

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

RECEIVED
U.S. COURT OF APPEALS
FOR THE D.C. CIRCUIT
2015 DEC 14 PM 4:40
FIRM/AFFILIATE OFFICES

FILING DEPOSITORY

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
SAN FRANCISCO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

December 14, 2015

VIA HAND DELIVERY

Mr. Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, DC 20001-2866

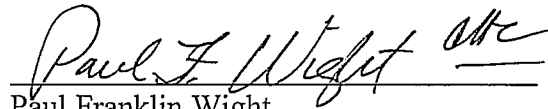
Re: Petition for Review of Orders of the Federal Energy Regulatory Commission

Dear Mr. Langer:

Please find enclosed for filing an original and four copies of a Petition for Review of orders of the Federal Regulatory Commission and the Corporate Disclosure Statement of PJM Power Providers Group. Also enclosed is a check in the amount of \$500 to cover the filing fee. Copies have been served as indicated on the enclosed Certificate of Service.

Please date stamp the extra copies of both the Petition for Review and the Corporate Disclosure Statement, and return them to our messenger for delivery to the undersigned.

Respectfully submitted,



Paul Franklin Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
(202) 371-7365
paul.wight@skadden.com

Counsel for PJM Power Providers Group

Enclosures

IN THE UNITED STATES
COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RECEIVED
U.S. COURT OF APPEALS
FOR THE D.C. CIRCUIT

2015 DEC 14 PM 4: 40
FILING DEPOSITORY


PJM Power Providers Group,)
Petitioner,)
v.) Case No. 15-
Federal Energy Regulatory Commission,)
Respondent.)

PETITION FOR REVIEW OF
PJM POWER PROVIDERS GROUP

Pursuant to section 313(b) of the Federal Power Act, 16 U.S.C. § 8251(b), Rule 15(a) of the Federal Rules of Appellate Procedure, and Circuit Rule 15, PJM Power Providers Group hereby petitions this Court for review of the following orders of the Federal Energy Regulatory Commission:

- (a) *PJM Interconnection, L.L.C.*, Docket Nos. ER13-535-000 and EL13-535-001, Order Conditionally Accepting in Part, and Rejecting in Part, Proposed Tariff Provisions, Subject to Conditions, 143 FERC ¶ 61,090 (May 2, 2013); and
- (b) *PJM Interconnection, L.L.C.*, Docket Nos. ER13-535-002 and EL13-535-003, Order on Rehearing and Compliance, 153 FERC ¶ 61,066 (Oct. 15, 2015).

Respectfully submitted,



John N. Estes III

Paul Franklin Wight

John Lee Shepherd, Jr.

Skadden, Arps, Slate, Meagher
& Flom LLP

1440 New York Avenue, N.W.

Washington, DC 20005

(202) 371-7000

john.estes@skadden.com

paul.wight@skadden.com

john.shepherd@skadden.com

Counsel for PJM Power Providers Group

Dated: December 14, 2015

**IN THE UNITED STATES
COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PJM Power Providers Group,)	
Petitioner,)	
)	
v.)	Case No. 15-
)	
Federal Energy Regulatory Commission,)	
Respondent.)	

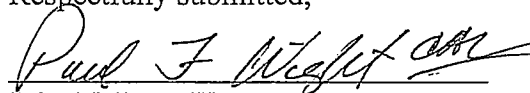
CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of both the Federal Rules of Appellate Procedure and the local rules of this Court, the undersigned, counsel of record for PJM Power Providers Group (“P3”), hereby states as follows:

P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 84,000 MWs of generation assets, produce enough power to supply over 20 million homes and employ over 40,000 people in the PJM region covering 13 states and the District of Columbia.

For purposes of this disclosure statement, P3 respectfully submits that it is a trade association pursuant to Circuit Rule 26.1(b).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul F. Wight", written over a horizontal line.

John N. Estes III

Paul Franklin Wight

John Lee Shepherd, Jr.

Skadden, Arps, Slate, Meagher
& Flom LLP

1440 New York Avenue, N.W.

Washington, DC 20005

(202) 371-7000

john.estes@skadden.com

paul.wight@skadden.com

john.shepherd@skadden.com

Counsel for PJM Power Providers Group

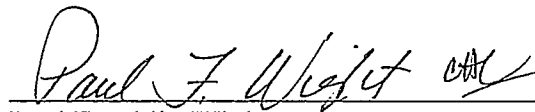
Dated: December 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Review and Corporate Disclosure Statement of PJM Power Providers Group will be hand delivered to the Office of the Solicitor, and filed with Kimberly D. Bose, Secretary, of the Federal Energy Regulatory Commission, and are also being served by first class mail or electronically on each person designated on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in the proceedings below, which are attached hereto at Appendix A.

Dated at Washington, D.C. this 14th day of December 2015.

Respectfully submitted,



Paul Franklin Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
(202) 371-7365
paul.wight@skadden.com

Counsel for PJM Power Providers Group

APPENDIX A

Amanda Conner
Senior Counsel
American Electric Power Service Corporation
801 Pennsylvania Ave. N.W.
Suite 320
Washington, DC 20004
arconner@aep.com

Krycia Kubiak
Assistant General Counsel
Duquesne Light Company
411 7th Ave.
Pittsburgh, PA 15217
kkubiak@duqlight.com

Joel Malina
Executive Director
COMPETE Coalition
1317 F Street, N.W.
Washington, DC 20004
malina@wexlerwalker.com

Susan Kelly
Chief Executive Officer
American Public Power Association
2451 Crystal Drive
10th Floor
Arlington, VA 22202
skelly@publicpower.org

Ruth Teetzel
Senior Legal Administrator
Brookfield Energy Marketing LP
480 Boulevard de la Cite
Gatineau, Quebec J8T 8R3
Canada
ruth.teetzel@brookfieldrenewable.com

Peter Lesch
Thompson Hine LLP
1919 M Street, N.W.
Suite 700
Washington, DC 20036-1600
peter.lesch@thompsonhine.com

Daniel L. Snider
Managing Director RTO & NERC/C
American Electric Power Service
Corporation
One Riverside Plaza
Columbus, OH 43215
dlsnider@aep.com

Lisa G. McAlister
Deputy General Counsel - FERC
American Municipal Power, Inc.
1111 Schrock Road
Suite 100
Columbus, OH 43229
lmcAlister@amppartners.org

Christopher J. Norton
Director of Market Regulatory
American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, OH 43229
cnorton@amppartners.org

Delia D. Patterson
General Counsel
American Public Power Association
2451 Crystal Drive
Suite 1000
Arlinton, VA 22202
dpatterson@publicpower.org

Nicolas Bosse
Manager Regulatory Affairs - I
Brookfield Energy Marketing Inc.
1501 McGill College, Suite 1602
Montreal, Quebec H3A 3M8
Canada
nicolas.bosse@brookfieldrenewable.c

Kurt P. Helfrich
Thompson Hine LLP
10 West Broad Street
Columbus, OH 43215
kurt.helfrich@thompsonhine.com

Neil Levy
Stephanie S Lim
Senior Attorney
King & Spalding LLP
1700 Pennsylvania Ave.
Washington, DC 20006
nlevy@kslaw.com
sslim@kslaw.com

Sarah G. Novosel
Senior VP and Managing Counsel
Steven Schleimer
Calpine Corporation
875 15th Street, N.W.
Suite 700
Washington, DC 20005
snovosel@calpine.com
steven.schleimer@calpine.com

Braith Kelly
CVP Power Development, Inc.
50 Braintree Hill Office Park, Suite 300
Braintree, MA 02184
bkelly@cpv.com

Laurence Daniels
Assistant People's Counsel
Office of the People's Counsel (DC)
1133 15th Street, N.W. Suite 500
Washington, DC 20005
ldaniels@opc-dc.gov

Randall Griffin
Chief Regulatory Counsel
Dayton Power and Light Company, The
1065 Woodman Drive
Dayton, OH 45432
randall.griffin@aes.com

John W. Horstmann
Dayton Power and Light Company, The
315 Buckwalter Rd
Phoenixville, PA 19460
john.horstmann@aes.com

Ruth A. Price
Delaware Deputy Public Advocate
Delaware Public Advocate
820 North French Street, 4th Floor
Wilmington, DE 19801
ruth.price@state.de.us

Regina A. Iorii
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
regina.iorii@state.de.us

Andrea Maucher
Public Utilities Analyst
Delaware Division of the Public Advocate
401 Federal Street, Suite 3 (Sec. of State)
John G. Townsend Building
Dover, DE 19901
andrea.maucher@state.de.us

Kevin Neilson
Acting Executive Director
John Farber
Public Utility Analyst
Delaware Public Service Commission
861 Silver Lake Blvd.
Dover, DE 19904
kevin.neilson@state.de.us
john.farber@state.de.us

Michael Regulinski
Assistant General Counsel
Dominion Services Legal Group
120 Tredegar Street
RS-2
Richmond, VA 23231-9
Michael.Regulinski@Dom.com

Gary Newell
Alan Robbins
Debra Roby
Andrea Sarmentero
Jennings, Strouss & Salmon, P.L.C.
1350 I Street, N.W.
Washington, DC 20005
gnewell@jsslaw.com
arobbins@jsslaw.com
droby@jsslaw.com
asarmentero@jsslaw.com

Michelle Grant
Corporate Counsel
601 Travis Street, Suite 1400
Houston, TX 77002
michelle.d.grant@dynegy.com

Christopher Foley
Managing Director & Senior Cou
Midwest Generation LLC
500 West Madison Street
Suite 2640
Chicago, IL 60661
christopher.foley@nrgenergy.com

Kathleen Barron
Senior Vice President
Exelon Corporation
101 Constitution Ave., N.W.
Suite 400 East
Washington, DC 20001
kathleen.barron2@exeloncorp.com

Paul Kinny
Associate General Counsel
Duke Energy Corporation
P.O. Box 1244
Charlotte, NC 28201-1244
Paul.Kinny@duke-energy.

