

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Calpine Corporation, et al.)	Docket Nos. EL16-49-000
v.)	
PJM Interconnection, L.L.C.)	
)	
PJM Interconnection, L.L.C.)	ER18-1314-000
)	ER18-1314-001
)	
PJM Interconnection, L.L.C.)	EL18-178-000
)	
)	(Consolidated)

**Comments of Maryland Legislators on PJM’s Compliance Filing
Regarding Minimum Offer Price Rule**

On March 18, 2020, PJM Interconnection submitted its *Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at Least 35 Days* (“Compliance Filing”). The Compliance Filing sets out important details for the implementation of this Commission’s December 19, 2019 *Order Establishing Just and Reasonable Rate*. That order requires PJM to apply the minimum offer price rule (“MOPR”) to all new resources that the Commission determines receive a “state subsidy” and will have the effect of increasing the costs that Maryland electricity consumers pay for capacity through PJM’s market. The MOPR order will also severely hamper the ability of the State of Maryland to achieve its public health and environmental goals set out in lawfully enacted state statutes in an affordable manner.

Due to the enormous consequences of the Commission’s MOPR order for the State of Maryland, the undersigned members of the Maryland General Assembly respectfully submit the following comments on PJM’s Compliance Filing. More specifically, we are members of the House Economic Matters Committee and Senate Finance Committee—the two committees in the

Maryland General Assembly most frequently tasked with energy policy for the state. Since the Commission first signaled that it would require a broad MOPR to be applied in PJM's capacity market, we have been closely following the Commission's proceedings and undertaking our own study of the impact on the state and available options to protect consumers from the harmful effects of the MOPR. This includes the establishment of a legislative working group of stakeholders and public officials who have collaboratively considered and evaluated the impacts of the MOPR and the state's options to exit the PJM capacity market. We appreciate this opportunity to share with the Commission our view of PJM's Compliance Filing and the MOPR Order.

A. The Commission's MOPR Order will increase costs for consumers while undermining state policies to promote public health and affordable energy supply

As discussed below, we ask the Commission to approve certain elements of PJM's Compliance Filing that will soften the blow of the Commission's misguided MOPR Order. Lest this request be taken out of context, we wish to stress that any marginally helpful parts of PJM's Compliance Filing cannot and do not cure the fundamental flaws of the MOPR.

1. *The MOPR will prevent generation and storage resources procured pursuant to state law from clearing the capacity auction and counting towards resource adequacy requirements.*

The MOPR order impinges on each state's ability to regulate generation, which is authority reserved to states under the Federal Power Act.¹ By erecting a barrier to market

¹ 16 U.S.C. § 824(b)(1) (reserving to the states jurisdiction "over facilities used for the generation of electric energy"); *see e.g., New York v. FERC*, 535 U.S. 1, 22 (2002) ("the legislative history [of the FPA] is replete with statements describing Congress' intent to preserve state jurisdiction over local [generation] facilities."); *Pacific Gas & Elec. Co. v. State Energy Resources Conservation Dev. Comm'n*, 461 U.S. 190, 205 (1983) (holding that the "[n]eed for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States"); *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009) (holding that states have authority "to require retirement of existing generators, to limit new construction to more expensive, environmentally-friendly units, or to take any other action in their role as regulators of generation facilities without direct interference from" FERC).

participation by resources that receive any kind or degree of benefit under state law, the MOPR counteracts the intended effect of those state policies, while raising prices for consumers.

Whereas the Commission declined to apply the MOPR to resources based on receipt of benefits under federal law because doing so would “nullify” those federal laws, the Commission apparently has no qualms about attempting to “nullify” state policies enacted pursuant to state authority over generation.

States act pursuant to their authority over generation in numerous ways. The Maryland General Assembly has enacted multiple laws aimed at protecting public health and the environment from the effects of fossil fuel generation, beginning in 2004 with the establishment of our Renewable Energy Portfolio Standard (RPS) that was intended to diversify the state’s generation resources and grow renewable energy. The state has found success in the RPS program, enhancing its goals on numerous occasions. More recently we passed the Maryland Clean Energy Jobs Act, which expands the state’s RPS target to 50% by 2030, including a 14.5% solar carve out and a new 1,200 MW offshore wind requirement. With respect to the offshore wind procurement, the state’s Public Service Commission is prohibited from entering into an agreement with any project where the cost of offshore wind renewable energy credits would create bill impacts for the state’s consumers that exceed specific thresholds.² In 2019, we also enacted an energy storage pilot program, which requires our four investor-owned utilities to issue a competitive solicitation for two energy storage projects to occur in 2020, with the projects to come online in early 2022. Maryland has a strong interest in supporting emerging technologies like offshore wind and energy storage, which are needed to reach the state’s decarbonization goals. Offshore wind operates at a high capacity factor, relative to onshore wind energy

