offer Price Rule

6. The MOPR was established in the 2006 RPM Settlement in order to address the concern that some market participants might have an incentive to depress market clearing prices by offering supply at less than a competitive level.[12] To protect against the exercise of buyer market power, the MOPR currently includes the following screens: (i) a conduct screen (i.e., a benchmark price used to determine whether a sell offer may be uncompetitively low and thus warrants mitigation);[13] (ii) an impact screen (a test that compares the capacity clearing price with and without mitigation);[14] and (iii) an incentive test, or net-short requirement (a test designed to distinguish between sellers who are net

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[10] *See PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,264 (2008); *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272 (2008); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (2009) (March 2009 Order).

[11] *See, e.g.,* March 2009 Order, 126 FERC ¶ 61,275 at P 22, 120 and 169.

[12] 2006 RPM Settlement Order, 117 FERC ¶ 61,331 at P 103.

[13] To apply this conduct screen, PJM is required to determine the values for the Net Asset Class Cost of New Entry (CONE) for a typical combustion turbine (CT) and combined cycle (CC) units. For a CC or a CT, the existing MOPR sets the lower bound for a new entry offer at 80 percent of the Net Asset Class CONE. For any other resource type not expressly permitted to submit a zero-price offer, the screen is set at a default level of 70 percent of the Net CONE for a CT.

[14] An offer that fails the conduct screen is subject to the impact screen, which is conducted by rerunning the auction with the failed offer at its mitigated value to measure the impact that such a below-threshold offer would have on capacity clearing prices. Specifically, the existing MOPR requires PJM to assess whether a new entry offer would reduce the clearing price by 20 percent to 30 percent, depending on the locational deliverability area, or $25/MW-day. If the impact of the offer would not reduce prices below these benchmarks, the impact screen is deemed to have been passed.

buyers who may have incentives to depress market clearing prices below competitive levels and sellers of planned generation who may have incentives to increase market clearing prices above competitive levels).[15] A sell offer that fails these screens is subject to a mitigated price, i.e., the uneconomic offer is increased to a competitive level. That mitigated level is 90 percent of the Net Asset Class cost of new entry (CONE). If there is no applicable asset class for a resource type, the offer is mitigated to 80 percent of the Net CONE. However, the MOPR also includes an exemption provision that eliminates mitigation for certain resource types[16] or from resources undertaken pursuant to a state mandate. In addition, the existing MOPR only applies to the first auction in which a planned generation resource is offered, regardless of whether the resource clears in that auction.

C. Proposed Changes

7. As discussed more fully below, PJM and P3 submit changes to the MOPR addressing, among other things: (i) reference values applicable to the calculation of Net CONE; (ii) percentage factors to be used in the conduct screen; (iii) re-pricing of mitigated offers; (iv) the net-short requirement and impact screen; (v) an exemption applicable to resources developed in response to a state regulatory or legislative mandate; (vi) resource-type exemptions; (vii) mitigation terms; and (viii) the New Entry Price Adjustment.

III. Notice of Filings and Responsive Pleadings

8. Notice of PJM's filing was published in the *Federal Register*, 76 Fed. Reg. 10,344 (2011), with interventions and protests due on or before March 4, 2011. Notices of intervention and timely-filed motions to intervene were filed by the entities noted in the Appendix A to this order. In addition, motions to intervene out-of-time were submitted on March 7, 2011 by the Indiana Utility Regulatory Commission (Indiana Commission) and Shell Energy North America (U.S.), L.P. (Shell) and on March 11, 2011 by American Electric Power Service Corporation (AEP). Protests and comments addressing PJM's filing are addressed below.

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[15] Specifically, the MOPR is designed to apply to a capacity market seller and its affiliates that have a substantial "net-short position" in the relevant RPM auction, i.e., a seller and its affiliates that are effectively buying substantially more capacity from the auction than they are selling into it.

[16] The MOPR currently does not apply to nuclear, coal, Integrated Gasification Combined Cycle facilities, hydroelectric facilities, and upgrades or additions to existing capacity resources.

9. Notice of P3's complaint was published in the *Federal Register*, 76 Fed. Reg. 7836 (2011), with interventions, answers, and protests due on or before March 4, 2011.[17] PJM submitted a timely-filed answer. In addition, notices of intervention and timely-filed motions to intervene were submitted by the entities noted in the Appendix B to this order. PJM's answer, protests, and comments are addressed below.

10. Answers, jointly submitted in both proceedings, were filed on March 9, 2011 by P3, on March 18, 2011 by P3, and on March 21, 2011 by PJM, the Maryland Public Service Commission (Maryland Commission), the New Jersey Board of Public Utilities, Dominion Resources Services, Inc., Hess Corporation, the New Jersey Rate Counsel, Calpine Corporation, and Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM).

11. Motions to consolidate PJM's filing and P3's complaint were submitted on February 14, 2011 by P3 and the Maryland Commission. Answers in support of these motions were submitted on February 16, 2011 by PJM and Rockland Electric Company (Rockland) and on March 4, 2011 by the Pennsylvania Commission, Direct Energy, and the New Jersey Rate Counsel.

12. Finally, on March 22, 2011, a motion to lodge evidence was filed in both proceedings by the National Rural Electric Cooperative Association (NRECA) and the PJM Load Group.[18]

IV. <u>Procedural Matters</u>

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which these interventions were filed. In addition, given the early stage of these proceedings and

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[17] *See* Notice of Extension of Time (issued February 15, 2011).

[18] For purposes of its motion the PJM Load Group is comprised of the following entities: American Municipal Power, Inc.; Old Dominion Electric Coop.; American Municipal Power, Inc.; PJM Industrial Customer Coalition; Public Power Association of New Jersey (Public Power-NJ); Duquesne Light Co.; Chambersburg, PA; Blue Ridge Power Agency; and Delaware Municipal Electric Corp. As referred to elsewhere in this order, the PJM Load Group is comprised of the following additional entities: Southern Maryland Electric Coop; Office of the Ohio Consumers' Counsel; Electricity Consumers Resource Council; North Carolina Electric Membership Corp.; Rockland Electric Co.; Pennsylvania Office of Consumer Advocate; Maryland Office of People's Counsel; and Office of People's Counsel for the District of Columbia.

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the absence of undue prejudice or delay, we grant the unopposed late-filed interventions of the Indiana Commission, Shell, and AEP in Docket No. ER11-2875-000.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by P3, PJM, the New Jersey Board, Dominion, Hess, the New Jersey Rate Counsel, Calpine, and the IMM, because they have provided information that assisted us in our decision-making process. We also accept the unopposed motion to lodge submitted by NRECA and the PJM Load Group.

15. Finally, we deny the motions to consolidate submitted by P3 and the Maryland Commission. While there may be common issues of fact and law in the proceedings for which parties seek consolidation, because we are not setting either for a trial-type evidentiary hearing, we conclude that administrative efficiency would not be served by consolidation. While we will not consolidate PJM's filing and P3's complaint, we address both in the remainder of this order.

V. Discussion

16. We accept, subject to conditions, PJM's tariff changes that modify its MOPR, because the changes will ensure that capacity prices are just and reasonable As the Commission previously has stated:

> A capacity market will not be able to produce the needed investment to serve load and reliability if a subset of suppliers is allowed to bid noncompetitively to suppress market clearing prices….The lower prices that would result under …[the] proposal [to eliminate the MOPR] would undermine the market's ability to attract needed investment over time. Although capacity prices might be lower in the short run, in the long run, such a strategy will not attract sufficient private investment to maintain reliability…The MOPR does not punish load, but maintains a role for private investment so that investment risk will not be shifted to captive customers over time.[19]

17. At issue is whether certain revisions to the MOPR are just and reasonable and necessary to ensure that the MOPR applies appropriately to resources that may have

[19] *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 90-91 (2009).

incentives to submit bids below their actual entry costs. We address below the specific issues raised in the filing and complaint.

A. Need for Expedited Action and Related Requests

1. PJM's Proposal

18. PJM states that its proposed tariff changes were considered by stakeholders on February 9, 2011, following the filing of P3's complaint and are designed to apply to the upcoming May 2011 RPM auction (i.e, on the same expedited implementation timeline envisioned by P3's complaint). PJM requests that its proposed tariff changes be made effective April 13, 2011.

2. P3's Proposal

19. P3 requests fast-track consideration of its complaint (without additional stakeholder deliberations), given that the New Jersey Statute is designed to procure 2,000 MW of new generation that must be offered into the RPM auction. P3 proposes that the following three issues be considered in a subsequent PJM compliance filing and thus deferred for later consideration: (i) whether all resources should be subject to buyer market power mitigation; (ii) whether mitigation should be applied to long lead-time resources; and (iii) whether the term "reference resource" should be used in place of the term "asset class" in setting mitigation benchmarks.

20. P3 argues that, while the New Jersey Statute is the triggering event driving the need for expedited action here, buyer market power has proven to be a recurring and pervasive problem in organized capacity markets. P3 notes, for example, that the Maryland RFP Initiative, proposing to authorize 1,800 MW of new generation, is similar to the New Jersey Statute. P3 argues that, while the goal of these efforts is to drive down costs in the short run, price suppression in the wholesale capacity market will harm long-term investment and consumption decisions, contradict the fundamental design and purpose of capacity markets, and put competitive markets at risk.

21. If fast track consideration is denied, P3 requests as a stop-gap measure clarification that PJM is permitted to interpret its tariff definition of the term "affiliate" to include parties that sponsor and effectively control the participation of other parties in the PJM capacity markets. P3 asserts that such an interpretation is appropriate under the circumstances, in order to avoid a "blatant avoidance of the MOPR's sprit and intent."

3. Responsive Pleadings

22. In their joint motion to lodge, NRECA and the PJM Load Group (Joint Movants) challenge the PJM and P3 claim that expedited action in this case is necessary or appropriate. Specifically, Joint Movants argue that this claim has now been eviscerated,

as evidenced by the March 21, 2011 report of Levitan & Associates, Inc. (LCAPP Agent's Report), a study undertaken pursuant to the requirements of the New Jersey Statute.[20]

23. The Maryland Commission requests that, if the Commission approves any MOPR changes applicable to the May 2011 base residual auction, judgment should be withheld on whether any such tariff revisions will become permanent.[21] The Maryland Commission argues that, in assessing whether to take expedited action, the Commission should pay particular heed to the law of unintended consequences, i.e., a Commission action addressing the uncertain intersection between RPM protocols and state policies supporting local reliability, economic development, enhanced competition, and environmental protection. The Maryland Commission argues that, while it has done its best to respond within the time and resource constraints imposed by this proceeding, it would be fundamentally unfair and unjust for the Commission to adopt any proposed MOPR modifications for future auctions without providing a reasonable opportunity to analyze and reply to the changes proposed by PJM and P3. Some intervenors agree.[22]

24. Other intervenors argue that, if PJM's filing and P3's complaint are not rejected as premature in advance of a stakeholder proceeding, then additional procedures should be established. The New Jersey Rate Counsel and the PJM Load Group request that the Commission establish an evidentiary hearing and hold the hearing in abeyance, pending settlement-judge procedures. The Maryland Commission and LS Power request a paper hearing. Finally, the PJM Load Group requests that PJM's filing and P3's complaint be suspended for the full five months if they are not rejected.[23]

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[20] Joint Movants cite the finding of the LCAPP Agent's Report that only six out of 34 submitted projects were determined to be prequalified as candidates for award of an LCAPP standard offer capacity agreement. Of the six projects, only three have been recommended, none of which would be awarded a contract for the 2014-15 delivery year (the May 2011 base residual action). Rather, two of the projects would come on line in delivery year 2015-16, while the remaining project would come on line in delivery year 2016-17.

[21] The Maryland Commission notes that the Commission followed a similar approach in the MOPR-type ISO-NE proceeding. *See* ISO-NE Capacity Market Revisions Order, 131 FERC ¶ 61,065 at P 15.

[22] *See* Dominion Comments at 2; New Jersey Board Protest at 6; LS Power Protest at 15; New Jersey Rate Counsel Protest at 7.

[23] *See also* NJLEUC Comments at 5.

4. **Commission Determination**

25. Under section 205 of the FPA, the Commission must act on PJM's tariff changes within 60 days of the date of filing. The filings made by PJM and P3 contain sufficient information to resolve the issues without the need for suspension or a hearing; we are not persuaded that the existing record is deficient on any of the issues presented. We are also not persuaded that the delay, uncertainty, and administrative expense associated with additional litigation would be outweighed by any other countervailing considerations.

26. Further, we agree with parties who argue that it would be beneficial to resolve these issues prior to the May 2011 base residual auction. First, we find that PJM had the authority to make the section 205 filing before us. While PJM's specific MOPR revisions have not been considered under the standard stakeholder process, PJM did convene an expedited process in advance of its filing and answered stakeholder questions raised by PJM's proposal and P3's complaint. We note that PJM's stakeholders are familiar with the instant issues, having addressed MOPR reforms in a recent Commission proceeding.[24] We further note that the record has been fully developed in support of our findings, regardless of any exigencies that may or may not be attributed to the May 2011 base residual auction. Accordingly, we reject the Maryland Commission's request that the tariff changes be made effective for an interim period only.

27. As discussed below, in many respects, PJM's section 205 filing changes the tariff provisions that were the subject of P3's complaint. However, in some cases, the issues raised by the complaint are germane to PJM's tariff filing and we have considered P3's arguments when addressing those issues. With respect to P3's request to defer addressing certain issues not raised in PJM's filing, we find that those issues should first be considered by PJM's stakeholders. Accordingly, we deny P3's request without prejudice with respect to the deferred issues as noted above. P3 can file another complaint if these issues are not resolved to its satisfaction.

B. **Calculation of the Net Cost of New Entry**

28. Application of PJM's conduct screen requires PJM to first establish the net CONE, a benchmark value used to assess the competitiveness of a sell offer. Net CONE is comprised by the various reference values discussed below.

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[24] March 2009 Order, 126 FERC ¶ 61,275 at P 13.

1. <u>PJM's Proposal</u>

29. PJM proposes to update its existing MOPR reference values as they relate to: (i) gross CONE; (ii) revenue requirements; (iii) construction costs; (iv) energy and ancillary services revenue offsets; and (v) locational differences.

30. With respect to gross CONE values for a CT plant, PJM proposes to use the same values currently produced by its Variable Resource Requirement Curve parameters.[25] PJM notes that these values are indexed to track changes in construction costs and vary by location to reflect differences in labor, land, tax, and other costs by sub-area within the PJM region. For a CC plant, PJM proposes to replace its existing estimates, which are based on 2008 un-indexed values, with estimated costs to build a new CC plant as based on 2010 values.

31. With respect to construction costs, PJM states that its gross CONE values currently make no allowance for tracking changes from year to year. PJM therefore proposes to index these changing costs based on the Handy-Whitman Index (a method currently used by PJM for the Variable Resource Requirement Curve CT CONE estimate).

32. With respect to energy and ancillary service revenues, PJM states that its existing MOPR fails to explain how these revenues will be determined. To clarify this process, PJM proposes tariff language that specifies that Net CONE for a CT in the MOPR screen will use the same energy and ancillary services revenue offset estimate as is used for the CT Net CONE in the Variable Resource Requirement Curve.[26] PJM proposes tariff language for a CC using the same basic method as for a CT, but it replaces certain

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[25] Under PJM's existing capacity market rules, PJM offsets the gross CONE of a CT reference resource, a reference point establishing the height of the Variable Resource Requirement Curve used to establish prices in the capacity auctions. It does so by netting the energy and ancillary services, which are calculated as a rolling average of all revenues received by a reference peaking unit in the three years immediately preceding the Base Residual Auction.