Sherman Goodpaster
Corporate Counsel
East Kentucky Power Cooperative
P.O. 707, 4775 Lexington Road
Winchester, KY 40391
sherman.goodpaster@ekpc.coop

Jason Cox
Director, Regulatory Affairs
Dynegy Power Marketing, Inc.
1000 Louisiana Ave., Suite 5800
Houston, TX 77002
jason.cox@dynegy.com

Nancy Bagot
Vice President
Electric Power Supply Association
1401 New York Ave., N.W.
11th Floor
Washington, DC 20005
NancyB@epsa.org

Jason C. Barker
Vice President, Energy Policy
Constellation Energy Group Inc.
111 Market Place, Suite 500
Baltimore, MD 21202
jason.barker@constellation.com

Divesh Gupta
Constellation Energy Group, Inc.
100 Constellation Way
Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com

David Schwartz
Natasha Gianvecchio
Tyler Brown
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004
david.schwartz@lw.com
natasha.gianvecchio@lw.com
tyler.brown@lw.com

Stuart Caplan
Jessica M. Lynch
SNR Denton US LLP
1301 K Street, N.W.
Suite 600, East Tower
Washington, DC 20005
stuart.caplan@dentons.com
jessica.lynch@dentons.com

Nora Naughton
Managing Attorney, Federal and
Illinois Commerce Commission
160 N. LaSalle Street
Suite C-800
Chicago, IL 60601
nnaughto@icc.illinois.gov

Brent Bolea
Assistant Attorney General
Maryland Office of the Attorney General
60 West Street, Suite 300
Annapolis, MD 21401
brent.bolea@maryland.gov

Mary Hain
Nicolas McTyre
Federal Energy Regulatory Commission
Staff Counsel
888 First Street, N.E.
Washington, DC 20426
Mary.Hain@ferc.gov
Nicolas.McTyre@ferc.gov

Karen A. Sealy
Attorney
FirstEnergy
76 South Main Street
A-GO-15
Akron, OH 44308
ksealy@firstenergycorp.com

Thomas P. Thackston
Associate General Counsel
1 Hess Plaza
Woodbridge, NJ 07095
thomas.thackston@directenergy

Jesse Dillon
Assistant General Counsel
Talen Energy Corporation
850 Hamilton Blvd., Suite 150
Allentown, PA 18101
jesse.dillon@talenergy.com

William Fields
Assistant People's Counsel
6 St. Paul Street, Ste 2102
Baltimore, MD 21202
billf@opc.state.md.us

Randall Speck
Kaye Scholer LLP
901 15th Street
Suite 1100
Washington, DC 20005
rspeck@kayescholer.com

Richard Meyer
Senior Regulatory Counsel
National Rural Electric Cooperative Association
4301 Wilson Blvd
Arlington, VA 22203
richard.meyer@nreca.coop

Jeffrey Schwarz
Scott H. Strauss
Spiegel & McDiarmid LLP
1875 Eye Street, N.W., Suite 700
Washington, DC 20036
jeffrey.schwarz@spiegelmc.com
Scott.Strauss@spiegelmc.com
eService@spiegelmc.com

Henry M. Ogden
Asst. Dep. Public Advocate
New Jersey Department of the Public Advocate
P.O. Box 46005
Newark, 07101-8003
hogden@rpa.state.nj.us

Charles Bayless
Associate General Counsel
3400 Sumner Boulevard
Raleigh, NC 27616
charlie.bayless@ncemcs.com

Robert H. Erwin
General Counsel
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, MD 21202
mpscogcferc@psc.state.md.us

Adrienne E. Clair
Glen L. Ortman
Stinson Leonard Street LLP
1775 Pennsylvania Ave, N.W.
Suite 800
Washington, DC 20006
adrienne.clair@stinsonleonard.com
gortman@stinsonleonard.com

Felicia Thomas-Friel
Managing Attorney - Electric
New Jersey Division of Rate Counsel
P.O. Box 46005
Newark, NJ 07101-8003
fthomas@rpa.state.nj.us

Joel Newton
Senior Attorney
Florida Power & Light Company
801 Pennsylvania Ave., N.W.
Suite 220
Washington, DC 20004
joel_newton@nexteraenergy.com

Richard Feathers
North Carolina Electric Membership
Corporation
P.O. Box 27306
Raleigh, 27611-7306
rick.feathers@ncemcs.com

Neal Fitch
Dir. East Regulatory Affairs
Abraham Silverman
Cortney Madea
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
neal.fitch@nrgenergy.com
abe.silverman@nrgenergy.com
cortney.madea@nrgenergy.com

James Melia
Assistant Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
jmelia@pa.gov

Robert Weishaar
McNees Wallace & Nurick LLC
777 North Capitol St, NE, Suite 401
Washington, DC 20002
rweishaa@mwn.com

Paul Flynn
Barry Spector
Wright & Talisman, PC
1200 G Street, N.W.
Suite 600
Washington, DC 20005
flynn@wrightlaw.com
spector@wrightlaw.com

Cynthia Holland
New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton, NJ 08625-0350
Cynthia.Holland@bpu.state.nj.us

Kyle L. Kern
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel 10
West Broad Street,
Suite 1800
Columbus, OH 43215-3485
kyle.kern@occ.ohio.gov

Amy Blauman
Assistant General Counsel
Pepco Holdings, Inc.
701 Ninth Street, N.W.
Suite 1204
Washington, DC 20856
alblauman@pepcoholdings.com

Elizabeth P. Trinkle
Attorney
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17101
etrinkle@mwn.com

Craig Glazer
V.P., Federal Gov't Policy
Jacquelynn B. Hugee
Senior Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
Craig.Glazer@pjm.com
Jacquelynn.Hugee@pjm.com

Sandra Rizzo
Bracewell & Giuliani LLP
601 Massachusetts Ave., N.W.
Washington, DC 20001
sandra.rizzo@aporter.com

Jill Barker
Betts & Holt LLP
1100 17th Street, N.W.
Suite 901
Washington, DC 20036
jmb@bettsandholt.com

Paul E. Russell
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
perussell@pplweb.com

Jodi Moskowitz
Gen. Reg. Counsel
Cara Lewis
PSEG Services Corporation
80 Park Plaza T5G
Newark, NJ 07102
jodi.moskowitz@pseg.com
cara.lewis@pseg.com

Thomas McNamee
Assistant Attorney General
Ohio Public Utilities Commission
180 East Broad Street
6th floor
Columbus, OH 43215-3793
thomas.mcnamee@puc.state.oh.us

Margaret Comes
Consolidated Edison Company
of New York, Inc.
4 Irving Place - Room 1815-S
New York, NY 10003
comesm@coned.com

Matthew Picardi
Vice President
Coral Power LLC
111 Washington Ave, Suite 750
Albany, NY 12210
Matthew.Picardi@shell.com

Jim Jablonski
Executive Director
Public Power Association of New Jersey
P.O Box 206
Seaside Heights, NJ 08751
ppanj@tellurian.com

Joseph Accardo
General Labor & Employment Counsel
PSEG Companies
80 Park Plaza T5G
Newark, NJ 07410
Joseph.Accardo@pseg.com

Kenneth R. Carretta
Deputy General Counsel/Chief
PSEG Energy Resources & Trade LLC
80 Park Plaza, T5G
Newark, NJ 07102
kenneth.carretta@pseg.com

Daniel Francis Shields, JR
Director of Analytical Service
Public Utilities Commission of Ohio
10 West Broad Street
Columbus, OH 43215-3485
dfsjr@live.com

Raghu Sudhakara
Con Edison Company of New York
4 Irving Place
New York, NY 10003
sudhakarar@coned.com

Jacqueline Lake Roberts
Deputy Consumer Advocate
Consumer Advocate Div /
WV Public Serv. Comm.
723 Kanawha Blvd Suite 700
Charleston, WV 25312
jroberts@cad.state.wv.us

Robert Weinberg
Matthew Rudolphi
Linda L. Murray-Kimball
Duncan, Weinberg, Genzer & Pembroke PC
1615 M Street, N.W., Suite 800
Washington, DC 20036
rw@dwgp.com
mrr@dwgp.com

Jeffrey Mayes
Joseph Bowring
Suzette N Krausen
Monitoring Analytics, LLC
2621 Van Buren Ave., Suite 160
Valley Forge Corporate Center
Eagleview, PA 19403
jeffrey.mayes@monitoringanalytics.com
Joseph.Bowring@monitoringanalytics.com
Suzette.Krausen@monitoringanalytics.com

John Adragna
Denise Goulet
Sean Beeny
Kevin Joseph Conoscenti
Phyllis G. Kimmel
McCarter & English, LLP
Twelfth Floor
1015 15th Street, N.W.
Washington, DC 20005
jadragna@mccarter.com
dgoulet@mccarter.com
sbeeny@mccarter.com
kconoscenti@mccarter.com

Mark A. MacDougall
V.P., Legal, Regulatory & Gen.
Kenneth M Capps
V.P., Engineering & Operations
P.O. Box 1937
Hughesville, DC 20637-1937
Mark.MacDougall@smeco.coop
Ken.Capps@smeco.coop

Larry Eisenstat
Richard Lehfeldt
Crowell & Moring LLP
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
leisenstat@crowell.com
rlehfeldt@crowell.com

143 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

PJM Interconnection, L.L.C.

