

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

PJM Interconnection, LLC)	Docket Nos. ER11-2875-001
)	ER11-2785-002
)	
PJM Power Providers Group)	
)	
v.)	Docket No. EL11-20-001
)	
PJM Interconnection, LLC)	

**POST-TECHNICAL CONFERENCE COMMENTS OF
THE ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association (“EPSA”)¹ respectfully submits these comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) July 28, 2011 technical conference in the above-referenced proceedings.² The technical conference was convened to explore issues raised on rehearing regarding the applicability of the PJM Interconnection, LLC (“PJM”) Minimum Offer Price Rule (“MOPR”) as it relates to self-supply Sell Offers for Planned Generation Capacity Resources (“self-supply”) submitted into PJM’s Reliability Pricing Model (“RPM”) base residual auctions (“BRA”).³

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA filed a timely motion to intervene in Docket No. EL11-20-000 on February 9, 2011, and in Docket No. ER11-2875-000 on February, 14, 2011.

² *PJM Interconnection, LLC*, 135 FERC ¶ 61, 022 (2011) (“April 12 Order”).

³ See: *Order Granting Rehearing For Further Consideration And Establishing Technical Conference*, Docket Nos. ER11-2875-001, *et al.*, (June 13, 2011); *Notice Of Date For Staff Technical Conference And Related Information*, Docket Nos. ER11-2875-001, *et al.* (June 29, 2011); *Notice Establishing Post-Technical Conference Comment Period*, Docket Nos. ER11-

Although intended to focus solely on the MOPR self-supply issues, the conference became a wider ranging discussion of various structural issues related to RPM, PJM's capacity market construct. EPSA agrees there are broader issues at stake and there will be significant ramifications to the integrity of RPM, PJM market participants and the PJM marketplace, if the matters in these proceedings are not appropriately resolved. Therefore, the MOPR and its intended purpose and applicability should be placed in context. As the Commission has correctly determined for PJM, consistent with similar mechanisms approved in other organized markets, such mechanisms are necessary to protect market participants and consumers from the exercise of buyer market power, specifically, to strictly limit the ability of any market buyer to introduce uneconomic supply and artificially suppress regional transmission organization ("RTO") prices (regardless of the primary intent of the new capacity).⁴

EPSA urges the Commission to remain focused on this fundamental goal. The Commission should remain strong and clear on the precedent it has established to date and use the information gathered from the technical

2875-001, *et al.* (July 28, 2011); and, *Notice Of Extension Of Time*, Docket Nos. ER11-2875-001, *et al.*, (August 4, 2011).

⁴ See, e.g., *ISO New England Inc. & New England Power Pool Participants Comm*, 131 FERC ¶ 61,065 (2010) (explaining that the purpose of the analogous mechanism in the New England market is "to discourage buyers that have the incentive and ability to suppress market clearing prices below a competitive level from doing so" in order "to ensure that the prices in capacity markets reflect the market cost of new entry when new entry is needed"); *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 at P 100 (accepting a buyer market power mitigation mechanism "to prevent uneconomic entry that would reduce prices in the [] capacity market below just and reasonable levels"), *on reh'g & compliance*, 124 FERC ¶ 61,301 (2008).

conference to provide additional clarification or guidance as necessary to PJM, rather than stepping back from any of its previous decisions in this proceeding.

As emphasized by PJM's Andy Ott, the MOPR is "very targeted" in its applicability and therefore to establish a blanket exemption for self-supply would create an exception that swallows the rule.⁵ Pursuant to the April 12 Order, a sell offer (whether or not it is characterized as self supply) can *only* be affected by the MOPR if it is: (1) for a new entry resource; (2) based on a combustion turbine or combined cycle generating plant; and, (3) in a capacity constrained locational deliverability area ("LDA"). The seller then has an opportunity under the Commission-ordered exception process to cost-justify its offer to PJM and the Independent Market Monitor ("IMM"). These changes were in place for the May 2011 RPM BRA for the 2014-15 Delivery Year (although certain changes to the exception process remain pending, which PJM believes would be further responsive to concerns raised on rehearing and at the technical conference). As reflected below, the results of the most recent BRA, which incorporated the required MOPR changes, continue to reflect that RPM has attracted new resources:

Since the implementation of RPM for the 2007/2008 Delivery Year, a minimum of 42,173 MW of incremental capacity was made available or offered into the 2014/2015 [BRA] across the PJM region...Of that, 9,189.5 MW was made available in the Eastern MAAC region of PJM, which includes 5,564.9 MW of additional capacity made available in New Jersey...This incremental, new capacity made available to PJM through RPM includes new generation capacity resources, capacity upgrades to

⁵ Andy Ott, PJM, *PJM MOPR Self-Supply Technical Conference Video Webcast*, Session II at 2:59, Docket Nos. ER11-2875-001, et al., (July 28, 2011) ("Video"); also, see Statement of Andrew L. Ott on behalf of PJM Interconnection, LLC, Docket Nos. ER11-2875-001, et al. at 2 (filed July 22, 2011) ("Andy Ott Written Statement").

existing capacity resources, new Demand Resources, upgrades to existing Demand Response Resources, and new Energy Efficiency resources.⁶

Further, as PJM has indicated, refinements are pending in its compliance filing in this proceeding or under consideration in the stakeholder process that may be responsive to concerns raised at the technical conference. While the Commission heard from the States and other parties various concerns regarding the operation of RPM, it is important to bear in mind that the PJM-operated markets are regional and interstate, and as such provide reliability and other market efficiencies that are broadly available to its market participants across the RTO footprint.

Importantly, and not to be overlooked, the results of the RPM auctions since its inception have, in each year and at each stage, been monitored and analyzed by the PJM IMM and found to be competitive.⁷ RPM is meeting intended reliability objectives as recently determined by the DC Circuit Court of Appeals⁸ and an independent economic consulting firm, The Brattle Group.⁹ The

⁶ Comments of PJM Interconnection, LLC at 12, In the Matter of the Board's Investigation of Capacity Procurement Transmission Planning, State of New Jersey, Board of Public Utilities – Energy Division, Docket No. EO11050309 (filed June 17, 2011).

⁷ See Monitoring Analytics' Analysis of the 2013/2014 RPM Base Residual Auction, the Independent Market Monitor for PJM, (September 20, 2010). Available at: http://www.monitoringanalytics.com/reports/Reports/2010/Analysis_of_2013_2014_RPM_Base_Residual_Auction_20090920.pdf. Also, see the 2010 State of the Market Report for PJM, Volume II, Section 5, "Capacity Market," available at: http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2010.shtml.

⁸ *Maryland Public Service Commission v. FERC*, No. 09-1296 (D.C. Cir Feb. 8, 2011) slip op. at 5.

⁹ Second Performance Assessment of PJM's Reliability Pricing Model, Page i, The Brattle Group (August 26, 2011). ("Our primary finding is that RPM is performing well. Despite concerns by some stakeholders, RPM has been successful in attracting and retaining cost-effective capacity sufficient to meet resource adequacy requirements. Resource adequacy requirements have been met or exceeded in both the Regional Transmission Organization ("RTO") and, during

continued success of RPM depends critically on the prevention of any type of market power or artificial price manipulation.

Accordingly, the Commission should deny requests for rehearing on the self-supply exemption issue and uphold its April 12 Order on rehearing, and expeditiously approve PJM's pending compliance filing with modifications consistent with the Protest of the PJM Power Providers Group ("P3 Protest"),¹⁰ without establishment of settlement judge or dispute resolution proceedings.