² Md. Code Ann., Pub. Util. § 7-704.1(e)(1)(iii)(2).

resources and is particularly valuable during winter peak events.³ It can also be built close to load centers and avoids congested transmission facilities coming into the state from the west. Energy storage is essential to integrating the higher levels of variable energy production required under the state's previously-described 50% by 2030 RPS law. While competitive markets can support the development of such resources, we determined that those market forces and existing federal and state clean energy policies were insufficient to incentivize development of these newer technologies at the pace required to avoid the worst impacts of climate disruption.

The Commission's December 2019 order imposing a broad MOPR on resources receiving benefits under state law did not specify exactly what offer price floors should apply to different resources, but left that to a subsequent process. PJM's Compliance Filing proposes default offer price floors for new and existing facilities of different resource types. The default floors proposed by PJM for renewable energy resources, especially offshore wind and storage, will likely prohibit many of those resources from clearing the auction, as shown in the following table for the four capacity zones comprising Maryland.

³ See, e.g., ISO New England System Planning Department Memorandum, High-Level Assessment of Potential Impacts of Offshore Wind Additions to the New England Power System During the 2017-2018 Cold Spell (Dec. 17, 2018), at https://www.iso-ne.com/static-assets/documents/2018/12/2018_iso-ne_offshore_wind_assessment_mass_cec_production_estimates_12_17_2018_public.pdf (reporting data indicating a 70% capacity factor for offshore wind facilities during a lengthy New England cold spell).

Default Net CONE (\$/ICAP MW-Day)

Zone	Solar PV (Tracking)	Solar PV (Fixed)	Onshore Wind	Offshore Wind	Battery Energy Storage	Demand Response Generator	2021/2022 BRA Clearing Price (\$/MW- day)
APS	\$165	\$357	\$994	\$3,116	\$1,042	\$254	\$140.00
BGE	\$135	\$333	\$869	\$2,999	\$977	\$254	\$200.30
DPL	\$180	\$374	\$955	\$3,092	\$994	\$254	\$165.73
PEPCO	\$147	\$343	\$909	\$3,038	\$1,001	\$254	\$140.00

These floors will prevent state-supported clean energy resources from displacing fossil plants, thereby perpetuating a PJM capacity mix that is at odds with state generation policies, rather than reflecting them.⁴ It will also increase costs of achieving state clean energy goals, thereby undermining the General Assembly’s efforts to reduce emissions in an affordable manner.

The mere *possibility* that renewable energy and storage projects will be able to obtain resource-specific offer price floors allowing them to clear the auction does not allay states’ concerns.⁵ We recognize that in some cases, a project developer may be able to establish to the satisfaction of PJM and the Independent Market Monitor that a lower offer floor is warranted.

⁴ Maryland’s laws regarding electricity generation not only require a minimum percentage of energy to be obtained from renewable energy resources, but also the “elimination of carbon-fueled generation” and a 40 percent reduction in greenhouse gas emissions by 2030 from a 2006 baseline. By providing continued incentive for unneeded fossil-fueled capacity resources to enter or remain on the market, the MOPR directly undermines the state’s ability to achieve these goals.

⁵ See, e.g., FERC Order on Rehearing and Clarification, Docket Nos. 16-49-002, et al., at PP 43, 56, 132.

However, the outcomes of such an idiosyncratic and opaque resource-specific offer floor process are unpredictable and therefore cannot be relied upon by state lawmakers that need to understand the costs and benefits of different legislative proposals. Moreover, the default floor prices for offshore wind and storage are so far above recent clearing prices, that even resource-specific floors reflecting project-specific financial data are unlikely to be low enough to allow the project to clear. These resources will still be built pursuant to state law, yet Maryland consumers will not be allowed to benefit from their capacity value, instead being forced to buy unneeded capacity through PJM's auction.

Finally, we are concerned that even if some clean energy resources are able to get resource-specific floors that allow them to clear, the overall clearing price may well be higher than it would be if the resource was not subject to mitigation in the first place. Thus, even if the state-supported clean energy resource is able to obtain capacity revenues, Maryland consumers will still be paying a higher price than they would without the MOPR.

