153 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

PJM Interconnection, L.L.C. Docket Nos. ER13-535-002
ER13-535-003

ORDER ON REHEARING AND COMPLIANCE

(Issued October 15, 2015)

Table of Contents

153 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

PJM Interconnection, L.L.C. Docket Nos. ER13-535-002
ER13-535-003

ORDER ON REHEARING AND COMPLIANCE

(Issued October 15, 2015)

1. We address, below, requests for rehearing of an order issued May 2, 2013, concerning revisions to a capacity market buyer-side market power mitigation measure, the Minimum Offer Price Rule (MOPR), as proposed by PJM Interconnection, L.L.C. (PJM).[1] For the reasons discussed below, we deny rehearing. We also address a compliance filing submitted by PJM on June 3, 2013. For the reasons discussed below, we accept PJM's compliance filing.

I. Background

2. PJM first established the MOPR in 2006, as part of its capacity auction protocols, to address the concern that load may have buyer-side market power, i.e., an incentive to suppress market clearing prices by offering supply at less than a competitive level.[2] The Commission has also addressed the performance of PJM's capacity auctions and the continuing validity of the MOPR in a series of orders.[3]

---

[1] *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013) (May 2013 Order).

[2] *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 103 (2006).

[3] *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,037 (2008); *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272 (2008). *See also PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, *order on reh'g and compliance, PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 90 (2009); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 242 (2011).

3. PJM's MOPR is designed to protect against buyer-side market power by setting a price floor, i.e., a minimum bid, and by requiring that all new, non-exempted resources bid at that floor, or higher, absent a demonstration, through a unit-specific review process, that a lower bid is justified based on the resource's operational economics. PJM uses this process to assess costs and revenues of the resource and to ensure that any alleged cost advantages are not the result of uncompetitive, discriminatory subsidies or out-of-market payments.

4. In the instant proceeding, PJM submitted proposed revisions to the MOPR on December 7, 2012, pursuant to section 205 of the Federal Power Act (FPA).[4] As relevant here, PJM proposed to: (i) narrow the list of resource types that would be subject to the MOPR; (ii) eliminate the unit-specific review process and, in its place, establish two categorical exemptions for competitive entry and self-supply resources; and (iii) extend from one to three years the period over which MOPR mitigation may apply. In support of its filing, PJM stated that its proposed revisions were designed to provide a better-defined and more transparent process for granting exemptions to the MOPR, in place of PJM's unit-specific review process,[5] and address the numerous concerns raised by market participants regarding the competitiveness of PJM's 2012 capacity market auction.

5. As further detailed below, the May 2013 Order conditionally accepted PJM's filing, in part, including PJM's proposed categorical exemptions, subject to a compliance filing, and rejected other aspects of PJM's filing. As relevant here, the Commission directed PJM to submit a compliance filing providing for retention of its unit-specific review process, and tariff language obligating PJM to review and, if necessary, revise its net-short and net-long thresholds, as applicable to PJM's self-supply exemption.

---

[4] 16 U.S.C. § 824(d) (2012).

[5] PJM's unit-specific review process was accepted by the Commission in 2011. *See PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at P 118 (2011) (*April 2011 MOPR Order*) (rejecting PJM's proposal to permit sellers whose sell offers have been mitigated to seek unit-specific review from the Commission), *order on compliance filing, rehearing, and technical conference*, 137 FERC ¶ 61,145 (2011) (*November 2011 MOPR Order*) (granting partial rehearing of the standard of review applicable to a unit-specific review process to be overseen by PJM), *order on reh'g*, 138 FERC ¶ 61,194 (2012), *appeal pending*, Case No. 11-4245, *et al.* (3rd Cir.) (collectively, 2011 MOPR proceeding).

6. Rehearing of the May 2013 Order was timely sought by: (i) NRG Companies (NRG); (ii) the Joint Consumer Advocates;[6] (iii) the PJM Power Providers Group (P3); (iv) the Competitive Markets Coalition;[7] (v) the Illinois Commerce Commission (Illinois Commission), (vi) Calpine; and (vii) FirstEnergy Companies (FirstEnergy).[8] On June 3, 2013, PJM submitted its compliance filing to the May 2013 Order. Below we first address the requests for rehearing and then turn to the compliance filing.

II. Requests for Rehearing

A. Unit-Specific Review Process

1. May 2013 Order

7. In its filing, PJM proposed to replace its unit-specific review process with two categorical MOPR exemptions. Under the unit-specific review process, generators seeking a MOPR exemption are required to submit detailed cost data to PJM to justify a bid lower than the default offer floor. In place of the unit-specific review process, PJM proposed two categorical exemptions for competitive entry and self-supply resources. PJM asserted that its categorical exemptions would operate in a manner that identifies all competitive generator offers.

8. The May 2013 Order found that PJM's categorical exemptions were just and reasonable and appropriately identified generators whose bids could be accepted as competitive without the need for submission of financial information. The Commission, however, conditioned its acceptance of PJM's filing on PJM's retention of its unit-

[6] The Joint Consumer Advocates consist of the following entities: the New Jersey Division of Rate Counsel, Maryland Office of People's Counsel, Attorney General of the State of Delaware, and the District of Columbia Office of the People's Counsel.

[7] The Competitive Markets Coalition consists of the following entities: Calpine Corporation (Calpine), Exelon Corporation, PPL Companies, and PSEG Companies.

[8] Answers to Rehearing Requests were submitted by the Maryland Public Service Commission (Maryland Commission), and the New Jersey Board of Public Utilities (New Jersey Board). Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.213(a)(2) (2012), prohibits an answer to a rehearing request unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers submitted by the Maryland Commission and the New Jersey Board and therefore reject them.

specific review process.[9] The Commission found that, while PJM's proposed reliance on categorical MOPR exemptions was warranted, there may be other resources that would be unable to qualify for these exemptions but whose project costs might nonetheless be competitive, i.e., at or below Net CONE for a typical marginal capacity resource.[10] The Commission concluded that market participants should continue to have the additional opportunity to demonstrate, through a unit-specific review process, that their entry costs are competitive,[11] and therefore "accept[ed] PJM's filing conditioned on the retention of its unit-specific review process."[12]

2. Requests for Rehearing

9. NRG asserts that, by accepting PJM's proposal subject to retention of the unit-specific review process, the Commission altered PJM's proposed rate change, without authority under FPA section 205, without invoking or meeting the requirements set forth under FPA section 206.[13] NRG argues that PJM's filing was submitted as an integrated rate proposal under section 205 – as a package of provisions that contemplated both a reliance on categorical MOPR exemptions *and* the elimination of PJM's unit-specific review process. NRG argues that under FPA section 205, the Commission could only accept PJM's filing or reject it.

10. NRG asserts that the Commission effectively acted under section 206 by both rejecting PJM's proposed rate and imposing its own rate consisting of a mix of PJM's proposal and the Commission's modifications. NRG argues, however, that the Commission's findings failed to satisfy the requirements of section 206, because, according to NRG, the Commission failed to institute a section 206 proceeding or

[9] May 2013 Order, 143 FERC ¶ 61,090 at P 141.

[10] Under PJM's Open Access Transmission Tariff (OATT), the Net CONE serves as the MOPR screen, or default offer floor, governing the submission of bids and sell offers into PJM's capacity auctions. *See* PJM OATT at Attachment DD, section 5.14(h)(5)(iii).

[11] May 2013 Order, 143 FERC ¶ 61,090 at P 141.

[12] *Id.* P 26.

[13] 16 U.S.C. § 824(e) (2012).

otherwise carry its section 206 burden of proof.[14] NRG asserts that under section 206 the Commission was required to show that the proposed and rejected rate is unjust and unreasonable and that its alternative rate is just and reasonable.[15]

11. Petitioners further argue that, under section 205, PJM was only required to establish that its proposal was just and reasonable. Petitioners assert that in rejecting PJM's proposal to eliminate unit-specific review, the May 2013 Order erroneously relied on its finding that "PJM does not argue that a unit-specific review process is unjust and unreasonable."[16]

12. FirstEnergy argues that regardless of whether the Commission acted within its statutory authority, in requiring PJM to retain an allowance for unit-specific review, such a directive is unwarranted on the merits. FirstEnergy argues that the unit-specific review process is flawed, given its lack of objectivity and transparency.[17] The Competitive Markets Coalition agrees, stating that the May 2013 Order failed to address record evidence that for the May 2013 auction three resources that had been developed under state-subsidized initiatives were permitted to submit bids and were subsequently cleared at price levels well below Net CONE.[18]

---

[14] NRG Rehearing Request at 21 (citing *Western Resources, Inc. v. FERC*, 9 F.3d 1568 at 1579 (D.C. Cir. 1993) (*Western Resources*)). *See also* Competitive Markets Coalition Rehearing Request at 19.

[15] *Id.* (citing *"Complex" Consolid. Ed. Co v. FERC*, 165 F.3d 992 at 1003 (D.C. Cir. 1999)); *see also* P3 Rehearing Request at 13 (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002)).

[16] P3 Rehearing Request at 13 (citing May 2013 Order, 143 FERC ¶ 61,090 at P 142); *see also* Competitive Markets Coalition Rehearing Request at 4, 7, 16; Calpine Rehearing Request at 4.

[17] *See also* P3 Rehearing Request 7.

[18] Specifically, the Competitive Markets Coalition identifies a project, as developed pursuant to a Maryland Request For Proposals initiative (i.e., the St. Charles, MD project, a 725 MW facility sponsored by Competitive Power Ventures) and two additional projects, as developed through New Jersey's Long-Term Capacity Agreement Pilot Program (i.e., the Woodbridge, NJ project, a 700 MW project sponsored by Competitive Power Ventures, and the Newark, NJ project, a 655 MW facility

(continued...)