I. COMMENTS

A. The Commission Has An Obligation To Protect The RPM Market Against Potential Buyer Side Market Power

As the Commission has recognized in recent orders pertaining to PJM and other RTO capacity markets, buyer-side market power is as relevant a concern as seller market power, and the Commission has a duty to protect the integrity of the wholesale power markets. The Commission's actions here are critical to protect both the viability of PJM's capacity market and the PJM competitive electricity markets more generally. The Commission must remain firm on buyer-side market manipulation and not retrench from its strong and clear directives in the April 12 Order. In discussing the Fixed Resource Requirement ("FRR") Alternative and other options that could accommodate self-supply while still protecting against market power, PJM's Andy Ott stated it is key that "participants

the last four BRAs, in all of the individual Locational Deliverability Areas ("LDAs") at capacity prices below the net cost of new entry ("Net CONE")."

¹⁰ See Protest of the PJM Power Providers Group, Docket Nos. EL11-20-000 and ER11-2875-002 (filed June 3, 2011). The P3 Protest identified four specific areas in which the PJM compliance filing does not fully comport with the letter and intent of the April 12 Order and requested that the Commission direct PJM to modify its compliance proposal to address these issues.

who put their money forth in [RPM] need to have confidence that the results of the auction will be fair and competitive; market power mitigation on both the buy-side and sell-side should be above reproach.”¹¹

B. IMM Proposal Regarding Self-Supply Or New Resources Obtained Through An Open, Non-Discriminatory Competitive Procurement

To address concerns that there are not sufficient opportunities for long-term contracting, one possible approach offered by Dr. Joe Bowring, PJM’s IMM, is to allow self-supply to be exempt from the MOPR floor if it is obtained through a competitive, non-discriminatory procurement process.¹² While PJM’s Andy Ott stated it would be insufficient to have such “a vague standard,” he indicated this approach “could work if clear, objective criteria” was incorporated into the tariff.¹³ This is consistent with an approach that has been proposed by the PJM Power Providers Group (“P3”) throughout this proceeding,¹⁴ and was generally supported by its representative, Dr. Roy Shanker, at the conference, who noted that an open, “all source” competitive procurement is a reasonable solution to the self-supply issue.¹⁵ PJM and The Brattle Group have also endorsed this

¹¹ Andy Ott, PJM, Video, Session I at 8-9 minutes.

¹² Dr. Joe Bowring, PJM IMM, Video, Session I at 1:25. *Also, see* Motion for Leave to Answer and Answer of the Independent Market Monitor for PJM in Docket No. EL11-20 at 4-5 (filed March 21, 2011); *and*, Protest of the Independent Market Monitor for PJM in Docket No. EL11-20 (filed June 2, 2011).

¹³ Andy Ott, PJM, Video, Session 1 at 1:26.

¹⁴ See P3 Complaint and Request for Clarification Requesting Fast Track Processing at 34-36 (filed February 1, 2011); Answer to Motions to Dismiss and Other Pleadings at 9-10 (filed March 18, 2011).

¹⁵ Dr. Roy Shanker, P3, Video, Session I at 1:40. *Also, see* Statement of Dr. Roy J. Shanker for Technical Conference, Presented on Behalf of PJM Power Providers at 3-4, Docket

concept.¹⁶ Although not discussed in detail at the July 28 Conference, through its ongoing stakeholder efforts PJM will propose to:

[O]perate a voluntary multi-year auction that would allow suppliers to submit offers to sell standardized multi-year contracts (e.g., 5, 7, 9 years) from both existing or new entry resources and buyers would submit bids to purchase long term contracts for the same standardized terms. Such a voluntary multi-year auction would be held in advance of the RPM Base Residual Auction and any contracts that are matched through the multi-year auction could exempt the supply and demand from direct participation in the RPM Base Residual Auction. Such an auction would be open to all resources and therefore would be competitive and non-discriminatory.¹⁷

EPSA has long been an advocate of transparent and competitive procurement processes open to all types of resources (existing and new). In that vein, EPSA supports, in principle, the development of such tariff language for inclusion in the PJM tariff. It is absolutely critical that a neutral party such as PJM be the administrator of the procurement process. Moreover, this is truly a proposal where the “devil is in the details” and until precise language governing the auction, the products to be sold, and the contracts to be awarded are

No. ER11-2875-001, et al. (July 28, 2011). (“Previously I presented a reasonable solution to self-supply: self-supply that is obtained through non-discriminatory procurements should be exempt from mitigation absent any other properties that might “game” the process.”)