[26] This estimate is based on the CT plant's tariff-specified heat rate, variable operating expenses, and a stated peak-hour dispatch unit dispatch scenario. PJM then uses the annual average over this period as the plant's expected energy revenues and then adds a stated annual revenue value for the reactive services the plant would be expected to supply.

elements of the CT calculation stated in the tariff with values and assumptions that PJM states are appropriate for a CC.[27]

33. PJM also proposes to use varying gross CONE values based on location within the PJM region. PJM explains that this approach is consistent with its existing Variable Resources Requirement Curve guidelines, and the approach recognizes not only locational differences in capital costs but also locational differences in the energy revenues a new plant can expect to receive.

34. Finally, PJM proposes to replace its current use of a real levelized model to calculate operating expenses with a nominal levelized model, a methodology that calculates the single fixed annual revenue requirement that has the same present value as the increasing revenue requirements over twenty years.[28] PJM asserts that whether new entry power plants are financed by corporate debt and equity or by project financing, the asset must be expected to generate a reasonably predictable revenue stream to support the investment and repay debt. PJM continues that lenders will seek assurance that the rate structure can recover all of the project's costs over the term of the loan. PJM argues that a project with revenues that will recover only its first-year level of costs will not be financed and if a project's financing is based on a nominal levelized approach, then offering the plant into RPM at only a real levelized first-year price would be in effect offering below the project's claimed costs. Finally, PJM contends that a seller legitimately concerned with recovering its project's costs over time through RPM would be expected to offer its plant at the highest permissible first-year price consistent with the nominal levelized methodology.

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[27] Specifically, PJM proposes to add to the MOPR differing values appropriate for a CC for the heat rate, the variable operations and maintenance expense, and ancillary services revenue. PJM states it is clarifying that the dispatch assumption to estimate CC revenues is slightly different as PJM assumes that a CC is expected to be dispatched for nearly all of the daytime hours on the days when it is economic. In contrast, PJM states that a CT is assumed to be dispatched only for the four-hour blocks when it is economic.

[28] The real levelized model, by contrast, produces lower numbers in the early years of a project's life and higher numbers in the later years, by assuming that plant revenue requirements will increase each year to reflect a 2.5 percent annual increase in operating expenses. However, both levelization models contain identical assumptions for all of the cost elements (e.g., fixed operations and maintenance expense, property taxes, interest expense, tax depreciation, and debt service) for each year of the project.

2. P3's Proposal

35. P3 also proposes that a nominal, levelized unit-specific cost model replace the current tariff. P3 states it is appropriate to base mitigation on a nominal stream because the cost stream most closely matches the type of financial obligations associated with project financing. P3 further asserts that nominal levelization is basically a cost structure similar to a mortgage. Finally, P3 states that there was never a justification for the use of the first year of a real levelized stream for the MOPR in lieu of the nominal levelized methodology for the Variable Resource Requirement Curve.

36. In its protest of PJM's filing, P3 objects to PJM's proposal to calculate the energy and ancillary services revenue offset using only real-time LMPs, and, therefore, PJM would not consider whether the unit would have been dispatched in the day-ahead market. P3 argues that such an approach overstates the offset calculations and thus understates the Net CONE. P3 adds that PJM's proposal inappropriately applies the highest LMP in the zone to determine offsets without regard to whether the relevant node has lower prices. Otherwise, P3 supports or does not oppose many of PJM's proposed changes to the calculation and application of the CONE values. P3 agrees with PJM that it is just and reasonable to update the out-of-date gross CONE values with an annual automatic adjustment to these values based on the Handy-Whitman Index.

3. Responsive Pleadings

37. The Pennsylvania Commission supports PJM's proposal to update and index the CONE values because the current MOPR provisions result in CONE values that are understated, outdated, and ambiguous. The Pennsylvania Commission argues that the revisions to use the same CT values as in the Variable Resource Requirement Curve parameters and to update the gross CONE estimate for a CC plant will result in CONE values that are more accurate and the indexing provision will help ensure the values continue to be accurate over time. Further, the Pennsylvania Commission supports the changes to the levelization difference, the inclusion of an explanation of how the energy and ancillary services revenue offset will be calculated, and the inclusion of locational differences.

38. The PJM Load Group objects to PJM's proposed reference values as unsupported, noting that the proposed increase for CT and CC units will be 33 percent and 32 percent, respectively. In particular, the PJM Load Group objects to PJM's proposed revisions to: (i) replace the real levelized approach with a nominal levelized approach; and (ii) the energy and ancillary services offset. The PJM Load Group argues that a real levelized approach will produce a lower MOPR screen value and, thus, make it easier for a new entrant to submit a lower offer and not trigger the MOPR. The PJM Load Group adds PJM's proposed revision is contrary to the objectives of RPM; if the purpose of the MOPR is to screen out offers that, on their face, are unreasonably low, then the threshold

should be set at the lower end of the range of reasonable offers, i.e., the gross CONE should be calculated on the basis of the real levelized approach.

39. With respect to energy and ancillary services, the PJM Load Group argues that PJM's proposal to continue using a short-term non-escalated offset is inconsistent with PJM's proposal to use a higher, flat, long-term full cost return for gross CONE. The PJM Load Group argues that these approaches, taken together, will produce a greatly inflated Net CONE value because an extra-high CONE will be netted against an extra-low energy and ancillary services offset. The PJM Load Group asserts that, in addition, looking backward to calculate an energy and ancillary services offset ignores the reality of project development (a process that focuses on forward curves for energy prices) to assess the expected future energy-related revenue flow. The PJM Load Group notes that while these forward curves will naturally reflect, to some degree, the level of energy prices in the recent past, the forward curves will weigh much more heavily the forward prices of expected marginal fuels, mostly natural gas or coal.

40. Dayton, like P3, objects to PJM's proposed mechanism to calculate energy and ancillary services offsets. Dayton argues that, because cleared RPM capacity resources are required to be offered in the day-ahead energy market, where they are usually cleared, such resources usually do not clear based on the real-time price. Dayton concludes that using real-time prices, instead of day-ahead prices, may overstate the offset calculations and thus understate Net CONE. Dayton also agrees with P3 that PJM has erroneously proposed the utilization of the highest LMP in the applicable zone to develop the offset calculations. Dayton argues that, given the readily available access to nodal data, there is no reason not to use these inputs.

41. The New Jersey Rate Counsel contends that Net CONE is a poor proxy or estimate for a competitive offer price, because Net CONE is a levelized or annual value rather than a present value and future capacity revenues are excluded from the calculation. The New Jersey Rate Counsel suggests several alternative methodologies that a project sponsor may present in lieu of the use of Net CONE, including a specific forecast of net energy, ancillary services, and capacity revenues over the life of the project. Further, the New Jersey Rate Counsel argues that the real levelized approach is more appropriate for the purposes of the MOPR than the nominal levelized approach used for the demand curve. The New Jersey Rate Counsel asserts that under the nominal levelized approach, the first-year Net CONE value would greatly overstate the capacity price needed by the plant for it to be economic. The New Jersey Rate Counsel argues that because both methodologies produce the same present value stream of revenue requirements, PJM's claim that an offer at only the real levelized first-year price would be in effect offering below the project's claimed costs is misleading and PJM's levelization proposal should be rejected.

42. Finally, the IMM agrees with PJM that the proposed Net CONE values are more current and accurate than those currently reflected in PJM's MOPR calculations and that these values should continue to be refined as necessary so that they are not allowed to become out of date in the tariff. The IMM further agrees with PJM that the benchmark for mitigation of a competitive offer should be based on the nominal levelized CONE of new entry of that technology type. The IMM contends that entry will occur when the expected price for capacity over the life of the asset is adequate to provide for the return on and of capital invested in the project. The IMM argues that when capacity is needed for reliability, it can reasonably be expected that the price will have to be equal to the nominal levelized cost of entry and that the price will remain at that level for a significant period of time. Finally, the IMM asserts that entry under any other conditions would be irrational.

4. <u>Commission Determination</u>

43. We accept PJM's proposal to update its existing MOPR reference values as they relate to calculating the Net CONE. Specifically, we accept PJM's proposals, consistent with its existing Variable Resource Requirement Curve guidelines, regarding: (i) updating gross CONE values for CT and CC plants; (ii) tracking changes in construction costs; (iii) calculating the energy and ancillary services revenue offsets; (iv) recognizing locational differences in capital costs; and (v) replacing its real levelized model with the nominal levelized model. We reject the New Jersey Rate Counsel's argument that Net CONE is a poor proxy for a competitive offer price. We find that Net CONE is a reasonable approximation of the cost of new entry less the energy and ancillary services revenues that resources are likely to receive, on average, over the resource's life, and thus Net CONE serves as a reasonable estimate for a competitive offer price.

44. PJM argues, and we agree, that revising out-of-date CONE values used in the current MOPR is appropriate. No party has argued that the CONE values for the MOPR should be different than the CONE values for the Variable Resource Requirement Curve. Accordingly, we accept PJM's proposal to use methodologies consistent with those used for the Variable Resource Requirement Curve parameters utilized in the RPM auction. Further, no party has shown that it is not appropriate to use an index generally or the Handy-Whitman index specifically to update the gross CONE. Moreover, no party has demonstrated that the key determinants of the energy and ancillary services revenues offsets should not be clearly stated in the tariff or that PJM should not recognize the locational differences in construction costs and energy prices. Finally, no party has challenged PJM's proposal to replace certain elements of the CT calculation for the energy and ancillary services revenue offsets stated in the tariff with those values and dispatch assumptions appropriate for a CC. Thus, we find these estimates and estimating methodologies to be adequately supported by PJM and acceptable.

45. The PJM Load Group argues that PJM's updated reference values are unsupported and should be subjected to rigorous review through an evidentiary hearing process, with full discovery, given the large size of the increase, and that the enormity of the increase also justifies the suspension of PJM's filing for the maximum period allowed by law. We disagree. We reject the PJM Load Group's arguments that updating the gross CONE values for CT and CC plants is contrary to the objectives of the MOPR and that instead these values should be set at the lower end of the range of reasonable offers. We agree with PJM that updating the gross CONE to current values and indexing them is appropriate. We further agree with PJM that the outdated MOPR values for a CT plant are unreasonably low and that it is appropriate for PJM to update these values to be consistent with the CT plant values that will be used as parameters for the upcoming RPM Base Residual Auction, calculated consistently with the tariff for the Variable Resource Requirement Curve. We have previously found that the MOPR values should be updated to be in line with the Variable Resource Requirement Curve values.[29] Similarly, we accept the updated gross CONE values that PJM calculates for a CC plant given that the methodology is consistent with those that PJM utilized for the outdated CC plant estimates.

46. P3 and Dayton raise two specific objections to PJM's proposed method for estimating energy and ancillary services revenue offsets. First, P3 and Dayton argue that the energy revenue estimates should be based on day-ahead LMPs rather than real-time LMPs, given the asserted risk overstating the offset calculations and thus understating Net CONE. Second, P3 and Dayton argue that PJM's proposed use of the highest LMP in the zone is inappropriate and without regard to the nodal data which is available and which may produce a lower price. We reject P3's and Dayton's objection to using real-time LMPs because PJM is simply proposing the same basic methodology for CT and CC units that PJM uses to produce the Net CONE for a CT for RPM's Variable Resource Requirement Curve.[30]

47. Regarding the use of the highest LMP in the zone, we agree with PJM that this is a reasonable screen because the use of nodal LMP values could trigger the market power screen even though the resource was simply using its historical energy and ancillary services revenues offset for its zone. Therefore, we reject P3's and Dayton's objection to the use of the highest LMP in the zone.

48. In addition, the PJM Load Group and the New Jersey Rate Counsel object to the use of the historical estimating method for the energy and ancillary services offset and contend that a forward-looking approach would produce a higher energy and ancillary

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[29] *See* March 2009 Order, 126 FERC ¶ 61,275 at P 192.

[30] *See* PJM OATT, Attachment DD, Section 2.46.

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services offset (and a lower Net CONE) consistent with an escalation of fuel price inputs. Again, we find that PJM's proposal for the Net CONE in the MOPR to use the same approach as the Variable Resource Requirement Curve parameters is reasonable and a sufficient basis for changing this existing approach. In addition, we have previously found that it is very difficult to design a forward-looking method and that the continued use of a three-year average of historical revenues from energy and ancillary services markets is appropriate because the cyclical changes in net revenues are likely to average out.[31] Thus, we reject the arguments of the PJM Load Group and the New Jersey Rate Counsel that the MOPR should not use a historical estimating method consistent with the approach the Commission has previously approved for the RPM demand curve.

49. Finally, we are not persuaded by the arguments of the PJM Load Group and the New Jersey Rate Counsel suggesting that PJM should continue to use the real levelized approach referenced in the current MOPR rather than nominal approach used with the Variable Resource Requirement Curve. We agree with PJM, P3, the IMM, and the Pennsylvania Commission that the nominal approach is reasonable here because a first-year offer based upon this methodology is more likely to match the typical cash flow streams associated with financing by either a mix of corporate debt and equity or with project financing, than the real levelized approach. We concur with PJM and the IMM that offering a plant into RPM under the price developed under the real levelized methodology would in effect be an offer below the project's claimed costs and that it is irrational for a new entrant needed for reliability to offer at a price far below a level consistent with its nominal levelized cost of entry.

50. PJM further contends that the nominal approach produces a gross CONE requirement that is about 15 percent higher than the real approach. PJM explains that once the gross CONE is further reduced by the energy and ancillary services offsets, the percentage difference becomes far greater (i.e., 30, 40, or 50 percent or more) because the net number is smaller than the gross number. We agree with PJM's analysis. For a CC located in New Jersey, the year 1 Net CONE is $205.40 per MW-day[32] under the nominal approach and $131.23 per MW-day[33] under the real approach. Under the assumption that

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[31] *See* March 2009 Order, 126 FERC ¶ 61,275 at P 44.

[32] Based upon PJM's updated gross CONE value for Area 1 (which includes the New Jersey zones) for a CC of $480.14 per MW-day and the updated energy and ancillary services offset of $287.57 per MW-day, Net CONE on a nominal levelized basis would be $192.56 per MW-day on an Installed Capacity basis and $205.40 per MW-day on an Unforced Capacity (UCAP) basis.

[33] Using PJM's assumptions that the nominal approach produces a gross CONE that is approximately 15 percent higher than the value calculated under the real approach,

(continued…)

capacity prices average the year 1 real value of $131.23 per MW-day over the 20-year life, this CC would fall about 36 percent short of recovering its actual costs. We find that bids under the real approach are uneconomic because the project sponsor must assume an unrealistic rate of inflation of capacity prices (in this case, 6.0 percent[34]) in order for the CC to recover its actual costs.[35]

51. P3 contends, and we agree, that nominal levelization is consistent with the mortgage-like cash stream associated with project finance. Under both levelization methodologies, the underlying cost assumptions are identical over the life of the project and the only difference is the annual revenue requirement. We are not persuaded by protestors' arguments that an offer submitted under the real levelized methodology is always competitive and should automatically be exempt from mitigation. Therefore, we find that the use of the nominal levelized number for Net CONE is reasonable for mitigation under the MOPR and is appropriate for the objectives of RPM.

C. Percentage Factors Used in the Conduct Screen

52. A sell offer is currently mitigated if it is less than 80 percent of the real levelized net CONE for the applicable asset class. For other, unspecified plant types, offers are

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the year 1 real levelized net CONE UCAP value of $131.23 per MW-day would be 36 percent lower than the nominal net CONE UCAP value.

[34] If one escalates gross CONE by 2.5 percent per year consistent with the inflation assumption of the real levelized method, the net CONE value of the CC in year 20 of $393.42 per MW-day would be three times higher than the year 1 real value. Under the real levelized model for a CC using PJM's updated assumptions, gross CONE on a UCAP basis would increase from a year 1 value of $410.60 per MW-day to a year 20 value of $656.41 per MW-day for an overall increase of 60 percent (2.5 percent annualized). In contrast, due to the impact of netting the energy and ancillary services revenues offset, the net CONE on a UCAP basis would increase from a year 1 value of $131.23 per MW-day to $393.42 per MW-day for an overall increase of 200 percent (6.0 percent annualized). As a result, capacity prices would need to increase at an average annualized value of about 6 percent per year under the real levelized method in order for the cash flow stream to have a present value equal to the cash flows consistent with the constant $205.41 per MW-day calculated under the nominal levelized method.

