**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**

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| PJM Interconnection, L.L.C | :  :  : | Docket No. ER13-535-000 |

**COMMENTS**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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# INTRODUCTION AND BACKGROUND

On December 7, 2012, PJM Interconnection, L.L.C. (PJM), pursuant to section 205 of the Federal Power Act (FPA), submitted to the Federal Energy Regulatory Commission (FERC) an application that delineates proposed stakeholder-driven revisions to its Minimum Offer Pricing Rule (MOPR), under PJM’s Reliability Pricing Model (RPM), to be effective February 5, 2013. PJM’s proposed effective date ensures that the proposed tariff amendments be effectuated in time for the May 2013 Base Residual Auction. Among other things, PJM’s application notes that its proposed filing advances FERC’s prior decisions regarding the need to protect against potential price suppression in the capacity market and to provide a greater certainty in the MOPR exception process.

The application makes several changes to current practice. PJM’s application creates two new broad categorical exemptions to MOPR, displacing the current unit-specific exemption. These are a self-supply exemption for load-serving entities, and an exemption for competitive entry projects that are receiving no out-of-market payments related to the construction of new generation. The application further notes that State-sponsored generation can also receive an exemption if the generation project is selected through a competitive and nondiscriminatory state procurement process that is open to both new and existing capacity. Another significant proposed change is to narrow the MOPR to apply only to gas-fired combustion turbine, combined cycle, or integrated gasification combined cycle generating technologies.

To ensure meaningful mitigation, PJM’s proposed MOPR application also strengthens the criteria applied to those generation facilities receiving out-of-market payments. Specifically, the application proposes (1) that, as opposed to the current one-year requirement, subsidized projects must clear the BRA for three years prior to eligibility to participate in the auction as a price taker,[[1]](#footnote-2) (2) to extend MOPR mitigation beyond only constrained locational deliverability areas (LDA) in PJM’s service area to include the entire RTO, and (3) to set the MOPR benchmark at 100 percent of the value of the net cost of new entry (Net-CONE) for that specific asset class, as opposed to the current 90 percent requirement.

On December 10, 2012, the Public Utilities Commission of Ohio (PUCO or Ohio Commis­sion) filed its motion to intervene in this docket and is consequently a party to this investigation. Comments in this proceeding are due on or before December 28, 2012. The PUCO hereby submits its comments responding to the PJM’s appli­cation to revise its MOPR tariff.

# DISCUSSION

## General Comments

As a retail competition state for electricity, the Ohio Commission supports PJM’s proposed revised MOPR (with exceptions of those items delineated, below). The Ohio Commission avers that the revised MOPR provides a flexible rule based approach to prevent the exercise of buyer market power to reduce prices to artificial levels, ensuring that market participants have full flexibility to react to market conditions while achieving a level of certainty for market participants.

The Ohio Commission agrees with PJM that this narrow application[[2]](#footnote-3) coupled with the two categorical exemptions is likely to exempt the vast majority of new generation projects from the MOPR, and leave only a very small number subject to mitigation. As revised, the only projects likely to be mitigated under the MOPR are those that: (i) do not qualify for the self-supply exemption; (ii) are receiving out of market payments; and (iii) were selected through a process that was not competitive or non-discriminatory. These remaining projects—not conforming to traditional models, not qualifying as competitive entry and selected in a discriminatory process—properly should be the central focus of the MOPR. They are the projects most likely to be deployed in a way that artificially suppresses wholesale capacity prices.

## State Procurement Process and Ohio Law

PJM explains that the proposed revised MOPR does not prevent a state from undertaking its own competitive procurement process. State sponsored generation can receive an exclusion from MOPR, under the Competitive Entry Exemption, if the generation project is selected through a competitive and non-discriminatory state procurement process that is open to both new and existing resources. Ohio Revised Code Section 4928.143(B)(2)(c) permits the establishment of a nonbypassable surcharge for the life of an electric generating facility that was sourced through a competitive bid process under rules established by the Ohio Commission.[[3]](#footnote-4) It is illogical to require existing capacity to be required to participate in a state procurement process for new generation in order to qualify for the MOPR exemption. Hypothetically, if a state commission sought to undertake its own competitive procurement, it would be effectuated to acquire new generation resources. Following this hypothetical, it is the non-discriminatory, competitive bid for new resources that would prevent price suppression; not the openness of the process to existing capacity -- although there would be nothing to prevent existing capacity resource providers from bidding in new resources to the state-procurement auction. Consequently, the Ohio Commission recommends that FERC direct PJM to amend the proposed tariff language in Section 5.14(h)(7)(ii) to reflect that a state sponsored generation solicitation limited to only new facilities can receive a MOPR Competitive Entry Exemption if the generation project is selected through a competitive and non-discriminatory state procurement process.

## Applicability

As previously noted, the major change contained in this filing is to add two broad, categorical exemptions to MOPR, displacing the current unit-specific exemption. The two new categorical exemptions are a self-supply exemption for load-serving entities that meet certain net short and net long criteria and that are operating under long-standing business models that predate RPM; and an exemption for competitive entry projects that are receiving no out of market payments related to the construction of new generation.

