

## **Exelon MOPR Reform Proposal**

Exelon developed the following Minimum Offer Price Rule (MOPR) reform proposal with the advice and input of members from all stakeholder sectors and diverse constituencies including clean power generators, consumer advocates, transmission owners and public power. Despite the broad input, we have not sought specific endorsement from any Member so that no supporter of this proposal feels constrained from also supporting other proposal(s), including the PJM proposal which Exelon believes may be a viable alternative (subject to reviewing its final form).

### **Basis for the Proposal**

Exelon offers a simple proposal that addresses the key principles stated in the Board's 4/14 letter to Members. Particularly, the proposed market reforms respect and accommodate legitimate state clean energy policy to the extent of the bounds established by current federal law while building on the core component of an objective buyer-side market power test that 89% of the Members Committee supported in 2012 and was effective through 2018, without imposition on market participants. The key components of this proposal provide a clear and objective MOPR standard that can be readily implemented, providing a legally sustainable means of ensuring just and reasonable market results. The proposal does not try to "hermetically seal" the PJM capacity market from state policy impacts as one proposal from a fossil resource owner suggests. It does not "kick the can down the road," holding MOPR reform hostage to other capacity modifications that will be controversial and are likely to be delayed. It does not provide a false compromise of permitting carbon free resources receiving state clean energy revenue to clear the auction only if consumers pay the ransom of a higher market clearing price. This proposal addresses MOPR reform now, as the Board specified, "to ensure the capacity market accommodates state policy choices related to resource mix, as well as long established self-supply business models, while adequately mitigating buyer-side market power" to facilitate competitive, least-cost procurement of these policy choices.

### **Why MOPR Reform Is Urgent**

MOPR reform is necessary, now. The application of PJM's current MOPR in the 2022/23 capacity auction resulted in the diversion of over \$35 million in capacity market revenue from mitigated, carbon-free resources to emitting fossil resources in Illinois alone, providing concrete evidence of the harm caused to consumers and the disrespect of state policy that was designed to value clean resource attributes to combat the urgent problem of global warming. Federal energy markets, including PJM's capacity market, have failed to internalize the carbon externality, so state action has filled the void. Indeed, state support for clean energy resources through renewable portfolio standards and market products like Renewable Energy Certificates (RECs), Zero Emission Credits (ZECs), and Offshore Wind Renewable Energy Credits (ORECs) is driving the proliferation of new renewable resources and retention of carbon-free nuclear resources, which alone provide 86% of all carbon free energy in PJM today. Absent immediate MOPR reform, the harm to consumers and the state clean energy policies multiplies as soon as the December capacity auction for the 2023/24 Delivery Year. Similarly, lack of immediate MOPR reform may compel states and their utilities with clean energy preferences to seek alternatives to the PJM capacity market.

## **Proposal Overview**

As more fully described below, Exelon proposes two-bright line screens for the application of the Minimum Offer Price Rule: one to address potentially pre-empted state policies that impermissibly intrude on the federally-regulated capacity market and one to address buyer-side market power. The former protects auction results from state actions impermissibly targeted at modifying auction prices. The latter is narrowly tailored to address the potential exercise of buyer-side market power by actual buyers (not states) with the incentive and ability to exercise such buyer-side market power. In both cases, the screens are applied to offers of new, gas-fired resources, subject to periodic review.

### ***Applicable Capacity Resource Technology Types***

Mitigation should only be applied to capacity market offers of new, gas-fired units. New gas units are widely acknowledged to be the least expensive incremental capacity resource and therefore the most effective means of successfully exercising buyer side market power. Similarly, in the case of state policies that might impermissibly intrude on federally-regulated auction outcomes, new gas units are the technology most likely to be supported for the purpose of effecting the auction clearing price. Offers from other technologies are typically (i) more expensive and time-intensive to construct, (ii) of such small capacity value that they would be an ineffective means of attempting to suppress market clearing prices, or (iii) supported by state or customer policies on account of their environmental benefits. “Existing” capacity resources, which are already interconnected and cleared, have entered the capacity market competitively and are already represented on the supply curve, thus mitigation is unwarranted. Simply put, it makes little economic sense for a buyer to invest in any resource other than a new, gas-fired unit if it were attempting to exercise buyer market power. Nonetheless, that could change. Thus, PJM should review the competitiveness of new gas-fired resources and other resource technologies at least with each Quadrennial Review and propose to modify this provision if it determines that the prevailing net costs of other technologies are more competitive than new gas resources.