[35] Moreover, if a new entrant CC claims a lower gross CONE value or higher energy and ancillary services revenues offsets than PJM's assumptions, the difference in year 1 values between the real and nominal approaches becomes more extreme and the assumed annual increases in capacity prices for the two cash flow streams to produce equivalent present values become even higher.

mitigated only if they are less than 70 percent of the Net CONE of a CT plant. Offers that do not pass the screen are mitigated to 90 percent of the Net Asset Class CONE (and to 80 percent for other, unspecified plant types).[36] Under the existing tariff, resource owners that believe they have unit specific entry costs lower than the thresholds may make a filing with the Commission to provide evidence to justify such lower costs.

1. **PJM's Proposal**

53. PJM proposes to increase the percentage factor used in its conduct screen for both CC and CT plants from 80 percent to 90 percent.[37] PJM characterizes its proposal as a reasonable balance, providing both greater deterrence against an uncompetitive sell offer while also recognizing the degree of imprecision inherent in the Net CONE estimate. PJM asserts that an elevated percentage factor is justified, given: (i) the recourse a seller is given to justify its offer pursuant a section 206 filing; (ii) the increased accuracy of its reference values;[38] and (iii) the Commission's long-standing acceptance of ten percent adders as applicable to related costs,[39] which is consistent with the offer cap calculation utilized in the RPM.[40] PJM proposes to continue to re-price any resource that fails the MOPR screens at a level equal to 90 percent of the asset class CONE (and to 70 percent for other, unspecified plant types, down from the currently-effective 80 percent price).

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[36] PJM OATT, Attachment DD at Section 5.14(h)(3).

[37] PJM proposes to retain its existing 70 percent factor default screen applicable to other, unspecified plant technologies.

[38] PJM notes that, under its proposal, it has developed separate estimates for a CC plant and CT plant and that each plant type includes separate estimates for different sub-regions that conservatively bases the energy revenue estimate for each CONE area in the zone with the highest energy revenues. PJM states that this approach will tend to reduce the Net Asset Class CONE reference value. PJM states that, in addition, its gross CONE estimates are highly detailed, well-supported, and subject to annual Handyman-Whitman indexing.

[39] PJM Filing at 12, (citing *Terra Comfort Corporation*, 52 FERC ¶ 61,241, at 61,840 (1990); March 2009 Order, 126 FERC ¶ 61,275, at P 26, 38 (2009)).

[40] *Id.*, citing PJM OATT, Attachment DD at Section 6.8(a) (adjustment factor of 1.10 "provide[s] a margin of error for understatement of costs").

2. P3's Proposal

54. P3 proposes to increase the percentage factor used in PJM's conduct screen to 100 percent of the Net CONE for the applicable asset class.

55. P3 also proposes that uneconomic offers be mitigated to 100 percent of the nominal levelized unit-specific CONE of the offering resource. P3 argues that PJM's existing mitigation provisions, by contrast, allow material, artificial price suppression without justification because they allow price suppression of between 10 to 20 percent. P3 rejects the argument that some discount from the Net CONE is appropriate, given the potential inaccuracies in PJM's Net CONE estimate. P3 responds that this justification could similarly be relied upon to support a mitigation level above a 100 percent benchmark. P3 also addresses the policies followed in other organized capacity markets in which discounted benchmarks, i.e., percentage factors below 100 percent, are used for purposes of imposing buyer-side mitigation. P3 argues that the relevant tariff provisions implementing these policies have largely been approved in the context of settlement agreements and that there has never been a litigated resolution of the arguments presented here by P3.[41]

3. Responsive Pleadings

56. Dayton supports P3's proposal but argues that, should the Commission choose a lower value, the IMM should be required to review and approve any offers falling between that benchmark and Net CONE.

57. The IMM supports P3's proposal. Specifically, the IMM argues that a 90 percent mitigation factor simply licenses, by rule, the potential exercise of market power. The IMM also recommends an allowance permitting a seller to submit its proposed offer to the IMM for review.[42]

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[41] Specifically, P3 argues that the Commission has never been presented with the stark contradiction between (i) the fundamental design criterion for organized capacity markets, or the need to average the actual Net CONE, and (ii) using a steep discount off of CONE for detecting the exercise of buyer market power, effectively capping price outcomes so that they remain below competitive levels.

[42] The IMM proposes that such a request be accepted upon review if: (i) the IMM agrees with the seller that the offer reflects costs and does not reflect out-of-market payments; (ii) PJM does not disagree; and (iii) no party appeals this determination to the Commission.

58. The Maryland Commission objects to any increase to the existing percentage factors used to mitigate RPM sell offers, given the penalizing effect such an increase will have on state-mandated programs designed to develop new generation. The Maryland Commission argues that increased percentage factors would likely elevate offers made by state-supported generation above the clearing price for the next several base residual auctions, if not permanently. The Maryland Commission notes that, were it to proceed with the Maryland RFP Initiative, it would do so subject to the risk that this new generation could be unable to compete with an incumbent utility (e.g., a coal-fired power plant) and could not be relied upon to serve Maryland's identified needs.

59. The New Jersey Rate Counsel argues that, if Net CONE continues to be used as the primary or exclusive benchmark for what constitutes an economic offer and the Net buyer requirement and impact screen are eliminated, then the percentage factor used in the conduct screen should be lowered, not raised, or at least retained at the existing level.[43]

60. The PJM Load Group argues that setting the conduct screen at 100 percent as proposed by P3 erroneously assumes without support that Net CONE is presumptively correct and that any departure below this value, no matter how small, is suspect. PJM Load Group asserts that wide latitude is necessary when determining the conduct screen due to the nature of the estimates involved. The PJM Load Group notes, for example, that interconnection costs vary considerably by project.

61. CPV Power also objects to the PJM and P3 proposals. CPV Power argues that there is no logical reason why two gas-fired CC plants, built in different locations, with different EPC contracts and other distinguishing characteristics, must have cost structures that are no less than 100 percent of Net CONE, as P3 proposes, or no less than 90 percent of Net CONE, as PJM proposes. CPV Power asserts that building generation assets with a 20- to 30-year useful life, projecting expected fixed expenses for 20 to 30 years, and projecting energy and ancillary service revenues for 20 years is a difficult process that is not captured by PJM's calculations.

62. LS Power argues that a conduct screen set at 90 percent of Net CONE, had it been used by PJM in the past, would have prevented much of the new entry of CT and CC units that has occurred in PJM. Specifically, LS Power argues that approximately 1,550 MW of new CT and CC generation capacity may not have cleared, a circumstance suggesting that the current screen of 80 percent may be too high and not too low.

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[43] New Jersey Rate Counsel contends that Net CONE is a poor proxy for determining a competitive offer price because Net CONE is an annual rather than present value, and because future capacity revenues are excluded from the calculation.

LS Power also notes that PJM's proposal is inconsistent with the conduct screen of 75 percent of CONE established by the NYISO.[44]

63. With respect to PJM's proposal to retain a default conduct screen of 70 percent of Net CONE for unspecified plant technologies, the IMM contends that no such default rule is required (and has not otherwise been supported). The IMM argues that, if a new technology emerges, PJM can develop a specified default cost of new entry value and revise the tariff accordingly at that time.

64. The Maryland Commission objects to P3's proposed mitigation price increase for the same reasons outlined above, regarding its objections to the PJM and P3 proposed percentage factor increases.[45] Specifically, the Maryland Commission argues that P3's proposed increase would unduly penalize and possibly destroy state-mandated programs designed to develop new generation facilities by making it more difficult for these resources to clear in PJM's RPM auctions.

65. Finally, the PJM Load Group also opposes P3's proposal to re-price mitigated bids at 100 percent of Net CONE. The PJM Load Group characterizes P3's proposal as an unsupported request to raise the floor on supplier returns that have already proven sufficient to elicit supply. The PJM Load Group argues that this "upward bias" proposed by P3 is impermissible under the FPA.

4. Commission Determination

66. For the reasons discussed below, we accept PJM's proposal to raise the conduct screen to 90 percent of Net CONE, from the current 80 percent threshold, as a reasonable level. This level reasonably balances the need to prevent uneconomic entry, the inherent vagaries of cost estimation, and the administrative burdens entailed by having to provide data to justify a generator-specific lower threshold. We also accept PJM's continued use of its 70 percent threshold for unspecified plant technologies and its proposed mitigation price levels.

67. PJM argues that its existing 80 percent conduct screen institutes an unreasonable tolerance for below-cost offers that can evade the MOPR and suppress prices to a considerable degree. It argues that the harm to market integrity that could result from application of the current 80 percent threshold cannot be justified in favor of allowing

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[44] LS Power Protest at 26 (citing NYISO Mitigation Order, 122 FERC ¶ 61,211 at P 107).

[45] *See supra* Section V.C.

variation from an administrative cost estimate. We agree that PJM's analysis provides a reasonable basis to support an increase in PJM's current percentage factors.

68. As such, we reject CPV Power's argument that an 80 percent threshold must be maintained, given the variance of project costs by location. While we agree that estimating project costs is a complex process and that the PJM-determined estimates are, like all estimates, imperfect, the MOPR allows for unit-specific determinations of costs for entities whose costs differ from PJM's net asset class CONE estimates.[46] We find that this process reasonably accounts for the natural variations in costs that resources encounter.

69. We further reject the New Jersey Rate Counsel's argument that the percentage factor should be maintained at the current level, if not lowered, given the Net CONE's reliance on annual values instead of present values. As noted above,[47] we reject the argument challenging PJM's use of Net CONE as the benchmark for MOPR mitigation. We therefore do not find persuasive New Jersey Rate Counsel's argument that the conduct screen should be maintained or lowered because of what it views as an unreasonable benchmark.

70. Nevertheless, while the current and the revised MOPR we accept here provide for a unit-specific cost justification process, we agree with PJM and others that such a process imposes an administrative burden on sellers. PJM therefore seeks to balance this burden with its need to prevent uneconomic behavior. We find persuasive PJM's assertion that the revised 90 percent threshold strikes a reasonable balance between protecting against unreasonable exercises of market power and recognizing the imperfection of administrative estimates and the burden of the cost justification process. We therefore reject P3's proposal, which involves raising the conduct screen to 100 percent of Net CONE.

71. LS Power contends that some of the new entry in recent auctions would not have cleared if a 90 percent conduct screen had been in place. It then concludes that such a result implies that the conduct screen may in fact be too high, not too low. We do not find this argument persuasive. LS Power's analysis fails to consider the cost justification process that allows for resources with costs below the reference value to receive an exemption from MOPR. The resources LS Power mentions would have had the opportunity, under PJM's proposal, to justify why their costs fall below 90 percent of Net CONE – and thus these offers could have potentially cleared if they were indeed accurate reflections of costs and below the market-clearing price. Further, the level of the conduct

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[46] *See infra* Section V.F.

[47] *See supra* P 43.

screen should not, in and of itself, determine whether a resource clears; rather, the level of the conduct screen merely indicates the point at which the burden to prove that an offer is economic falls on the seller making the below-threshold offer. Nevertheless, if a resource's true cost of new entry is above the price at which the market clears, such a resource is not needed.

72. We also find reasonable PJM's proposal to retain the 70 percent threshold for other, unspecified plant technologies. Specifically, we find persuasive PJM's explanation that, should a need for a new asset class estimate be identified, the generator development lead times should provide an adequate timeframe in which to develop and add such an estimate to PJM's tariff.

73. We also accept PJM's proposed mitigation price levels and reject P3's proposal to re-price mitigated offers to 100 percent of Net CONE. While intervenors propose different mitigation prices, the preferred mitigation prices generally correlate with intervenors' preferences for the conduct screen (i.e. intervenors advocating for a 100 percent conduct screen similarly advocate for a 100 percent mitigation price). As discussed above, we therefore find PJM's proposal to mitigate sell offers by setting such offers equal to the conduct screen to create a reasonable balance of interests and accept it as just and reasonable.

74. Finally, we address below in Section V.F of this order Dayton's argument regarding IMM review of sell offers.

D. Net-Short Requirement

75. Capacity offers from a seller and its affiliates who buy substantially more capacity from the RPM auction than they sell into it (i.e., a net-short buyer) are subject to PJM's MOPR, based on the assumption that such a seller may have an incentive to depress market clearing prices below competitive levels.[48] By contrast, capacity offers from a seller and its affiliates who are not substantially net short are not subject to the MOPR. The net-short determination is based on the seller's actual retail load minus the seller's portfolio of supply.

1. PJM's Proposal

76. PJM proposes to eliminate its net-short requirement. PJM notes that its existing requirement allows a seller that may have an incentive to make an uncompetitive offer to structure a new entry transaction in a way that achieves the desired price-lowering effects without triggering the MOPR. PJM explains that a buyer wishing to do so for the benefit

[48] PJM OATT, Attachment DD at Section 5.14(h)(2)(iii).

of its load can achieve this result through the terms of its power purchase agreement with a new entrant, even though the buyer is neither the seller nor an affiliate of the seller. PJM states that such a buyer could simply commit to cover the seller's costs and then direct by contract that the seller offer the new plant's capacity at a low or zero price.

2. P3's Proposal

77. P3 also proposes to remove PJM's net-short requirement. First, P3 argues that, while the rule's underlying assumption (i.e., that a net-short seller may have an incentive to depress market clearing prices) may have support as an economic principle, in practice it is impossible to administer because it can be easily circumvented.[49] P3 also argues that PJM's existing rule erroneously assumes that the market power it is required to deter will be both exercised by and benefit the same entity. P3 argues that there is nothing in the economics of exercising market power that requires the beneficiary of the scheme (the party that has an actual or constructive short position) and the capacity seller (the party that actually offers the resource into the RPM auction) to be the same entity or even closely related. P3 asserts that, if one entity offers the capacity resource and another, separate entity has the short position, the arrangement will escape mitigation under PJM's current rules.[50]

78. P3 further argues that it is administratively impossible to craft a net seller provisions that does not suffer the same defect as the existing requirement. [51]

79. P3 also argues that the net-short requirement must be eliminated. In the alternative, it states that entities operating under a state mandate must be deemed to be affiliates that are subject to the MOPR, given the New Jersey Statute, a law designed to

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[49] P3 notes that only when the net purchases of capacity exceed 10 percent of the locational deliverability areas does mitigation set in; as such, a load serving entity that purchases up to 9.9 percent of all capacity in a small locational deliverability area would be exempt from the MOPR. So too would a load serving entity that purchases 30 percent of all capacity in such a locational deliverability area and sells 20.1 percent of the capacity in that same area for the purposes of suppressing prices.

[50] P3 notes that the only link between the seller and the beneficiary would be a "contract for differences" or other arrangement in which the beneficiary shares a sufficiently large part of its profits to incent the capacity seller's participation.

[51] P3 states, for example, that the beneficiary could enter into a derivative transaction that bestows upon the seller a synthetic short position in the capacity market, i.e., a contract in which the beneficiary pays the seller an amount that increases as the clearing price in the capacity market drops.

avail itself of the net-short loophole. P3 notes that, under the New Jersey Statute, non-affiliate entities that could combine to avoid the net-short requirement would be: (i) the owners of the new eligible generation, which are entities that are obligated to offer their resources into the capacity auctions; (ii) the state's electric utilities, which are entities who are required to enter into contracts for differences with the generation; (iii) the New Jersey Board of Public Utilities, which is the entity that arranges for the contract between the forenamed entities; and (iv) the State of New Jersey, which is the entity whose statute set up the scheme.