13. Calpine adds that the Commission, in the May 2013 Order, did not disagree that the unit-specific review process is flawed, and therefore it was erroneous to have left the flaws in place. The Competitive Markets Coalition states that the Commission erred by conditioning its acceptance of PJM's filing on the retention of the unit-specific review process without any reforms, such as requiring that subsidies and other guaranteed revenue streams be properly accounted for when calculating a project's competitive costs.

14. Calpine and P3 argue that the May 2013 Order failed to take into consideration the broad stakeholder support for PJM's proposed package of reforms. Calpine further argues that, in the past, the Commission has deferred to the will and intent of negotiating parties.[19] P3 states that PJM's compromise package reflected a balanced approach among a divergent range of interests, the rejection of which will discourage future negotiations.[20] Finally, FirstEnergy argues that the May 2013 Order erred by providing for both categorical exemptions and unit-specific review, with the result, according to FirstEnergy, that the MOPR will be largely ineffective and rarely, if ever, invoked.

3. Commission Determination

15. For the reasons discussed below, we deny rehearing. With respect to our review authority, we recognize that under FPA section 205 and section 4, the comparable provision of the Natural Gas Act (NGA),[21] our authority permits us to accept or reject a proposal submitted by the utility depending upon whether the utility has carried its burden of proof to show that its proposal is just and reasonable. As such, we cannot impose on the utility significant changes, without satisfying our burden under FPA section 206, or NGA section 5, to find the existing tariff provisions unjust and unreasonable.

---

sponsored by the Hess Corporation). *See* Competitive Markets Coalition Rehearing Request at 10-16.

[19] Calpine Rehearing Request at 7 (citing *Southern Nat. Gas Co., L.L.C.*, 142 FERC ¶ 61,078, at PP 34-35 (2013); *Maine Pub. Utils. Comm'n v. ISO New England, Inc.*, 126 FERC ¶ 61,090, at P 46 (2013)).

[20] *See also* Competitive Markets Coalition Rehearing Request at 22 ("The Commission's material changes to the stakeholder package will chill future attempts to reach compromise on issues where various interested parties have strong differences of opinion.").

[21] 15 U.S.C. § 717c (2012).

16. Nonetheless, an applicant that fails to satisfy its burden to show that its FPA section 205, or NGA section 4, proposal is just and reasonable may prefer to implement its proposal with the changes necessary to make that proposal just and reasonable rather than continue to operate under its existing just and reasonable tariff. Accordingly, the Commission, in exercising its FPA section 205 and NGA section 4 authority, has utilized a long standing practice of accepting filings conditioned on the utility or pipeline revising its proposal, when the Commission finds the filing generally just and reasonable, but further determines that certain components of the filing are not just and reasonable. The Commission adopted this approach given the complexity of FPA section 205 and NGA section 4 filings, which, like the proposal submitted here by PJM, may consist of numerous inter-related tariff revisions. In these circumstances, a conditional acceptance serves the need for administrative efficiency by avoiding the necessity of rejecting the filing in its entirety.

17. We emphasize, however, that the Commission is not improperly imposing those conditions under FPA section 205 or NGA section 4. The Commission, rather, is finding only that the filing has not been shown to be just and reasonable as filed, unless the utility or pipeline makes the revisions identified by the Commission. Accordingly, the utility or pipeline is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing and returning to the use of its prior rate. As the U.S. Court of Appeals for the District of Columbia Circuit found in *City of Winnfield v. FERC*,[22] the Commission can revise a rate proposal under section 205 as long as the utility "accepts" the change.[23] The court recognized, as has the Commission, the administrative convenience of not having to reject a filing only to have the utility refile to signify its acceptance later:

> It would be empty formalism to strike down those rates solely because they were initially introduced into the proceeding by Commission staff rather than the utility itself. And it would be wasteful to require, instead of the sensible procedure adopted here, that the Commission first deny LP&L's requested increase and that the utility then commence a separate § 205 proceeding proposing the acceptable increase of rates under the existing scheme that the Commission staff had suggested.[24]

---

[22] 744 F.2d 871 (D.C. Cir 1984) (*City of Winnfield*).

[23] *Id.* at 875.

[24] *Id.*

In *Western Resources*, the court similarly recognized the Commission's ability to act under section 205 or section 4 when the utility or pipeline "consents" to the change.[25]

18. In line with the sensible procedure in *City of Winnfield*, the conditional acceptance process utilized by the Commission gives the utility or pipeline an opportunity, through a compliance filing, to cure the problems the Commission has found in its filing, without having its entire filing rejected. As long as the utility or pipeline accepts the condition, this process allows their FPA section 205 or NGA section 4 filing to take effect, without the delay and administrative difficulties attributable to the submission of a new FPA section 205 filing or NGA section 4 filing to cure the problems identified by the Commission.

19. The Commission has recognized that, with the consent of the public utility or interstate natural gas pipeline, it may implement, under FPA section 205 and NGA section 4, provisions that differ from those initially proposed. In a proceeding instituted by ISO New England Inc. (ISO-NE), for example, the Commission found that it had properly acted under section 205 in requiring ISO-NE to utilize one of three rate design options, as outlined in the pleadings, each of which ISO-NE had made clear it would accept.[26] The Commission noted that, "[w]hile ISO-NE [had] not propose[d] the three-tiered rate design in its initial filing, [its] acceptance of this rate design . . . established that [it] has not been imposed unwillingly on the utility under section 206."[27]

20. The Commission similarly permits utilities and pipelines that are unwilling to consent to the Commission's conditional acceptance of their filings to withdraw those filings and thus retain the effectiveness of their existing tariffs. In *PJM Interconnection, L.L.C.*,[28] the Commission, after conditionally accepting a filing by American Electric Power Service Corporation (AEP), subject to hearing and settlement judge procedures, permitted AEP to withdraw its filing and terminate the proceeding, given that "AEP no

---

[25] *See Western Resources*, 9 F.3d at 1579.

[26] *ISO New England, Inc.*, 106 FERC ¶ 61,294, *order on reh'g*, 108 FERC ¶ 61,138 (2004), *order on remand, ISO New England, Inc.*, 113 FERC ¶ 61,055 (2005).

[27] *Id.* P 27. *See also Municipal Defense Group v. FERC*, 170 F.3d 197, 201 (D.C. Cir. 1999) (finding that a pipeline, which had submitted multiple tariff options, but had not withdrawn its initial tariff option, which the Commission accepted, remained the proponent of that initial option under NGA section 4).

[28] 143 FERC ¶ 61,009 (2013).

longer support[ed] its [FPA] section 205 filing rate increase filing, and because no charges [had been] assessed . . . under the proposed formula rate filing."[29] Similarly, in *Columbia Gulf Transmission Company*,[30] the Commission accepted a filing subject to a technical conference and the pipeline later moved to withdraw the proposal, which the Commission accepted. The Commission explained: "since Applicants are not required to offer the proposed [rate] service, and are not prepared to support their proposed tariff sheets, applicants may withdraw the [relevant] tariff sheets."[31]

21. Here, PJM's OATT, as of the date of PJM's filing, provided for a unit-specific review process, with PJM's filing proposing to rely on two categorical MOPR exemptions as a replacement mechanism, among other changes. While the Commission, in the May 2013 Order, found that the categorical exemptions did identify competitive offers, the Commission concluded that PJM had not shown that these provisions, standing alone, were just and reasonable because generation offers that did not fall within these exceptions might also be just and reasonable.[32] The Commission therefore accepted PJM's filing conditioned on PJM's retention of its current just and reasonable unit-

[29] *Id*. P 3.

[30] 127 FERC ¶ 61,059 (2009).

[31] *Id*. at P 19. *See Texas Gas Transmission Corp.*, 100 FERC ¶ 61,126 (2002) (accepting and suspending filing subject to conditions and outcome of technical conference), *order on technical conference*, 101 FERC ¶ 61408 (2002) (imposing conditions), *delegated order*, Docket Nos. RP02-378-000, *et al*. (July 18, 2003) (accepting withdrawal of tariff provisions); *Columbia Gas Transmission Corporation*, *delegated order*, Docket No. RP00-374-002 (April 9, 2001) (accepting withdrawal of a tariff filing where the pipeline did not agree with the Commission's condition); *Columbia Gulf Transmission Company*, 132 FERC ¶ 61,134 (2010) (permitting the pipeline to submit a new filing to reinstate its prior just and reasonable rates where the pipeline was unwilling to accept Commission's conditions, as applicable to the filing at issue, and thus elected to withdraw its filing). *See also Columbia Gulf Transmission Company*, 134 FERC ¶ 61,194 (2011) (rejecting a filing when the pipeline filed for rehearing disagreeing with the Commission's interpretation of its tariff).

[32] May 2013 Order, 143 FERC ¶ 61,090 at P 26.

specific review process for resources that do not qualify for PJM's categorical MOPR exemptions.[33]

22. We clarify, however, that this action was not taken pursuant to section 206 given that the Commission did not find the existing unit-specific review process unjust and unreasonable; indeed, the Commission's compliance directive provided for its retention. The conditional acceptance pursuant to section 205 provided PJM with the opportunity to move forward with its two new categorical exemptions and the rest of its filing while retaining the just and reasonable unit-specific review process. Based on the fact that PJM neither sought rehearing of the May 2013 0rder, nor submitted a request to withdraw its filing, and that PJM submitted its compliance filing to retain the unit-specific review process, it appears that PJM has consented to the Commission's condition. Nonetheless, given the requests for rehearing on this issue and the unique facts and circumstances of this case, and to avoid any possible confusion as to PJM's acceptance of the unit-specific review condition, PJM must file a notice within 30 days of the date of this order if it determines to withdraw its filing.