### ***Conditioned State Support – “Conditioned on Clearing” Screen***

State policies that provide value for clean energy attributes that are not *conditioned upon clearing in the PJM capacity market* are legitimate exercises of state authority; not exercises of market power. The first screen identifies whether a state policy that provides a benefit to a proposed capacity resource contains such a condition. If not, mitigation is not called for – PJM has every reason to accommodate and respect the state policy. In contrast, the Supreme Court has held that state policies that condition receipt of a state-provided benefit on clearing in the PJM capacity auction are impermissibly “tethered” to PJM’s federally-regulated market. Both the Supreme Court and lower federal courts have acknowledged that nearly every state policy can “affect” PJM capacity market outcomes, without such policies constituting an impermissible intrusion in to the federal rate that is established by the capacity auction outcomes.<sup>1</sup>

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<sup>1</sup> *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1298 (S.Ct. 2016) (“States, of course, may regulate within the domain Congress assigned to them even when their laws incidentally affect areas within FERC’s jurisdiction”). See also, *Coalition for Competitive Elec. v. Zibelman*, 906 F.3d 41, 50 (2018) (“While FERC’s authority extends to ‘rules or practices affecting wholesale rates,’ this affecting jurisdiction is limited to ‘rules or practices that *directly* affect the [wholesale] rate’ so that FERC’s jurisdiction does not ‘assum[e] near-infinite breadth.’”)

### *Application of the Conditioned State Support Screen*

PJM and the IMM may rely upon an officer certification from a capacity resource seller attesting that the seller has not received revenues from a Conditioned State Support program. Offers for capacity resources *with* Conditioned State Support, to which the MOPR would be applied, may seek from PJM a unit-specific exception to the MOPR floor by demonstrating that the unit-specific net costs are less than the default MOPR floor values without consideration of revenues from the Conditioned State Support. This would ensure the integrity of PJM auction outcomes notwithstanding any legal challenge to state policy on preemption grounds.

### *Legacy State Policies*

The provisions of this Section concerning the application of the MOPR will not apply to any legislative, executive or regulatory authorization that specifically directs an out-of-market payment to a designated or prospective capacity resource whose enactment predates the effective date of this Section, regardless of when any implementing executive or regulatory action is enacted or promulgated to specifically effectuate the authorization to direct an out-of-market payment.

### ***Buyer-Side Market Power Screen***

The second test addresses the potential attempt by an actual buyer to exercise market power to obtain a lower market clearing price and thereby benefit economically. This proposed test applies objective thresholds to “net short” market participants (i.e., market participants that, overall, are buyers) to assess whether an offered new, gas-fired capacity resource is consistent with maintaining a balanced load service portfolio.

### *Applicable Buyers*

Not all capacity market participants have a meaningful incentive and ability to suppress price. In assessing market buyers with such incentive and ability, the class is logically narrowed to market participants that are “net short” who would benefit from the purchase of capacity at suppressed market prices that may result from clearing relatively small increments of capacity in a constrained zone. Only Self-Supply Entities, who typically serve intransient load for long periods of time under long-standing business models, could have such an incentive. In contrast, competitive retail suppliers, who are typically net short but serve transient, “shopping” customers that are typically under contract for less than three-year terms, have no such incentive. If a competitive retailer offered increments of generation to suppress market prices, all other retailers would gain the full benefit of the subject competitive retailer’s price suppressing offer, while the subject retailer would bear the full cost. The result of such scheme would be that shopping customers would migrate to the lower cost competitors, resulting in an even worse result for the subject retail supplier. Similarly, utilities in retail choice states do not directly supply generation to load, instead relying on third parties to act as providers of last resort.