3. <u>Responsive Pleadings</u>

80. The Pennsylvania Commission agrees with PJM and P3 that the net-short requirement creates an unwarranted loop hole giving a state-supported seller that does not itself serve load the incentive to make an uncompetitively low offer that cannot render the seller net-short. The Pennsylvania Commission further agrees that the proposal to eliminate the existing rule is consistent with Commission precedent.

81. The IMM concurs, noting that, under the New Jersey Statute, the net-short requirement is circumvented by requiring a state-chosen resource that presumably does not itself serve load and is not itself net-short to submit the sell offer into the RPM auction. The IMM argues, however, that such a strategy would violate the spirit and intent of the MOPR, given that the sell offer at issue could in fact be regarded as net-short when taking into account the status of New Jersey ratepayers (the buyers).[52]

82. LS Power similarly suggests that the Commission could interpret the current net-short requirement broadly so as to apply to all sellers that have entered into long-term agreements with net-short entities.[53]

83. The New Jersey Rate Counsel opposes the PJM and P3 proposal to eliminate the net-short requirement. The New Jersey Rate Counsel argues that the net-short

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[52] The IMM adds that, should New Jersey determine that its reliability needs are not being adequately addressed through the PJM market, it could require load serving entities in its jurisdiction to opt out of this market altogether by electing to satisfy their capacity obligations under PJM's Fixed Resource Requirement (FRR) alternative. *See* PJM Reliability Assurance Agreement, Schedule 8.1. This argument is also addressed below regarding self-supply at Section V.L.

[53] LS Power notes, however, that its support for this interpretation would be contingent on rule changes governing the way that PJM clears the market such that mitigated sell offers would be able to clear at their actual sell offer and not the mitigated price.

requirement serves as an important check on over-mitigation of offers that are either unmotivated by a suppression strategy or otherwise of little impact on the market. The New Jersey Rate Counsel, however, does support revisions to the existing requirement. Specifically, the New Jersey Rate Counsel proposes that the net-short requirement be revised to apply mitigation not only to resources owned by net-buyers but also to resources offered by counter-parties of net buyers.

84. The PJM Load Group argues that eliminating the net-short requirement is at odds with the fundamental purpose of the MOPR, which is to deter entities having the incentive and ability to artificially depress prices from doing so. The PJM Load Group argues that P3 and PJM have provided no evidence that expanding this rule to entities without the incentive or ability to exercise this type of market power would be just and reasonable. The PJM Load Group further argues that, at most, the proper response would be to reduce the threshold for small locational deliverability areas rather than to eliminate the net-short test altogether.

85. Finally, NJLEUC argues that PJM and P3 have failed to demonstrate that the New Jersey Statute will inevitably have a market-distorting impact on the upcoming RPM auction. NJLEUC asserts that because it remains uncertain precisely what the impact will be, it is equally unclear whether the tariff modifications proposed by PJM, or the remedies sought by P3, are appropriately tailored to the deficiencies they purport to correct. NJLEUC argues that the proposals made by PJM and P3 appear to go well beyond preventing the alleged exercise of buyer market power by state-supported generation.

4. <u>Commission Determination</u>

86. We accept PJM's proposal to eliminate the net-short requirement. The purpose of this provision is to focus the MOPR on entities with the incentive to exercise buyer market power. Thus, under the net-short requirement, only entities purchasing substantially more capacity than they sell are subject to the MOPR because only entities in this position would appear to have the desire to artificially lower capacity prices. As explained below, we agree with PJM and others that the net-short requirement is ineffective and unnecessary.

87. As PJM, P3 and several intervenors note, the net-short requirement's narrow focus may enable a net buyer, or an entity acting on behalf of a net buyer, to evade mitigation by structuring a new entry transaction in such a way that achieves the same price-lowering effect without triggering the MOPR. As the Pennsylvania Commission notes, for example, the net-short requirement allows a state-supported seller that does not itself serve load to make an uncompetitively low offer that will not trigger the MOPR, as the seller would not be in a "net-short" position. As another example, PJM notes that a buyer wishing to reduce the clearing price below a competitive level for the benefit of its load could achieve that result through the terms of its power purchase agreement with the new

entrant, even though the buyer is neither the seller nor an affiliate of the seller. Such a buyer could simply commit to cover the seller's costs and direct in the contract that the seller offer the new plant's capacity at a low price, and such a transaction would not trigger the current MOPR.

88. As these examples demonstrate, the net-short requirement can be gamed, and the evasion can come in a variety of forms – forms not limited to the examples provided above. PJM has thus demonstrated that providing this exemption from the MOPR based on the perceived incentives of an entity will be ineffective at protecting against buyer market power.

89. We further find the net-short requirement to be unnecessary. The PJM Load Group and the New Jersey Rate Counsel argue that removing this exemption will lead to "over mitigation" or that doing so runs afoul of the very purpose of the rule, which is to deter entities with the incentive to suppress prices. We disagree. As discussed later in this order, all sellers will retain the opportunity to demonstrate, on an individual basis, that an offer is indeed competitive and should not be mitigated. Parties with economic offers therefore will not face mitigation, and thus providing this blanket exemption, which parties can evade, is unnecessary.

90. Some intervenors note different ways the net-short requirement could be refined or improved, rather than eliminated. The New Jersey Rate Counsel argues that the net-short requirement should be revised to also apply to resources offered by counter-parties of net buyers. The PJM Load Group argues that PJM should reduce the threshold for small locational deliverability areas rather than simply eliminating the proposal. We are not persuaded, however, that merely refining the net-short requirement, or applying it more broadly, will be an effective means of addressing PJM's legitimate concern that this provision is too easily gamed or evaded. Defining the "net-short" position and determining whether an entity is acting on behalf of another entity in a net-short position can involve significant complications. As explained above, the evasion of the net-short requirement can come in a variety of forms, some unforeseen, and attempting to revise this provision to account for those scenarios may simply lead to further opportunities for gaming. For these reasons, we find that PJM's proposal to eliminate the net-short requirement altogether is just and reasonable.

E. Impact Screen

91. Under PJM's existing tariff, if a sell offer fails PJM's conduct screen, a second screen, the impact screen, is applied. The impact screen reruns the auction to measure the impact that a mitigated offer would have on capacity clearing prices. Offers are

mitigated only if there is at least a $25/MW-day or a 20 to 30 percent change in clearing price, depending on the size of the zone.[54]

1. PJM's Proposal

92. PJM proposes to eliminate the impact screen. Therefore, if an offer fails the conduct screen, it will be mitigated.[55] PJM characterizes its proposal as consistent with the MOPR-type provisions administered by the NYISO and ISO-NE.[56]

93. PJM argues that it does not impose an impact test before it mitigates other types of sell offers that are found non-competitive. PJM states that, regardless of whether that seller has a new plant or an existing plant, when conditions indicate that a seller is in a position to exercise market power, mitigation is applied under PJM's OATT without first assessing how severely the exercise of market power will affect the clearing price.[57] PJM states that, for purposes of symmetry and the equivalent treatment of uncompetitively high offers and uncompetitively low offers, the same rule should apply with respect to PJM's MOPR. PJM argues that such a revision is warranted because even a small change in the clearing price from a below-cost offer, if it deters entry or spurs retirement, can harm competition.

2. P3's Proposal

94. P3 similarly states that the impact screen should be eliminated and that all offers that fail the conduct screen, regardless of their impact on the clearing price, should be mitigated. P3 asserts that such an approach would have the additional benefit of simplifying PJM's procedures by mitigating sell offers that warrant mitigation without the need to rerun the auctions to determine whether mitigation was, in fact, required.

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[54] PJM OATT, Attachment DD at Section 5.14(h)(3).

[55] PJM also proposes two conforming changes. First, PJM proposes to delete a provision providing that the MOPR applies only to a sell offer that "affects" the clearing price. *See* PJM OATT, Attachment DD at Section 6.5(a)(i). Second, PJM proposes to delete as moot subsection iv of this same provision (addressing the re-setting of a price following the application of the impact test).

[56] PJM Filing at 17 (citing NYISO Mitigation Reh'g Order, 124 FERC ¶ 61,301 at P 76).

[57] *See* PJM OATT, Attachment DD at Section 6.5(a)(i)-(ii) (mitigation measures for new and existing resources).

95. P3 notes that, in the unconstrained part of PJM, the $25/MW-day exemption effectively means that there is no buyer market power mitigation because existing clearing prices are near, or even below, $25/MW-day.[58] Specifically, P3 notes that because the capacity clearing price in this region for the 2012-13 base residual auction-was $16.46/MW-day, capacity buyers would have been free to suppress capacity prices all the way to $0/MW-day. P3 argues that annual capacity compensation in the unconstrained portion of PJM could have been reduced by almost $1.4 billion if instead the MOPR had been applied.

96. P3 argues that the impact screen also permits unwarranted price suppression in the constrained portion of PJM. P3 notes that, in the constrained Eastern Mid-Atlantic Area Council region, which includes New Jersey, the 20 percent threshold permitted under the impact screen would have reduced the clearing price in the 2013-14 base residual auction by up to $49/MW-day, equating to a reduction in annual capacity compensation (and hence the market signals for new entry) of over $590 million.

3. Responsive Pleadings

97. The PJM Load Group argues that PJM's impact screen properly reflects the view that, if auction results are not materially affected by a sell offer below the level of the conduct screen, no benefit would be obtained by mitigation. The PJM Load Group further argues that the impact screen, including PJM's existing impact values, were a key provision included in the 2006 RPM Settlement and should not be set aside lightly; PJM and P3 have offered no evidence to suggest that these values have permitted the exercise of buyer market power in specific instances or that relevant circumstances have changed since these impact values were first approved. The PJM Load Group also takes issue with P3's projection of potential supplier losses in PJM's constrained and unconstrained regions. The PJM Load Group argues that these projections are erroneously premised on conditions that have not occurred. The PJM Load Group argues that, regardless, all it would take to prevent the price suppression forecasted by P3 is for a single capacity market seller to offer and clear at a higher price. The PJM Load Group also argues that achieving consistency with the NYISO and ISO-NE MOPR-type provisions is not a valid basis for finding that PJM's proposed elimination of the impact threshold is appropriate or required.

98. The New Jersey Rate Counsel asserts that the impact test should be retained because, like the net-short requirement, it serves as an important check on over-mitigation. The New Jersey Rate Counsel asserts that mitigating offers from new

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[58] Offers are mitigated only if there is at least a $25/MW-day or 20 to 30 percent change in clearing prices, depending on the size of the zone. *See* PJM OATT, Attachment DD at section 5.14(h)(3).

resources that would have little or no impact on clearing prices may cause them not to clear, with another resource clearing instead (likely a high-cost older resource with much shorter remaining useful life). The New Jersey Rate Counsel argues that such a result would not be efficient. However, the New Jersey Rate Counsel acknowledges that the current impact thresholds warrant reassessment. Specifically, the New Jersey rate Counsel proposes that PJM's existing values be limited to a 5 percent to 10 percent range.

99. The Maryland Commission argues that the PJM and P3 proposal to eliminate the impact screen, coupled with other elements of their MOPR proposals, will reduce the incentive to develop innovative technologies or to minimize costs because the only permitted offers will be at, or very near, net CONE.

100. On the other hand, the IMM agrees with PJM and P3 that there is no justification for any impact threshold. The Pennsylvania Commission also agrees, adding that the impact screen is administratively cumbersome, unnecessarily complex, and detracts from the intended function of the MOPR without contributing anything to the functionality of the capacity market. Other intervenors echo these views, too, arguing variously: that because the impact screen allows for manipulation of the true capacity price, it is anti-competitive; that no legitimate definition of market power is based on how much prices are decreased below competitive levels; that it is unjust and unreasonable for the MOPR explicitly to permit market power to be exercised without mitigation when below certain thresholds; and that such a screen would legalize substantial price depressing activities.

4. Commission Determination

101. We accept PJM's proposed elimination of the impact screen. The impact screen precludes mitigation of a below-cost sell offer unless that sell offer, by itself, would decrease the market clearing price by a significant amount: either by $25/MW-day or by 20 to 30 percent, depending on the size of the zone. This provision allows offers that are indisputably uneconomic to escape mitigation. We also agree with P3 and the Pennsylvania Commission that PJM's proposed elimination of the impact screen has the ancillary benefit of simplifying the mitigation process by eliminating the need to re-run auctions. We therefore accept as just and reasonable PJM's proposal to eliminate the impact screen.

102. In response to those who argue that the impact screen should be retained as a check on "over-mitigation," we note that, as discussed later, a new resource whose actual competitive costs are below the offer floor will not be mitigated, as such a resource can verify its actual competitive costs with the IMM. Mitigating an offer that is below a new resource's actual costs cannot be considered "over mitigation."

103. The Maryland Commission argues that the impact screen is necessary to provide the incentive to develop innovative technologies and/or to minimize costs. However, we note that a resource whose demonstrated actual costs are below the offer floor will not be

mitigated; furthermore, the lower such a resource's costs (and offer), the more likely the resource will be to clear. We therefore disagree that elimination of the impact screen will reduce the incentive to either minimize costs or to innovate.

104. We acknowledge the New Jersey Rate Counsel's concern that mitigating offers from new resources that would have little or no impact on clearing prices may cause them not to clear and another resource to clear instead. This is so because mitigating an offer from any resource, no matter the impact on clearing price, may cause it not to clear. As mentioned above, however, because a resource that justifies its costs with the IMM will be allowed to bid its actual competitive costs, only offers that are demonstrated to be uneconomic will be mitigated. The very purpose of the MOPR, in fact, is to hinder such uneconomic entry, i.e., to ensure that an offer that may be the result of buyer market power does not clear at its artificially low level, thereby injecting uneconomic supply into the market. In fact, because the elimination of the impact screen will hinder uneconomic new entry, it will have the concomitant tendency to encourage economic new entry.

105. The PJM Load Group argues that the impact screen properly reflects the view that, if auction results are not materially affected by a sell offer below the level of the conduct screen, no benefit would be obtained by mitigating the offer to a higher level. We disagree. First, there is no parallel screen before mitigation is applied to prevent the exercise of seller market power. That is, the IMM does not calculate whether a sell offer increases the clearing price by $25/MW-day or by 20 to 30 percent, or indeed, by any amount, before acting to protect the market from the exercise of seller market power. We see no reason to employ such a rule to address buyer market power here.

106. Second, the impact screen does not address the joint effect of multiple below-cost offers. Therefore, even if one were to accept that a below-market offer with no material effect on prices should not be mitigated because it does no harm, such a position provides no comfort as the combined effects of several such offers might well affect prices, but would be allowed under the impact screen. We find it unreasonable to allow a new resource to offer into the market at a price $25/MW-day, or 20 to 30 percent below the resource's true entry costs. Such an allowance permits suppression of market-clearing price and harms the long-term viability of the RPM.

107. PJM Load Group notes that the impact values at issue were included in the RPM settlement and found just and reasonable by the Commission and that P3 has presented no evidence to suggest that these values have permitted the exercise of buyer market power, or that relevant circumstances have changed since these impact values were approved. Absent evidence of this nature, argues PJM Load Group, a determination that the values currently included in the MOPR's impact screen are unjust and unreasonable would not be the product of reasoned decision-making.

108. However, PJM has proposed to change this provision under section 205 and has demonstrated that eliminating the impact screen is just and reasonable. Under section 205, there is no need to demonstrate that the existing tariff is unjust and unreasonable; the filer must demonstrate only that the new tariff is just and reasonable. Moreover, parties have presented ample evidence that circumstances have changed—that recent efforts have brought to the fore what were previously unrecognized, or, if recognized, only theoretical, weaknesses in the current MOPR rules.