23. Finally, we reject petitioners' argument that the unit-specific review process is not just and reasonable. As discussed above, the Commission found the unit-specific review process just and reasonable in the 2011 MOPR proceeding.[34] While the Commission, in the May 2013 Order, acknowledged that this review process warranted additional stakeholder review and the consideration of certain enhancements, we cannot conclude, based on the record before us, that review of individual units' costs and revenues is an unjust and unreasonable method of determining rates.[35] To the contrary, the Commission noted in the May 2013 Order that, based on PJM's assessment, the clearing prices in PJM's capacity auctions held during the period in which the unit-specific review process

[33] *Id*. *See also City of Winnfield*, 744 F. 2d at 875 ("the structure of the [FPA] . . . is not 'undermined' or even threatened when, in a § 205 proceeding, the Commission declines to permit a new form of rate calculation but grants a rate increase under the form the utility had previously been using, which increase the utility accepts.").

[34] *See April 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 119.

[35] Cost of service ratemaking has been a long fixture in ratemaking. *See Federal Power Commission v. Hope Natural Gas Co*., 320 U.S. 591 (1944).

has been in effect have been just and reasonable.[36] The Commission further found that this process yields benefits that warrants its retention.[37]

B. Competitive Entry Exemptions

1. May 2013 Order

24. As discussed in the May 2013 Order, under PJM's competitive entry exemption, a new entry project will be exempt from the MOPR, subject to a demonstration that: (i) the costs of the project will not be recovered from customers either directly, or indirectly, through a non-bypassable charge linked to the construction or clearing of the project in PJM's auction; and (ii) the project will not receive certain types of payments from any governmental entity connected to the project.[38] The Commission also conditionally accepted PJM's proposal to extend its exemption to any new entry project that has been developed through a state-sponsored, or state-mandated, procurement process, provided that this process was undertaken on a competitive and non-discriminatory basis.[39] The Commission found that such an exemption will remove an unnecessary barrier to entry for merchant projects and other new entry resources procured on a competitive, non-discriminatory basis.[40]

2. Requests for Rehearing

25. Joint Consumer Advocates argue that, in accepting PJM's proposed competitive entry exemption, the May 2013 Order unduly discriminated between restructured and traditionally-regulated states by imposing on the former more restrictive treatment of offers for new resources. Joint Consumer Advocates argue that, in fact, all states in the

---

[36] May 2013 Order, 143 FERC ¶ 61,090 at P 143.

[37] *Id.* The May 2013 Order found, for example, that the unit-specific review process recognizes that some resources, including those that would fail to qualify for PJM's proposed exemptions, may nonetheless have competitive costs that fall below Net CONE. *Id*. The May 2013 Order further noted that this benchmark price was only an estimate that several intervenors had argued was currently too high, thus further justifying the need to provide unit-specific review, upon request. *Id.*

[38] *Id.* P 53.

[39] *Id.*

[40] *Id*.

PJM region seek to ensure that any load serving entity within their jurisdictions can offer state-selected resources as price-takers in PJM's capacity auctions.[41] Joint Consumer Advocates argue, however, that under the May 2013 Order, only new gas-fired generation in a restructured state will continue to be subject to the MOPR.

26. Joint Consumer Advocates also challenge the May 2013 Order's finding that the incentives for uneconomic entry in a restructured state differ from those in a traditionally-regulated state. In the former, it is claimed, a load serving entity relies largely on the market to meet its capacity obligations. Joint Consumer Advocates argue, however, that the concern over the possibility of price-suppression, in this instance, does not justify interfering with legitimate state generation development and resource procurement policies. Joint Consumer Advocates add that basing a mitigation policy on whether a price-suppressing motive can be ruled out is inconsistent with Commission precedent.[42]

27. Joint Consumer Advocates also challenge the competitive entry exemption's eligibility restriction, regarding RFP processes that are limited to the procurement of new resources. Joint Consumer Advocates argue that while this restriction is based on PJM's asserted need to clear least-cost resources, such a rationale mischaracterizes the purpose and function of PJM's capacity auctions, which are limited to the procurement of PJM's *residual* capacity needs.[43] Joint Consumer Advocates assert that under PJM's capacity auction rules, as initially established, independently-procured capacity was intended to be integrated into PJM's auction by way of price taking offers – not as an independently-determined least-cost resource.

---

[41] Joint Consumer Advocates note, for example, that the policy mandates as between New Jersey and Maryland, on the one hand, and Virginia and North Carolina, on the other hand, are fundamentally similar, as evidenced by a comparison of the New Jersey legislature's establishment of the Long-Term Capacity Agreement Pilot (LCAPP) Program, the Maryland Commission's Request for Proposal (RFP) Initiative, and the integrated resource plan filed by Dominion Resources with state regulators in Virginia and North Carolina. *See* Joint Consumer Advocates Rehearing Request at n.10.

[42] *Id.* at 19-20 (citing *ISO New England, Inc.*, 135 FERC ¶ 61,029, at P 170 (2011) (uneconomic entry suppresses prices regardless of intent); *New York Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,170, at P 37 (2010) (an individual state in a multi-state region like PJM's is unlikely to subsidize new entry for price suppressing reasons, given that the free-rider effects would disadvantage the state *vis a vis* its neighbors).

[43] Joint Consumer Advocates Rehearing Request at 11 (citing *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079, at P 169 (2006)).

28. Joint Consumer Advocates further assert that the procurement of least-cost resources is inconsistent with the MOPR's categorical exemption as applicable to non-gas-fired resources, including wind and solar units, which are likely to be more expensive than gas-fired resources. Joint Consumer Advocates assert that the May 2013 Order fails to explain why the downward price pressure created by exempting *some* new resources is compatible with the Commission's policy of maintaining auction price signals and market health, while downward price pressure from exempting new resources in restructured states is not.

29. Joint Consumer Advocates also argue that the May 2013 Order erred by not conditioning its acceptance of PJM's proposed exemption on a broader definition of the term "fair competition," as applicable to restructured states' resource planning and generation development programs. Specifically, Joint Consumer Advocates argue that PJM's exemption should apply to procurement processes that consider qualitative factors other than price, including: (i) difference in location; (ii) expected service life; (iii) efficiency; (iv) anticipated capacity factors and effects on energy prices; (v) emissions levels and other environmental impacts; (vi) market concentrations; and (vii) effects on local economic conditions. Joint Consumer Advocates add that a MOPR exemption should apply where an act of a state legislature, or a ruling issued by a state regulatory entity, support a given project based on a legitimate intent.

30. The Illinois Commission asserts as error the May 2013 Order's requirement that PJM, and not the Commission, make the initial determination, upon request, that a given state-sponsored procurement process is competitive and non-discriminatory. The Illinois Commission argues that such a determination warrants the Commission's involvement, without the imposition of any intermediary procedures overseen by PJM, or the Market Monitor. The Illinois Commission adds that delegating this determination to PJM and/or the Market Monitor may discourage participation in state-sponsored initiatives and deprive the affected state of the time it may require to re-run its procurement in advance of PJM's auction.

31. Finally, NRG asserts as error the Commission's acceptance of a categorical exemption. NRG argues that, having rejected PJM's proposal to eliminate the unit-specific review process, and having found the existing rate under this process to be just and reasonable, the Commission's work in this proceeding was done.[44] NRG adds that a categorical exemption is not required when a unit-specific review mechanism is available

[44] NRG Rehearing Request at 26 (citing May 2013 Order, 143 FERC ¶ 61,090 at P 143).

and that such an exemption is inconsistent with the Commission's past statements regarding the need for all uneconomic entry to be mitigated.

3. Commission Determination

32. For the reasons discussed below, we deny rehearing on this issue. The economic justification for a competitive entry exemption is grounded in competitive market design principles where merchant, at-risk investment is disciplined by market forces. A resource can obtain a competitive entry exemption in either of two ways.[45] The first is to show that one hundred percent of the revenues such investment earns must be derived by meeting market demand for energy, capacity, and ancillary services; and that no revenues are earned by non-by-passable charges to ratepayers. The second way is to show that any contractual revenues received by the resource are as a result of a nondiscriminatory procurement process that is competitive and open to all resources, including existing resources. Subjecting investment that meets either of these conditions to any buyer-side market power mitigation that could penalize its entry does not enhance competition because in either case, competitive forces are a sufficient protection against uneconomic entry.[46]

33. Joint Consumer Advocates maintain that the competitive exemption unduly discriminates between resources in restructured states and resources in traditionally-regulated states. Specifically, they argue that generation in restructured states fails to qualify for the self-supply exemption and that the competitive entry exemption qualification requirements are more stringent than those for self-supply in traditionally-regulated states. They also maintain the competitive entry exemption does not recognize that state subsidized generation seeks to implement legitimate state policy goals and that state sponsored generation should be exempt from mitigation.

34. We disagree and continue to find that mitigation of resources that have the incentive and ability to reduce capacity prices through uneconomic entry is appropriate and necessary to ensure just and reasonable rates. In contrast, a resource that can show that it does not have an incentive to exercise buyer-side market power should not be subject to market power mitigation. As we have stated previously, subjecting state-sponsored resources to the MOPR does not prevent the states from pursuing their own

[45] *See* PJM OATT at proposed Attachment DD, section 5.14(h)(7).

[46] *See* May 2013 Order, 143 FERC ¶ 61,090 at P 57.

public policy requirements.[47] Rather, it is intended to ensure that whatever subsidy is received does not discriminatorily affect the outcome of the PJM auction.[48]

35. We also do not find undue discrimination between restructured and traditionally-regulated states based on the differences between the eligibility requirements for the competitive entry exemption and the self-supply exemption. Both the competitive entry and self-supply exemptions are tailored to ensure that merchant resources that have no incentive to artificially suppress capacity prices are able to offer into the capacity auction at prices that are not subject to mitigation. In traditionally-regulated states, a large majority of load is typically satisfied by generation owned by the load serving entity and recovered through state cost of service rates. Because of this financing model, the competitive entry exemption is not applicable to resources developed through that model. PJM, therefore, appropriately developed the self-supply exemption to determine under this financing model whether an investment in new generation is consistent with a competitive market.