¹⁶ Second Performance Assessment of PJM’s Reliability Pricing Model at viii, The Brattle Group, prepared for PJM Interconnection, LLC, (August 26, 2011). (“To increase forward price transparency and facilitate bilateral long-term contracting, we also support PJM’s effort to add centralized but voluntary auctions for [standardized] long-term capacity products as a supplement to the 3-year forward base auctions (e.g., for a duration of 3,5, and 7 years starting with the BRA delivery year).”). Available at: <http://www.pjm.com/~media/committeesgroups/committees/mrc/20110818/20110826-brattle-report-second-performance-assessment-of-pjm-reliability-pricing-model.ashx>

PJM Review of The Brattle Group Study on RPM at Slide 12: <http://www.pjm.com/~media/committees-groups/committees/mrc/20110818/20110818-item-03-pjm-review-of-brattle-study.ashx>

¹⁷ Andy Ott Written Statement at 8.

established, it is impossible to know whether it will be non-discriminatory in fact, as well as concept. For the approach to be feasible, clear and objective criteria should be specified to ensure there are no new “loopholes” created to avoid mitigation.

C. The New Jersey LCAPP Auction Was Not An Open, Non-Discriminatory Competitive Procurement Process

With all due respect, EPSA must clarify for the formal record in this proceeding that the recent New Jersey Board of Public Utilities (“BPU”) Long-Term Capacity Agreement Pilot Program (“LCAPP”) auction process would not even meet the “vague standard” as an open, non-discriminatory competitive procurement process. Such processes by simple definition do not have limiting parameters around them other than term, quantity and price.¹⁸ As noted by the PJM IMM in recent comments submitted to the New Jersey BPU:

The [LCAPP] approach, as currently implemented, is not consistent with the operation of a competitive capacity market. LCAPP, as currently implemented, would result in: the procurement of capacity that is not needed for reliability; the procurement of capacity through a process that is discriminatory because it excludes existing generation; and the requirement to offer the procured capacity so that it clears in the PJM capacity auctions. The result of offering LCAPP capacity through this auction structure into the PJM capacity market at prices less than cost would be to artificially depress prices in the PJM capacity market both inside and outside New Jersey. This would therefore negatively affect the incentives to build new generation both inside and outside New Jersey and would likely result in a situation where only subsidized units would ever be built in New Jersey.¹⁹

¹⁸ See Statement of Dr. Roy J. Shanker for Technical Conference, Attachment at pg. 3: Response to Technical Conference Question 6:...”The principal considerations to qualify as non-discriminatory is the absence of conditions outside of price, term, quantity and general legal compliance of the supplier with applicable state and federal laws. The Commission has repeatedly held that a MW is a MW with respect to meeting capacity requirements.”

¹⁹ Comments of the Market Monitor re In the Matter of the Board’s Investigation of Capacity Procurement and Transmission Planning at 3, Before the New Jersey Board of Public Utilities, Docket No. EO1111050309, (June 17, 2011). Available at:

At the July 28 Conference, BPU President Lee Solomon stated that “the issue of whether the process we adopted in New Jersey was discriminatory” and excluded “incumbent” generation was “incorrect.”²⁰ Later, President Solomon noted:

The concern was for the benefit of New Jersey that the lights might start going out and the prices as high as they were and as non-competitive as they were would start going up, reflective of reliability issues and congestion, period. And the contracts occurred, it was an open, very public, not the bid itself, not the – but the process was very open, very public, the rationale open and public. It was open to incumbents and it was open to new and frankly they were not going to get paid unless they cleared which means that the current MOPR means they’re not going to get paid because they won’t clear and we’re not going to get the new generation...²¹