2. *The MOPR will increase costs to all consumers in PJM without corresponding reliability benefits to consumers.*

The electricity bills of Maryland residents and businesses are an extremely important issue for the General Assembly. And although protection of consumers from excessive rates is among the core purposes of the Federal Power Act, the Commission's orders imposing the broad MOPR on PJM's capacity market evinces no real concern about increased costs. To the extent that the Commission acknowledged the extensive record regarding cost impacts and widespread concern from states, consumer advocates, industrial consumers, and public power about these impacts, the Commission simply shifted blame for those costs to states pursuing their FPA-reserved rights to shape the generation mix. In its most recent order on rehearing, the Commission summarily asserted that the increased costs to consumers would ultimately benefit

those consumers by ensuring reliability,⁶ without pointing to any evidence that higher prices were needed to ensure reliability given PJM's bloated reserve margins.

The Commission has consistently failed to acknowledge the degree to which the MOPR will increase costs for consumers, much less attempt to quantify that increase as part of its determination that a broad MOPR will result in just and reasonable rates. Yet the fundamental purpose of the MOPR is to counteract price suppression, in other words, to increase prices. Importantly, this price increase will affect not just states that have enacted the clean energy policies that will be undermined, but all consumers throughout PJM. That is part of why representatives of every single state in PJM sought rehearing of the Commission's December 2019 order.

In determining whether PJM's Compliance Filing results in just and reasonable rates, the Commission must develop a robust estimate of how much the MOPR will cost consumers, especially over the next ten to twenty years as large amounts of clean energy resources supported by state policies come online. This estimate should reflect all currently enacted state clean energy policies and reflect reasonable assumptions about how many of these resources will clear the auction using lower resource-specific offer price floors. In its April 2020 rehearing order, the Commission stated that the costs of the MOPR could not be reasonably estimated until key compliance details are known; at the point where the Commission issues an order on PJM's Compliance Filing, this excuse for failing to estimate even the magnitude of the price increase will no longer exist.

⁶ FERC, Order on Rehearing and Clarification, Docket Nos. 16-49-002, et al. at P 140 ("While we recognize the replacement rate could increase costs to consumers, particularly the customers in states that have chosen to enact State Subsidies, we nevertheless find the replacement rate is necessary to protect the integrity of the capacity market, which, in turn, ensures that investors will continue to be willing to develop resources to meet current and future reliability needs.").

Furthermore, the Commission's 11th-hour decision that state default service auctions, such as Maryland's Standard Offer Service ("SOS") auction, will trigger the MOPR, further adds to the disruption and cost associated with FERC's order. Application of the MOPR to any resource participating, even indirectly, in the SOS auction, will make it more difficult for SOS suppliers to obtain affordable hedging arrangements, ultimately increasing the costs to consumers. It does not appear that the Commission understood this implication of its decision, much less consciously determined these additional costs to be necessary to ensure just and reasonable rates in the PJM capacity market.

3. *PJM's Proposed auction schedule does not allow states adequate time to react prior to the first auction or in between subsequent auctions.*

The MOPR will profoundly affect many areas of concern to state lawmakers, including state policies related to generation, retail choice, and consumer protection. Many of the impacts cannot be understood until the Commission issues an order in response to PJM's Compliance Filing. Indeed, pursuant to the Commission's April 2020 order on rehearing, PJM is due to submit yet another Compliance Filing in early June, further delaying the time when a final set of rules for PJM's capacity market will be in place. PJM has proposed to hold the next Base Residual Auction six and a half months after a final compliance order, but will delay the auction to March 2021 only if a state enacts Fixed Resource Requirement ("FRR")-enabling legislation and requests a delay by June 1. PJM then proposes to hold the next three auctions only six months apart. This proposed auction timing does not give state legislators sufficient time to evaluate the compliance order(s), and results of each auction, as needed to inform consumer protection measures or clean energy policy development.

PJM's proposal to hold the auction in December 2020, unless states enact FRR-enabling legislation and request a delay by June 1, is unreasonable given a range of current circumstances.

Most obviously, it is impractical for state legislatures to act before June 1 of this year due to COVID shutdowns.⁷ Indeed, due to the risks associated with the COVID-19 pandemic, Maryland's legislature was forced to adjourn weeks early for the first time since the Civil War. Furthermore, states currently lack the information they would need to assess full impacts of the MOPR on consumers because that impact depends in significant part on whether the Commission accepts PJM's compliance filing in its entirety. Since the Commission will likely not issue an order on the Compliance Filing until after the June 1st deadline, PJM's proposed accommodation of states is useless. Legislators require time to evaluate options for ensuring consumers are protected from unreasonable capacity prices, including the FRR. These decisions need to be informed by more dynamic analysis of possible FRR prices than has yet been made available. PJM's proposal also implicitly assumes that the only reason states would require additional time to prepare for an auction under new rules is to enable the FRR. Yet states are likely to consider a wide range of changes to protect their interests from the effects of the MOPR. For example, states might need time to examine whether budgets for residential energy bill support need to be increased, to re-examine state agency coordinated procurement structures for clean energy resources, or to modify default service auctions to lessen the impact of the MOPR.