Docket Nos. ER13-535-000
ER13-535-001

ORDER CONDITIONALLY ACCEPTING IN PART,
AND REJECTING IN PART, PROPOSED TARIFF PROVISIONS,
SUBJECT TO CONDITIONS

(Issued May 2, 2013)

	<u>Paragraph</u>
I. Introduction	<u>1.</u>
II. Background	<u>4.</u>
A. Capacity Offer Mitigation	<u>4.</u>
B. Proposed Changes	<u>9.</u>
III. Notice of Filing and Responsive Pleadings	<u>13.</u>
IV. Deficiency Letter and Responsive Pleadings	<u>15.</u>
V. Procedural Matters	<u>17.</u>
VI. Discussion	<u>19.</u>
A. Competitive-Entry Exemption.....	<u>27.</u>
1. PJM’s Proposal.....	<u>27.</u>
2. Responsive Pleadings	<u>32.</u>
3. PJM’s Answer	<u>47.</u>
4. Additional Answers	<u>51.</u>
5. Commission Determination.....	<u>53.</u>
B. Self-Supply Exemption.....	<u>65.</u>
1. PJM’s Proposal	<u>65.</u>
2. Responsive Pleadings	<u>71.</u>
3. PJM’s Answer	<u>82.</u>
4. Additional Answers	<u>86.</u>
5. Deficiency Letter Responses	<u>89.</u>

. a. PJM's Responses	<u>89.</u>
. b. Intervenors' Responses	<u>100.</u>
6. Commission Determination	<u>109.</u>
C. Unit-Specific Review	<u>118.</u>
1. PJM's Proposal	<u>118.</u>
2. Responsive Pleadings	<u>119.</u>
3. PJM's Answer	<u>127.</u>
4. Additional Answers	<u>129.</u>
5. Deficiency Letter Responses	<u>132.</u>
. a. PJM's Responses	<u>132.</u>
. b. Intervenors' Responses	<u>135.</u>
6. Commission Determination	<u>143.</u>
D. Resources Subject to MOPR	<u>147.</u>
1. PJM's Proposal	<u>147.</u>
2. Responsive Pleadings	<u>150.</u>
3. PJM's Answer	<u>159.</u>
4. Additional Answers	<u>162.</u>
5. Deficiency Letter Responses	<u>165.</u>
. a. PJM's Responses	<u>165.</u>
. b. Intervenors' Responses	<u>166.</u>
6. Commission Determination	<u>168.</u>
E. Benchmark Values	<u>177.</u>
1. PJM's Proposal	<u>177.</u>
2. Responsive Pleadings	<u>179.</u>
3. Additional Answers	<u>182.</u>
4. Commission Determination	<u>182.</u>
F. Net CONE Percentage Factors	<u>185.</u>
1. PJM's Proposal	<u>185.</u>
2. Responsive Pleadings	<u>186.</u>
3. PJM's Answer	<u>192.</u>
4. Additional Answers	<u>193.</u>
5. Commission Determination	<u>197.</u>
G. Mitigation Period	<u>201.</u>
1. PJM's Proposal	<u>201.</u>
2. Responsive Pleadings	<u>203.</u>
3. PJM's Answer	<u>210.</u>
4. Additional Answers	<u>211.</u>
5. Commission Determination	<u>212.</u>
H. Geographic Scope	<u>215.</u>
1. PJM's Proposal	<u>215.</u>
2. Responsive Pleadings	<u>216.</u>
3. Answers	<u>218.</u>
4. Commission Determination	<u>219.</u>

I. Stakeholder Review	<u>220.</u>
1. PJM's Position.....	<u>220.</u>
2. Responsive Pleadings	<u>221.</u>
3. PJM's Answer	<u>225.</u>
4. Additional Answers	<u>228.</u>
5. Commission Determination.....	<u>229.</u>
J. Additional Issues.....	<u>232.</u>
1. New Entry Price Adjustment.....	<u>232.</u>
2. Drafting Errors.....	<u>235.</u>

I. Introduction

1. On December 7, 2012, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to Attachment DD, section 5.14(h), and related provisions of its Open Access Transmission Tariff (OATT), pursuant to section 205 of the Federal Power Act (FPA).¹ Section 5.14(h) establishes a Minimum Offer Price Rule (MOPR) for certain generation capacity resources seeking to participate in PJM's capacity market auctions.²

2. PJM states that its proposed revisions are designed to provide a better-defined and more transparent process for granting exemptions to the MOPR, in place of PJM's existing unit-specific review process, as approved by the Commission in 2011.³ PJM states that its proposed revisions also include related changes, including, among other things, a narrowed list of resource-types subject to the MOPR, an extension of the period over which MOPR mitigation may apply, an expanded region-wide application of the MOPR, and a stricter standard for comparing new-entry capacity offers to a PJM benchmark value. PJM states that its filing is intended to address the numerous concerns raised by market participants regarding the operation of PJM's 2012 capacity market auction (as summarized, below). PJM states that to resolve these concerns, as applicable to the 2013 capacity auction, Commission action approving PJM's proposed revisions is required, effective February 5, 2013.

3. For the reasons discussed below, we conditionally accept in part, subject to a further compliance filing, and reject in part PJM's filing, to become effective February 5, 2013.

II. Background

A. Capacity Offer Mitigation

4. The MOPR was implemented in 2006, as part of PJM's RPM protocols, to address the concern that certain resources seeking to participate in PJM's capacity market

¹ 16 U.S.C. § 824e (2000).

² PJM's capacity market auction rules (collectively, the Reliability Pricing Model (RPM)) are governed by Attachment DD of the PJM OATT.

³ See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at P 37 (2011) (April 2011 MOPR Order), *order on compliance filing, rehearing, and technical conference*, 137 FERC ¶ 61,145 (2011) (November 2011 MOPR Order), *order on reh'g*, 138 FERC ¶ 61,194 (2012), *appeal pending*, Case No. 11-4245, *et al.* (3rd Cir.).

auctions might have an incentive to suppress market clearing prices by offering supply at less than a competitive level.⁴ The performance of PJM's RPM auctions and the continuing validity of the MOPR was subsequently addressed by the Commission in a series of orders issued in 2008 and 2009, upon request by a coalition of market participants and the subsequent filing by PJM of proposed RPM revisions.⁵ In that proceeding, the Commission rejected PJM's proposal to replace the MOPR with a market mitigation review procedure to be undertaken by PJM's independent market monitor (IMM), subject to PJM review and a Commission filing authorizing a market mitigation remedy.⁶

5. In the April 2011 MOPR Order, the Commission again addressed proposed revisions to the MOPR, as filed by PJM. In its filing in that proceeding, submitted February 11, 2011, PJM argued that MOPR revisions were required, consistent with the mitigation reforms implemented by the New York Independent System Operator, Inc. (NYISO) and ISO New England, Inc. (ISO-NE),⁷ and in response to certain procurement initiatives in New Jersey and Maryland, seeking to support the entry of new generation through out-of-market payments.⁸ In addition to PJM's filing, the April 2011 MOPR Order addressed a related complaint filed by the PJM Power Providers Group (P3), alleging that, under the New Jersey Statute, New Jersey intended to procure 2,000 MW of new generation to be bid into PJM's capacity market auction at a non-competitive price,

⁴ See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at P 103 (2006).

⁵ See *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,037 (2008); *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272 (2008). See also *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (March 2009 RPM Order), *order on reh'g and compliance, PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 90 (2009).

⁶ See March 2009 RPM Order, 123 FERC ¶ 61,037 at P 190.

⁷ See April 2011 MOPR Order, 135 FERC ¶ 61,022 at P 1 (citing *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211, *order on reh'g and compliance*, 124 FERC ¶ 61,301 (2008); *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 (2010); *ISO New England, Inc. and New England Power Pool Participants Committee*, 131 FERC ¶ 61,065 (2010).

⁸ See S. 2381, 214th Leg. (N.J. 2011) (New Jersey Statute), authorizing the establishment of a Long-Term Capacity Agreement Pilot Program (LCAPP); *In re Whether New Generating Facilities are Needed to Meet Long-Term Demand for Standard Offer Service*, No. 9214, Request for Proposals for Generation Capacity Resources Under Long-Term Contract (M.P.S.C. Dec. 29, 2010) (Maryland RFP Initiative).

while under the Maryland RFP Initiative, a similar proposal to support 1,800 MW of new generation was being considered.

6. In the 2011 MOPR proceeding, PJM's MOPR was revised to include, among other things, a unit-specific review process authorizing the IMM and PJM to review cost justifications submitted by resources whose sell offers fell below the established bid floor.⁹ PJM's unit-specific review process specifies the information that will be considered as part of the review and the relevant standard supporting an exemption from the MOPR, requiring, among other things, that a sell offer falling below the MOPR screen will nonetheless be found permissible, subject to a showing that the offer is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry (Net CONE), were the resource to rely solely on revenues from PJM-administered markets.¹⁰

7. In addition, PJM's unit-specific review procedures permit the IMM and PJM to deny a request for exemption where the requesting seller's claimed cost advantages, or sources of net revenue, are "irregular or anomalous, . . . do not reflect arm's length transactions, or . . . are not in the ordinary course of the Capacity Market Seller's business."¹¹

8. In addition to the unit-specific review process, the Commission's 2011 MOPR orders accepted a number of other changes to the MOPR, including, among other things: (i) updated reference values, as used to assess the competitiveness of a sell offer; (ii) an increased percentage factor, as used to trigger mitigation at a level equal to 90 percent (versus 80 percent) of Net CONE; and (iii) elimination of a provision that subjected to the MOPR only capacity offers from a seller and its affiliates who bought substantially more capacity in the RPM auction than they sold into it (i.e. resources in a "net short" position).

⁹ See November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 242.

¹⁰ See PJM OATT, Attachment DD, section 5.14(h)(5)(iii). PJM's unit-specific review procedures also make clear that a sell offer below the MOPR screen can also be justified based on competitive cost advantages relative to the costs estimated for the MOPR screen, including costs resulting from the capacity market seller's business model, financial condition, tax status, access to capital or other similar conditions affecting the applicant's costs. *Id.*

¹¹ *Id.*

B. Proposed Changes

9. PJM states that, notwithstanding the revisions approved by the Commission in the 2011 MOPR proceeding, PJM's members and the financial community raised concerns regarding the need for immediate additional revisions in the aftermath of PJM's 2012 capacity auction. PJM states that, in that auction, several offers made by gas-fired, new entry projects managed to clear, with capacity price assurances made available under state support arrangements. PJM states that the concerns raised regarding these matters have focused on the lack of transparency associated with the unit-specific review process, the persisting lack of clear, objective standards for reviewing sell offers, and the resulting inability of PJM's unit-specific review procedures to maintain clear, competitive market signals in the face of ongoing state initiatives to subsidize the targeted development of new generation projects.

10. PJM states that these concerns are consistent with the findings made by the Brattle Group, an outside consultant commissioned by PJM, finding that PJM's 2011 MOPR revisions "are inefficiently structured, will inefficiently mitigate legitimate resource additions, and will discourage bilateral contracting and self-supply."¹² PJM states that the Brattle Report further found that the 2011 MOPR revisions "will inadvertently interfere with self-supply offers from generating resources that are competitive and do not involve manipulation [and] will lead to over-mitigation that will undermine bilateral markets and RPM participation by entities, such as public power companies, that meet their customers' needs primarily through long-term contracts or other self-supply options."¹³

11. PJM states that the Brattle Report recommended that PJM implement additional MOPR exemptions for: (i) resources that have won a competitive, non-discriminatory RFP that is open to both new and existing resources; (ii) self-supply resources that are offered into RPM by vertically-integrated LSE if the resource is the result of a deliberative planning process by the LSE and the LSE is not substantially "net-short" in RPM; and (iii) a resource if the owner and its contractual counter-party, if relevant, are not substantially net-long in RPM and, thus, would not benefit from suppression of RPM capacity prices.