36. When a self-supplying entity owns or has contractual rights to an amount of generation that is close to its capacity requirement, the entity's net purchases or sales are not significantly affected by changes in the capacity market price. As a result, the load serving entity will not have an incentive to suppress PJM's capacity market price because there will not be a significant benefit from doing so. Mitigating the offer prices of resources owned by such an entity is therefore not necessary to ensure just and reasonable rates. PJM developed thresholds to ensure that self-supply investment is eligible to be exempt from mitigation only when the self-supply entity provides a large proportion of its own power. We, therefore, do not find undue discrimination between the exemptions applicable to restructured and traditionally-regulated states. Both exemptions are structured to exempt resources of entities that lack the incentive or ability to suppress prices.

37. Joint Consumer Advocates also renew the argument raised by intervenors below that PJM's asserted need to limit the reach of its competitive entry exemption to state procurement processes that are competitive and non-discriminatory is contrary to the purpose and function of PJM's capacity auctions. Joint Consumer Advocates argue that

---

[47] *See November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 89.

[48] *See PPL Energyplus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (the FPA preempts state program conditioning payments to a generator on their participation in PJM's capacity auctions); *PPL Energyplus, LLC v. Solomon*, 766 F.3d 241 (3rd Cir. 2014) (same).

the capacity market's role is limited to the procurement of PJM's *residual* capacity needs, and that the competitive entry exemption interferes with both state and load serving entity's ability to decide what to buy or build to meet their total capacity needs. In the May 2013 Order, the Commission disagreed that the competitive entry exemption will unlawfully interfere with the ability of a restructured state to (i) ensure adequate capacity for consumers within its jurisdictions; or (ii) pursue its legitimate policy interests, including the procurement of cleaner generation resources and/or state economic development.[49] Further, residual needs must not be satisfied in a way that allows for the exercise of buyer-side market power.

38. The May 2013 Order found that, notwithstanding these retail interests, PJM's capacity market was designed to procure on a least-cost basis sufficient capacity to meet the reliability needs of the region as a whole and do so on a long-term basis. While uneconomic new entry may lower prices in the short-run, over the long-run it will dampen incentives to invest, thereby jeopardizing the reliability of the PJM system. The May 2013 Order further found that, given these broader needs, it was appropriate for PJM to limit its MOPR exemption to ensure that subsidized entry supported at the state level does not have the effect of disrupting the competitive price signals that PJM's wholesale capacity market protocols are designed to produce.

39. We also reject the Joint Consumer Advocate's argument that restricting the competitive entry exemption to state procurements that are competitive and non-discriminatory (and doing so based, in part, on a least-cost resources rationale) is inconsistent with the MOPR's categorical exemptions as applicable to non-gas-fired resources. The purpose of the MOPR, as the Commission found in the May 2013 Order, is to protect the market from the exercise of buyer-side market power.[50] The May 2013 Order further found that a resource developed by a state in an open and non-discriminatory procurement process raises no such concerns, given that this process, by definition, will identify the least-cost resource. The Joint Consumer Advocates do not challenge this finding, or the economic principle on which it is based. The justification underlying PJM's exemptions as to non-gas-fired resources, moreover, were addressed by the Commission in full in a prior proceeding, based on the evidence presented and a finding made that these resource types do not raise market power concerns.[51]

---

[49] May 2013 Order, 143 FERC ¶ 61,090 at P 54.

[50] *Id*. P 56.

[51] *See April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 153; *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 110.

40. Joint Consumer Advocates next argue that the eligibility criteria proposed by PJM for its competitive entry exemption are too narrow, given the focus of these criteria on price competition at the expense of qualitative differences. As we previously held in the *November 2011 MOPR Order*,[52] and restated in the May 2013 Order,[53] the Commission, in its review of PJM's MOPR needs, does not intend to pass judgment on state resource procurement policies. Rather, we find it reasonable for a regional grid operator, such as PJM, to propose tariff provisions to ensure that subsidized entry supported at the state level does not have the effect of disrupting the competitive price signals that PJM's wholesale capacity market protocols are designed to produce and on which PJM's market participants, region-wide, rely to attract sufficient capacity.

41. We also reject the Illinois Commission's argument that the Commission, not PJM, should be solely responsible for any determination as to whether a state's procurement process is competitive and non-discriminatory. In the May 2013 Order, the Commission found that, consistent with its prior rulings with respect to the unit-specific review process, PJM and its Market Monitor were better suited to make these determinations in the first instance and can make those determinations more expeditiously than the Commission.[54] We are not persuaded that the rationale underlying this policy requires reconsideration here, based on the unsubstantiated allegation that PJM will apply its procedures so as to discourage developers from participating in PJM's capacity auctions. Under PJM's procedures, a developer will obtain a determination from PJM in sufficient time to participate in the auction. If the developer objects to the determination and files a complaint with the Commission, that process may delay the project, but such a delay also is inherent in the Illinois Commission's proposal to submit the project initially to the Commission. In addition, a state can insulate itself from any such risk by making payments resulting from their competitive and non-discriminatory procurement process contingent on the resource's offer being accepted by PJM.

42. Finally, NRG argues that, having rejected PJM's proposal to eliminate the unit-specific review process, the Commission did not need to consider PJM's proposed categorical MOPR exemptions. We disagree. PJM also proposed to implement

---

[52] *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at PP 89-90.

[53] May 2013 Order, 143 FERC ¶ 61,090 at P 57.

[54] *Id.* P 61. *See also April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 118 ("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 [Market Monitor] and PJM.").

categorical exemptions, so the Commission appropriately addressed the merits of that aspect of the proposal, and, as discussed above, the Commission accepted it subject to condition.

C. Self-Supply Exemptions

1. May 2013 Order

43. The May 2013 Order conditionally accepted PJM's proposed exemption for self-supply, as applicable to load serving entities that: (i) operate pursuant to a long-standing business model that relies on self-supply arrangements; and (ii) do not buy substantially more capacity in PJM's capacity auction than they clear, or sell, as capacity (i.e., they are not significantly "net-short"), and (iii) do not clear, or sell, substantially more capacity than they buy (i.e., they are not significantly "net-long").[55]

44. The May 2013 Order found that PJM's proposed thresholds will adequately protect the market from the price effects attributable to uneconomic new self-supply.[56] Specifically, the Commission found that if a self-supply entity meets a sufficiently large proportion of its capacity needs through its own generation investment, it will have little or no incentive to suppress capacity market prices. The Commission noted that, if the amount of non-self-supplied resources procured from PJM's capacity auction is sufficiently small, uneconomic entry would reduce the cost of procuring this portion by less than the amount spent on the uneconomic entry.[57] The May 2013 Order also found, however, that evolving market conditions can affect the accuracy and/or usefulness of these thresholds. Accordingly, the Commission required PJM to review and, if necessary, revise its thresholds on an appropriate, periodic basis, with tariff language to be submitted on compliance addressing this obligation.[58]

---

[55] May 2013 Order, 143 FERC ¶ 61,090 at P 107. PJM proposed maximum net-short thresholds based on four customer types and a graduated net-long scale, based on estimated capacity obligations and maximum net-long thresholds. *Id.* PP 64-65.

[56] *Id.* P 107.

[57] *Id.* P 108.

[58] *Id.* P 113.

2. Requests for Rehearing

45. NRG argues that the May 2013 Order erred by establishing a self-supply exemption for new entry projects that are supported by a vertically integrated utility, or a public power entity, both of which have captive ratepayers and guaranteed cost recovery. NRG argues that PJM's exemption has and will allow these entities to bid into PJM's auctions at prices far below their actual costs and below Net CONE.[59] NRG also asserts that the May 2013 Order failed to address affidavit testimony submitted by NRG on this issue, including testimony to the effect that, under PJM's exemptions, four public power entities in Maryland would have the ability to suppress prices in the Southwest Mid-Atlantic Area Council zone to the level of the unconstrained rest-of-RTO region. NRG further points to the New Brunswick facility, as sponsored by Dominion Virginia Power, a project that has been allowed to bid into PJM's capacity auction at less than its actual costs.[60]

46. NRG also challenges the May 2013 Order's acceptance of PJM's proposed self-supply exemption as contrary to Commission precedent. NRG argues that, in the *November 2011 MOPR Order*, the Commission rejected a proposal to allow integrated utilities and public power entities to bring new self-supply projects on line on an unmitigated basis, based on a finding that a self-supply exemption "would allow for an unacceptable opportunity to exercise buyer market power and inhibit competitive investment."[61] NRG further relies on the Commission's prior finding that while a self-supply entity's "well-recognized business model[] should not be considered automatically suspect when determining whether a sell offer reflects avoidable net costs, [it is imperative that PJM] consider project costs as well as revenues the project would receive on a competitive basis[.]"[62] In addition, NRG argues that permitting a self-supply

[59] *See also* FirstEnergy Rehearing Request at 10 (arguing that, under PJM's exemption, two self-supply entities located in the Southwest Mid-Atlantic Area Council region could independently offer 300 MW of new capacity into PJM's auction on a zero-price basis, the effect of which would lower their supply costs but also suppress clearing prices).

[60] NRG asserts that the estimated construction costs for the New Brunswick facility, excluding financing costs, are $1.2 billion, or $934/kW, while capacity market clearing prices in the Dominion zone are less than one-third of the price that PJM has determined would be needed to support new entry. *See* NRG Rehearing Request at 29.

[61] *Id.* at 27 (citing *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 5).