Further, the MOPR would apply only to gas-fired combustion turbine (CT), combined cycle (CC), or integrated gasification combined cycle (IGCC) generating technologies. PJM states that the revised MOPR also applies to uprates, *i.e*., incremental increases in the capability of existing plants, but subject to a 20 MW screen that applies to any resource— existing or new, that is otherwise subject to the MOPR. PJM maintains that this focuses the MOPR on projects that have the most potential to move auction-clearing prices.

The Ohio Commission agrees with PJM that the revised MOPR will be more targeted at those resources that are the most likely to present legitimate price suppression (i.e., non-competitively bid state-subsidized projects). Moreover, the Ohio Commission also supports PJM’s statement that because the categorical exemptions eliminate the types of projects that are not likely to raise price suppression concerns, and leave behind only those that arelikely to raise price suppression concerns; it is no longer necessary or appropriate to retain a unit-specific review. Eliminating that review also eliminates a source of non-transparent discretionary determinations, and potentially reduces the need for litigation.

## Competitive Entry Exemption

PJM states that the Competitive Entry exemption provides several avenues to qualify for the exemption from MOPR. A market seller that is not receiving out-of-market payments from a government entity connected to the construction or clearing in an RPM auction may demonstrate the resource qualifies through submission of appropriate documentation and certifications.

The Ohio Commission supports PJM’s assertion that this exemption is reasonable because it significantly reduces administrative burdens for merchant generation projects that are not receiving out-of-market payments to obtain an exemption from the MOPR requirements and it significantly reduces the potential for unintended barriers to entry for legitimate competitive new generation projects.

The Ohio Commission notes, however, that PJM’s proposed tariff language in Section 5.14(h)(8) requires that the Capacity Market Seller in its exemption request provide a description of its resource and “all documentation necessary to demonstrate that the exemption criteria are satisfied, including without limitation the applicable certification(s) specified in this subsection (h).” The Ohio Commission maintains that “all documentation” is too broad and subjective. The required “sworn, notarized certification of a duly authorized officer” that its exemption request meets the criteria of the exemption should be sufficient in conjunction with the MOPR’s proposed remedies process for fraudulent or material misrepresentations. With the requisite affidavit, all new generation should be placed on par with existing facilities. That is, to the extent possible, new entry generation should not be required to provide any documentation or additional administrative reports as compared to existing facilities. This recommendation is consistent with the State of Ohio’s “Common Sense Initiative”[[4]](#footnote-5) that seeks to mitigate the impact of administrative rules on businesses in Ohio. Specifically, Ohio Revised Code Section 107.53 requires “standards that promote transparency, predictability, consistency, and flexibility in the implementation and operation of a draft rule as well as an overall balance in a draft rule between its regulatory objectives and the cost of compliance it imposes on regulated persons.” When implementing the Competitive Entry Exemption, PJM should be mindful of the potential for unnecessary administrative burdens its proposed tariff language places on new-entry generation.

## Other Proposed Modifications to MOPR

### NET CONE Benchmark

PJM explains that the current tariff sets the MOPR benchmark value at 90% times PJM’s estimate of Net-CONE. The change endorsed by the vast majority of stakeholders sets that benchmark at 100% of Net-CONE.

The Ohio Commission agrees with PJM that, as described previously, the two categorical exemptions will exempt most resources, and because projects that fail the two exemptions are likely to present significant risks of price suppression, there is less reason to apply a discount factor to Net-CONE.

### Region-wide Application

PJM states that the current MOPR applies only in constrained areas of PJM, reflecting a reasonable focus on the areas in which prices will tend to be highest, and therefore in which price suppression is most likely to be profitable.

The Ohio Commission agrees with PJM that because the categorical exemptions are likely to exempt most projects from MOPR, there is little need to further limit the application of MOPR by focusing it on only part of the region (*i.e.,* the constrained LDA). Furthermore, the Ohio Commission believes that the proposed change is reasonable because there is no logical reason to geographically limit the methodology if the revised MOPR is to achieve its intended purpose.

### Extension of time for MOPR application

PJM proposes, in the revised MOPR, that screened resources maintain the MOPR price floor until the resource clears in three separate RPM auctions for three separate delivery years; rather than the existing one-year rule. The exception to this rule occurs where capacity is needed for reliability in those auctions where the region is short on capacity.

PJM further explains that the revised MOPR, with its tighter focus on resources that are most likely to pose price suppression concerns, properly should apply for a longer period. Applying the rule for only one year would allow subsidized units to enter the market on a non-competitive basis based on a temporary, coincident increase in capacity prices or a temporary decrease in the MOPR price floor. PJM maintains that the MOPR price floor is just an estimate of new entry costs and if a unit clears at that price in a single year, it does not mean that the unit will not interfere with the competitive market in subsequent years. The Ohio Commission agrees with PJM’s rationale for extending to three the years needed to clear the MOPR. Similar to the revisions proposed to Net- CONE and the applicability of MOPR throughout the entire region, these criteria working together are necessary to ensure that MOPR functions appropriately to exclude the limited amount projects that create the greatest amount of price suppression concerns in a competitive wholesale market (*i.e*., support payments from captive customers tied to the clearing or construction of a capacity resource in the PJM region).