12. PJM states that the proposed tariff revisions included in its filing arose out of a stakeholder-driven process, consisting of a diverse, ad hoc group of supply-side members

¹² See PJM filing at 7, *citing* Brattle Report (August 26, 2010), as posted at: www.pjm.com/~media/committees-groups/committees/mrc/20110818/20110826-brattle-report-second-performance-assessment-of-pjm-reliability-pricing-model.ashx.

¹³ *Id.*, *citing* Brattle Report at 149.

and load-serving members. PJM states that the negotiated settlement proposal forged by these entities was subsequently considered by, and approved by, PJM's stakeholders. PJM's proposed changes are discussed in greater detail below.

III. Notice of Filing and Responsive Pleadings

13. Notice of PJM's filing was published in the *Federal Register*, 77 Fed. Reg. 67,641 (2012), with interventions and protests due on or before December 28, 2012. Notices of intervention and timely-filed motions to intervene were filed by the entities noted in the Appendix to this order.

14. Answers were submitted on January 8, 2013 by PJM and the Maryland Public Service Commission (Maryland Commission), on January 9, 2013, by the Illinois Commerce Commission (Illinois Commission), on January 14, 2013, by P3, PPL Companies (PPL), Hess Corporation (Hess), and the Competitive Markets Coalition,¹⁴ and on January 15, 2013, by the PJM Load Group,¹⁵ on January 18, 2013, by the Maryland Commission, and on January 25, 2013, by FirstEnergy.

IV. Deficiency Letter and Responsive Pleadings

15. On February 5, 2013, Commission Staff issued a Deficiency Letter, requiring PJM to provide additional information, including: (i) an explanation of whether it is reasonable for a resource that fails to qualify for PJM's proposed competitive entry exemption, or its proposed self-supply exemption, to be mitigated to a default offer price, even if that resource has lower competitive costs than those assumed in determining the default offer price; (ii) the underlying basis supporting PJM's proposed self-supply exemption; and (iii) additional support for PJM's proposal to apply the MOPR to integrated gasification combined cycle plants.

16. Notice of PJM's Deficiency Letter responses was published in the *Federal Register*, 78 Fed. Reg. 11,641 (2013), with interventions and protests due on or before March 25, 2013. Timely-filed motions to intervene were filed by the entities noted in the Appendix to this order. On March 28, 2013, late-filed comments were submitted by the Illinois Commission. Answers were submitted on April 8, 2013, by P3, on April 9, 2013

¹⁴ The Competitive Markets Coalition is comprised of the following intervenors: PPL; Calpine Corporation (Calpine); Exelon Corporation (Exelon); Edison Mission Marketing & Trading (Edison Mission); and NextEra Energy Resources, LLC. (NextEra).

¹⁵ The PJM Load Group is comprised of the following intervenors: Old Dominion Electric Cooperative (ODEC); PJM Industrial Customer Coalition (PJM-ICC); Dominion Resources Services, Inc. (Dominion); and American Municipal Power, Inc. (AMP).

by PJM, the Maryland Commission, and the Competitive Markets Coalition, on April 16, 2013, by EKPC, on April 1, 2013, by the IMM, and on April 23, 2013, by Calpine.

V. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the intervenors' answers, because they have provided information that assisted us in our decision-making process. For this same reason, we will accept the late-filed comments submitted by the Illinois Commission addressing PJM's Deficiency Letter responses.

VI. Discussion

19. For the reasons discussed below, we accept PJM's proposed categorical exemptions for competitive entry and self-supply, subject to PJM's retention of its unit-specific review process and the submission of a compliance filing. We also accept PJM's proposal to apply the MOPR to gas-fired combustion turbine, combined cycle, and integrated gasification combined cycle (IGCC) units. In addition, we accept PJM's proposed increase of its MOPR benchmark values to 100 percent of Net CONE. We also accept PJM's proposal to broaden the geographical reach of the MOPR to the entire PJM region, but we reject PJM's proposal to change the duration of mitigation from one to three years.

20. We begin our analysis with a review of the MOPR's underlying objectives. PJM's MOPR is a mechanism that seeks to prevent the exercise of buyer-side market power in the forward capacity market, which occurs when a large net-buyer—that is, an entity that buys more capacity from the market than it sells into the market—invests in capacity and then offers that capacity into the auction at a reduced price. Given the uniform clearing prices in PJM's markets, such behavior would benefit the net-buyer so long as the reduction in the net-buyer's purchasing costs exceeds its losses from selling the underpriced capacity.¹⁶

¹⁶ See *TC Ravenswood, LLC v. FERC*, No. 11-1258, slip op. at 4 (D.C. Cir. Jan. 22, 2013) (uneconomic entry “occurs when a large net buyer of capacity makes a capacity purchase or investment and then offers the capacity for sale at auction at reduced prices, thus lowering the market-clearing price”).

21. While these strategies reduce capacity costs in the short-run, by producing a capacity surplus, these strategies harm other suppliers and, of even greater concern, are deleterious to the market in the long-run.¹⁷ Ultimately, this strategy will prove more costly as existing generators become unable to recover their costs and therefore choose to exit the market, thus tightening capacity and raising prices. Similarly, new merchant generators will be reluctant to enter a market in which their expected prices are susceptible to such reduction.¹⁸

22. Currently, PJM's MOPR protects against these forms of buyer-side market power by setting a price floor, i.e. a minimum bid, and requiring all new, non-exempted resources to bid at that floor, or higher, unless the resource can demonstrate, through a unit-specific review process, that a lower bid is justified based on the economics of that unit. PJM uses this process to assess costs and revenues of the project and to ensure that any alleged cost advantages are not the result of uncompetitive, discriminatory subsidies or out-of-market payments. PJM employed this process in the 2012 base residual auction.

23. In the instant proposal, PJM states that its revisions are designed to provide a better-defined and more transparent process for granting exemptions to the MOPR, in place of PJM's existing unit-specific review process. In lieu of the unit-specific review process, PJM proposes two broad exemptions from the MOPR for what it calls "competitive entry" and for resources designated as self-supply, subject to some restrictions.

24. As explained below, PJM's competitive entry exemption consists of two component parts. First, units that receive no out-of-market funding are exempt from the price floor. This exemption is reasonable because such resources do not pose the risk to the market described above, as competitive resources need to rely on sufficient capacity market revenues to remain economic. Second, PJM proposes to exempt entities receiving

¹⁷ *Id.*

¹⁸ For example, suppose a large buyer has a load of 1,000 MWs, and the competitive market price is \$20/MW, producing a total cost to load of \$20,000. If load finances an uneconomic new entrant that produces 100 MWs at a cost of \$5,000 (\$50/MW) (more expensive than the \$20/MW competitive market price), and that new entry reduces the market price by \$5.00, the total cost to load is less, even though its new generator is more expensive than a market purchase. Under these circumstances, load would pay a total cost of \$13,500 to the market and an additional \$5,000 to the generator for a total of \$18,500. Such price suppression over the long-term will lead to the exit of resources and will discourage future competitive entry.

outside funds if they receive such funds as a result of participating in a competitive auction open to all available resources, both new and existing. When all resources are competing fairly, the resources selected in such a competitive auction will represent the least cost resources needed to meet PJM's reliability needs. For the reasons discussed below, we find that the resources that will qualify for this exemption do not pose a risk of uneconomic entry.

25. PJM also proposes an exemption for self-supply LSEs, such as municipalities/cooperatives, single customer entities, and vertically integrated utilities, provided that these resources meet certain "net-short" or "net-long" thresholds.¹⁹ For the reasons discussed below, we find that a self-supply LSE that owns or contracts for a large proportion of the capacity needed to meet its load has no reason to finance uneconomic entry given that such a strategy would not be profitable. Accordingly, we agree that with properly-calibrated thresholds measuring an entity's net-short and net-long positions, PJM's self-supply exemption will operate to identify those self-supply entities lacking the incentive to exercise buyer-side market power. However, because the market conditions and related assumptions underlying these thresholds are subject to change, we require PJM to submit tariff language memorializing its obligation to review and, if necessary, revise these thresholds on a periodic basis.

26. While we find that PJM's competitive entry exemption and, subject to conditions, its self-supply exemption, appropriately identify entry that is consistent with competitive behavior, we find that PJM's proposal does not provide a just and reasonable replacement for the unit-specific review process. There may be resources ineligible for any MOPR exemptions that have lower competitive costs than the default offer floor, and these resources should have the opportunity to demonstrate their competitive entry costs. We will therefore accept PJM's filing conditioned on the retention of its unit-specific review process.²⁰ By targeting those resources most likely to raise price suppression concerns (*i.e.*, gas-fired resources), adopting exemptions for competitive entry and self-supply, and retaining the unit-specific review process for resources not eligible for the exemptions,

¹⁹ Being in a net-short position refers to the circumstance where an LSE owns and/or contracts for an amount of capacity, measured by megawatts of unforced capacity, that is less than its capacity needs. Being in a Net-long position refers to the circumstance where an LSE owns or contracts for generation in excess of its capacity needs, measured by megawatts of unforced capacity.

²⁰ To the extent that PJM has identified problems with its current unit-specific review process, it can submit a section 205 filing to implement necessary changes.

we find that the MOPR as modified herein appropriately balances the need for mitigation of buyer-side market power against the risk of over-mitigation.²¹

A. Competitive-Entry Exemption

1. PJM's Proposal

27. PJM proposes that a resource participating in PJM's capacity market auction be permitted to qualify for a MOPR exemption, as a competitive-entry project, subject to a showing that it satisfies certain criteria.²²

28. Under PJM's proposal, a resource may qualify for this exemption in a couple of ways. PJM proposes that a capacity market seller may qualify for the competitive entry exemption if it can show that no costs are recovered from customers either directly or indirectly through a non-bypassable charge linked to the construction, or clearing in any RPM auction, of the resource. Any such resource must also show that it does not receive certain types of payments from any governmental entity connected with the construction/clearing of the resource in RPM.²³ Thus, a new resource built by a state-regulated utility would not qualify for the competitive entry exemption if its costs for the new unit were recovered from ratepayers through a non-bypassable charge. Neither would a resource be eligible if a state offered it a subsidy contingent on the resource clearing in an RPM auction.