### *Application of Buyer-Side Market Power Screen*

Not every Self-Supply Entity is similarly situated with respect to the potential exercise of buyer-side market power. A Self-Supply Entity’s offer into a capacity auction of an incremental gas-fired capacity

resource that it has developed or purchased is presumed to be consistent with managing the risk of load service in the Delivery Year and therefore competitive and not subject to application of the MOPR.

However, the presumption described above is rebutted if:

- A) The MW volume of the incremental gas-fired capacity resource offer falls outside the bounds of Net Short thresholds set forth below; or
- B) PJM, with the advice of the IMM, determines that a seller has contracted to clear an incremental gas-fired resource on behalf of or for the benefit of a Self-Supply Entity (i.e., no sleeving) for the purpose of evading the Net Short Thresholds.

A Self-Supply Entity that fails the Net Short thresholds may present evidence to demonstrate that such incremental gas-fired capacity resource offer is consistent with reasonable expectations of future load service consistent with Self-Supply Entity’s long-term business model. For example, the Self-Supply Entity could demonstrate unique load growth characteristics such as a new industrial development or a transient net short position due to resource retirements for which imminent additional new capacity has not yet been completed.

<i>Net Short Thresholds (from 2012 MOPR and which may warrant updating)</i>	
<b>Type of Self-Supply Entity</b>	<b>Maximum Net Short Position (UCAP)</b>
Single Customer Entity	150 MW
Public Power Entity	1000 MW
Multi-state Public Power Entity Less than 90% of total load in any one state	1000 MW in SWMAAC, EMAAC, or MAAC LDAs and 1800 MW RTO
Vertically Integrated Utility	20% of LSE's Estimated Capacity Obligation

Unless otherwise specified, Net Short Position is measured in the constrained LDA within which the load resides

*Position Measurement*

The Self-Supply Entity shall elect whether the net short calculation is based on (1) the entity's PJM capacity obligation (coincident peak), or (2) the entity's forecasted peak load (non-coincident) plus a reserve margin; which is intended to correctly assess the balance of a winter-peaking Self-Supply LSE’s portfolio.

**General Anti-Manipulation Provision**

Notwithstanding the above, should PJM, with the advice of the IMM, have evidence indicating that any seller’s offer reflects a deliberate attempt to uncompetitively reduce capacity clearing prices, PJM or the IMM, may request additional documentation to investigate the concern, subject to the following prescriptions:

- The market seller is entitled to the presumption that the offer is competitive until such time that clear and convincing evidence demonstrates the seller’s incentive to uncompetitively reduce capacity clearing prices, the seller’s ability to uncompetitively reduce capacity clearing prices, and a deliberate and intentional act in furtherance of both the seller’s ability and incentive to reduce capacity clearing prices.
- PJM and the IMM must provide to the market seller the basis for the concern, in writing, including:
  - the specific offer(s) that raise such concern;
  - the purported beneficiary of the alleged manipulation (i.e., who is the “buyer”);
  - the alleged buyer market power conduct;
  - an explanation of why the MOPR screens, above, are not applicable; and
  - the proposed mitigation.
- PJM and the IMM shall meet and confer with the market seller prior to issuing requests for documents and data and before elevating any concern to FERC.
- Any request for documents or data must be reasonably related to the basis for concern.
- Any request for documents or data must be accompanied by a written description of the relation between each request and the basis for the concern to minimize burdensome and speculative information gathering.

***Application of MOPR***

PJM shall establish a default MOPR floor price of Net CONE for new, gas-fired combustion turbines and combined-cycle units, respectively, that fail the screens described above or for which application of the MOPR is otherwise warranted.

***MOPR Term***

The MOPR may apply as long as the triggering conditions exist. Once a resource clears an auction it is deemed "existing" so it will no longer trigger the MOPR conditions and may enter subsequent auctions without mitigation.

***Effective Date***

This new Section shall become effective on [the date FERC accepts it] and the following shall terminate effective for the 2023/2024 Delivery Year:

- Existing MOPR focused on all new natural gas resources (and associated provisions) - Tariff Attachment DD, Section 5.14(h)
- Expanded MOPR resulting from December 2019 FERC Order (and associated provisions, including penalties for violating the competitive exemption) - Tariff Attachment DD, Section 5.14(h-1)