Rather than imposing an arbitrary deadline on states to seek a delay in the auction, FERC should simply require that the auction be held in May 2021, consistent with the nearly unanimous request of the Organization of PJM States.⁸ This will also have the benefit of

⁷ In January 2020, the Maryland General Assembly convened a legislative working group to evaluate the impacts of the MOPR and explore the potential to counter those impacts through the Fixed Resource Requirement. That working group has been suspended due to the Covid-19 crisis.

⁸ See Organization of PJM States Inc., Letter to PJM Board of Managers (Feb. 13, 2020), available at <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20200219-opsi-letter-re-scheduling-next-base-case-residual-auction>.

ensuring that an updated load forecast is used for the next auction. PJM's proposal to hold the auction in December 2020, would mean the variable resource requirement (VRR) curve employed in that auction would reflect a year-old load forecast at a time when the economic circumstances that underlay the load forecast have already changed significantly. This is especially important given that PJM's load forecast is already chronically inflated, forcing consumers to buy unneeded excess capacity.⁹ The error in PJM's load forecast would be compounded by not updating the forecast to reflect the latest economic indicators. Consumers should not be required to buy more capacity than they need at a time when prices are likely to go up.

In addition, PJM proposes to allow six and a half months in between the next several auctions. This does not provide sufficient time for legislature or PUCs to assess and respond to impacts of MOPR on consumers and state policies, especially given that the deadline for utilities to elect FRR would occur only about two months after the auction results are available. The Commission should instead require that PJM allow eight to nine months in between auctions.

B. The Commission should approve key components of PJM's Compliance Filing

We urge the Commission to adopt key elements of PJM's compliance filing, which will help to reduce the adverse impact of the MOPR on consumers in the short term.

Most importantly, the Commission should approve PJM's proposal to allow generators seeking resource-specific offer price floors to demonstrate a longer asset life that can be used in calculating that floor. Doing so will yield more accurate floor prices that reflect the reality of how many renewable energy projects are financed, and may allow more resources procured pursuant to Maryland state policy to clear the auction. FERC's December 2019 order referred to

⁹ See James F. Wilson, *Over-Procurement of Generating Capacity in PJM: Causes and Consequences* (Feb. 2020).

the opportunity to seek a resource-specific offer price floor as a means to avoid severe impacts on state policies -- but that opportunity is a false promise without the kind of flexibility that PJM proposes to offer. Even if this flexibility is permitted to resources seeking resource-specific offers, it will not address the fundamental uncertainty in the resource-specific process that serves as a barrier to implementation of state policies.

Second, FERC should approve PJM's proposal not to run the next auction until *at least* six and a half months after its order(s) on compliance so that all parties have time to understand complex new rules and generators have time to attempt to obtain a lower offer price floor. As discussed above, more time is needed for states to react to the final set of capacity market rules, but in no case should the Commission require an auction in less than 6 and a half months from a final order.

Finally, the Commission should approve PJM's proposed offer price floors for multi-unit nuclear resources. These default floors will permit those nuclear facilities subject to the MOPR to clear the auction, thereby preventing significant increases in RPM clearing prices and avoiding requiring consumers to buy unneeded capacity through the auction. This will provide limited benefit to Maryland consumers by putting some downward pressure on capacity prices.

In conclusion, we ask that FERC approve the terms of PJM's compliance filing listed above because they will mitigate the short-term harm to clean energy development and the achievement of state targets. However, this will not obviate the need for prompt, comprehensive reform of PJM's capacity market, including an immediate reversal by the Commission of its deeply flawed MOPR order.

Respectfully submitted by,

Members of the Maryland Senate Finance Committee

Senator Brian Feldman, Vice Chair
Senator Malcolm Augustine
Senator Pamela Beidle
Senator Joanne Benson
Senator Katherine Klausmeier
Senator Benjamin Kramer

Members of the Maryland House of Delegates Economic Matters Committee

Delegate Dereck Davis, Chair
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Delegate Mike Rogers
Delegate Kriselda Valderrama
Delegate Jay Walker
Delegate Courtney Watson
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Annapolis, Maryland this 14th day of May, 2020.

/s/ Victoria Tajzai

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