29. PJM also proposes a path to this exemption for a resource obtained through a state-sponsored, or state-mandated, procurement process. Such a resource may qualify for the exemption if the resource can show that it will receive no revenues from any contract with a term of at least one year that is obtained in a state procurement process that was uncompetitive or discriminatory. PJM proposes to allow affected entities to submit a filing with the Commission seeking a determination, in the first instance, that any such state-sponsored procurement process meets the "competitive and non-

²¹ See, e.g., *Edison Mission Energy, Inc., et al. v. FERC*, 394 F.3d 964 (D.C. Cir. 2005) ("[Mitigation] may well do some good by protecting consumers and utilities against... the exercise of market power. But the Commission gave no reason to suppose that it does not also wreak substantial harm... that could be cured only by attracting new resources of supply.").

²² See PJM OATT, Attachment DD at proposed section 5.14(h)(7).

²³ PJM states that this restriction does not include certain payment types such as industrial siting incentives or federal production tax credits, which PJM states do not give rise to price suppression concerns. *Id.* at section 5.14(h)(7)(iii)(C)-(E).

discriminatory” standard. PJM proposes requiring any market seller seeking the competitive entry exemption to submit an LSE certification similar to that proposed for the categorical exemption for self-supply (discussed in section VI.B below).

30. PJM proposes that a procurement process shall be eligible under this exemption if: (i) both new and existing resources can satisfy the requirements of the procurement process; (ii) the selection criteria do not give preference to new resources; (iii) the procurement process does not use indirect means to discriminate against existing capacity; (iv) the requirements are fully objective and transparent; and (v) the procurement terms do not restrict the type of capacity resource that may participate in and satisfy the requirements of the procurement. In addition, PJM notes an error in its filing in this regard. Specifically, PJM notes that the tariff language, as proposed, appears to indicate that a resource procured through a competitive and non-discriminatory state procurement process may not qualify for this exemption if a state imposes a non-bypassable charge on its load linked to the project clearing in RPM or to construction. PJM states that its understanding of the agreement reached by stakeholders was that such a resource, procured through a competitive and non-discriminatory auction process, could impose such charges and still qualify for this exemption. PJM states that it chose to note the error rather than unilaterally correct the tariff language given that the tariff language, as written, came through the stakeholder process.

31. PJM also proposes tariff revisions authorizing PJM to take certain actions, including the revocation of an exemption, if it reasonably believes that a previously-granted competitive-entry exemption was based on the submission of fraudulent or material misrepresentations or omissions.²⁴ Finally, PJM proposes to disclose certain information regarding competitive-entry exemption requests, consistent with the proposals summarized in section VI.B of this order, below, as applicable to PJM’s proposed self-supply exemption.²⁵

2. Responsive Pleadings

32. Comments generally supportive of PJM’s proposed competitive entry exemption were submitted by a number of intervenors.²⁶ P3 argues that the competitive entry exemption is well-suited for the occasions when unit developers can demonstrate they

²⁴ PJM’s proposed revisions would apply to both the competitive-entry exemption, as summarized here, and to the self-supply exemption, as discussed below.

²⁵ See PJM OATT, Attachment DD at proposed section 5.11.

²⁶ See comments submitted the IMM, the Pennsylvania Commission, the Ohio Commission, P3, and LS Power.

can economically enter the market at a net cost level below the PJM-determined Net CONE. P3 asserts that PJM's proposal also provides a clear path for a state to procure capacity outside of the RPM process because it may secure a commitment from a new resource to provide capacity in a Locational Deliverability Area through a competitive and non-discriminatory auction, provided that such contract does not mandate the construction or clearing of the new resource. LS Power argues that PJM's proposed exemption will strengthen PJM's capacity market, not only by making it more difficult for buyers to exercise buyer-side market power and artificially suppress RPM clearing prices, but by providing much-needed certainty to all market participants, including independent power producers like LS Power.

33. The IMM generally supports PJM's proposed exemption as another option available to market participants to obtain long term contracts on competitive terms, subject to certain modifications. First, the IMM proposes that a state be permitted to hold a competitive, nondiscriminatory auction to acquire new capacity in a given Locational Deliverability Area, with an exemption from the MOPR accorded to any such capacity addition, provided that: (i) PJM's capacity auction clears with a total MW level less than the reliability requirement for the relevant Locational Deliverability Area; (ii) PJM provides notice of a potential reliability issue that is expected to persist for that Locational Deliverability Area, due to a capacity level falling below the reliability requirement; and (iii) the reliability issue cannot be resolved without the acquisition of new generation, or incremental generation, within the relevant area. The IMM argues that, under these circumstances, it is appropriate that PJM's capacity auction exclude imports and existing generation in the relevant Locational Deliverability Area, given that neither could resolve the issue. The IMM asserts that PJM's independent findings would preclude any need to protect against potential ulterior motives.²⁷

34. The IMM also requests changes with respect to exemption request review procedures applicable to both PJM's proposed competitive-entry exemption and proposed self-supply exemption, as discussed below at section VI.B of this order.

35. The Maryland Commission, the Maryland Energy Administration, the Joint Consumer Advocates,²⁸ and NRG object to PJM's proposed competitive entry exemption. The Joint Consumer Advocates argue that PJM's proposed exemption intrudes upon the

²⁷ See also comments of the Ohio Commission at 4-5.

²⁸ The Joint Consumer Advocates are comprised of the following entities: New Jersey Division of Rate Counsel; Maryland Office of People's Counsel; Consumer Advocate Division of West Virginia; Delaware Division of the Public Advocate; and District of Columbia Office of People's Counsel.

historic and exclusive authority of the state to take direct action to ensure adequate supply for the state's customers. The Maryland Commission asserts that the proposed exemption inappropriately targets state procurement processes undertaken in good faith to assure reliability. The Maryland Commission adds that, even if a state agency (or PJM itself) forecasts insufficient capacity, a state such as Maryland cannot take the steps necessary to address that concern without potentially requiring customers to pay twice for capacity. The Maryland Commission asserts that PJM has offered no evidence to suggest that public policies implemented by states are illegitimate or an exercise of buyer market power.

36. The Maryland Commission further argues that by precluding from the competitive-entry exemption any project acquired through a state procurement process that discriminates against existing resources, a state will be able to develop new incremental capacity only if it issues an RFP for 100 percent of the state's load obligation. The Maryland Commission adds that any lesser amount will almost certainly be won by existing generators. The Ohio Commission similarly argues that states should not be required, in an RFP, to invite participation by "existing resources," as proposed, because inviting such capacity to participate in a procurement request for new generation would be illogical.

37. The Maryland Commission, the New Jersey Board, CPV, and the Joint Consumer Advocates also take issue with PJM's proposed exemption to the extent it would preclude certain preferences during the state procurement process. These intervenors note that, under PJM's proposal, a state procurement process will not be eligible for a competitive-entry exemption if, under that process, a resource is selected based on such considerations as diversity of fuel type, health/environmental benefits, or economic development. The Maryland Commission argues that these restrictions may cause a state like Maryland to pay twice for capacity.

38. CPV argues that the requirement that an RFP be objective and transparent is both ill-defined and vague. NRG agrees, noting that PJM's proposed tariff language tying its exemption to the demonstration that the relevant state procurement proceeding is "non-discriminatory" and "competitive" is ambiguous. NRG requests that PJM be required to clarify whether, and to what extent, this standard will consider: (i) factors other than the cost of the capacity procured in the auction; (ii) capacity market price suppression or energy market savings; (iii) economic development, jobs, environmental benefits and other ancillary non-capacity market issues; and (iv) geographic restrictions, including how legitimate geographical restrictions may be determined.

39. The Maryland Commission, the Maryland Energy Administration, the New Jersey Board, the Illinois Commission and the Joint Consumer Advocates argue that PJM's proposed exemption will operate to impede states that have opted for competitive retail

energy markets, while favoring states that continue to operate in reliance on vertically integrated utilities.

40. The Maryland Commission, CPV and the Joint Consumer Advocates argue that PJM's proposal fails to distinguish between certain permissible and impermissible revenues, including PJM's proposed exclusion of revenues attributable to construction or clearing in the auction. The Joint Consumer Advocates note that the four *non*-disqualifying (i.e. permissible) revenue streams for self-supply resources, such as local government incentives to locate facilities in a given town or county, are in fact tied to construction of the resource. The Joint Consumer Advocates argue that, as such, PJM is not actually distinguishing between revenues tied to clearing in the auction or construction and revenues not tied to clearing in the auction or construction, but rather is distinguishing between the retail regulatory context in which the arrangements are entered. Joint Consumer Advocates argue, however, that such a distinction is unjustified, given that restructured states have as great a need to advance public policies as non-restructured states.²⁹

41. CPV objects to PJM's proposed exemption to the extent it does not apply to competitive power development entities operating under long-term contracts with an LSE that recovers its costs through a non-bypassable charge. CPV argues that the cost of capital benefits attributable to such a contract should be treated no differently than the benefits enjoyed by a city or a rural electric cooperative that have access to tax-exempt debt, given that the benefits ultimately at issue, under any such arrangement, inures to the ratepayer.

42. The Joint Consumer Advocates argue that PJM should amend its proposed exemption to reflect additional criteria that would be acceptable for consideration as part of a state RFP process, including: (i) the offered capacity price; (ii) expected resource availability; (iii) the extent to which a resource would reduce market concentration in a Local Delivery Area; and/or (iv) the extent to which a resource would contribute to meeting an applicable state target set forth in state law or adopted in a state utility commission proceeding.³⁰

²⁹ The Joint Consumer Advocates add that the very same incentive (e.g. revenue to locate facilities in a given city or county) will be treated differently depending on whether a local government or a state grants the incentive.

