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## PJM Revisions to MOPR Go Into Effect

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At the Saul Ewing Arnstein & Lehr Symposium in Houston in March 2020, a session was dedicated to reviewing steps the Federal Energy Regulatory Commission had taken to expand the Minimum Offer Price Rule (MOPR) applicable in PJM's Base Residual Auction for electric capacity. On September 29, 2021 a new PJM MOPR took effect, as explained below. The general view at that time was that a FERC December 2019 Order would largely eliminate the possibility of state-subsidized renewable generation sources from receiving PJM capacity payments. FERC's inaction has allowed the new PJM MOPR to take effect, and provides the possibility for state-subsidized generation sources to participate in PJM auctions, as outlined in greater detail below. An Emergency Request for Rehearing has already been filed by the PJM Power Providers Group.

### What You Need to Know:

- A December 2019 Federal Energy Regulatory Commission ("FERC") Order was issued which was expected to largely eliminate the possibility of state-subsidized renewable generation sources from receiving PJM capacity payments.
- President Biden appointed a new Chairman of FERC who in March and April 2021 pronounced that a new proceeding would be commenced by year end on PJM's Minimum Offer Price Rule ("MOPR") if a consensus of PJM's various stakeholders could not be reached on a modified MOPR.
- Relying on a stakeholder process PJM filed an updated tariff provision on a modified MOPR with FERC on July 30, 2021 which took effect as a matter of law on September 29, 2021 after the FERC Commissioners were deadlocked 2-2 on reaching any decision. The modified MOPR provides the possibility for state-subsidized generation sources to qualify for capacity payments in PJM auctions.

On September 29, 2021, revisions to its tariff filed by PJM Interconnection ("PJM") on July 30, 2021 at the Federal Energy Regulatory Commission ("FERC") went into effect as a matter of law after the Commissioners at FERC were unable to act during the time period required under the Federal Power Act due to a 2-2 tie vote among the Commissioners, where one vacancy currently exists at FERC.

The tariff filing basically caused the rollback of the existing PJM tariff provision that had been put in place in response to a FERC December 2019 order, subsequent FERC orders and the subsequent PJM compliance filing creating an expanded Minimum Offer Price Rule ("MOPR") to be applied to PJM's Reliability Pricing Model ("RPM") in its Base Residual Auctions ("BRA") which sets the price to be paid for electric generator capacity.

The December 2019 FERC order was based on the premise that state subsidies to power generation facilities would be an infringement on federal authority if taken into account in setting wholesale prices. The order expanded the MOPR, which had originally been limited to setting a price floor in the BRA for bids submitted for certain natural gas fired units, to also set a price floor for generation technologies receiving state subsidies, such as solar and wind receiving renewable energy credits ("REC") under state programs and nuclear receiving zero emission credits ("ZREC") under state programs. The calculated floor price for such state subsidized generation would be based on what a calculated cost would be for such technologies absent the state subsidies. The general view was that the December 2019 FERC order would largely eliminate the possibility for the state subsidized technologies from clearing the BRA and receiving PJM capacity payments.

After the election of President Biden, then FERC Commissioner Glick was appointed Chairman of FERC. He subsequently made comments at a FERC technical conference in March 2021 and the monthly FERC meeting in April 2021 that FERC was going to move forward to change the expanded PJM MOPR before subsequent PJM BRAs were conducted in December 2021 unless a consensus of the various stakeholders within PJM could be reached in the meantime to avoid the FERC having to open a new proceeding.

The PJM tariff revisions submitted on July 30, 2021 were the product of a stakeholder process within PJM subsequently approved by the PJM Board of Directors.

## ENERGY PRACTICE

**PJM's New Limited MOPR**

The PJM scaled back MOPR will eliminate setting floor prices for parties bidding in the BRA, except in two limited circumstances called out by PJM:

- I. The MOPR would still apply to sell offers from resources that receive "Conditioned State Support," which is defined as any financial benefit required or incentivized by a state, or political subdivision of a state acting in its sovereign capacity, provided outside of PJM markets and in exchange for the sale of a FERC-jurisdictional product conditioned on clearing in any RPM Auction. By way of example, it might apply where a state commits to subsidize a generator to put in a low bid that clears the BRA so that the state is paying a generator for the intended purpose to help suppress the price of electricity in the state.
- II. The MOPR would still apply to sell offers in the BRA that are deemed an Exercise of Buyer-Side Market Power, where PJM defines "Exercise of Buyer-Side Market Power" in the tariff as anti-competitive behavior by a capacity market seller with a "Load Interest" of any kind which occurs when the Capacity Market Seller is responsible for serving load within the PJM region, whether through its own load service obligations, that of an affiliate, or through a contractual arrangement with a load serving entity for the overall benefit of the Capacity Market Seller's portfolio of generation and load or that of the directing entity with a Load Interest. In other words, where the party bidding in the PJM BRA has such direct or indirect interests in load serving obligations that it would set its bid price to influence the cost it is paying as a buyer of electricity.

The process would be policed by having the capacity market sellers self-certifying that they are not involved in either of the above conditions.

To that end, Capacity Market Sellers will need to certify (1) whether, at the time of certification, their generation capacity resource is receiving or expected to receive Conditioned State Support and (2) that the capacity market seller acknowledges and understands that the Exercise of Buyer-Side Market Power is not permitted in RPM Auctions, and does not intend to submit a sell offer for their generation capacity resource as an Exercise of Buyer-Side Market Power.

The tariff language also includes the ability for PJM and the PJM Independent Market Monitor ("IMM") to initiate a further inquiry, where appropriate. If PJM or the IMM has a reasonable basis to initiate an inquiry that a capacity market seller may commit an Exercise of Buyer-Side Market Power with respect to a certain resource, PJM or the IMM may initiate a fact-specific review. PJM or the IMM may conduct all parts of the inquiry, while PJM, with the advice and input of the IMM, will ultimately determine whether to apply the MOPR, based on the outcome of such inquiry. Similarly, if a seller certifies that the resource will not receive any Conditioned State Support, but PJM and/or the IMM is aware of Conditioned State Support that the resource may receive, PJM and/or the IMM may inquire with the Capacity Market Seller. The outcome of such inquiries may result in the resource being subject to the MOPR.

**Reactions to PJM's New Limited MOPR**

The reactions to the new PJM limited MOPR can be gleaned from the filings made by various parties in August either to support or to protest the then-proposed PJM tariff filing.

The Organization of PJM States, Inc filed in support of the PJM reduced MOPR, with almost all of its members (Delaware PSC; PSC of District of Columbia; Illinois CC; Kentucky PSC; Maryland PSC; Michigan PSC; New Jersey BPU; North Carolina UC; Tennessee PUC; Virginia SCC; and PSC of West Virginia) supporting PJM, except the PUC of Ohio and Pennsylvania PUC, who opposed. Additionally, many states commissions file separate supporting comments and the Pennsylvania and Ohio commissions jointly filed a protest

Exelon Corporation and The PSEG Companies both supported the PJM limited MOPR.

The PJM Power Providers Group and the Electric Power Supply Association both had filed extensive protests opposing the new MOPR provisions in August, claiming among numerous problems, the price suppression effect it might have.

EPSA's CEO posted the following comment after the PJM reduced MOPR tariff provision went into effect: "We will continue to pursue what we think is the better path forward, which would be to reject the as-filed MOPR and allow sufficient time to pursue a more holistic approach..."

Further, on October 5, 2021, the PJM Power Providers Group filed with the FERC an Emergency Request for Rehearing siting both procedural as well as legal deficiencies in the process by which the new reduced MOPR took effect.

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