## Cogeneration and MOPR

As explained previously, PJM states that the MOPR excludes certain combined CC, CT, or IGCC resources that are unlikely to raise price suppression concerns (i.e., qualifying facilities for cogeneration or landfill gas facilities). While the Ohio Commission agrees with PJM’s statement in its application and supports the exclusion of any qualifying cogeneration facilities from MOPR screened generation, the actual tariff language proposed by PJM appears to be antithetical to this statement. Upon examination of the PJM’s actual proposed tariff language in Section 5.14(h)(2), the Ohio Commission notes that the proposed language would exclude from MOPR the following:

(iii) any cogeneration unit that is certified or self-certified as a Qualifying Facility, where the Capacity Market Seller is owner of the Qualifying Facility and is the beneficial off-taker of the steam, electrical energy, and Unforced Capacity of the unit, the Unforced Capacity of the unit is no larger than approximately all of the Unforced Capacity Obligation of the host load, and all Unforced Capacity of the unit is used to meet the Unforced Capacity of the host load.

Instead of exempting all cogeneration units from MOPR, the proposed tariff language would appear to only exclude those units that are not sized larger than the host load. Nowhere in its application does PJM explain why the cap on cogeneration is necessary or just and reasonable. To the contrary, as previously mentioned, PJM appears to recognize that cogeneration facilities are unlikely to raise price suppression concerns. If allowed to remain as currently proposed, the tariff language will likely have a chilling effect on the fledgling cogeneration and Combined Heat and Power (CHP) industry and its participation in RPM.

As FERC is aware, both federal and state actions have been initiated to promote and incent cogeneration and CHP initiatives. President Barack Obama signed an executive order on August 30, 2012, encouraging investment in industrial energy efficiency and increased investment in CHP. Chairman Todd Snitchler stated in a press release, in response to the President’s executive order, that Ohio and the Ohio Commission have been at the forefront of cogeneration/CHP development by teaming with the Department of Energy in February of 2012 to facilitate dialog between regulators and potential CHP developers with the goal of removing education and regulatory barriers to CHP development. Additionally, the Ohio General Assembly passed legislation (Ohio Senate Bill 315), signed by Governor Kasich on June 11, 2012, that created a state policy to fully promote and incent cogeneration efforts. This legislation recognized the important role of CHP by allowing CHP to help satisfy energy efficiency standards. The proposed MOPR tariff language would hinder the goals of Ohio’s legislation by placing caps, which do not exist in Ohio law, on those cogeneration units exempted from MOPR.

Furthermore, the Ohio Commission is concerned that a cogeneration unit may be subject to the MOPR if a cogenerator receives incentives in the form of state or federal grants, loans and other financial assistance designed to promote deployment of cogeneration/CHP. To the extent a cogenerator may seek to obtain a Competitive Entry Exemption for its facilities that would otherwise be subject to the MOPR, it would be subject to the proposed provision that prohibits a capacity market seller from arrangements that provide material payments, concessions, rebates, or subsidies directly or indirectly from any governmental entity connected with the construction or clearing of the resource in any RPM auction. Similarly, FERC should clarify that if cogeneration units are not entirely exempted from MOPR, such facilities may receive concessions, rebates, subsidies or incentives from any governmental entity and still be eligible for the Competitive Entry Exemption.

In sum, it is important that FERC review the applicability of PJM’s proposed tariff language to cogeneration facilities. In its current form, the language does not appear to be just and reasonable when such facilities are unlikely to raise price suppression concerns. Therefore, FERC should order PJM to remove the language which caps the MOPR exemption for cogeneration in tariff Section 5.14(h)(2)(iii) and clarify the status of cogeneration facilities with regard to governmental subsidies and the Competitive Entry Exemption under Section 5.14(7)(iii).

# CONCLUSION

The Ohio Commission thanks FERC for the opportunity to provide com­ments on PJM’s proposed filing to revise its MOPR requirements.

Respectfully submitted,

*/s/Thomas W. McNamee*

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**On behalf of The Public Utilities Commission of Ohio**

# CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

*/s/Thomas W. McNamee*

**Thomas W. McNamee**

Dated at Columbus, Ohio this December 28, 2012.

1. PJM’s application notes that a one year-requirement will continue to apply if the RPM auction clears with a significant capacity shortage in that year and reliability could be in jeopardy. [↑](#footnote-ref-2)
2. Application at Page 15, December 7, 2012. [↑](#footnote-ref-3)
3. To date, the Ohio Commission has not approved an application for a nonbypassable surcharge for new generation facilities, nor is any active combustible turbine, combined cycle, integrated gasification combined cycle generation application pending before the PUCO. [↑](#footnote-ref-4)
4. Amended Substitute Senate Bill *2*, 129th Ohio General Assembly, effective June 7, 2011. [↑](#footnote-ref-5)