

Summary of the Updated PJM MOPR Proposal

Overview and objective

PJM proposes to clearly define Buyer-Side Market Power (BSMP) and to prohibit and mitigate the exercise of BSMP through the minimum offer price rule (MOPR) and/or referral to FERC, as further described below. The approach outlined herein will maximize transparency and market confidence while ensuring PJM and the independent market monitor (IMM) are able to mitigate the exercise of BSMP when it is identified, while also better accommodating state public policies and self-supply business models. In addition, PJM proposes to further clarify the actions of a state (or subdivision thereof) which may improperly interfere with bidding in PJM's capacity market and FERC's rate-making authority (deemed Conditioned State Support).

PJM will only apply the MOPR in the limited situations of either a) Exercise of BSMP, or b) Conditioned State Support, as further set forth below. PJM will utilize two attestations to be provided by all market sellers as described below as a key tool in implementing this proposal.

Definitions

- BSMP shall be defined as "Ability of market participant(s) with a load interest to suppress market clearing prices for the overall benefit of their portfolio."
- Exercises of BSMP require both the ability and incentive to do so. The exercise of BSMP shall be defined as "Anti-competitive behavior of market participant(s) with a load interest, or directed by a load interest, to uneconomically lower capacity market offer(s) in order to suppress market clearing prices for the overall benefit of the market seller's load portfolio or that of the directing load interest." It is the exercise of BSMP that shall be prohibited.
- Conditioned State Support shall be defined as "Out-of-market payments or other financial benefit from a state, or political subdivision of a state acting in its sovereign capacity, provided in exchange for the sale of a FERC-jurisdictional product conditioned on clearing in any RPM auction. The term 'conditioned on clearing in any RPM auction' refers to directives as to the price level at which a resource must be offered in the capacity market or directives that the unit is required to clear in any capacity auction."

Conditioned State Support

State¹ policies² deemed to be Conditioned State Support may improperly interfere with bidding in PJM's capacity market and FERC's rate-making authority. As such, PJM will apply the MOPR to resources receiving Conditioned State Support (in accordance with the process described below).

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

¹ For the purposes of this summary, any references to a state shall include any political subdivision of a state acting in its sovereign capacity.

² For the purposes of this summary, any references to a state policy shall include policies and/or programs that may flow from those policies.

Screening for Affected Resources

All market sellers will be required to provide an attestation prior to each RPM Auction confirming whether or not the market seller expects to receive Conditioned State Support for each resource in their portfolio under any legislative or executive policy that is approved at the time of the attestation and otherwise not exempt as a legacy policy.

- If the market seller attests that a resource will receive Conditioned State Support or fails to provide the attestation, the resource will be subject to MOPR pursuant to the process listed below.
- If the market seller attests that the resource will not receive Conditioned State Support, PJM will not apply the MOPR on the basis of Conditioned State Support³. However, if PJM has reason to believe the attestation may be erroneous⁴, the resource may be subject to MOPR pursuant to the process listed below.

Should government policies with provisions that include a condition that requires clearing in any RPM auction be made known to PJM through the market seller's certification or through other means, PJM will review the applicable policy and determine, with advice and input from the IMM, whether it believes such policy constitutes Conditioned State Support. If PJM believes such policy does constitute Conditioned State Support, PJM will file a Section 205 action at the Commission indicating PJM's intention to classify the state policy as Conditioned State Support and therefore apply the MOPR to the offers of the resources receiving the benefits. PJM will apply the MOPR as stated in its Section 205 filing, so long as the filing is approved by FERC through a FERC Order or by operation of law.

Through the Section 205 process, states, affected parties and others will have the due process opportunity to opine to the Commission as to whether the application of the MOPR is warranted based on the specific language and facts surrounding the state law or regulatory action. PJM shall file such 205 action in sufficient time so as to provide for FERC resolution prior to submission of bids.

No element of this proposal shall interfere with the ability of any person to file a complaint pursuant to Section 206 as to PJM's application of this tariff provision or seeking any other such remedies available to the Commission pursuant to Section 206 of the Federal Power Act.

Unconditioned State Support

State policies providing out-of-market payments to generating resources are recognized as being a legitimate exercise of a state's authority over the electric supply mix serving customers in the state, and will not be deemed Conditioned State Support and subject resources to MOPR so long as the policy does not constitute the sale of a FERC-jurisdictional product that is conditioned on clearing in any RPM auction.

For example, such legitimate policies, if not accompanied with a requirement conditioned on clearing in any RPM auction, may include:

- i. Policies to procure, incent, or require environmental attributes, whether bundled or unbundled,
- ii. economic development programs and policies,
- iii. tax incentives,

³ Such resource may still be subject to MOPR for other reasons if the market seller is found to be exercising market power pursuant to the processes described in the "Exercise of BSMP" section herein.

⁴ For example, PJM may have reason to further evaluate the attestation of two resources receiving support from the same state policy or program, but which each attested differently to the receipt of Conditioned State Support.

- iv. state retail default service auctions,
- v. policies or programs that provide incentives related to fuel supplies,
- vi. resources of a) vertically integrated utilities that are subject to state regulation and b) state rate-regulated electric cooperatives,
- vii. resources of municipal utilities or municipal Joint Action Agencies subject to approval by the RERRA,
- viii. policies or programs implementing PURPA.

Exercise of Buyer-Side Market Power

The exercise of BSMP is prohibited. The MOPR is used to mitigate BSMP and will be applied to any resources suspected to be used by a market seller to exert BSMP in accordance with the procedures listed below.