[62] *Id.*

project to bid into PJM's capacity auction at levels below its actual costs is inconsistent with the Commission's prior finding, as applicable to the New York Independent System Operator, Inc. (NYISO), that "all uneconomic entry has the effect of depressing prices below the competitive level."[63]

47. Petitioners also challenge the Commission's acceptance of PJM's proposed net-short and net-long thresholds. FirstEnergy argues that the May 2013 Order erred by accepting threshold levels based on an analysis of a single historical auction, i.e., based on the 2015-16 auction. FirstEnergy argues that this auction was not representative of current market conditions as reflected by the increased capacity and lower prices cleared in PJM's 2016-17 auction. NRG argues that the May 2013 Order erred in assuming only a single-year outlook, contrary to the Commission's prior reliance on a multi-year analysis.[64] NRG also asserts that PJM's thresholds will be ineffective as a tool against price suppression, in the case of a net capacity purchaser incented to bring new entry into the market to suppress prices in future years – where, for example, retirements (and a corresponding movement of prices up the demand curve) might be expected. NRG further asserts that PJM's thresholds will prove ineffective, given that there are no self-supply entities for whom these thresholds will actually operate as an exemption bar.

48. NRG argues that because the demand curve PJM uses to clear its auction is steep, the price suppressing benefits of new entry will increase dramatically as the market reaches equilibrium. NRG adds that, as such, a self-supply entity is encouraged to build today to prevent the market from ever reaching an equilibrium – a strategy that PJM's thresholds will be powerless to prevent. FirstEnergy argues that because PJM's threshold levels were set using auction data that was significantly net-long, the May 2013 Order erred by not requiring PJM to analyze its threshold levels under alternative conditions, including a consideration of when the market is clearing near the reliability requirement and new supply is needed.

49. FirstEnergy argues that PJM's net-short thresholds are unduly discriminatory and preferential, given that they impose the same threshold values for three regions (the MAAC, EMAAC and SW-MAAC regions), each of which are different in size (as measured by their MWs cleared). FirstEnergy adds that in two regions in which PJM's reliability requirement is approximately equal (i.e., in the ATSI region and the SW-

---

[63] *Id.* at 30 (citing *New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301, at P 29 (2008) (*NYISO Capacity Mitigation Order*)).

[64] NRG Rehearing Request at 31 (citing *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, at P 29 (2005)).

MAAC region), PJM's net-short threshold for the former is approximately double that of the latter.

50. FirstEnergy also argues that the May 2013 Order erred by failing to address the potential that the self-supply exemption and thresholds may be gamed. FirstEnergy notes that PJM's tariff's prior inclusion of a net-short limitation was terminated by PJM, in the 2011 MOPR proceeding, based on this very concern. FirstEnergy further notes that the Commission accepted PJM's proposal, based on its own finding that defining the net-short position can involve complications and that evasion of the requirement can come in many forms, some of which may be unforeseen.[65] FirstEnergy adds that, in the instant proceeding, Commission Staff's deficiency letter appropriately inquired into this matter, with PJM, in its response, neither refuting the possibility of gaming, as set forth by FirstEnergy in its answer, or offering any explanation as to how PJM would protect against such practices. FirstEnergy argues that, in the May 2013 Order, the Commission ignored its own precedent and otherwise failed to address the facts and arguments presented on this issue

51. Finally, FirstEnergy asserts as error the May 2013 Order's failure to require PJM to disclose the underlying data supporting its threshold levels, as FirstEnergy had requested during the stakeholder process and in its protest. FirstEnergy asserts that without this data it was precluded from testing the assumptions underlying PJM's thresholds and verifying PJM's results.

3. Commission Determination

52. For the reasons discussed below, we deny rehearing on this issue. NRG argues that the self-supply exemption will result in a large number of new power plants being built by vertically-integrated utilities and public power entities, the effects of which will suppress market clearing prices. We disagree. With properly-calibrated net thresholds, PJM's self-supply exemption will not operate in a manner that encourages uneconomic entry and thus will not artificially suppress market clearing prices. PJM's analysis of offers submitted into its Base Residual Auction (BRA), moreover, reasonably identifies the threshold level at which a self-supply entity would not have the incentive to seek uneconomic entry.[66]

---

[65] FirstEnergy Rehearing Request at 12 (citing *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 90).

[66] *See* PJM Deficiency Letter response, Aff. of Andrew L. Ott at 2-11.

53. NRG and FirstEnergy also assert that the Commission's acceptance of PJM's self-supply exemption was inconsistent with the Commission's rulings in the 2011 MOPR proceeding. However, in that proceeding, the Commission rejected a proposal for a blanket, across-the-board self-supply exemption.[67] Under PJM's limited exemption in this proceeding, by contrast, a net-short and net-long restriction will apply such that the exemption will not operate on a blanket, across-the-board basis.

54. NRG further notes that, in the *November 2011 MOPR Order*, the Commission found that, in considering MOPR exemptions, it was appropriate for PJM to examine "project costs as well as revenues the project [will] receive on a competitive basis[.]"[68] However, given the Commission's finding that the limited self-supply exemption proposed here (together with the competitive entry exemption) is just and reasonable, subject to the retention of the unit-specific review, the PJM MOPR continues to provide PJM an avenue to examine such project costs and revenues for units that do not qualify for either categorical exemption. Thus, the Commission's finding in the May 2013 Order did not contradict its previous findings with respect to self-supply.

55. NRG also argues that the Commission's acceptance of PJM's self-supply exemption was inconsistent with the Commission ruling, as applicable to the NYISO, that "all uneconomic entry has the effect of depressing prices below the competitive level."[69] We disagree. The May 2013 Order does not contradict the Commission's findings in the *NYISO Capacity Mitigation Order*, nor does it allow for uneconomic entry via PJM's carefully tailored self-supply exemption. Based on the record evidence, the May 2013 Order properly found that "PJM's proposed net-short and net-long thresholds, in principle, adequately protect the market from the price effects attributable to uneconomic new self-supply."[70] Specifically, the Commission reasoned that if a self-supply entity meets a sufficiently large proportion of its capacity needs through its own generation investment, it has little incentive to suppress capacity market prices. Additionally, the Commission found that if the amount of non-self-supplied resources procured from RPM

[67] *See April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 192.

[68] *See* NRG Rehearing Request at 27 (citing *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 5).

[69] *Id.* at 30 (citing *NYISO Capacity Mitigation Order*, 124 FERC ¶ 61,301 at P 29).

[70] May 2013 Order, 143 FERC ¶ 61,090 at P 107.

is sufficiently small, uneconomic entry would reduce the cost of procuring this portion by less than the amount spent on the uneconomic entry.[71]

56. Petitioners also challenge the Commission's acceptance of PJM's proposed net-short and net-long thresholds. In particular, NRG argues that PJM's proposed thresholds are comparable to the market test rejected by the Commission in the *NYISO Capacity Mitigation Order*. We disagree. The proposal rejected by the Commission in the *NYISO Capacity Mitigation Order* was broader than PJM's proposal, given that it would have exempted all net sellers from offer floor mitigation and would have applied mitigation to all net buyers.[72] By contrast, the proposal accepted by the Commission in the May 2013 Order exempts only those net-sellers with little incentive to support uneconomic new entry. PJM's MOPR, as approved by the Commission, applies mitigation to entities that are at the greatest risk of subsidizing uneconomic new entry because they are either significant net sellers or significant net buyers (based on whether the entity's net sales or net purchases exceed the applicable threshold).

57. In its rehearing request, FirstEnergy submitted new evidence regarding PJM's May 2013 auction to support its assertion that PJM's net-short and net-long thresholds are based on data reflecting market conditions that have changed. We reject this argument. A petitioner seeking rehearing of a Commission order may not submit and/or rely on new evidence that was not previously made a part of the record.[73] Moreover, the May 2013 Order acknowledges that market conditions may change over time, and accordingly, requires that PJM "review and, if necessary, revise these thresholds on an appropriate, periodic basis," when the analysis indicates that changes are necessary.[74]

---

[71] *Id.* P 108.

[72] *See NYISO Mitigation Order*, 124 FERC ¶ 61,301 at P 29.

[73] *See FirstEnergy Solutions Corp. Allegheny Energy Supply Co., LLC v. PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,205, at P 22 (2015) ("It is well settled that the Commission does not accept new evidence at the rehearing stage of the proceeding); *S. California Edison Co.*, 137 FERC ¶ 61,016, at P 11 & n.20 (2011). *See also San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 133 FERC ¶ 61,014, at P 24 (2010) (the Commission's procedures encourage the timely submission of evidence and adhere to the general rule that the once closed the record will not be reopened).

[74] May 2013 Order, 143 FERC ¶ 61,090 at P 113.

58. FirstEnergy asserts that, under PJM's exemption, two self-supplying entities in the Southwest Mid-Atlantic Area Council region could independently develop 300 MW of new capacity and then submit offers into PJM's auction on a zero-cost basis. We disagree. The analysis supporting PJM's exemption properly focuses on the incentives facing an individual self-supply entity, and supports PJM's claim that an individual self-supply entity that falls within PJM's thresholds will not have the incentive to suppress market clearing prices by subsidizing uneconomic entry.

59. We also reject FirstEnergy's argument that, because PJM's Net CONE regions (e.g., Southwest Mid-Atlantic Area Council) vary in size, PJM's net-short thresholds are unduly discriminatory and preferential. The distinctions on which FirstEnergy relies are not relevant here, given that PJM has tailored its net-short thresholds based not on regional characteristics, but on customer characteristics, namely: (i) 150 MW for a single-customer load serving entity; (ii) 1,000 MW for a public power entity; (iii) 1,800 MW for a multi-state public power entity, based on a PJM region-wide assessment (or 1,000 MW for three specified Locational Deliverability Areas); or (iv) 20 percent of the load serving entity's reliability requirement for an investor-owned load serving entity. PJM concluded that such thresholds were appropriate based on its review of portfolio information and actual portfolio positions in the market. Based on this and additional data submitted in its response to Commission Staff's deficiency letter, we reaffirm the Commission's finding that these requirements and related restrictions appropriately ensure that PJM's self-supply exemption will operate in a manner that sufficiently addresses the MOPR's objectives.