³⁰ The Joint Consumer Advocates identify as "state targets," in this regard: (i) a state capacity reserve margin requirement; (ii) a state resource-mix requirement; (iii) a state renewable portfolio requirement; (iv) a state service-reliability requirement; or (v) a brownfield-redevelopment or economic-development goal, as applicable to all or a
(continued...)

43. NRG objects to PJM's proposal to exempt, from the MOPR, planned generation resources certifying to PJM that their project is not entitled to receive non-market revenues. NRG argues that a planned resource owned by a pure "merchant" should not be permitted to suppress market clearing prices any more than a resource built pursuant to a state contract. NRG adds that the Commission has already rejected this proposal, as previously proposed by P3 as a "No-Subsidy Off-Ramp," in the 2011 MOPR proceeding,³¹ and reached a nearly identical conclusion in the context of NYISO's capacity market.³²

44. NRG also questions how a state's auction process would be audited. NRG seeks clarification that the results of such state-sponsored auctions will be made public and filed with the Commission prior to PJM granting a MOPR exemption. NRG also requests that PJM be required to make a public filing with the Commission if PJM discovers that a resource incorrectly or fraudulently received a MOPR exemption.

45. The Ohio Commission requests that PJM be directed to revise its proposed documentation requirement, requiring that a seller provide, in its exemption request, "all documentation" necessary to demonstrate that the exemption criteria are satisfied.³³ The Ohio Commission argues that the need to provide "all documentation," in this context, is overly-broad and subjective, given that the additional corollary requirement that a sworn, notarized certification of a duly authorized officer be provided should suffice in demonstrating that a good faith request has been made.

46. Finally, the Competitive Markets Coalition proposes clarifying language, at proposed section 5.14(h)(7)(i), addressing a drafting error identified by PJM in its filing, regarding the unintended, erroneous intent that "all" of several stated criteria must be satisfied to qualify for PJM's proposed competitive-entry exemption.³⁴

portion of a state.

³¹ NRG protest at 13 (citing November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 75.

³² *Id.* at 14 (citing New York Independent System Operator, Inc., 124 FERC ¶ 61,301 at P 29.

³³ *See* PJM OATT, Attachment DD at proposed section 5.14(h)(8).

³⁴ *See* PJM filing at 23, n. 53. The Competitive Markets Coalition proposes clarifying language (and as shown in italics), providing that "No costs of the *MOPR Screened Generation Resource* are recovered from customers either directly or indirectly through a non-bypassable charge, *except in the event that Sections 5.14(h)(7(ii) and (iii)*,
(continued...)

3. PJM's Answer

47. PJM responds to intervenor arguments advocating a MOPR exemption for state-sponsored projects of the sort supported by the Maryland Commission and the New Jersey Board. PJM argues that the Commission has already recognized that a state-sponsored project that is effectively directed to offer into PJM's capacity market auctions at a price below the state's own determination of the net costs of the project presents a clear risk of wholesale price suppression.³⁵ PJM asserts that its proposed revisions do not change this rule, but simply provide a more transparent and predictable process for its implementation by describing measures a state can take to alleviate any concern it may have that a given project will be a source of improper price suppression.

48. PJM also responds to the clarifying tariff language proposed by the Competitive Markets Coalition to correct the drafting error at proposed section 5.14(h)(7)(i), as identified by PJM in its filing. PJM states that the revision proposed by Competitive Markets Coalition would resolve the conflicting language.

49. PJM also objects to the Ohio Commission's and the IMM's requests that a state capacity procurement program that excludes existing resources be treated as eligible for a MOPR exemption. PJM argues that a state procurement program that is explicitly designed to be closed to all existing resources would fail to provide the high level of confidence required that a state program meets a standard of competitiveness that is comparable to PJM's capacity market auctions. PJM adds that the better course is to leave untouched the important principle that a state procurement process must be non-discriminatory in order for wholesale price offers from its selected resources to be afforded a MOPR exemption. PJM states that this approach is supported by the Commission's recent finding, in a case involving the NYISO, that a state agency contracting process that awarded a power purchase agreement to a new plant was discriminatory, given that the process at issue was limited to new resources.³⁶

50. Finally, PJM responds to NRG's objection regarding PJM's proposed requirement that the state procurement process at issue in a MOPR exemption request must be

to the extent either or both are applicable to such resource, are satisfied linked to the construction, or clearing in any RPM Auction, of the MOPR Screened Generation Resource."

³⁵ PJM answer at 2 (citing April 2011 MOPR Order, 135 FERC ¶ 61,022 at PP 139, 141-43; November 2011 MOPR Order, 137 FERC ¶ 61,145 at PP 87-101).

³⁶ PJM answer at 14 (citing *Astoria Generating Co. L.P. v. N.Y. Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189 (2012)).

“competitive and non-discriminatory.” PJM argues that while NRG characterizes this standard as overly-broad, it is precisely this degree of breadth and flexibility that should be afforded to a state under this standard.

4. Additional Answers

51. P3, in its answer, opposes the IMM’s proposed modifications to PJM’s proposed competitive, non-discriminatory procurement exemption (a proposal, as summarized above, that would permit the state to declare that a reliability issue exists and then initiate a procurement process, subject to PJM’s unit-specific review). P3 argues that the IMM’s proposal would enable the very behavior the MOPR is intended to prevent, given that it would require a series of subjective determinations to be made on the basis of an ambiguous standard and ultimately allow a state to engage in a discriminatory procurement of capacity. P3 also challenges intervenors’ assertion that PJM’s proposed exemption is unduly discriminatory against competitive retail energy markets. P3 argues that while these arguments have been made by entities representing New Jersey and Maryland, the similarly-situated retail choice states of Pennsylvania and Ohio generally support PJM’s proposal and have not claimed discrimination.

52. The Competitive Markets Coalition responds to the Maryland Commission’s argument that PJM’s proposed exemption is unduly discriminatory to the extent that competitive entry will focus on state initiatives, undertaken in a competitive retail access environment. The Competitive Markets Coalition argues that there is nothing inherent about retail access states that requires, or warrants, the use of discriminatory procurement processes that eliminate existing resources from consideration.

5. Commission Determination

53. We accept PJM’s proposed categorical exemption for competitive-entry, subject to conditions, as a just and reasonable modification to PJM’s MOPR process. We agree with PJM that this proposed exemption will remove an unnecessary barrier to entry for merchant projects and other projects that are procured on a competitive basis.

54. Intervenors representing the interests of Maryland and New Jersey continue to argue that the application of the MOPR, and the competitive-entry exemption in particular, unlawfully interferes with the ability of states to both ensure adequate capacity and pursue state policy objectives, including the procurement of cleaner generation resources and economic development. We note, as a threshold matter, that we do not intend here to pass judgment on state policies and objectives. Nonetheless, RPM is designed to allow PJM to procure, on a least-cost basis, sufficient capacity to meet the reliability needs of the entire region, including all of the states in PJM, on a three-year

forward basis.³⁷ Therefore, as the Commission made clear in the November 2011 Order, we find it reasonable for an RTO to propose tariff provisions to ensure that subsidized entry supported at the state level does not have the effect of disrupting the competitive price signals that PJM's wholesale capacity market protocols are designed to produce and on which PJM's market participants, region-wide, rely to attract sufficient capacity.³⁸

55. Several intervenors, including the Ohio Commission and the Joint Consumer Advocates, argue that an RFP process should not be considered uncompetitive or discriminatory—and thus a winning resource in such a process should be eligible for the competitive entry exemption—if the process is available only to new resources. We disagree and find that, consistent with our precedent, an RFP process available only to new resources is discriminatory and will not necessarily procure the lowest cost resources. Therefore, a resource resulting from such a process should not be eligible for an exemption from buyer-side mitigation.³⁹

56. The purpose of RPM is to clear the least-cost set of resources needed to meet reliability needs. The MOPR's purpose is to protect the market from the exercise of buyer-side market power. A resource selected in an open and non-discriminatory RFP process is, by definition, the least-cost resource available, and thus does not raise buyer-side market power concerns. Such a resource should clear in RPM. When a state or another entity issuing an RFP discriminates between new and existing resources, however, the RFP may no longer be acquiring the least-cost resource(s) available. Allowing such a resource to bid into RPM as a price taker would violate the intent of the MOPR to protect against the exercise of buyer-side market power.

57. We also disagree with NRG's characterization of PJM's proposed exemption. NRG argues that a purely merchant resource should not be permitted to suppress market clearing prices any more than a resource built pursuant to a state contract. The economics of a merchant resource, however, differ markedly from a resource built pursuant to a state contract. Because a purely merchant generator places its own capital at risk when it invests in a new resource, any such resource will have a strong incentive to bid its true costs into the auction, and it will clear the market only when it is cost effective. As such, a bid from a merchant project below Net CONE likely represents the economics of that resource, and if it does not, the resource will not be able to recover its costs. The purpose of the MOPR, however, is not to protect a merchant resource from

³⁷ November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 89.

³⁸ *Id.* P 3, 89-90.

³⁹ See *Astoria Generating Co. L.P. v. N.Y. Indep. Sys. Operator*, 140 FERC ¶ 61,189 at P 135 (2012).

making a poor investment decision with its own capital. By contrast, a resource built pursuant to a state contract will likely remain indifferent to actual RPM clearing prices because of its guaranteed revenue stream from the state, and such a resource can therefore remain in the market long-term even if its sell offer does not reflect its competitive costs.

58. As PJM states in its answer, the actions of one state in a multi-state RTO like PJM can have a significant impact on wholesale prices affecting loads in other states.⁴⁰ For this reason, we support PJM's proposal to use caution when determining whether resources developed through one state's procurement process should receive an exemption from the MOPR. To receive this exemption, any such state process must maintain a level of openness and competitiveness comparable to RPM itself. Nevertheless, we reiterate that failing to qualify for this exemption does not mean that a resource cannot participate in RPM or that it will automatically be mitigated to the full cost of new entry. We find only that such a resource may not receive a categorical exemption from the MOPR. Any such resource will still have the ability to have its individual net costs reviewed through the unit-specific review process, as discussed below at section VI.C of this order.