Screening for Affected Resources

PJM proposes requiring a second attestation (in addition to the attestation described above) from all market sellers prior to an RPM Auction confirming that they acknowledge and understand the prohibition on the exercise of BSMP and attest to not offering their resource(s) with the intent to exercise BSMP or having any bilateral contracts that direct the submission of an offer to deliberately lower market clearing prices. Specifically, the attestation provided will attest that the market seller is not: a) through any load interest it may have, or b) through acting at the direction of a load interest, uneconomically planning to lower its capacity market offer in order to suppress market clearing prices for the overall benefit of the market seller's portfolio or for the portfolio of any load serving entity.

- If the market seller does not provide the attestation, the applicable resource shall be subject to MOPR.
- If the market seller does provide the attestation, the applicable resource shall generally not be subject to MOPR.
 - PJM and/or the IMM may, upon suspicion, investigate the potential exercise of BSMP through fact-specific, case-by-case reviews. If PJM, with the advice and input of the IMM, determines that the market seller did not provide sufficient justification that the behavior in question does not represent an attempt to exercise BSMP, the applicable resource shall be subject to MOPR. Additionally, upon that review, should PJM or the IMM have concern that the market seller provided a misrepresentation or otherwise acted fraudulently, PJM or the IMM may make a referral to FERC for investigation.

Fact-specific, Case-by-case Reviews pursuant to Suspicion of BSMP

PJM and/or the IMM may request additional documentation from market participants to conduct fact-specific, case-by-case reviews when PJM and/or the IMM have reason to suspect the potential exercise of BSMP. The various types of business models (self-supply, etc.), in and of themselves, will not be an indicator of buyer-side market power nor raise suspicion thereof. Suspicion of the exercise of BSMP may be raised if a market seller intends to offer a resource or technology believed to be uneconomic in a manner that will result in clearing and lowering the market price in a location where the market seller and/or its affiliates have a net short position. In initiating a review, PJM and/or the IMM shall articulate, in writing, the basis for concern of the exercise of BSMP (including the specific resource(s) that raise concern, the purported beneficiary of the price suppression, and the specific conduct or action that raises concern) and the market seller shall have an opportunity to provide information justifying the conduct or

action in question as not representing the exercise of BSMP. PJM will endeavor to notify the market participant of such suspicion in advance of the deadline of submitting requests for unit-specific MOPR floor prices. PJM and/or the IMM may request additional information to conduct the review and shall describe how such request is reasonably related to the basis for concern. The market seller shall make best efforts to provide the requested information as soon as practicable. PJM and the IMM shall meet with the market seller prior to issuing requests for information and data and before elevating any concern to FERC.

PJM, with advice and input from the IMM, intends to determine whether the capacity market seller holds BSMP and whether the offer of the resource in question may constitute the exercise of BSMP. PJM's review of potential exercises of BSMP will have the goal of determining whether all elements of the exercise of BSMP are present, namely: the participant has the ability to suppress the market clearing price; the participant has the incentive to suppress the price (i.e., it would be profitable to do so); and the participant acts to uneconomically lower capacity market offers below the economically justifiable level. An offer that can be justified, economically⁵ or otherwise, without consideration of the potential benefit of suppressed prices to a participant's portfolio (including load interests) will not be considered an exercise of BSMP.

For clarity and transparency, MOPR will not be applied if any of the following, non-exhaustive circumstances are known or are identified in the course of a fact-specific, case-by-case review by PJM or the IMM:

- i. Merchant generation supply resources not contracted to load
- ii. Resources acquired through a fully competitive and non-discriminatory process open to new and existing units
- iii. All owned and bilaterally contracted (new and existing) generation resources of Self-Supply Entities that are demonstrated to be consistent with or included in their long-range resource plan (e.g. long-range hedging plan) which is approved or otherwise accepted by the RERRA provided any such plan approval or contracts do not direct the submission of an uneconomic offer to deliberately lower market clearing prices.
- iv. Support of resources aligned with well-demonstrated customer preferences

Other Elements

Other elements of the proposal remain unchanged from that which PJM previously shared. PJM proposes to establish default MOPR floor prices for various technology types and for both new and existing resources. Market sellers may utilize a unit-specific exception request to establish unit-specific floor prices lower than the defaults if necessary.

The level of the MOPR floor price differs between new and existing units. New units (which have never cleared in an RPM auction) are subject to MOPR at Net CONE. Existing units (which have previously cleared an RPM auction) are subject to MOPR at Net ACR. Existing units would under no circumstances be changed to "new" status.

Units will remain subject to MOPR in future auctions so long as they trigger the MOPR criteria - even after clearing at the MOPR floor price. Once the MOPR criteria is no longer triggered (that is the market seller is no longer found to be attempting to exert BSMP or accepting Conditioned State Support), the resource is no longer subject to MOPR - even if it did not clear at the MOPR floor price while previously subject to MOPR.

⁵ Out-of-market compensation that is not tied to either Conditioned State Support or a bilateral contract that directs the submission of an offer to lower market clearing prices may be used to support the economics of the resource under review. Examples of this include RECs and ZECs.

Under this proposal PJM intends to terminate the existing MOPR focused on all new natural gas resources and the expanded MOPR resulting from December 2019 FERC Order (including any future trigger of the asset life ban), effective with the 2023/2024 delivery year.