F. Commission Review of Sell Offers

109. Under PJM's existing MOPR, a sell offer that has been rejected as outside the bounds of PJM's generically-determined costs for a particular asset class, i.e., a sell offer subject to mitigation, may nonetheless be justified subject to showing made to the Commission that the sell offer "is consistent with the real levelized (year one) competitive, cost-based, fixed, net [CONE]" for that unit, assuming that the unit is relying solely on revenues from PJM-administered markets.[59]

1. PJM's Proposal

110. PJM submits that its current rule addressing Commission review of mitigated sell offers fails to specify how this determination is to be made and thus requires clarification. Accordingly, PJM proposes to clarify that such a filing will be made pursuant to FPA section 206, consistent with the Commission's directive to the NYISO.[60] PJM proposes to permit a new resource to obtain from the Commission a determination that its "Sell Offer is permissible because it is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry were the resource to rely solely on revenues from PJM-administered markets (i.e., were all output from the unit sold in PJM-administered spot markets, and the resource received no out-of-market payments)."[61] PJM also states that it will participate in any such proceeding and submit written comments addressing a seller's representations regarding its costs.

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[59] PJM OATT, Attachment DD at Section 5.14(h)(2). Additional sell offers subject to Commission review, under PJM's proposal, are also discussed in Section V.G of this order.

[60] NYISO Mitigation Enhancements Order, 133 FERC ¶ 61,178.

[61] *See* proposed PJM OATT, Attachment DD at Section 5.14(h)(5).

2. Responsive Pleadings

111. The Pennsylvania Commission supports PJM's proposal to require resources to submit a section 206 filing in order to receive a determination from the Commission that a resource's offer is consistent with its expected costs and revenues. The Pennsylvania Commission argues that allowing the IMM to determine if a bid was made at cost and without discriminatory payments would leave too much discretion with PJM and the IMM.

112. The Maryland Commission opposes PJM's proposal, which it calls inappropriate, unworkable, and unsatisfactory. It argues that, given the likely opposition from incumbent generators, the section 206 process would be too time-consuming and cumbersome to be effective. The Maryland Commission and the PJM Load Group further contend that few new resources will have the resources to mount a section 206 challenge.

113. The New Jersey Rate Counsel, NRECA and the PJM Load Group disagree with PJM's requirement that, to gain approval for a unit-specific offer price, resources would have to demonstrate that their offers are consistent with the competitive, cost-based, fixed, nominal levelized, net CONE were the resource to rely solely on revenues from PJM administrative markets. NRECA argues that there are a number of reasons why a resource's costs may be below the estimated net CONE, and thus restricting the exception to demonstrations focused on offering at no more than cost, or demonstrating that the resource has not received payments, some of which are not inappropriate subsidies, is unreasonable.

114. The New Jersey Rate Counsel states that resources should be permitted to present other information, including: a specific forecast of net energy, ancillary services, and capacity revenues over the life of the project; long-term revenues provided under a bilateral contract; incentives in recognition of preferred resource attributes that are not valued in RPM; incremental costs that exclude sunk costs; a net present value comparison of total anticipated net revenues from all sources, including capacity payments, over the life of the project compared to present value costs; and a net present value or net CONE calculation based on incremental costs excluding any sunk costs. The PJM Load Group proposes to eliminate PJM's proposed constraints on the Commission's discretion by placing a period after the word "permissible" in proposed Section 5.14(h)(5) and deleting the remainder of the section.

115. The PJM Load Group further argues that a more reasonable approach would be to require the seller whose offer was screened to demonstrate only that its offer is just and reasonable, consistent with the standards in FPA section 205. It argues that the procedural vehicle for such an approach could be a section 205 filing or a petition for declaratory order for those entities not entitled to make filings under section 205.

116. The IMM states that there should be an exception process under which a market participant may first submit its proposed offer with full documentation to the IMM for review and discussion. It states that, if it agrees that the offer reflects costs and does not reflect out of market payments, PJM does not disagree, and no party appeals to the Commission, the offer would be permitted. It argues that such a process would reduce administrative costs and the duration of the review compared to requiring a 206 filing with the Commission while still preserving the ultimate recourse with the Commission.

117. P3 suggests what it calls a "No-Subsidy" Off-Ramp, which would mean that any resource of any type would avoid the conduct screen altogether if it establishes that it has not received any discriminatory payment.

3. Commission Determination

118. We find unjust and unreasonable PJM's proposal to require parties to submit at the outset a section 206 filing with the Commission to demonstrate that a sell offer is consistent with the project's costs and with expected revenues from other PJM markets. As illustrated by the recent filing in *West Deptford,*[62] a filing with the Commission *ab initio* could result in complex and lengthy litigation that may well be avoided if such determinations are made first by the IMM and PJM. We direct PJM to propose, as discussed below, tariff revisions that allow the IMM and PJM to review such cost justifications.

119. Having the IMM and PJM review such filings is consistent with Order No. 719. In Order No. 719, the Commission envisioned a role for the IMM in the calculation of reference levels and cost calculations, among other things.[63] We found that allowing the RTO or ISO market monitors to undertake such a role would reduce waste and would put to use the expertise developed by these entities.[64] Consistent with this precedent and the IMM's proposal in its comments, we find that parties should have the opportunity to submit their proposed offers with full documentation to the IMM for review. To avoid giving sole discretion to the IMM, however, parties shall also have the right to justify their offers before PJM if the IMM's findings are adverse to the parties' interests.

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[62] *See West Deptford Energy, LLC*, Docket No. ER11-2936-000.

[63] *See Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 at P 375, *et seq.* (2008) (Order No. 719), *order on reh'g*, Order No. 719-A, FERC Stats. & Reg. ¶ 31,292 (2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

[64] *Id.*

120. PJM notes that the Commission rejected a proposal to replace the current MOPR with a provision that would have given responsibility to the IMM to determine whether a seller's new entry offer was an exercise of market power.[65] The Commission did not, however, object to the IMM participating in the process of making this determination. Instead, the Commission objected to a proposal that would have given the IMM "unfettered discretion" to make such determinations unilaterally through a process that would have lacked the certainty for market participants that more objective MOPR tariff standards could provide.[66] The procedure proposed by the IMM and accepted here does not give the IMM the discretion to unilaterally decide whether a resource gets mitigated. We therefore find that the IMM's proposal is consistent with our precedent.

121. We find that first having the opportunity to justify offers with the IMM, and then with PJM, will allow for a less burdensome process than the one proposed by PJM for cost justification purposes. We therefore direct PJM to file, within 30 days of the date of this order, a compliance filing containing revisions to its tariff that allow for a process in which a market participant may first submit its proposed offer with full documentation to the IMM for review. The process must also allow the market participant to have the opportunity to receive a determination from PJM if the IMM's findings are adverse to its interests. To provide certainty to market participants, we will further require these proposed tariff provisions to include an explanation of the information resources that will need to be submitted to the IMM for this determination and the objective standards by which such submittals will be evaluated.

122. In conducting an individualized generation review, PJM proposes that: a sell offer would be permissible when such offer is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry were the resource to rely solely on revenues from PJM-administered markets. We find that this standard is appropriate for reviewing such cost estimates and that PJM must include this language in its revised tariff.

123. Finally, we find P3's "No-Subsidy" Off-Ramp proposal unnecessary. All parties have the opportunity to avoid mitigation by making a cost demonstration, and we are not persuaded that adding an additional exemption is warranted.

G. State Mandated Exemption

124. The MOPR exempts from its operation any planned resource being developed in response to a state regulatory or legislative mandate to resolve a projected capacity

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[65] PJM Filing at 13 (citing March 26 Order, 126 FERC ¶ 61,275 at P 190.

[66] *Id.*

shortfall, as determined pursuant to a state evidentiary proceeding that includes due notice, PJM participation and an opportunity to be heard.[67]

1. PJM's Proposal

125. PJM proposes to make MOPR exceptions based on state policy grounds subject to the same process as any other sell offer seeking a MOPR exception, i.e., subject to the receipt of a section 206 authorization. PJM states that this policy would be consistent with the policy that the Commission has required the NYISO to adopt.[68] PJM's proposed language provides an exemption for new entry that is pursuant to "a state-mandated requirement that furthers a specific legitimate state objective" and that involves a sell offer that would not "lead to artificially depressed capacity prices" or "directly and adversely impact [the Commission's] ability to set just and reasonable rates for capacity sales" in the PJM region or any affected locational deliverability area.

126. In support of its proposal, PJM notes that the existing rule requires it to pass on the adequacy of state administrative processes and to determine whether an offer is legitimately intended to address a projected capacity shortfall. PJM asserts that an RTO is not well-suited to do either.

2. P3's Proposal

127. P3 asserts that PJM's existing state mandate exemption is inadequate for the purposes of deterring buyer market power because it allows states to shield schemes intended to promote uncompetitive sell offers. P3 argues that there should be no separate exemption for state-sponsored generation projects.

3. Responsive Pleadings

128. Dominion, Viridity and CPV Power argue that the language of the current MOPR state-exemption should be retained. Viridity argues that changing this longstanding rule that specifically protects the ability of NJ and MD to do exactly what they have proposed would have the effect of propping up prices in the capacity market – at the same time that evidence suggests that the RPM market construct should be eliminated or substantially modified. According to CPV Power, the current MOPR exemption for state-sponsored projects is precisely the mechanism developed through the stakeholder process pursuant to which a state could go outside of the RPM auctions when it believed they were failing to generate resources the state determined to be necessary.

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[67] PJM OATT, Attachment DD, Section 5.14(h)(1)(iv).

[68] *See* NYISO Mitigation Order, 122 FERC ¶ 61,211 at P 92.

129. On the other hand, PPL objects to the current MOPR's exemption for state-sponsored projects, arguing that no party should be granted *carte blanche* to exercise market power.

130. Among the parties who support PJM's proposal to permit a below-cost offer to escape mitigation if the seller first obtains a determination from the Commission under section 206 is the Pennsylvania Commission, which argues that this approach achieves the correct balance of protecting the RPM against buyer market power while respecting states' rights to develop individual energy policies tailored to their state. Moreover, argues the Pennsylvania Commission, PJM's solution is more reasonable than the proposal submitted by P3, which unnecessarily requires PJM to determine whether a resource has received any improper subsidies or is bidding at cost. The Pennsylvania Commission agrees with PJM that when necessary, review of state policy justifications is a matter better addressed by the Commission than by PJM, and asserts that this also ensures a more transparent process.

131. Shell also supports PJM's proposal, stating that states other than New Jersey and Maryland are acting to suppress RPM clearing prices by, for example, using non-bypassable retail rates to subsidize new capacity that is offered into the RPM auctions at below-competitive prices guaranteed to clear. Hess supports PJM's proposal to the extent it requires a project seeking a state-policy exemption to file with the Commission under section 206, but requests that the Commission direct PJM to submit a compliance filing to make clear that states seeking an exemption on state policy grounds must only seek such an exemption with respect to projects that are unable to pass the economic entry test (which Hess argues should be based on unit-specific net CONE).

132. Among the parties who object to PJM's proposal are those who object to the requirement that the filing be made under section 206, as opposed to a simple petition or motion, or a section 205 filing.[69] According to the PJM Load Group, it is not clear what a seller must prove to be unjust and unreasonable under a section 206 filing. PJM Load Group and the New Jersey Rate Counsel assert that the procedural vehicle should instead be a section 205 filing (for those entities entitled to make such filings) or a petition for declaratory order (for those entities like municipal and cooperative customers that are not entitled to do so). The PJM Load Group further argues that the filing fee for such a petition for declaratory order must be set at the same level as a section 205 filing, that is, zero.

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[69] These parties include Dominion, the PJM Load Group, and New Jersey Rate Counsel.

133. Dominion and the Maryland Commission are concerned about timing under PJM's proposal. The Maryland Commission notes that a new resource would be required to submit its section 206 petition substantially in advance of the auction and that an incumbent generator intent on litigation could forestall the Commission's acting on the petition before the auction, erecting yet another barrier to entry. Dominion notes that because a Commission determination must be made prior to the auction, it will be impossible for the Commission to determine whether or not the offer at issue will affect market-clearing prices.

134. Other parties object to the language of PJM's proposed state-policy exemption. The PJM Load Group maintains that PJM's proposed language improperly attempts to limit the circumstances in which the Commission may find that a screened offer is just and reasonable and suffers from circular reasoning.[70] According to the PJM Load Group, if PJM's proposed MOPR changes are intended to prevent "artificially depressed capacity prices" and to prevent "unjust and unreasonable rates for capacity sales," then PJM is essentially taking the position that a screened offer may be unscreened only if it passes the screen. The New Jersey Rate Counsel and the Maryland Commission have a similar concern: if all downward price pressures are considered "artificial" price suppression, then PJM's new proposed criterion would swallow the exemption. The New Jersey Rate Counsel believes that the existing MOPR reliability-based exception should be retained, with the only change being the Commission would determine whether the exemption had been met.

135. The Maryland Commission further argues that PJM's proposal introduces unnecessary bureaucratic process, raises new regulatory obstacles and costs for new entrants, and places the Commission in the position of second-guessing state policies and actions.[71] CPV Power similarly asserts that limiting the state's prerogatives only to projects that the Commission approves pursuant to a section 206 filing would establish the Commission as arbiter of decisions expressly left to states by the FPA. CPV Power

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[70] As noted in the prior section, to rectify this and the PJM Load Group's above-mentioned procedural concern, PJM Load Group proposes that "If the Commission does require that screen clearances be obtained from the Commission, then at least PJM's proposed Section 5.14(h)(5) should be modified by deleting the words '206 of the FPA' and inserting in lieu thereof the words '205 of the FPA or a petition for a declaratory order.' Also, to eliminate PJM's proposed, inherently circular constraints on the Commission's discretion, a period should be placed after the word 'permissible' in proposed Section 5.14(h)(5) and the remainder of the section should be deleted." *See* the PJM Load Group Protest at 65.

[71] Maryland Commission protest, Exhibit 1, Nazarian Testimony at 19-20.

submits that all state-mandated projects should be assumed to promote legitimate public policies and therefore should be exempt from mitigation, unless the IMM or other party can show that the project resulted from a state-mandated process intended solely to suppress wholesale capacity prices, and requests that the Commission modify PJM's proposal to this end.

136. On the other hand, a number of commenters agree with P3 that the state-policy exemption should be eliminated altogether. EPGA asserts that state-supported generation initiatives in New Jersey and Maryland threaten the efficacy of the capacity market and that, absent changes, there will be an artificial suppression in the capacity market and proper signals will not promote investment for new or incremental generation. EPGA argues that existing capacity resources will be financially harmed, consumers will not be aided in their consumption decisions, and demand response and other load management programs will be compromised. Finally, EPGA argues that other states may need to seek ratepayer subsidies in order to build generation. A number of commenters, including Compete and FirstEnergy, argue that the MOPR should be adjusted to require full mitigation, that is, to require that generation capacity resources that receive ratepayer-funded out-of-market payments under state commission-approved programs or orders must offer all such capacity into the RPM at an offer price that is equal to 100 percent of their costs or of net CONE.[72]

137. Several parties, including the Pennsylvania Commission, the IMM and EPSA, note that states seeking full independence in resource procurement choices can opt out of the RPM markets via the Fixed Resource Requirement (FRR) alternative[73] or can implement a form of capacity procurement that complements the RPM. According to the Pennsylvania Commission, under the FRR alternative, a state undertakes to bear all of the costs and receive all of the benefits associated with procuring all necessary capacity resources for its citizens. This, according to the Pennsylvania Commission, contrasts sharply with the problem posed by unmitigated subsidized entry, where the costs are

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[72] The IMM also proposes that out of market payments not be permitted. *See* IMM comments at 13.