The point here may be nuanced from a pure terminology standpoint. However, the fact remains it was not an open, “all source” procurement process, as all classes and types of resources were not eligible to participate, and that by definition is discriminatory. While the term “incumbent” was used in discussion at the conference, the LCAPP process, albeit conducted in response to requirements of the State law, was skewed in favor of resources by vintage (i.e., new vs. existing), type of resource (base load and mid-merit vs. peaking), and location (in-state, although not specified). Specifically, the following language describes the Eligibility Screening Method for an “eligible generator” for the LCAPP process:

http://www.monitoringanalytics.com/reports/Reports/2011/IMM_Comments_NJ_EO_11050309_2_0110617.pdf

²⁰ President Lee Solomon, NJ BPU, Video, Session I at 1:15.

²¹ Id., Session II at 2:32.

In accordance with the LCAPP Law, an “[e]ligible generator” is “a developer of a base load or mid-merit electric power generation facility, including but not limited to, an on-site generation facility that qualifies as a capacity resource under PJM criteria and that commences construction after the effective date of [the LCAPP Law]”. Based on this definition, as well as the finding by the Legislature that, “[f]ostering and incentivizing the development of a limited program for *new* electric generation facilities will help ensure sufficient capacity to stabilize power prices...”(P.L.2011, c.9, Sec.1.i., *emphasis added*), the Agent identified those proposals that satisfied all three eligibility conditions:

- Proposed project must be a base load or mid-merit electric power generation facility;
- Proposed project must qualify as a capacity resource under PJM criteria; and
- Proposed project must be a new electric generation facility that did not begin construction on or before January 28, 2011.

Proposed generation projects that did not satisfy all three eligibility conditions were not promoted to the prequalification review phase.²²

Further, the following language provides additional insight into projects deemed ineligible to participate in the LCAPP process:

Prequalification applications were submitted for thirty-four (34) generation projects prior to the 5:00 pm deadline on February 22, 2011. Of the thirty-four submitted projects, nine (9) were determined to be eligible to continue in the process. The Agent determined that twenty-five (25) were ineligible for the LCAPP. Of the ineligible projects, twenty-one (21) were eliminated because they were resource submissions tied to existing generation facilities; hence, they did not satisfy the criterion set forth in the LCAPP Law fostering and incentivizing the development of new electric generation facilities. Of the ineligible projects, four (4) were categorized as peaking units highly unlikely to meet the baseload or mid-merit operating regime required by the LCAPP Law. Bidders were so notified of their eligibility status or lack thereof on March 3, 2011.²³ [emphasis added]

²² LCAPP Agent’s Final Report at 28, Section 5.1 Eligibility Screening Method, Long-Term Capacity Agreement Pilot Program, prepared for the New Jersey Board of Public Utilities, March 21, 2011. Available at: <http://www.bpu.state.nj.us/bpu/pdf/energy/LCAPP%20Agent%20Report.pdf>.

²³ Long-Term Capacity Agreement Pilot Program – Initial Recommended SOCA Proposals at 1, Letter to New Jersey Board of Public Utilities Chief Counsel Kenneth Sheehan from the

In a “real-time” world, the broader impacts, including from the financial markets, of such discriminatory actions also cannot be overlooked. As noted by Dr. Shanker, the day that New Jersey signed LCAPP [into law], all the independent generators were downgraded.²⁴

D. The Restrictions On Interactions Between FRR Resources and RPM Resources Should Not Be Substantially Relaxed

Another important discussion at the Technical Conference centered around the FRR Alternative, and whether (1) it is a viable alternative to the RPM for a self-supply entity, and (2) rules applicable to FRR entities are too stringent. Importantly, PJM’s Andy Ott noted the RTO’s support for reviewing elements of the FRR Alternative given experience with both RPM and FRR, and stated it is currently undertaking a stakeholder process to do so; however, he indicated there are “fundamental, necessary features” that must remain to ensure the viability of the RPM construct and ensure long-term resource adequacy in the PJM region.²⁵ Specifically, there must be some minimum time period associated with the FRR election (currently there is a 5-year commitment period) and all capacity obligations must be fully secured outside of RPM for all load in the area covered by the FRR plan. PJM explains that:

A key design element of the FRR alternative is to ensure the FRR entity manages the entire costs of ensuring long term adequacy through its FRR plan for the load covered by the plan. The FRR plan must manage

LCAPP Agent, Richard Levitan, President, Levitan & Associates, March 15, 2011. Available at: <http://www.bpu.state.nj.us/bpu/pdf/energy/LCAPPAr.pdf>.

²⁴ Dr. Roy Shanker, P3, Video, Session I at 55 minutes.

²⁵ Andy Ott, PJM, Video, Session I at 8 minutes. Also, see Andy Ott Written Statement at 9-10.

performance risk within the plan and cannot take advantage of RPM resources and prices that manage risk through the variable resource requirement curve. If an FRR entity is permitted to place a portion of its load in an FRR plan and then satisfy the remainder in RPM, they can readily game the market by leaning on RPM when prices are low and pulling their load out of the market when prices get high. Such a partial FRR alternative would unfairly shift costs of long term resource adequacy to RPM loads and would be unreasonable.²⁶

EPSA supports the general review of the FRR Alternative, but agrees with PJM that these key design elements must be retained. Specifically, any FRR entity should not be allowed to game the market or potentially distort market pricing by “toggling” between the FRR option (and obligation levels) and RPM participation, and there must be specific longer-term time commitments and full load requirements to ensure there is no shifting of risk or cost to RPM.

An entity may participate in RPM, obtain its requirements through a non-discriminatory competitive process or elect the FRR option, which admittedly does not provide the benefits and efficiencies that a system-wide auction can provide. However, there cannot be a partial FRR option, where an entity could designate certain new units in its portfolio as FRR resources and avoid mitigation, while monetizing the excess supply that is created through sales from existing units into RPM at artificially depressed prices. To reap the benefits of the competitive market when it suits the needs of the individual entity, without being subject to all the obligations required of other market participants, is inappropriate, uneconomic and should not be permitted.

²⁶ Andy Ott Written Statement at 9-10.

D. The Commission Should Uphold The PJM MOPR Decision On Rehearing, and Direct Modifications to PJM's Compliance Filing Without Requiring Settlement Judge Or ADR Proceedings

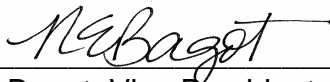
As discussed at the conference and highlighted above, key issues of concern in terms of application of the MOPR to self-supply are currently being considered in the stakeholder process. Other possible issues for consideration in a PJM stakeholder process that could be directed by the Commission include further refinements or clarification of the self-supply exemption process and development of the voluntary, non-discriminatory long-term bilateral contract market that may be responsive to hedging needs.

Given the critical importance to the integrity of RPM to prevent uneconomic entry and artificial price suppression, the Commission should deny requests for rehearing regarding the MOPR self-supply exemption issue and uphold on rehearing the findings in its April 12 Order. Additionally, the Commission should expeditiously approve PJM's pending compliance filing conditioned consistent with the P3 Protest to provide certainty in advance of the May 2012 RPM base residual auction ("BRA"). EPISA submits that further proceedings utilizing a FERC-appointed settlement judge or alternative dispute resolution are not required, as many issues raised at the conference are either sufficiently addressed within the PJM compliance filing, or as noted above are currently under consideration in a stakeholder process, or, if necessary, may appropriately be considered in the stakeholder process under ongoing discussion of RPM issues.

II. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission consider the comments herein, deny requests for rehearing on the self-supply exemption issue and uphold its April 12 Order on rehearing, and expeditiously approve PJM's pending compliance filing with the modifications requested in the P3 Protest, without settlement judge or dispute resolution proceedings required.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., August 29, 2011.



Nancy Bagot, VP Regulatory Affairs