60. We also reject FirstEnergy's argument that the May 2013 Order erred by failing to address the potential that PJM's self-supply exemption and thresholds may be gamed. The abuses associated with gaming are comprehensively addressed elsewhere in PJM's OATT, in addition to the Commission's existing market oversight authority.[75] Therefore, gaming need not also be addressed as part of PJM's MOPR.[76]

61. Finally, we reject FirstEnergy's argument that PJM failed to disclose data reasonably required by FirstEnergy in order to independently evaluate PJM's proposed thresholds. PJM clarified in its April 9, 2013 answer that its proposal was based on

[75] *See, e.g.*, *Prohibition of Energy Market Manipulation*, Order No. 670, 71 Fed. Reg. 4244 (Jan. 26, 2006) FERC Stats. & Regs. ¶ 31,202, at P 49 (2006) (Order No. 670).

[76] *See* PJM OATT at Attachment M (PJM Market Monitor Plan).

scenario analyses that were posted on PJM's website and shared with its stakeholders.[77] We find that these scenario analyses were sufficient to support PJM's proposed thresholds and that the release, or consideration, of additional information was therefore unnecessary.

D. Integrated Gasification Combined Cycle Units

1. May 2013 Order

62. The May 2013 Order accepted PJM's proposal to apply the MOPR to integrated gasification combined cycle (IGCC) resources. The Commission agreed with PJM that a MOPR exemption for IGCC units was no longer appropriate given that: (i) the development of an IGCC unit typically requires out-of-market revenues and (ii) such a unit can be modified to run as a combined cycle unit, which would not otherwise qualify for a MOPR exemption.[78]

2. Requests for Rehearing

63. The Illinois Commission argues that subjecting IGCC units to the MOPR is inconsistent with the Commission's finding in the *April 2011 MOPR Order*, regarding the differences among certain exempt and non-exempt resources.[79] Specifically, the Illinois Commission asserts that because the *April 2011 MOPR Order* distinguished IGCC units from combustion turbine and combined cycle units due to their development times, it was error for the May 2013 Order to have found that IGCC units may nonetheless have an equal ability to suppress capacity clearing prices.

64. The Illinois Commission also challenges the May 2013 Order's finding that a MOPR exemption for IGCC units is unwarranted based on a consideration of the out-of-market revenues that these resources will typically require. The Illinois Commission argues that the assumption underlying this finding was the very basis for the Commission's holding in the *April 2011 MOPR Order* that coal, nuclear, and IGCC resources will generally require a long development time, will likely incur significant sunk costs prior to their participation in PJM's capacity auctions, and thus will not likely

[77] *See* PJM's April 9, 2013 Answer at 16.

[78] May 2013 Order, 143 FERC ¶ 61,090 at P 168.

[79] Illinois Commission Rehearing Request at 5 (citing *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 155).

be capable of suppressing capacity prices. The Illinois Commission further argues that subjecting IGCC units to the MOPR based on their asserted need for out-of-market revenues, is inconsistent with PJM's treatment of wind resources, which also receive out-of-market revenues in the form of production tax credits. The Illinois Commission asserts that, regardless, the Commission has previously rejected arguments that resources are required to demonstrate that they are not receiving revenues from outside PJM's markets.[80]

65. The Illinois Commission further characterizes as speculative, and thus unjustified, PJM's asserted rationale that an IGCC resource should be subject to the MOPR because such a resource, once developed, could be converted into a combined cycle unit. The Illinois Commission adds, even if this risk were real, it would only support the application of the combined cycle MOPR benchmark to an IGCC resource operating as a combined cycle unit, not a separate benchmark based on the IGCC unit's costs prior to conversion (including costs attributable to processes that would not be performed were the unit to operate as a combined cycle unit). Finally, the Illinois Commission asserts that the application of the MOPR to the IGCC resources is unduly discriminatory, given the ability of self-supply entities in traditionally-regulated states to develop such a unit in conjunction with a self-supply MOPR exemption.

3. Commission Determination

66. For the reasons discussed below, we deny rehearing of the May 2013 Order regarding the Commission's acceptance of PJM's proposal to apply the MOPR to IGCC resources. The Illinois Commission argues that the May 2013 Order's application of the MOPR to IGCC units departs without justification from the *April 2011 MOPR Order*, which distinguished certain resource types from those that are subject to the MOPR. In the *April 2011 MOPR Order*, the Commission accepted the proposal to include wind and solar facilities on the list of MOPR-exempt resources, which at that time also included coal, nuclear and IGCC resources. As the Illinois Commission notes, in doing so the Commission distinguished natural gas combustion turbine units and combined cycle units from the exempt units, in part due to the combustion turbine and combined cycle units' short development time and relative cost advantages.

67. In this proceeding, however, PJM proposed to limit the MOPR "to apply only to the gas-fired resources that are most likely to be associated with offers that raise price suppression concerns, i.e., combustion turbine, combined cycle, and IGCC [resources]."[81]

[80] *Id.* at 5 (citing *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 133).

[81] *See* PJM December 7, 2012 Transmittal Letter at 27.

PJM noted that this approach is superior to the assumption, as previously reflected in its tariff, that an IGCC plant would have competitive net new entry costs of zero, given the actual, far higher costs of an IGCC plant and given the approaches taken toward such projects in recent years which have raised doubts as to whether these costs will be recovered as competitive market prices. Finally, PJM raised concerns regarding the ability to eliminate the gasification component of an IGCC plant such that the project originally planned as an IGCC plant could become a combined cycle plant. Based on these concerns, we continue to find the relevant characteristics of an IGCC resource justify their inclusion in the MOPR, consistent with PJM's treatment of other natural gas-fired units.

68. The Illinois Commission argues that the May 2013 Order erred by relying on the out-of-market revenue an IGCC unit may require as a basis for subjecting such a resource to the MOPR, given that wind resources, which PJM recognizes as exempt from the MOPR, also rely on out-of-market revenue. The May 2013 Order, however, did not rely on any single factor in accepting PJM's proposal to subject IGCC resources to the MOPR, but rather on a balance of factors, including a finding that the development of an IGCC unit will typically require out-of-market revenues *and* that such a unit may be modified to run as a combined cycle unit.[82] With respect to wind resources, their intermittent energy output makes the capacity value of those resources only a fraction of their nameplate capacity, and thus an ineffective mechanism to suppress capacity prices.

69. The Illinois Commission further argues that IGCC resources should be exempt from the MOPR for the same reason that coal and nuclear-fueled resources are exempt, i.e., based on their relative expense and long lead times. For the reasons summarized above, however, PJM appropriately supported its finding that an IGCC unit should be subject to the MOPR as it may be used to suppress prices. This was based in part on the fact that various stakeholders supporting the construction of the Taylorville Energy Center IGCC plant within PJM made several (ultimately unsuccessful) attempts to change state laws to increase end-use electric rates to help support the costs of the project.[83]

70. The Illinois Commission also asserts as error the May 2013 Order's reliance on the convertibility of an IGCC unit into a combined cycle unit as a basis for subjecting such a resource to the MOPR. Contrary to the Illinois Commission's assertion, the concern noted in the May 2013 Order was not that an IGCC resource would operate as a

[82] May 2013 Order, 143 FERC ¶ 61,090 at P 168.

[83] *See* PJM March 4, 2013 Deficiency Letter Response at 11.

conventional natural gas-fired combined cycle unit once developed. Rather, it was that an IGCC resource would modify its planned resource during the development process to be a conventional natural gas-fired combined cycle unit, eliminating the gasification components entirely. Applying the MOPR to IGCC plants ensures that a project that ultimately is installed as a combined cycle plant (to which MOPR would apply) does not evade the MOPR by being proposed as an IGCC when it is first offered into an RPM auction.

71. Finally, we reject the Illinois Commission's argument that application of the MOPR to IGCC resources is unduly discriminatory as between restructured and traditionally-regulated states, given that a self-supplying entity in a restructured state may be permitted to exempt its IGCC unit from the MOPR under PJM's self-supply exemption. As the Commission found in the May 2013 Order, and has held previously, according different treatment to restructured and traditionally-regulated states types does not amount to undue discrimination under the FPA due to the differences in incentives between the different regulatory models.[84] In any event, an IGCC unit that does not qualify for a MOPR exemption as a self-supply project may still apply for and receive, if eligible, an exemption through the competitive entry exemption or unit-specific review process.

E. Mitigation Period

1. May 2013 Order

72. The May 2013 Order rejected PJM's proposal to change the duration of mitigation from one to three years based on the Commission's rationale in considering a comparable proposal in the 2011 MOPR proceeding.[85] The Commission explained that when a new resource clears in PJM's capacity auction, it undertakes an obligation to begin construction in order to provide the capacity it will be obligated to make available in the corresponding delivery year. The Commission found that, under these circumstances, no developer would reasonably commence construction without the certainty that its project has been accepted by PJM as a new capacity resource. The Commission added that PJM's proposal could lead to over-mitigation by requiring a commercially operational resource to bid at an offer floor that would likely be substantially above its going-forward costs. Finally, the Commission found that the narrowed application of the MOPR to

[84] May 2013 Order, 143 FERC ¶ 61,090 at P 167.

[85] *Id.* P 210 (citing *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 175; 160-62; *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 122).

those deemed more likely to present price suppression concerns does not justify an unreasonably prolonged mitigation term.[86]

2. Requests for Rehearing

73. FirstEnergy argues that a resource that is subject to the MOPR for only a single year may be entering the market under anomalous circumstances. FirstEnergy argues that a mitigation period of three-years duration, as proposed by PJM, is essential to address this market risk. The Competitive Markets Coalition agrees, stating that a longer mitigation period is appropriate given the fluctuation of offer floors on a year-to-year basis and the inherent uncertainties in estimating new entry costs. The Competitive Markets Coalition adds that a three-year mitigation period is appropriate because it allows more time for uneconomic new entry to be absorbed by the market.