[73] *See* PJM Reliability Assurance Agreement at Schedule 8.1. An entity that chooses the FRR alternative submits an FRR capacity plan to PJM, a long-term plan for the commitment of capacity resources to satisfy the entity's capacity obligations. The area covered by the plan is: (i) the service territory of an IOU; (ii) the service area of a public power entity or electric cooperative; or (iii) a separately identifiable geographic area that is bounded by wholesale metering, or similar appropriate multi-site aggregate metering, and for which the FRR entity has or assumes the obligation to provide capacity for all load (including load growth) within such area.

borne not only by consumers within the sate that is sponsoring the entry, but also by other states within PJM. In the case of unmitigated subsidized entry, the Pennsylvania Commission asserts that one state's choice to subsidize resources will completely undermine competitive markets for resources serving other states, including resources in those states that prefer to rely on private capacity for generation construction.[74] The Pennsylvania Commission asserts that no one state (or states) can claim the right to artificially skew wholesale outcomes by escaping market power mitigation of subsidies, particularly given that such efforts would affect all other PJM states.

138. Finally, the Ohio Commission requests that the Commission affirm that individual states possess and will continue to possess the requisite authority to require the construction of generation facilities within the confines of their respective state boundaries. In addition, the Ohio Commission requests that the Commission affirm that states will continue to possess the requisite authority to arrive at the proper intrastate cost recovery mechanism for that generation. In addition, the Ohio Commission maintains that the Commission must affirm that individual states are not precluded from ensuring that electric distribution utilities can dedicate to intrastate consumers the capacity and energy and the rate associated with the cost of that facility. Therefore, asserts the Ohio Commission, this Commission must not preclude a state from arriving at reasonable methods to ensure its generation clears the RPM capacity auctions.

4. <u>Commission Determination</u>

139. The mounting evidence of risk from what was previously only a theoretical weakness in the MOPR rules that could allow uneconomic entry has caused us to reexamine our acceptance of the existing state exemption, which we approved as part of the 2006 RPM Settlement Order.[75] For these reasons, we accept as just and reasonable PJM's proposal to eliminate the current state exemption.

140. However, we reject PJM's proposed replacement mechanism. PJM's proposed state exemption restates an affected party's right to file to prospectively change a filed

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[74] Pennsylvania Commission comments at 13 ("Pennsylvania is committed to the competitive market structure and would be harmed by any action by another state within PJM that subsidized a participant in PJM's interstate wholesale electric capacity market, absent an effective mitigation mechanism in PJM's RPM").

[75] In the 2006 RPM Settlement Order, the Commission determined that current exemption "is reasonable because it enables states to meet their responsibilities to ensure local reliability." 2006 RPM Settlement Order, 117 FERC ¶ 61,331 at P 104. We note that removing this provision from PJM's tariff in no way impairs the ability of a state to request an exemption for reliability reasons under section 206.

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rate schedule (other than its own), which is embodied in section 206 of the FPA. This is a statutory right, not a right created by contract.

141. The MOPR, as modified herein, sets forth reasonable procedures for establishing a bid floor for a new generating unit and, as discussed earlier, the tariff will provide a mechanism by which a generating unit may seek to establish a different rate for a competitive bid if it believes its costs are lower than those in the default bid.[76] Further, the MOPR does not interfere with states or localities that for policy reasons seek to provide assistance for new generation entry if they believe such expenditures are appropriate for their state. The MOPR ensures only that the wholesale capacity market prices remain at just and reasonable levels. The Commission has previously found, and we reiterate here, that uneconomic entry can produce unjust and unreasonable wholesale rates by artificially depressing capacity prices, and therefore the deterrence of uneconomic entry falls within our jurisdiction.[77] It is the potential for these unjust and unreasonable outcomes in a Commission-jurisdictional market that is the focus of our actions here.

142. Furthermore, as argued by the Pennsylvania Commission, among others, effective mitigation of uneconomic entry into wholesale capacity markets does not encroach on a state's ability to act within its borders to ensure resource adequacy or to favor particular types of new generation.[78] In response to the Ohio Commission's request, we reiterate that states are free to promote all of those policies. However, as the Pennsylvania

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[76] Furthermore, as required here, such a demonstration by a generating unit will not in the first instance involve a section 206 petition, and therefore concerns about timing, whether because an incumbent generator could forestall Commission action until after an auction, or because the Commission would have to determine the effect of a bid on clearing prices before an auction, are absent. Also, as pointed out by the Pennsylvania Commission, the IMM and EPSA, states seeking full independence in resource procurement choices can implement a form of capacity procurement that complements the RPM or can opt out of the RPM markets via the FRR alternative, an option discussed more fully in Section V.K. below.

[77] *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 90-91 (2009). See also *NYISO*, 124 FERC ¶ 61,301 (2008), *order on reh'g*, 131 FERC ¶ 61,170 (2010), *rehearing pending*.

[78] The Commission has found that, for example, "our action in approving in the NYISO's minimum bid proposal does not adversely affect [the New York Public Service Commission's] regulation of resource adequacy in [New York City because] ... [t]his new pricing methodology does not prescribe whether or what types of generation facilities should be built[.]" NYISO Mitigation Order, 122 FERC ¶ 61,211 at P 112.

Commission notes, there is no valid state interest in ensuring that uneconomic offers can submit below-cost offers into the RPM auction.

143. We reject CPV Power's assertion that only if the IMM or other party can demonstrate that a project resulted from a state-mandated process intended solely to suppress wholesale capacity prices should it be mitigated. While the Commission acknowledges the rights of states to pursue legitimate policy interests, and while, as we have said, any state is free to seek an exemption from the MOPR under section 206, it is our duty under the FPA to assure just and reasonable rates in wholesale markets. As the Pennsylvania Commission notes, without effective mitigation of state-sponsored uneconomic entry, the actions of a single state could have the effect of preventing other states from participating in wholesale markets. Because below-cost entry suppresses capacity prices and because the Commission has exclusive jurisdiction over wholesale rates, the deterrence of uneconomic entry falls within the Commission's jurisdiction, and we are statutorily mandated to protect the RPM against the effects of such entry.

H. Resources Subject to Mitigation

144. PJM's MOPR currently allows zero-price offers for nuclear, coal, integrated gasification combined cycle (IGCC) facilities and hydroelectric resources.

1. PJM's Proposal

145. PJM proposes to add wind and solar facilities to the MOPR provision that currently allows for zero-price offers, and PJM also proposes to eliminate its existing zero-price allowance for upgrades or additions to an existing capacity resource.[79] PJM states that the net cost of wind and solar resources, which are intermittent resources, will bear little relation to the Net Asset Class estimates that will be determined under PJM's OATT for CC and CT plants and may be complicated by credits and incentives. PJM asserts that an existing resource is a planned resource if it adds capacity and that adding capacity to an existing CC or CT plant may well be an effective means of pursuing a price-suppression strategy.

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[79] PJM also proposes several clarifying changes, including deleting from the current zero-price allowance for nuclear, coal and IGCC facilities the term "base load" and the phrase "that require a period of development greater than three years." PJM states that deletion of these terms is warranted given that they add little to the list of technology types intended to be included within this provision and because their continued inclusion would invite unnecessary debate regarding the scope and application of these terms.

2. P3's Proposal

146. P3 asserts that while a buyer mitigation regime should apply to all resources with no exceptions, the expedited circumstances warrant the application of mitigation only to CT and CC resources for the next RPM auction (the May 2011 base residual auction). P3 proposes to defer to a subsequent proceeding, subject to a time-table established by the Commission, the appropriate mitigation regime applicable to demand response, renewable, and long-lead-time resources. P3 asserts that this deferred approach is appropriate, given that CT and CC units pose the principle threat to the integrity of the upcoming auction.

3. Responsive Pleadings

147. Electric Power Generation Association (EPGA) supports P3's proposal to delete the language in the tariff limiting mitigation to "planned generation capacity resources."

148. The Pennsylvania Commission supports PJM's proposal, which it believes ensures that the MOPR provisions target the resources that are most likely to exercise buyer market power.

149. The IMM argues that the application of the MOPR should not turn on technology type. The IMM asserts that monopsony power is not acceptable, regardless of the technology on which it is based. The IMM further asserts that the MOPR should be robust enough and based on the appropriate economic theory so that any legitimate offer will pass and any non-legitimate offer will fail. The IMM states that exempting particular technologies suggests that the rule does not distinguish between legitimate and non-legitimate offers. The IMM adds that while it may be more, or less, likely that the MOPR will apply to one technology versus another technology, these probabilities alone offer no justification in support of a MOPR exemption. With respect to long lead time units, the IMM proffers that units that require more than the three-year lead time embedded in the RPM auction structure should be permitted to request a determination from PJM as to whether the unit is needed in a particular delivery year. If needed, explains the IMM, the unit could be constructed and offered into the auction at any price less than the offer cap with the explicit condition that the unit received no out-of-market revenues.

150. CPV Power objects to the PJM and P3 proposals to limit the application of the MOPR to gas-fired CT and CC units, the two resource classes most likely to respond in the near term to New Jersey's and Maryland's need for new resources. CPV Power argues that these proposals will hobble, if not block altogether, new entry by these beneficial resources, which rely on abundant, efficient, clean and proven domestic reserves. CPV Power also challenges PJM's rationale for proposing to exempt some resources, such as hydroelectric units, (they will further "laudatory public policy objectives"), but not exempting other resources, namely, gas-fired plants. CPV Power

responds that PJM should not be in the generation development or supply planning business, nor should it be in the business of second-guessing the wisdom of state-level resource choices, or somehow determining whether a particular resource would further a "laudatory" policy goal.

151. The PJM Load Group argues that PJM provides no testimony or evidence to, first, demonstrate that certain types of resources are inherently capable of engaging in actions that require buyer mitigation while others are not and to, second, provide an explanation of why preemptive development of CTs or CCs units should be singled out for MOPR application, while automatically exempting other types. The PJM Load Group notes that the tariff language that PJM proposes appears to eliminate the upgrade/addition exemption for all types of generation capacity, not just for CTs and CCs. The PJM Load Group argues that upgrades and additions to those facilities should be similarly exempt and that PJM provides no explanation for this disconnect.

4. **Commission Determination**

152. We accept PJM's proposal to add wind and solar generation to its list of generator types that are not required to offer into the base residual auction at a price higher than zero. We also accept PJM's proposal to eliminate the zero-price exemption for upgrades and additions to an Existing Capacity Resource.[80]

153. We find persuasive PJM's justification for applying the MOPR to CTs and CCs and not the exempted resources. CTs and CCs have the shortest development time to respond to capacity needs and thus are more efficient resources to suppress capacity prices. In addition, as PJM notes, wind and solar resources are a poor choice if a developer's primary purpose is to suppress capacity market prices. Due to the intermittent energy output of wind and solar resources, the capacity value of these resources is only a fraction of the nameplate capacity. This means that wind and solar resources would need to offer as much as eight times the nameplate capacity of a CT or CC resource in order to achieve the same price suppression effect.

154. Estimates for CT or CC plants can be drawn from a variety of sources from around the country, and the estimates do not vary greatly. On the other hand, developing expected investment costs of coal, nuclear, or IGCC base-load resources that could be used as a reliable MOPR reference value would be more difficult, as not many of these resources have been constructed and placed into commercial operation in recent years and the estimates could vary greatly.

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[80] We also accept PJM's proposal to eliminate from the tariff references to "base-load" and facilities "that require a period of development greater than three years."

155. Long lead time resources also have a greater cost variance when compared to CT or CC plants. We agree with PJM that developers of longer lead time projects make investment decisions based on several years of auctions and energy market prices. A long lead time resource must necessarily begin construction and incurring the associated costs in advance – and often several years in advance – of the first capacity auction in which it participates. As a result, when a long lead time resource finally participates in a base residual auction, the resource would most likely have tens or hundreds of millions of dollars of sunk costs, yielding a net avoidable incremental cost that is small, or even zero. By contrast, since a CT or a CC does not need to undertake most of its construction until after it clears in its first auction, its net incremental costs at the time of its first auction are near its full construction costs (net of market energy revenues). Since a competitive offer, and a reasonable offer floor, would approximate the seller's incremental cost, a reasonable offer floor for a long lead time resource would be substantially below its full construction cost (net of market energy revenues), and substantially below those of a new CT or CC. Moreover, CT or CC resources can test the market by offering a bid at the price needed to make the project financially viable and, if such a bid does not clear, can re-assess the viability of the project at a future time.. In sum, we do not believe that the exempted resources and CTs/CCs are similarly situated, and thus, based on the foregoing facts, we do not believe that the MOPR is unduly discriminatory.[81]

156. We also agree with PJM's proposal to no longer exempt upgrades or added capacity from the MOPR. Upgrading or adding capacity to a resource means the resource is considered a planned resource, and adding capacity to an existing CC or CT plant could potentially be an effective means of pursuing a price-suppression strategy. As with other new entrants, these resources would have the opportunity to apply for an exemption through the process discussed in this order.

157. The PJM Load Group reads PJM's language as proposing to mitigate upgrades of all types of generation capacity, not just CTs and CCs. We note, however, that since under PJM's proposal wind, solar, and other capacity resources listed in the tariff are permitted to offer at zero, such resources by definition are already exempt from the MOPR.

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[81] *California Independent System Operator Corporation*, 119 FERC ¶ 61,076, at P 369 (2007).

I. Duration of Mitigation

158. Under PJM's existing MOPR, mitigation is applied for one auction, i.e., for the first delivery year in which the resource qualifies as a Planned Generation Capacity Resource,[82] regardless of whether the resource clears.[83]

1. PJM's Proposal

159. PJM proposes to apply its MOPR to a Planned Generation Capacity Resource in all base residual auctions up to and including the second successive base residual auction after the base residual auction in which the new entrant's resource clears. PJM asserts that this is consistent with findings made by the Commission regarding the abilities and incentives of a new entrant to suppress prices.[84] PJM also argues that its proposal is appropriate because it matches the three-year lag between the time a Planned Generation Capacity Resource first clears a base residual auction and the time it would enter commercial operation for the first delivery year for which it is committed. PJM states that, in the interim, there will be two additional base residual auctions in which the Planned Generation Capacity Resource would presumably offer, but not yet be in service and still have considerable avoidable project investment and development costs.[85] PJM states that its proposal is required in order to cover the period during which the costs of the new resource are not fully sunk, thereby recognizing the resource's ongoing ability, during this period, to affect clearing prices.

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[82] A Planned Generation Capacity Resource is a resource that is participating in the interconnection process. Once a resource begins to receive interconnection iervice, it is no longer classified as a Planned Generation Capacity Resource. *See* PJM Reliability Assurance Agreement at Section 1.70.

[83] PJM OATT, Attachment DD at Section 5.14(h)(2).

[84] PJM Filing at 19-20, (citing NYISO Mitigation Order, 122 FERC ¶ 61,211 at P 114-16; ISO Capacity Market Revisions Order, 131 FERC ¶ 61,065 at P 83).

[85] PJM notes, for example, that a planned generation capacity resource that offers into the 2014-15 base residual auction in May 2011 for first time and clears, expecting to be in-service three years later, i.e., just prior to the 2014-15 delivery year, is still considered to be "planned" in the following two actions, since it will likely not yet be in-service at the time of those two subsequent auctions.

2. P3's Proposal

160. P3 proposes to continue mitigation until a resource proves that it is economic by clearing in two base residual base auctions. Resources that clear in two capacity auctions would thereafter be permanently exempt from mitigation.[86] P3 argues that such an approach is the closest approximation to the Commission's recently-approved standard for the NYISO.[87]

161. P3 argues that this revision is necessary because the existing single year limitation can be easily circumvented by offering a resource into an auction at a high price prior to the time when it is anticipated to be ready. P3 notes that such an offer would then fail to clear and the resource would complete its one-year mitigation period close to its start-up date. P3 adds that even without such machinations, a one-year mitigation period does virtually nothing to remove the ability and incentive to exercise buyer market power. P3 argues that the resources used to artificially depress capacity prices have a useful life of several decades and that an uncompetitive resource will depress capacity market clearing prices in every year it participates, not merely the first year.