59. We disagree with the IMM's argument that a limited reliability exception is appropriate when PJM identifies an "immediate, local reliability issue ... that existing or imported capacity cannot solve."⁴¹ Under these limited circumstances, the IMM proposes that a state should be permitted to conduct a procurement process for new resources only, and that the resulting resource should be eligible to receive an exemption from the MOPR. We agree with PJM that such a limited exception is not necessary. Nothing in the record suggests that PJM is ill-equipped to fulfill its duty to ensure adequate capacity for the entire PJM region. Moreover, one of the requirements for the IMM's proposed reliability exception is that the PJM capacity auction clear with a total MW level less than the reliability requirement of the relevant Locational Deliverability Area. PJM's demand curve, however, is structured such that when the auction clears less than the reliability requirement, the price will be higher than Net CONE, and thus, higher than the default offer floor under the MOPR.⁴²

⁴⁰ See PJM answer at 13.

⁴¹ See IMM comments at 2.

⁴² See PJM OATT at Attachment DD, section 5.10(a). Thus, the offer floor would not prevent any resource from clearing in the auction that the IMM's proposal would exempt; any resource that would clear under the IMM's proposal *could* have cleared without the IMM's proposed exemption.

60. As PJM acknowledges in its filing, the proposed tariff language approved by PJM's stakeholders appears to differ, inadvertently, in a material respect relating to the competitive entry exemption for resources procured through a state-sponsored procurement process, by imposing independent criteria that are in inherent conflict, at proposed sections 5.14(h)(7)(i) and (ii).⁴³ We agree with PJM that a resource procured through a procurement process that is deemed competitive and non-discriminatory should be eligible for this exemption, even if the state imposes a non-bypassable charge on its loads linked to the project clearing in the RPM auction or construction. We therefore accept PJM's proposed exemption for competitive entry subject to PJM's submission of proposed tariff language, in its compliance filing, consistent with this discussion.

61. We further condition our acceptance of PJM's proposed exemption on PJM submitting, in its compliance filing, revised tariff language removing any allowance permitting competitive entry exemption applicants to seek, in the first instance, a Commission determination that a state-sponsored procurement process meets the competitive and non-discriminatory standard. We find that, consistent with our prior rulings with respect to the unit-specific review process, PJM and the IMM are better suited to make any such determination in the first instance. We note that all parties maintain their section 206 rights to challenge any unjust and unreasonable outcome with the Commission.

62. Finally, intervenors argue that the competitive entry exemption, when combined with the self-supply exemption, unfairly discriminates against restructured states such as New Jersey and Maryland. We address this matter below in our analysis of PJM's proposed exemption for self-supply, but we note that the retention of the unit-specific review process should mitigate this concern..

B. Self-Supply Exemption

1. PJM's Proposal

63. PJM proposes a MOPR exemption for certain self-supplying LSEs whose long-standing business models include such self-supply arrangements,⁴⁴ and who do not "buy" substantially more capacity in PJM's capacity auction, via PJM's procurement protocols,

⁴³ See PJM filing at 23, n. 53 (noting that subsection 7(i) bars non-bypassable charges tied to clearing or construction while subsection 7(ii) permits arrangements to support cost recovery for projects selected in a state procurement process that is competitive and non-discriminatory – and provision further provides that *all* criteria must be satisfied).

⁴⁴ See PJM OATT, Attachment DD at proposed section 5.14(h)(6)(vi).

than they clear or sell as capacity supply (i.e., they are not significantly “net-short”), and who, conversely, do not clear or sell substantially more capacity than they “buy” (i.e., they are not significantly “net-long”). PJM asserts that these net-short/net-long positions may give an LSE the incentive to offer capacity into PJM’s capacity auction at a level intended to depress market clearing prices and therefore need to be barred, subject to the thresholds discussed below.

64. With respect to PJM’s proposed net-short limitations, PJM proposes the following maximum net-short thresholds by customer type: (i) 150 MW for a single-customer LSE; (ii) 1,000 MW for a public power entity; (iii) 1,800 MW for a multi-state public power entity, based on a PJM region-wide assessment (or 1,000 MW for three specified Locational Deliverability Areas); or (iv) 20 percent of the LSE’s RPM reliability requirement for an investor-owned LSE. PJM asserts that these thresholds are appropriate, i.e., that being net-short for these LSEs at the levels specified under PJM’s proposal is in the ordinary course of these LSEs’ businesses, based on PJM’s review of confidential portfolio information. PJM notes that, as part of its review process, it interviewed the relevant LSEs regarding their respective: (i) multi-year business cycles; (ii) methods for managing load forecast uncertainty; (iii) approach to managing varying term lengths for bilateral contracts; (iv) risk management approach for customer switching; and (v) resource planning. PJM states that its proposed thresholds for self-supply entities are based on actual, current portfolio positions in the market.

65. With respect to PJM’s proposed net-long limitations, PJM proposes a graduated net-long scale, based on “estimated capacity obligations” (calculated on a three-year average basis along with specified criteria to determine which end-use customers to include) and the following maximum net-long thresholds: (i) 70 MW for an estimated capacity obligation less than 500 MW; (ii) 15 percent of the LSE’s estimated capacity obligation for an estimated capacity obligation greater than or equal to 500 MW and less than 5,000 MW; (iii) 750 MW for an estimated capacity obligation greater than or equal to 5,000 MW and less than 15,000 MW; (iv) 1,000 MW for an estimated capacity obligation greater than or equal to 15,000 MW and less than 25,000 MW; and (v) four percent of the LSE’s estimated capacity obligation capped at 1,300 MW for an estimated capacity obligation greater than or equal to 25,000 MW. PJM states that these proposed thresholds are appropriate because they will serve to limit a self-supply entity from substantially overbuilding while recognizing that the addition of a large resource that may be efficiently sized to accommodate the LSE’s long-term needs may put the LSE in a net-long position at the beginning of the resource’s life.

66. PJM also proposes to limit the LSEs that will be eligible for its proposed exemption to: (i) cooperative and municipal utilities;⁴⁵ (ii) vertically integrated utilities;⁴⁶

⁴⁵ PJM proposes that such LSEs include public power supply entities and joint
(continued...)

and (iii) single customer LSEs serving, at retail, only customers that are under the LSE's common control. PJM also proposes to bar from its exemption a self-supply project that has cost or revenue advantages "that are irregular or anomalous, that do not reflect arms-length transactions, or that are not in the ordinary course of the self-supply LSE's business," absent a demonstration that the costs or revenues are consistent with the overall objectives of the self-supply exemption.⁴⁷ PJM also proposes that its self-supply exemption not apply to the extent the LSE has an arrangement for any payments or subsidies that are specifically tied to the LSE clearing its project in PJM's capacity auction, or to the construction of its project.

67. PJM also proposes to require LSEs to submit a sworn, notarized statement from its duly authorized officer certifying that the information submitted to PJM and the IMM in support of the LSE's exemption request is true and correct, that the generation resource that is the subject of the exemption request will be part of the LSE's owned and contracted capacity, that the LSE has disclosed all material facts and that the market seller satisfies the criteria for the exemption.⁴⁸ Finally, PJM proposes tariff revisions authorizing PJM to take certain actions, including the revocation of an exemption, if it reasonably believes that a previously-granted self-supply exemption was based on the submission of fraudulent or material misrepresentations or omissions.⁴⁹

action agencies.

⁴⁶ PJM proposes to define a vertically integrated utility as a "utility that owns generation, includes such generation in its regulated rates, and earns a regulated return on its investment in such generation."

⁴⁷ *See* PJM OATT, Attachment DD at proposed section 5.14(h)(6)(i). PJM's proposed revisions enumerate four different types of such costs or revenues that an LSE often may secure for its project, and that do not raise price suppression concerns, namely: (i) incentives a project might receive from a town or county to locate in that vicinity; (ii) revenues to an investor-owned utility attributable to inclusion of the costs of the project in regulated rates, as planned consistent with the LSE's most recent retail regulator-accepted integrated resource plan; (iii) cost or revenue advantages associated with the LSE's long-standing business model, such as tax preferences, or municipal or cooperative member customers; and (iv) incentives for general industrial development.

⁴⁸ As noted above, PJM proposes to require a similar LSE certification, as applicable to PJM's proposed categorical exemption for competitive-entry.

⁴⁹ PJM's proposed revisions would apply to both the supply exemption and competitive-entry exemption, as discussed above.

68. Finally, PJM notes that its existing MOPR does not require that PJM notify stakeholders that a MOPR exemption has been requested, given that the receipt, approval, or denial of such a request is currently treated as confidential in its entirety. PJM argues, however, that these existing procedures fail to promote a reasonable level of transparency. Accordingly, PJM proposes to post the aggregate MW quantity of all self-supply exemption requests and such exemptions granted, for each delivery year, at least 60 days prior to conducting its base residual auction for that year.⁵⁰ PJM argues that these disclosure requirements are appropriate because they are limited in scope such that the identity of the market participant who submitted the exemption request and related offer remains masked to ensure that no single participant's data can be isolated and identified by other market participants. PJM adds that, as such, the market sensitive nature of market participants' data will remain protected from being gleaned by third parties who may seek to ascertain their bidding strategies to gain an unfair advantage.⁵¹

2. Responsive Pleadings

69. Comments generally supportive of PJM's proposed exemption were filed by Dominion, PJM-ICC, AMP, ODEC, the Competitive Markets Coalition, Duke, P3, and the Pennsylvania Commission. Dominion argues that under PJM's existing MOPR, an LSE such as Dominion can receive state approval for a self-supply project and begin construction, only to have that plant's offer price mitigated. Dominion argues that, under these circumstances, i.e., if its resource cannot clear, its retail customers will be denied a capacity credit applicable to the capacity charge reflected in their retail rates, with PJM then required to procure a comparable amount of capacity for which Dominion's

⁵⁰ See PJM OATT, Attachment DD at proposed section 5.11. PJM states that after an RPM auction has cleared, and as soon as is feasible, PJM will post: (i) the aggregate MW quantity requested and granted in the self-supply exemption category in the Eastern Mid-Atlantic Area Council (EMAAC), Mid-Atlantic Area Council (MAAC), and collectively for all Locational Deliverability Areas; (ii) the aggregate MW quantity cleared in the RPM auction for the self-supply exemption category; and (iii) the aggregate MW quantity of self-supply exemptions requested and granted for any Locational Deliverability Area other than those specified in the preceding clause, if the Locational Deliverability Area has more than four new generation projects in the generation interconnection queue that could have offered into the applicable RPM auction and the Locational Deliverability Area had a separate Variable Resource Requirement Curve posted for the applicable RPM auction. *Id.*

⁵¹ As summarized in section VI.A of this order, above, PJM proposes a similar disclosure policy, as applicable to competitive-entry exemption requests.

customers will also be responsible, i.e., they will be required to pay twice.⁵² Dominion argues that PJM's proposed self-supply exemption appropriately addresses this problem. PJM-ICC argues that PJM's proposed exemption will appropriately accommodate various self-supply arrangements that large industrial customers may employ to meet their power supply requirements. AMP argues that because of the business models employed by municipal LSEs, there is little if any opportunity for such LSEs to build generation for market manipulation reasons. AMP adds that PJM's proposed net-short and net-long criteria also effectively deter buyer side market manipulation. ODEC agrees that PJM's proposed exemption will allow self-supplying LSEs to make investment decisions with greater assurance that its resources will not be subject to the MOPR.