74. P3 argues that, in rejecting PJM's proposal to extend the MOPR mitigation period mitigation from one to three years, the May 2013 Order erroneously relied on the Commission's prior findings on this issue in the 2011 MOPR proceeding, regarding the significance that should be attached to a new resource's ability to clear in PJM's auction. P3 argues that clearing an auction should not result in a free pass to exercise buyer-side market power. The Competitive Markets Coalition agrees that the Commission erred in relying on its prior findings in the 2011 MOPR proceeding.

75. P3 and the Competitive Markets Coalition also argue that the May 2013 Order departs from the Commission's prior rulings on the buyer-side market power mitigation terms of the NYISO capacity market. First, the Competitive Markets Coalition and P3 argue that, in a 2010 NYISO proceeding, the Commission accepted a mitigation period that, in effect, mitigates resources for a minimum two-year period.[87] P3 also asserts that, in a 2012 NYISO complaint proceeding, the Commission required NYISO to re-apply its market power screen to the complainant's project, even though that project had already participated in and cleared several prior auctions.[88]

---

[86] *Id.* P 212.

[87] *See* Competitive Markets Coalition Rehearing Request at 25-26 and P3 Rehearing Request at 10 (citing *New York Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,178, at P 49 (2010) (*In-City Buyer-Side Mitigation Order*)).

[88] *See* P3 Rehearing Request at 11 (citing *Astoria Generating Co. L.P. v. New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189, at P 141 (2012) (*Astoria*)).

76. Finally, P3 challenges the May 2013 Order's finding that when a new resource clears in PJM's capacity auction, it is required to begin construction in order to provide the capacity it will be obligated to make available in the corresponding delivery year. P3 asserts, to the contrary, that even subsidized resources may delay their construction starts.

3. Commission Determination

77. For the reasons discussed below, we deny rehearing. In the May 2013 Order, the Commission rejected PJM's proposal to change the duration of mitigation under the MOPR from one to three years.[89] We reject the arguments made by FirstEnergy and the Competitive Markets Coalition that a mitigation term that requires a single-year clearance is inadequate because, it is claimed, an uneconomic generator may be able to clear in a single auction solely because the market is experiencing temporary anomalous conditions. We continue to find that removing the MOPR offer floor after a resource has cleared appropriately reflects competitive offer behavior. If a generator clears a BRA, it incurs an obligation either to complete construction and become operational by the associated delivery year three years later, or else to find an acceptable replacement resource bilaterally or through an incremental auction. If the resource is to become operational by the delivery year, it typically must begin construction shortly after clearing its first BRA. Construction costs incurred prior to subsequent BRAs are sunk costs; they are not part of its going-forward costs that will affect its future decisions because competitive offers are based on going-forward costs, not sunk costs. The one year application of the MOPR therefore permits a resource to submit a competitive offer price reflecting its going forward costs and excluding construction costs incurred after the resource has cleared.

78. By contrast, a three-year clearance requirement, as advocated by FirstEnergy and the Competitive Markets Coalition, would prevent developers from offering at their going forward costs for at least two years beyond the first auction in which they clear, and instead would force these entities to offer at their Net CONE. That would create the risk that the generator would fail to clear in the second and third auctions, even though its going forward costs are below the clearing price and below the going forward costs of other, higher-cost resources. Such a proposal could deter legitimate entry by creating an extra risk that a resource may not clear at all in the second and third years, depriving it of any capacity revenue.

[89] As noted earlier, PJM must file within 30 days of the date of this order if it chooses to withdraw the filing due to the Commission's revision.

79. We also reject P3's argument that a three-year auction requirement is appropriate because it would prevent any generator that receives a discriminatory subsidy from exercising buyer-side market power. Even if a generator has received a discriminatory subsidy, it is subject to the MOPR provisions that limit its ability to exercise buyer-side market power. The subsidy, therefore, would not artificially suppress the market price, if the generator clears the auction. It is appropriate in this instance, then, to allow a generator, including one that has received a discriminatory subsidy, to bid into the market at a competitive price determined by the default offer or its actual costs. Once a generator has cleared in one auction, it will incur fixed construction costs if it intends to complete construction in advance of the applicable delivery year. It would be inefficient and inconsistent with competitive behavior to impose an offer floor at or near Net CONE on such a resource that has already incurred fixed construction costs.

80. P3 and the Competitive Markets Coalition also argue that May 2013 Order's rejection of PJM's proposed three-year mitigation term is inconsistent with the Commission's rulings in the *In-City Buyer-Side Mitigation Order* and *Astoria*. We disagree. In the *In-City Buyer-Side Mitigation Order*, the Commission accepted a provision that removes NYISO's offer floor after a resource has cleared in twelve monthly auctions, whether on a consecutive basis, or otherwise, thus allowing for the possibility that mitigation may extend beyond a one-year term. The NYISO capacity market, which is a monthly spot market, however, differs from the PJM market, which procures capacity for an *annual* period. While the number of auctions that must be cleared before removing the offer floor in NYISO's market differs from PJM's market, the time period over which capacity revenues must equal or exceed Net CONE is an equivalent twelve month period.

81. As noted above, moreover, PJM operates a three-year forward auction, while NYISO operates a monthly spot auction held only a few days before the beginning of the obligation month. PJM's forward auction allows a generator that has not yet been built to participate in the auction. Since PJM's BRA is held three years in advance of the delivery year and gas-fired generators (the only generators in PJM subject to the MOPR) typically can be built within three years, a developer of a gas-fired generator can avoid incurring most construction costs until after the auction is concluded and the auction results are known. By contrast, since the NYISO spot auction is held only a few days in advance of the obligation month, only generators that are already built can participate in the auction. As such, PJM's auction operates as an *ex ante* consideration of a resource's economic viability, able to test in advance of construction whether that resource is economic. By contrast, NYISO's auction serves as an *ex post* examination of a resource's economic viability, able to test whether a resource is economic only after the resource has been built.

III. Compliance Filing

82. On June 3, 2013, PJM submitted a compliance filing in response to the May 2013 Order. Notice of PJM's filing was published in the *Federal Register*, 78 Fed. Reg. 32,383 (2013), with interventions, protests and comments due on or before June 24, 2013.

83. Protests were timely filed by NRG and FirstEnergy. Answers were submitted by the PJM Load Group, PJM, FirstEnergy, and NRG. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[90] prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the aforementioned answers because they have assisted us in our decision-making process.

A. Net Thresholds

1. May 2013 Order

84. The May 2013 Order conditionally accepted PJM's proposal on this issue, subject to PJM submitting tariff language obligating PJM to review and, if necessary, revise its net position thresholds, as may be necessary.[91]

2. Compliance Proposal

85. PJM proposes revised tariff language memorializing its obligation to review its net position thresholds once every four years, effective as of the commencement of the June 1, 2020 delivery year,[92] and consistent with the four-year review period as applicable to PJM's capacity auction parameters.[93] PJM adds that, to address transparency concerns, it proposes to cite certain non-exclusive, non-mandatory guidelines it will be authorized (but not required) to consider in determining whether any changes are needed to its thresholds. PJM argues that it is appropriate that these guidelines not be exclusive, or mandatory, given that the considerations and analytical approaches required may change over time, and given PJM's obligation and ability to

[90] 18 C.F.R § 385.213(a)(2) (2015).

[91] May 2013 Order, 143 FERC ¶ 61,090 at P 113.

[92] *See* PJM OATT at proposed Attachment DD, section 5.14(h)(6)(v).

[93] *See* PJM Filing at 8 (citing *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER13-1044-000 (May 2, 2013)).

make an appropriate independent determination, as guided by stakeholder input, with any resulting proposed tariff changes subject to approval by the Commission. PJM states that its review criteria are consistent with the criteria relied upon by PJM to develop its existing thresholds.[94]

86. PJM states that its proposed periodic review provision further specifies that PJM will prepare a recommendation, based on its review, either to modify or retain its existing thresholds and will post that recommendation for stakeholder comment. PJM states that its proposed provision further provides that if PJM's determination reveals that threshold changes are required, PJM will file those changes with the Commission by October 1, prior to the conduct of the capacity auction for the first delivery year in which the new values would be applied.

3. Protests and Comments

87. NRG objects to PJM's proposed standard as overly vague. Specifically, NRG asserts that while PJM proposes to balance the need to protect the market with the need to accommodate the "normal business operations" of the self-supply entity, PJM provides no detail as to how it will decide what the appropriate balance might be. NRG further asserts that the term "normal business operations" is left undefined. NRG also objects to the lack of transparency associated with PJM's proposed balancing of interests, arguing that the assessment of "normal business operations" will presumably involve the same type of confidential portfolio review that PJM utilized in setting its existing thresholds.

88. NRG argues that PJM should be obligated to determine the net-short level at which a load serving entity's strategy to offer a new unit, or portion of a new unit, as a price taker becomes profitable, taking into account the net cost of the new unit, and to update the thresholds on this basis. NRG adds that the determination made by PJM

---

[94] Specifically, PJM proposes revised tariff language stating that its periodic review:

> [M]ay include, without limitation, analyses under various appropriate scenarios of the minimum net short quantities at which the benefit to [a load serving entity] of a clearing price reduction for its capacity purchases from the [capacity] Auction outweighs the cost to the [load serving entity] of a new generating unit that is offered at an uneconomic price, and may, to the extent appropriate, reasonably balance the need to protect the market with the need to accommodate the normal business operations of Self-Supply [load serving entities].

See proposed PJM OATT at Attachment DD, section 5.14(h)(6)(v).

should be replicable by market participants. NRG asserts that any such analyses should be applied to multiple years of auction data and should also consider scenarios other than ownership of an entire unit by a single load serving entity. NRG further asserts that, because many cooperatives and municipal organizations engage in joint development of new capacity, sensitivities that consider 50 percent and 75 percent of a combined cycle unit should be required.