162. P3 also argues that the MOPR is inappropriately limited to base residual auctions, and should also apply to incremental auctions. P3 notes that, while prices and volumes in the incremental auctions may be smaller than those in the base residual auctions, the exemption for incremental auctions still permits resources that are otherwise mitigated by the MOPR to begin to suppress prices even in the first year of operation.

3. Responsive Pleadings

163. A number of intervenors generally agree with PJM and P3 that subsidized resources could re-bid in subsequent years and suppress prices absent the extension of the MOPR. The length of duration supported by these intervenors, however, varies. Some argue that the duration should last until the resource is competitive.

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[86] Under P3's proposal, a resource that previously cleared only in part would only be exempt from mitigation for that portion of its offer that cleared. For example, if a 500 MW resource was offered in the previous base residual auction, but only 200 MW cleared, the 200 MW would thereafter become exempt from the MOPR.

[87] NYISO Mitigation Enhancements Order, 133 FERC ¶ 61,178 at P 51 (finding that any resource that is not clearing in the market is uneconomic and requiring that mitigation continue, regardless of how long the resource has already been subject to mitigation).

164. Other intervenors argue that the PJM and P3 proposals are unworkable because: (i) both proposals would further impair the financeability of projects developed pursuant to the RPM; and (ii) a new capacity resource would be required to construct the facility so as to meet its commitments in the first base residual auction that it clears, with no certainty as to whether it would clear (and receive capacity payments) for additional base residual auctions. LS Power states that, once a resource clears the base residual auction, it has been deemed economic and should not be subject to future mitigation if the market conditions and assumptions underlying its bid change. CPV Power requests that the time period for the proposed MOPR be revised such that the MOPR would apply to new entry offers for every year until an entrant clears its first base residual auction or for three years following its in-service date, whichever is earlier.

165. LS Power states that, alternatively, another option to explore (during a paper hearing) would be to extend the New Entry Price Adjustment term and apply the MOPR conterminously with that extended term, providing revenue assurance for the generator and mitigation of the capacity sell offer for the term of the New Entry Price Adjustment.

166. The Pennsylvania Commission argues that PJM's proposal is a just and reasonable approach. Hess submits that the Commission should approve the three-year period on the condition that, rather than requiring a developer to obtain Commission approval to use unit-specific net CONE, PJM examines on a unit-specific basis a project's costs and revenue expectations to determine whether the new entry is economic.[88]

167. However, Dominion asserts that PJM's proposal to continue mitigation after a unit clears is not sufficiently supported; Dominion argues that such a rationale is at odds with the purpose of the MOPR, which is to prevent uneconomically low bids. CPV argues that PJM's proposal places a large risk on new generation resources, and because this risk cannot be factored into gross or net CONE, PJM's proposal would effectively bar new entry for any resource that requires capacity payments longer than one year to amortize construction costs and would further undermine the efficacy of the very process – the RPM – that is intended to facilitate such entry. LS Power argues that, once a project has been financed and begins construction, which would be shortly after clearing the first base residual auction, it no longer has "considerable avoidable project and investment and development costs," as PJM claims. The New Jersey Rate Counsel argues that while PJM's mitigation proposal might be an appropriate response to intentional efforts to suppress prices, it is not appropriate in a mitigation scheme focused on price impacts without regard to intent.

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[88] Hess notes that, otherwise, extending mitigation from one year to three is not just and reasonable.

168. The New Jersey Rate Counsel also argues that the MOPR should apply for one year and proposes that the IMM, or any market participant, could file under FPA section 206 to have mitigation extended for any resource that they believe should be mitigated longer. The PJM Load Group asserts that P3 has offered no proof that the single-year mitigation limitation has ever been circumvented and, at any rate, the fact that a rule can be circumvented is no reason to find it unjust and unreasonable. The PJM Load Group concludes that P3's proposed remedy would deter the new entry of resources whose costs are low enough to trigger mitigation.

169. The PJM Load Group argues that P3's claim that its proposal is similar to mitigation in the NYISO is not sufficient evidence that a proposal to expand mitigation indefinitely is appropriate. The PJM Load Group states that a major distinction between New York City and anywhere else is the issue of open and competitive new entry and that, while there is general agreement that entry in New York City is difficult, there is no indication of such limitations in PJM.

170. The IMM states that the competitive offer of a new resource participating in its second base residual auction, after clearing in its first base residual auction, is the avoidable cost rate, not net CONE. The IMM argues that, as such, the MOPR should not create barriers to entry by creating risks for new entrants. The IMM further argues that the P3 and PJM proposals would place an unnecessary burden on the potential entrant by requiring the resource's costs to match the relevant market signal for one, or two, additional years and that such a requirement would act as a deterrent to competitive entry. The IMM further states that such an approach would put the new entrant at risk of being forced out of the market by predatorily-priced capacity additions to an incumbent's existing generation designed to defeat and deter new entry.

171. The IMM states that the MOPR should require that a unit clear one base residual auction based on an offer of net CONE, or its demonstrated individual net CONE, and demonstrate that it is not receiving any subsidies and has not contracted to receive any subsidies. From then on, any offer would be acceptable, subject to the ongoing requirement to demonstrate that it is subsidy-free and subject to the avoidable cost rate-based caps. The IMM further argues that offer floors should apply to new resources in all auctions, including both base residual auctions and incremental auctions.

4. <u>Commission Determination</u>

172. For the reasons discussed below, we agree that PJM's existing tariff needs to be revised. However, we find that PJM's proposed revision is unreasonable and we will accept it subject to revision.

173. PJM's existing tariff provides that the MOPR is applied only once – namely, to the offer made in the base residual auction for the first delivery year in which the resource qualifies as a capacity resource. Such a provision, however, still permits a resource to

submit a less than competitive bid in the second auction that results in an unjust and unreasonable reduction in price. For this reason, we conclude that the existing MOPR provision that limits the application of an offer floor to one auction is not reasonable.

174. We also conclude that PJM's proposed revision is not just and reasonable, and therefore, we reject it. In some instances, PJM's proposal would unreasonably remove the offer floor before the resource has demonstrated that it is needed by the market. That is because PJM would apply the offer floor only to Planned Generation Capacity Resources, which are resources that are participating in the interconnection process.[89] Once a resource begins to receive interconnection service, it is no longer classified as a Planned Generation Capacity Resource, and thus, it would not be subject to the offer price floor under PJM's proposal. A resource could lose its status as a Planned Generation Capacity Resource before the resource has cleared a capacity auction, thereby enabling an uneconomic resource to bypass the MOPR and successfully and artificially suppress capacity prices.

175. On the other hand, PJM's proposal also mitigates resources that should not be mitigated. PJM's proposal would apply the offer floor to a resource that has already cleared in a PJM capacity auction, and thus, that has already demonstrated that it is needed by the market. In these instances, PJM's proposal would unreasonably apply the offer floor to an economic resource and could therefore inefficiently discourage the entry of new capacity that is economic. That is because PJM proposes to apply the offer price floor to a Planned Generation Capacity Resource for two base residual auctions beyond the first auction in which the resource clears. We agree with the IMM that once a new resource has cleared in one auction at the offer price floor, the resource has demonstrated that it is needed by the market and it is therefore economic. The resource's presence in the market at this point does not artificially suppress market prices, and there is no reasonable basis for continuing to apply the MOPR to it.

176. We agree with the IMM that the appropriate duration is that the MOPR offer floor should apply to each new resource in the base residual and each incremental auction until the resource demonstrates that its capacity is needed by the market at a price near its full entry cost – by clearing one of the PJM capacity auctions (base residual or incremental) at an offer price near its full cost of entry. Under such an approach, the MOPR would apply to any resource until it has proven that it is needed by the market and from that point forward, the resource would be treated as an existing capacity resource not subject to the MOPR. Unlike PJM's approach, the IMM's approach would not unfairly mitigate a resource (or require it to cost justify a lower bid) in the years after it has cleared the auction.

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[89] *See* PJM Reliability Assurance Agreement at Section 1.70.

177. The IMM also suggests we add as a second requirement that the resource show it is not receiving discriminatory subsidies. We decline to add this requirement because even if discriminatory subsidies are being received, if the resource is needed at the MOPR bid then it is a competitive resource and should be permitted to participate in the auction regardless of whether it also receives a subsidy.

178. We therefore require PJM to submit tariff language in its compliance filing adopting the approach discussed above.

J. Sunset Provisions

1. PJM's Proposal

179. PJM proposes to delete the sunset provision, pursuant to which the MOPR automatically terminates when there is a positive "Net Demand for New Resources" over a period of consecutive years beginning with the first RPM delivery year in a specified portion of the PJM region that was not capacity-constrained at the time RPM was implemented. PJM states that the defined term, "Net Demand for New Resources," was deleted from PJM's OATT in 2009. PJM further asserts that the objectives served by the MOPR are not time-limited. As such, PJM states that the MOPR should not be subject to a sunset provision.

2. P3's Proposal

180. P3 proposes, like PJM, to delete the sunset provision.

3. Responsive Pleadings

181. EPGA, Dayton, and the IMM support PJM's proposed elimination of sunsetting. The IMM argues that the objectives of the MOPR are not time-limited and that the only effect of the existing provision would be to prevent application of the MOPR under possible future circumstances when the rule should apply.

4. Commission Determination

182. We accept PJM's proposal to delete the sunset provision. We agree with PJM that the objectives of the MOPR are not time-limited. Furthermore, the provision is no longer necessary because it relies upon a definition of "net demand for new resources" from an RPM tariff rule that has been deleted.

K. Self-Supply

183. PJM's existing MOPR provides, in relevant part, that PJM "shall accept Sell Offers to provide Capacity Resources in accordance with the following priority and criteria for allocation: (i) first, all Sell Offers in their entirety designated as self supply . . . ."[90]

1. PJM's Proposal

184. PJM states that it has never intended to exempt self-supply[91] offers from application of the MOPR, but that subsection 4 of the current MOPR is ambiguous and requires clarification.[92] PJM states that subsection 4 addresses the construction of a revised supply curve after the MOPR is triggered and one or more new entry sell offers are re-priced to a higher level. PJM proposes to delete this subsection as moot given that under its proposal it will no longer construct alternative supply curves. PJM states that to further clarify the status of self-supply in the MOPR, it proposes to add a cross-reference to the RPM OATT self-supply provision to clarify that self-supply offers are subject to the MOPR.[93]

2. P3's Proposal

185. Unlike PJM, P3 construes PJM's existing MOPR as exempting self-supply. P3 argues against such an exemption, arguing that it could be easily gamed. Specifically, P3 argues that load serving entities, who would benefit from the use of market power to suppress capacity prices, could designate their own capacity resources as self-supply. P3 adds that load entities committed to self-supply for legitimate reasons retain the option of satisfying their capacity obligation outside of RPM, through reliance on the FRR alternative.

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[90] PJM OATT, Attachment DD at Section 5.14(h)(4).

[91] PJM's OATT defines self-supply as: "[C]apacity Resources secured by a Load-Serving Entity, by ownership or contract, outside a Reliability Pricing Model Auction, and used to meet [capacity] obligations . . . ."

[92] PJM cites this ambiguity as the apparent cause for P3's lengthy analysis, in P3's complaint (discussed below), in support of the argument that self supply should not be exempt from the MOPR.

[93] *See* proposed PJM OATT, Attachment DD at Section 5.2.

3. **Responsive Pleadings**

186. Public Power-NJ argues that the PJM and P3 proposals, in an overbroad effort to address the New Jersey Statute, will unnecessarily undermine the ability of municipal utilities and cooperatives to serve their customers at the lower costs they have been able to achieve through their tax exempt status and ability to secure favorable financing terms. Public Power-NJ argues that municipal utilities and cooperatives operate under a vertically-integrated business model and within a small scope, do not exercise buyer market power, and should therefore be permitted to continue to bid new units into the RPM auction at zero. Accordingly, Public Power-NJ proposes that municipal utilities and cooperatives be exempted from mitigation or, in the alternative, permitted to bid their true costs into the RPM market, even if such costs are below the benchmark.[94] Public Power-NJ argues that such a policy would not be unduly discriminatory, but rather is necessary to facilitate participation by a distinct category of utility participating in PJM's market.

187. Dominion asserts that PJM's filing and P3's complaint, while intended to address the limited problem of direct state subsidies to independent power producers required by law to bid into the RPM market at zero for the purpose of artificially depressing wholesale rates, improperly go further. Dominion states that while RPM must be protected from anti-competitive behavior in constrained areas, the Commission must reject an overbroad response that penalizes (and unfairly characterizes as anti-competitive) legitimate price-taker participation by vertically-integrated utilities that are subject to state sanctioned planning and certification processes.[95] Dominion argues that when state-regulated utilities build new plants, they do so pursuant to a rational, state-approved planning process designed to meet the needs of state ratepayers. Dominion argues that RPM was never intended to supplant this existing mechanism, and that an exemption for units approved through state-sanctioned planning processes for vertically-integrated utilities should be incorporated into PJM's tariff without need for Commission authorization.

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[94] Public Power-NJ argues that, at a minimum, an exemption should apply to municipal utilities and cooperatives with sales less than 4 million MW/h per year.

[95] Dominion notes that under its 2010 long-term, integrated resources plan, as filed with the state utility commissions of Virginia and North Carolina, customer demand and capacity projections have been made based on assumptions relating to: (i) global warning mitigation legislation; (ii) federal environmental air, water and waste regulations; (iii) the cost and performance of future advanced energy technologies; and (iv) load growth projections.

188. Dominion also responds to P3's claim that the FRR option offers a viable option for entities committed to self supply. Dominion responds that P3's argument ignores the underlying purpose of the RPM base residual auction, which is intended to accommodate price-taker bidding strategies used to address the "lumpy" nature of generation additions.[96] Dominion adds that as utilities engage in long-term planning and load grows, they may be capacity short or capacity long in any given time period, a circumstance for which RPM will be required to satisfy unmet needs and sell excess capacity. Dominion concludes that the FRR option, while useful, is not a replacement for flexible participation in the market by state-regulated vertically-integrated utilities.[97]

189. The PJM Load Group argues that self-supply is a necessary option for load serving entities and states seeking relief from high RPM capacity prices. The PJM Load Group states that self-supply, in essence, is a hedge against the up-side risk in the cost of capacity that allows a load serving entity or a state to lock in its capacity costs for a portion of its load. The PJM Load Group asserts that doing so is an economically rational action, particularly for entities like municipal and cooperative utilities whose long-term business models focus on serving retail customers at stable, predictable prices.

190. Finally, NRECA agrees that, under the PJM and P3 proposals, load serving entities will not only be required to bear the cost of a resource that they cannot use to meet their capacity obligations, but would also be required to pay to procure through RPM (at a higher clearing price) the volume of capacity equal to the rejected self-supply.

4. Commission Determination

191. We accept PJM's revised tariff provision that makes clear that self-supply bidding as a Planned Generation Resource is subject to the MOPR. PJM's existing tariff provision ("self-supply committed regardless of price") might have suggested that when a Planned Generation Capacity Resource was intended for self-supply, it was not covered by the MOPR. PJM maintains that was never the intention of the provision and its removal of that provision clarifies that Planned Generation Capacity Resources are covered even if they are intended to be bid as self-supply.

192. We agree with PJM that its current tariff does not exempt resources that are planned to be self-supply from the MOPR and therefore agree that the current revisions

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[96] *See also* NRECA Protest at 18 ("Because generation investment are chunky, [load serving entities] have long acquired resources by investment or contract that they intend to grow into.").

[97] *See also* PJM Load Group Protest at 34 (arguing that the FRR option is viable only for large, vertically integrated utilities that have diverse portfolios).

do not change the tariff. Moreover, even if this did constitute a change, we agree with PJM that planned generation designated by a load serving entity as self-supply should be classified as a capacity resource and be subject to an offer floor based on its entry costs until it clears in the base residual auction. PJM's tariff also provides an alternative for those load serving entities that wish to bring new generation resources into the PJM capacity market without risk of being mitigated under the MOPR. They may avail themselves of the FRR option to satisfy their capacity requirements. Dominion argues that the FRR option does not provide the necessary flexibility to load serving entities seeking both to build new rate-based capacity to serve load and to offer their surplus capacity into the RPM auction as price-takers. The FRR option, however, was not intended to be used for this purpose, nor was the MOPR.