89. FirstEnergy and NRG object to PJM's proposal to review its thresholds every four years, as opposed to a shorter period. FirstEnergy argues that PJM's proposal lacks evidentiary support. NRG further argues that PJM's proposed lag time fails to address the May 2013 Order's concern that market conditions may evolve and may pose risks, if not appropriately reflected in PJM's thresholds. NRG asserts that a shorter interval is required, given that PJM's thresholds are new and untested. FirstEnergy requests that PJM be required to review and revise its threshold levels annually. Alternatively, FirstEnergy requests that PJM be required to analyze market data from all capacity auctions that have occurred since its last review. NRG argues that PJM should be required to use actual net-short positions and actual supply and demand curves for the relevant year. NRG submits that, alternatively, PJM should be required to adopt the same four-year review and annual update schedule as required under PJM's existing Energy and Ancillary Services offset mechanism.

90. NRG argues that if PJM's compliance approach is accepted, PJM should be required to: (i) make a section 205 filing reflecting the outcome of its review (regardless of whether it is, or is not, proposing changes); (ii) post the outcome of its review and its proposal to update the thresholds by June 1; and (iii) identify in its posting any instances in which the balancing of a self-supply entity's business interests caused PJM to deviate from its purely mathematical analysis of what defines a net benefit.

4. PJM's Answer

91. PJM responds to NRG's assertion that PJM's proposed standard grants undue discretion to PJM and is otherwise vague. PJM notes that its proposed standard appropriately maintains PJM's ability to submit a section 205 proposal that it deems warranted, with market participants thereafter free to challenge any such filing.

92. PJM also responds to NRG's objection to the types of analyses PJM will consider in reviewing its thresholds. PJM asserts that regardless of the standards that PJM deems relevant, NRG will be free to advance any alternative analysis it deems relevant, whether in the stakeholder process or in response to PJM's filing. PJM also responds to NRG's proposal that PJM, as part of its periodic review, should be required to include an automatic, formulaic change applicable to its self-supply exemption thresholds. PJM asserts that such a proposal is beyond the scope of this compliance proceeding.

93. PJM also responds to intervenors' objections to PJM's proposed four-year review cycle. PJM argues that intervenors fail to explain why the same four-year review cycle utilized by PJM in the case of its auction parameters would be rendered inappropriate in the case of its net position thresholds.

5. Additional Answers

94. The PJM Load Group, in its answer, responds to NRG's protest and reiterates arguments raised by PJM's answer, as summarized above. NRG responds that PJM should not be given unlimited discretion to determine when and how to revise its net position thresholds. NRG argues that PJM's compliance directive, in this instance, is to establish an appropriate review standard that will ensure that its net position thresholds remain just and reasonable.

6. Commission Determination

95. For the reasons discussed below, we accept PJM's proposed revisions providing for the periodic review of its net thresholds as consistent with the requirements of the May 2013 Order.[95]

96. PJM asserts, and we agree, that a review of PJM's thresholds on a four-year cycle is an appropriate timeframe, consistent with PJM's periodic review of its related capacity market parameters, including the Variable Resource Requirement (VRR) Curve and CONE updates. In addition, should PJM determine that its currently-effective net thresholds are contributing to undue price suppression in PJM's capacity market, PJM, under its proposal, will not be required to delay its reassessment of its net thresholds. Accordingly, while review under the four-year timeline proposed by PJM should suffice to ensure that changing market fundamentals do not impair the efficacy of PJM's net thresholds, PJM's section 205 filing rights provide additional assurance that new entry into PJM's capacity market will continue to be monitored, as designed under the MOPR.

97. NRG and FirstEnergy object to PJM's proposed four-year review cycle, arguing that an annual review should be adopted, instead, consistent with PJM's annual formula rate change requirements, as applicable to PJM's capacity market parameters. We are not persuaded, however, that PJM's proposed four year frequency of review is unjust and unreasonable. Nor are we persuaded that PJM's review of its auction parameters is analogous to its assessments of its net thresholds.

---

[95] The Commission will accept PJM's compliance filing after 30 days if PJM does not withdraw its tariff filing within that time.

98. We also accept PJM's proposed non-exclusive, non-mandatory guidelines for determining whether any changes may be needed to its net thresholds. Specifically, we agree that a requirement that these standards be specified in detail and remain fixed would deprive PJM of the flexibility that may be required in appropriately assessing both existing and evolving new entry conditions. Accordingly, we reject NRG's argument that PJM's proposed standards are overly vague. As PJM notes, because the relevant factors are subject to change, from one four-year review to the next, a requirement that these factors be specified in PJM's tariff would require PJM to file those standards in advance of each review. Moreover, under PJM's proposal, if PJM's determination reveals that revised net thresholds are required, those changes will be filed with the Commission for approval prior to the conduct of the capacity auction for the first delivery year in which the new values would be applied. Under these circumstances, we agree that requiring PJM to submit additional filings to update its methodology would be unnecessarily duplicative.

99. With respect to arguments that the Commission should prescribe to PJM the various types analyses it should undertake, such as scenarios other than ownership of an entire unit by a single load-serving entity, we find that PJM's proposed tariff language is just and reasonable, given that it does not limit PJM to certain types of analyses. The periodic review, rather, "*may* include, *without limitation*, analyses under various appropriate scenarios" at which the benefit to a load-serving entity of a lower clearing price outweighs the cost of making an uneconomic offer into PJM's capacity auction.[96] In addition, once PJM completes its review, it will then propose to either modify or maintain the existing thresholds, and "post publicly and solicit stakeholder comment regarding the proposal."[97] Nothing in PJM's tariff language forecloses market participants from advancing alternative analyses or considerations in the stakeholder process that will accompany PJM's periodic reviews, or prevent interested parties from presenting such alternative analyses to the Commission in the ensuing section 205 proceeding on any change that may be proposed by PJM to its net thresholds.

100. Finally, we reject, as beyond the scope of this compliance proceeding, intervenors requests that PJM be required to adopt various additional obligations as a supplement to PJM's periodic review mechanism. These revisions were not part of the condition established in the May 2013 Order.

---

[96] *See* PJM OATT at Attachment DD, sections 5.14 and 8.1.0.

[97] *Id.*

B. Reinstated Provisions

1. May 2013 Order

101. The May 2013 Order accepted PJM's proposed categorical exemptions for self-supply and competitive entry, subject to PJM's retention of its unit-specific review process.[98]

2. Compliance Proposal

102. PJM proposes to restore its unit-specific review process.[99] PJM also proposes to grant a new entry auction participant the option "at its election, [to] submit a request for a Unit-Specific Exemption in addition to, or in lieu of, a request for a Self-Supply Exemption or a Competitive Entry Exemption." PJM asserts that because the deadline for seeking unit-specific review and the deadline for seeking either of PJM's two categorical exemptions is the same, and because the deadlines for the Market Monitor's and PJM's determinations relating to these requests are also the same, it is appropriate that PJM entertain and administer duplicative requests.

3. Protests and Comments

103. FirstEnergy argues that PJM's proposal to give a capacity seller the right to seek unit-specific review while simultaneously seeking a categorical exemption fails to comply with the May 2013 Order's directive that the unit-specific review process be made available only with respect to new entry resource that would not qualify for a categorical exemption. FirstEnergy argues that PJM's tariff should be required to provide that entities may apply for a categorical exemption or seek unit-specific review (but not both) and, if denied, will be required to submit an offer into PJM's auction, subject to the MOPR.

4. PJM's Answer

104. PJM responds to FirstEnergy's argument regarding PJM's proposed allowance for simultaneous MOPR exemption requests. PJM argues that its proposal is consistent with the May 2013 Order, which contemplates the availability of unit-specific review in the event a new-entry resource does qualify for a categorical exemption. PJM adds that the

---

[98] May 2013 Order, 143 FERC ¶ 61,090 at P 141.

[99] *See* PJM OATT at proposed Attachment DD, section 5.14(h)(8).

parallel submission and processing of these requests will provide PJM and the Market Monitor the time they will require to render their determinations.

5. Additional Answers

105. The PJM Load Group characterizes FirstEnergy's protest as a collateral attack of the May 2013 Order's finding that "some resources, including those that would fail to qualify for PJM's proposed exemptions, may nonetheless have competitive costs that fall below the benchmark price." [100]

106. FirstEnergy responds that the May 2013 Order is silent on the issue of whether an entity may apply for a categorical exemption and seek unit-specific review on a simultaneous basis.

6. Commission Determination

107. For the reasons discussed below, we accept PJM's compliance proposal. FirstEnergy argues that, to comply with the condition in the May 2013 Order, PJM's tariff is required to allow a prospective resource seeking a MOPR exemption to apply for a categorical exception or seek unit-specific review, but not both. We disagree. While the May 2013 Order found that PJM's categorical exemptions "will generally allow qualifying market participants to avoid the need of seeking a unit-specific review of their offers," the Commission did not prohibit PJM from allowing a resource to seek a categorical exemption as well as unit-specific review. Doing so is consistent with the reasoning in May 2013 Order supporting continuation of unit-specific review, because some resources that do not qualify for a categorical exemption might still merit a unit-specific exemption. Allowing a resource to seek both at the same time merely provides for administrative efficiency.

C. Other Matters

108. Pursuant to the May 2013 Order, PJM proposes additional tariff language, e.g., defining "repowering" projects; removing a reference to an outdated term; adding clarifying language regarding cogeneration and combined heat and power facilities. [101] We accept PJM's proposed revisions.

---

[100] *See* PJM Load Group Answer at 5 (citing May 2013 Order, 143 FERC ¶ 61,090 at P 143).

[101] *See* PJM June 3, 2013 compliance filing at 2-3.

The Commission orders:

(A) Requests for rehearing of the May 2013 Order are denied, as discussed in the body of this order.

(B) PJM's compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.