193. By choosing the RPM market rather than the FRR option, load serving entities elect to participate in a three-year forward wholesale capacity market that relies on competition between existing resources (including self-supply) and competitive new entry to secure needed resources at a least cost rate. The FRR option is the alternative for load serving entities that wish to secure their own capacity resources outside of a competitive market, whether as directed by state-authorized integrated resource plans, or pursuant to other considerations. To protect the integrity of PJM's wholesale capacity markets under RPM and to permit new self-supply, however, new self-supply seeking to participate in the RPM market must compete with other planned generation on the same competitive basis.

194. NRECA, the PJM Load Group, and Dominion argue that load serving entities should be allowed to pursue new rate-based investments that meet state or regulatory standards yet remain participants in PJM's RPM markets at offer levels reflecting the full extent of this state backing. As stated earlier, states are free to pursue their policy goals by financing new investments. We find only that such investments must submit bids into the capacity auction consistent with their competitive costs. Clarifying that the MOPR applies to new self-supply, however, does not prevent rate-based investments that are economic by market-based RPM standards from being designated as capacity resources. The MOPR, then, is both an appropriate and necessary mechanism to support market-driven investment in a way that does not expose captive customers to long-term investment risk.

195. Nor are we persuaded, as intervenors argue, that permitting new self-supply to be rejected at its preferred offer price is too harsh and too costly for ratepayers. First, as noted above, the FRR option is available for those load serving entities that want to secure capacity outside of the RPM market.[98] Second, permitting new self supply

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[98] Under this option, load serving entities identify and secure all capacity resources needed to serve only their load and any new self-supply may be designated as a capacity

(continued…)

investment to compete as a price-taker in RPM impermissibly shifts the investment costs of self-supply to competitive supply by suppressing market clearing prices, and will create an environment in which only such self supply investment will occur. Failure to subject new self-supply to the MOPR, that is, permitting new self-supply to participate in RPM as a price-taker, would significantly impede competition from all types of private investment and shift long-term investment risk from private investors to captive customers.

196. We reject Public Power-NJ's argument that municipal utilities and cooperatives should be granted a targeted exemption for self-supply, given the limited scope of their operations. We also reject Public Power-NJ's alternative argument, basing an exemption for municipal utilities and cooperatives with sales less than 4 million MW/h per year. Both arguments ignore the fact that the sloped demand curve used in PJM's base residual auctions is very steep, and as a result, even small amount of additional supply can result in large price reductions. As P3 observes, a three percent increase in supply will decrease capacity prices by 60 percent.[99]

197. Finally, we reject intervenors' argument that a self-supply exemption is warranted because it would provide needed support for new investment for selected loads. Intervenors' argument fails to address the consequences of below-competitive compensation for at-risk investment, as discussed above, and the fact that future investment will likely require greater risk-sharing by captive customers.

L. New Entry Price Adjustment

198. PJM's currently-effective New Entry Price Adjustment provides that, in certain circumstances, a new entry project will receive the clearing price from the first year the new plant decides to enter a constrained locational delivery area, for two additional years.[100]

1. PJM's Proposal

199. PJM proposes a tariff provision establishing a date-certain, October 1, 2011, for PJM to file revisions to the New Entry Price Adjustment as determined necessary by PJM

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resource. However, the FRR option does not (and should not) give the participating FRR load serving entities an opportunity to defray the costs of new resources that they do not need by offering them into the RPM auctions.

[99] *See* P3's March 18, 2011 Answer at 15.

[100] *See* PJM OATT, Attachment DD at Section 5.14(c).

following a stakeholder process. Any such revisions, according to PJM, will satisfy the twin objectives of supporting new entry while avoiding undue discrimination between new and existing units.

2. **P3's Proposal**

200. P3 asserts that PJM's proposed tariff commitment is unnecessary. P3 proposes, instead, to discuss issues related to the New Entry Price Adjustment as part of the same omnibus triennial review process that PJM is about to embark upon to review many core parameters of the RPM construct, including the demand curve parameters and the level of gross CONE.

3. **Responsive Pleadings**

201. Intervenors agree with PJM that, in addition to the issues raised by PJM's filing and P3's complaint, PJM's existing New Entry Price Adjustment must also be addressed.[101] The IMM notes that, in previously addressing this issue, the Commission rejected a PJM proposal (also supported by the IMM) to extend the term of this provision for a new entrant.[102] The IMM argues that while the Commission's concern was valid and the New Entry Price Adjustment should not confer a windfall for the exercise of market power, PJM's allowed adjustment must nonetheless be adequate to finance investment.[103]

202. The IMM requests Commission guidance, however, regarding the development of an adequate record at the stakeholder level and the support that might be required for a proposal designed to attract new entry on an effective and competitive basis. The IMM

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[101] *See* New Jersey Board Protest at 5; Dominion Comments at 3; CPV Power Comments at 3; FirstEnergy Comments at 7; and LS Power Protest at 7-8.

[102] IMM Comments at 25, (citing March 26 Order, 126 FERC ¶ 61,275, *order on reh'g,* 128 FERC ¶ 61,157 at P 149). The IMM notes that, in doing so, the Commission found that "PJM's proposal would further bifurcate capacity markets by giving new suppliers longer payments and assurances unavailable to existing suppliers providing the same service [and thus] would result in further price discrimination between existing resources, including demand response, and new generation suppliers[.]" *Id.*

[103] The IMM adds that if the New Entry Price Adjustment cannot serve as a basis to finance an investment over a fixed, multi-year period, the price in the base residual auction will need to rise to a level high enough to serve as such a basis in one delivery year. The IMM submits that if there is no financial basis for new investment, the investment will not be made.

notes that this guidance, among other things, could include a requirement that PJM's filing be accompanied by testimony from objective witnesses explaining why the New Entry Price Adjustment and other aspects of the RPM market design would constitute an adequate basis for project finance.

203. Dominion agues that the Commission should direct PJM and its stakeholders to work towards a permanent solution to this issue that addresses concerns over buyer market power in constrained areas and new generation pricing while distinguishing and supporting rational long-term generation investment decisions by the various types of participants in the PJM market. LS Power suggests that the Commission set the New Entry Price Adjustment reform for paper hearing (held concurrently with a paper hearing on MOPR reform) or, in the alternative, hold a MOPR reform paper hearing in abeyance until PJM files its proposed revisions to the New Entry Price Adjustment mechanism at the conclusion of the stakeholder process. LS Power also suggests that another option would be to extend the New Entry Price Adjustment term and apply the MOPR conterminously with that extended term, providing revenue assurance for the generator and mitigation of the capacity sell offer for the term of the New Entry Price Adjustment.

204. The PJM Load Group requests that the Commission undertake a holistic, integrated review, including review of the New Entry Price Adjustment. The New Jersey Rate Counsel asserts that an adjustment to the New Entry Price Adjustment would not obviate the need for out-of-market mechanisms such as bilateral contracts in removing barriers to the construction of new generation.

4. Commission Determination

205. We accept PJM's proposal to commit to a date-certain, in its tariff, to file revisions to the New Entry Price Adjustment as determined necessary by PJM following a stakeholder process. We reject P3's argument that such a commitment is unnecessary. In fact, PJM's proposal is broadly supported by its stakeholders and has not otherwise been shown to be unjust, unreasonable, unduly discriminatory or preferential.

206. We decline to grant the IMM's requests for clarification and guidance regarding the required parameters of PJM's stakeholder proceeding. PJM and its stakeholders should address these procedural issues.

M. Additional Issues

1. PJM's Proposal

207. PJM submits that the issues presented by its filing do not require, or justify, a broad review or overhaul of RPM, a capacity procurement regime which PJM

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characterizes as largely successful.[104] However, PJM states that reform to its existing interconnection request procedures will be considered this year by PJM's stakeholders.[105] PJM states that any resulting proposed tariff changes will be filed with the Commission by year's-end.

2. Responsive Pleadings

208. The IMM argues that PJM's existing rules for interconnecting new resources (and PJM's related rules addressing transmission planning) represent important new entry policies that are related to PJM's filing and P3's complaint.[106] The IMM therefore requests that PJM be directed to reexamine the applicable rules, including rules relating to both the interconnection and transmission planning process.[107]

209. The New Jersey Board argues that changes to the MOPR alone cannot remedy the demonstrated inability of RPM to bring new generation to the locations inside PJM that

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[104] Specifically, PJM argues that PJM has shown notable success in meeting its design objective. PJM argues, for example, that RPM has encouraged investment needed to maintain both existing generation and demand response resources, as well as investment in new resources, including incremental upgrades to existing generators, new energy efficiency projects, new demand-side resources and new generation resources.

[105] PJM states that these rules can have an effect on new entry. PJM notes, for example, that queue positions and the rules pursuant to which they are determined may warrant review for the purpose of assessing preferences based on the progress of a project towards the ultimate goal of delivering new capacity to serve the reliability needs of the PJM region.

[106] The IMM argues, for example, that PJM's existing interconnection process is complex and time consuming and potentially creates barriers to entry by creating uncertainty for potential entrants about the cost and time associated with interconnecting to the grid. The IMM concludes that a renewed effort is required to find ways to reform this process and thus minimize the uncertainty for potential market entrants.

[107] The IMM also notes, however, that these issues are currently being considered in the PJM stakeholder process.

need capacity.[108] Accordingly, the New Jersey Board requests that the Commission establish a proceeding to review all potential RPM modifications required.[109]

210. Finally, Viridity argues that if the Commission considers only the piecemeal issues presented by PJM's filing and P3's complaint, left ignored will be the equally-critical inter-related issues.[110] Accordingly, Viridity requests that the Commission consider PJM's current market design as a whole, determine why it is failing to achieve the expected outcomes, and determine what changes are needed.[111]

3. Commission Determination

211. We are satisfied that the process outlined by PJM is sufficient for both addressing and resolving the interconnection issues related to PJM's filing and P3's complaint, first through PJM's stakeholder processes and then, if necessary, through additional section 205 filings. Finally, we will not prejudge or impose any additional obligations or requirements on PJM regarding the additional issues raised by intervenors.

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[108] The New Jersey Board states New Jersey and much of the rest of the Mid-Atlantic region, where capacity prices are the highest, have seen little if any new generation built in the area since the advent of RPM and expect significant additional retirements of generation in the near future.

[109] *See also* APPA Protest at 11 ("Rather than continue to act on a piecemeal basis, APPA urges the Commission to undertake a global review of the operation and outcomes of locational capacity markets, and to replace them with a construct that better harnesses competitive forces to benefit consumers, treat both load and generation resources fairly, and actually supports the development of the new generation resources that are likely to be needed in the next few year.").

[110] Specifically, Viridity identifies the following issues: (i) the duration of the price signal for new generation; (ii) the lead-time between the offer of demand resources in an RPM auction and the delivery of those resources three years later; and (iii) the nature of the offers of demand resources in the RPM auction. Viridity argues that if the Commission approves changes to the MOPR alone, it should expect the RPM to continue to fail in bringing new generation to market in constrained areas (the problem that New Jersey and Maryland are attempting to address).

[111] Viridity also notes that the continued establishment of demand response provides sufficient reason to revisit RPM.

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The Commission orders:

(A) PJM's proposed tariff changes are hereby accepted, subject to conditions and the submission of a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(B) With respect to the immediate issues addressed in P3's complaint, we grant in part and deny in part the complaint as discussed in the body of this order. With respect to the deferred issues, we deny P3's complaint without prejudice.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

List of Intervenors
ER11-2875-000

Allegheny Electric Cooperative, Inc.
Ameren Services Company
American Electric Power Service Corp. *
American Municipal Power, Inc. **
American Public Power Association **
Baltimore Gas and Electric Company
Blue Ridge Power Agency **
Calpine Corporation
Chambersburg, PA **
CPV Power Development, Inc. **
Commonwealth Chesapeake Company, LLC
Comverge, Inc., EnergyConnect, Inc. and
  EnerNOC, Inc. **
Connecticut Attorney General
Consolidated Edison Energy, Inc.
Constellation Energy
Consumers Energy Company
DC Office of the People's Counsel **
Dayton Power and Light Company **
Delaware Municipal Electric Corporation, Inc.
Delaware Public Service Commission
Detroit Edison Company
Direct Energy **
Dominion Resources Services, Inc. **
Dynegy Power Marketing, Inc.
Duke Energy Corporation
Duquesne Light Company **
Edison Electric Institute **
Edison Mission Energy
Electric Power Supply Association **
Electricity Consumers Resource Council **
Exelon Corporation
FirstEnergy Solutions Corp. **
GenOn Parties
Hagerstown, Thurmont, and Williamsport, MD.
Hess Corporation **
Illinois Commerce Commission

Illinois Municipal Electric Agency
Independent Energy Producers of New Jersey **
Indiana Utility Regulatory Commission *
Invenergy Wind Development LLC,
and Invenergy Thermal Development LLC
JP Morgan Ventures Energy Corporation
Long Island Power Authority and LIPA
LS Power Associates, L.P. **
Maryland Office of People's Counsel **
Maryland Public Service Commission **
Monitoring Analytics, LLC **
Morgan Stanley Capital Group Inc.
National Rural Electric Cooperative Association **
New Jersey Board of Public Utilities **
New Jersey Large Energy Users Coalition **
New Jersey Division of Rate Counsel **
NextEra Energt Generators
North Carolina Electric Membership Corporation **
Nucor and Steel Dynamics **
Office of the Ohio Consumers' Counsel **
Old Dominion Electric Cooperative **
Organization of PJM States, Inc.
Pepco Holdings, Inc.
PPL Parties **
PSEG Companies **
PJM Industrial Customer Coalition **
PJM Power Providers Group
Pennsylvania Office of Consumer Advocate **
Pennsylvania Public Utility Commission **
Public Power Association of New Jersey **
Public Utilities Commission of Ohio
Rockland Electric Company **
Shell Energy North America (US), L.P. * **
Southern Maryland Electric Cooperative, Inc. **

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* late intervention request

** protest and/or comment

Appendix B

List of Intervenors
EL11-20-000

Allco Renewable Energy Limited
Ameren Services Company
American Antitrust Institute
American Public Power Association **
Blue Ridge Power Agency **
Chambersburg, PA. **
Comverge, Inc., EnergyConnect, Inc. and
EnerNOC, Inc. **
Connecticut Attorney General
Constellation Energy
Dayton Power and Light Company **
Direct Energy **
Dominion Resources Services, Inc. **
Duke Energy Corporation
Duquesne Light Company **
Edison Electric Institute **
Edison Mission Energy
Electric Power Generation Association
Electric Power Supply Association **
Exelon Corporation
FirstEnergy Solutions Corp. **
GenOn Parties
Hess Corporation
Illinois Municipal Electric Agency
Independent Energy Producers of New Jersey **
Independent Power Producers of New York, Inc. **
Invenergy Wind Development LLC, et al.
Long Island Power Authority and LIPA
LS Power Associates, L.P. **
Maryland Office of People's Counsel **
Maryland Public Service Commission **
Monitoring Analytics, LLC **
Morris Energy Group, LLC
National Rural Electric Association **
New Jersey Large Energy Users Coalition **
New Jersey Division of Rate Counsel **
NextEra Energy Generators
Nucor and Steel Dynamics **

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Old Dominion Electric Cooperative **
PJM Industrial Customer Coalition **
PJM Interconnection, L.L.C.
Pennsylvania Public Utility Commission **
Public Power Association of New Jersey **
Public Utilities Commission of Ohio **
Rockland Electric Company **
TransCanada Power Marketing Ltd.
Viridity Energy, Inc. **

** protest and/or comment

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