70. The IMM, while generally supportive of PJM's proposed exemption as it would apply to public power entities, recommends continued evaluation of this aspect of PJM's exemption after it becomes effective. The IMM objects, however, to PJM's proposal as it relates to vertically integrated utilities, arguing that exempting such LSE's self-supply improperly discriminates against merchant competitors with whom the vertically integrated LSE is competing, within its service territory, and further discriminates against other utilities located in states where retail restructuring has occurred.

71. With respect to exemption request review procedures applicable to both PJM's proposed self-supply exemption (addressed here) and competitive-entry exemption (addressed *supra* at section VI.A), the IMM supports a more flexible, extended review period, as may be required.⁵³ The IMM also recommends eliminating the existing provision allowing for a grant of an exemption if PJM does not provide its determination within 65 days of the exemption request.⁵⁴ In addition, the IMM recommends a revision to PJM's existing fraud provision clarifying that PJM has the discretion to take action, as currently authorized, even if the suspected fraud is directed to the IMM and not directly

⁵² AMP makes a similar argument, noting that a municipal utility, without assurance that long-term arrangements can be used to meet all or a portion of its capacity obligation, would face the prospect of simultaneously paying for the resource it secured on its own while also purchasing capacity from PJM to meet its resource adequacy obligation.

⁵³ The IMM thus recommends deletion of the requirement that requests for additional documentation not extend the deadline by which PJM or the IMM issue their determinations. *See* PJM OATT, Attachment DD at section 5.14(h)(8)(i). The IMM adds that an IMM determination for an early request should not begin to run until a complete request has been received.

⁵⁴ PJM OATT, Attachment DD at section 5.14(h)(8)(i).

to PJM.⁵⁵ The IMM further recommends that the supporting documentation that PJM and/or the IMM will be authorized to require in the exemption application process should include additional information, as may be specified in the PJM Manuals.

72. LS Power, NRG, FirstEnergy, the Joint Consumer Advocates, the New Jersey Board, and the IMM argue that PJM's proposed exemption fails to justify why a vertically integrated utility should be eligible for the exemption. The New Jersey Board argues that PJM's proposed rule change unjustifiably allows states retaining jurisdiction over vertically integrated utilities to order the development of new gas-fired generation resources and receive a blanket MOPR exemption, irrespective of any impact this new entry may have on capacity market prices.

73. NRG argues that PJM's proposed exemption is unjustified, given that PJM's capacity procurement rules allow such an LSE to satisfy its capacity obligations through the Fixed Resource Requirement (FRR) alternative, without risk of being mitigated under the MOPR.⁵⁶ NRG adds that the FRR alternative is carefully crafted to insulate market-participants from any price effects caused by self-supply. NRG asserts that PJM's proposed exemption would eliminate the existing incentive to choose the FRR alternative, the effect of which would lead to a flood of capacity additions intended to suppress capacity prices. The IMM argues that the availability of the FRR option is sufficient for vertically integrated utilities who do not want to fully participate in competitive markets, as it provides sufficient accommodation for jurisdictions that are not restructured and want to pursue some form of integrated resource planning under cost of service regulation.

74. Dayton also objects to PJM's proposed exemption. Dayton notes that, under PJM's exemption, an entity that is eligible for the self-supply exemption must have a load that is roughly balanced against the amount of generation it owns or controls. Dayton argues, however, that intent and impact should be considered as factors in applying any rule designed to protect market participants from market power abuse.

75. Dayton also argues that PJM's proposed exemption for self-supply should be proportional across all exemption categories and should not vary in size from category-to-category. Dayton notes that there are existing rules set forth in PJM's OATT, as applicable to the FRR alternative, that could be appropriately modified and applied for scaling any MOPR exemption approved in this proceeding.

⁵⁵ *Id.* at section 5.14(h)(9).

⁵⁶ LS Power comments at 3, *citing* PJM Reliability Assurance Agreement at Schedule 8.1.

76. NRG argues that PJM's proposed exemption is also inconsistent with the Commission's orders finding that an exemption for self-supply is unduly discriminatory relative to other planned generation and provides an unwarranted opportunity to exercise buyer-side market power.⁵⁷ NRG further argues that no public power entity will trigger PJM's proposed net-short provisions, meaning that they will all receive an exemption from the MOPR, and that the exemption will cause significant harm to the market.⁵⁸

77. FirstEnergy argues that PJM has failed to explain why demand-side market power should not be mitigated in the same manner as supply-side market power. In addition, FirstEnergy argues that PJM's proposed "net-short" and "net-long" thresholds are arbitrary, provide ample opportunity for gaming and evasion, are not likely to provide any meaningful limit on the potential for the exercise of market power, and are inconsistent with Commission precedent. FirstEnergy asserts that PJM has not provided any data regarding the development of the specific net-short and net-long thresholds, any economic analysis to support the reasonableness of the threshold levels for self-supply LSEs to qualify for an exemption, any indication of how much exempt capacity could actually enter the market in a given year, or any economic analysis illustrating the possible impacts on the market of self-supply LSEs dumping zero-priced capacity into the market.

78. FirstEnergy states that the Commission has found that defining the net-short position can involve significant complications and evasion of the requirement can come in many forms, including some unforeseen, and any attempts to refine the provision "may simply lead to further opportunities for gaming."⁵⁹ FirstEnergy contends that it is undisputed that, due to the relatively steep slope of the RPM demand curve, even very small changes in supply can have significant impacts on the price estimates and that an

⁵⁷ NRG comments at 9-10 (citing April 2011 MOPR Order, 135 FERC 61,022 at P 192 and *ISO New England, Inc.*, 135 FERC ¶ 61,029 at P 232 (2011)). *See also* New Jersey Board protest at 40; FirstEnergy protest at 7-8.

⁵⁸ NRG notes, for example, that in the SWMAAC Locational Deliverability Area, a swing of 1,195 MW could significantly affect prices, where four Maryland public power entities account for approximately 1,400 MW of the area's reliability requirement, giving these four collectively more than enough latitude to suppress prices through the addition of new capacity. NRG further notes that Dominion could be short up to 4,000 MW – 2.4 percent of the region-wide capacity requirement – and still receive a MOPR exemption.

⁵⁹ FirstEnergy protest at 12-13 (citing April 2011 MOPR Order, 135 FERC ¶ 61022 at P 90).

addition of only 500 MW of zero-priced supply, which is well within the threshold requirements, to the EMAAC Locational Deliverability Area would decrease prices by approximately 29 percent. FirstEnergy contends that very small changes in capacity supply in PJM can affect the clearing price substantially and that the proposal does not include any *aggregate* threshold levels, so multiple exemptions for self-supply LSEs could seriously harm the market.

79. FirstEnergy argues that PJM's proposed exemption will harm PJM's capacity market, noting that if all potentially exempt LSEs were to self-supply new capacity to account for their net-short positions, nearly 18,000 MW could be added to the market in a single year, and that if these LSEs were to maximize their net-long positions, as allowed, an additional 3,000 MW could be added.

3. PJM's Answer

80. PJM responds to intervenor arguments that the 2011 MOPR orders considered, but rejected, proposed categorical exemptions for self-supply and that, as such, a self-supply exemption cannot be "re-litigated" here. PJM argues that its proposed exemption is not the broad exemption the Commission declined to adopt in the 2011 MOPR proceeding.⁶⁰ PJM asserts, rather, that its proposed exemption for self-supply is carefully circumscribed by limits on how net-short, and how net-long, a requesting market participant may be, as well as express rules on the types of costs and revenues that will disqualify a project from receiving a MOPR exemption.

81. PJM adds, moreover, that the 2011 MOPR orders *did* find that a MOPR exemption can recognize projects that embody traditional business models, or that have costs and revenues that are not anomalous.⁶¹ PJM submits that its proposed exemption for self-supply simply proposes to implement a prior authorization, by defining the types of projects contemplated by PJM's existing rules addressing "traditional business model" allowances, i.e., to treat as eligible for an exemption projects developed as self-supply by municipals, cooperative utilities, and vertically integrated utilities operating under integrated resource plans developed under state-approved rules.

82. PJM responds to the IMM's proposed revisions to PJM's proposed procedures governing IMM/PJM review of exemption requests. First, PJM objects to the IMM's proposed deletion of a requirement, at section 5.14(h)(8)(i), specifying that when PJM or the IMM request additional information from market sellers to review their exemption

⁶⁰ PJM answer at 3 (citing April 2011 MOPR Order, 135 FERC ¶ 61,022 at PP 191-97 and November 2011 MOPR Order, 137 FERC ¶ 61,145 at PP 204-10).

⁶¹ *Id.* (citing November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 245).

requests, any such request “will not extend the deadline by which [PJM] or the [IMM] must provide their determinations of the exemption request.” PJM argues that this requirement appropriately gives the market seller assurance that, if it requests a MOPR exception, it will receive a definitive response within a time-certain.

83. PJM also responds to IMM’s proposed deletion of a requirement, at section 5.14(h)(8)(ii), providing that if PJM “does not provide its determination by no later than [65] days of receipt of the exemption request, the exemption request shall be deemed granted.” PJM argues that this proposed provision appropriately gives market participants assurance that the parties responsible for processing exemption requests will process those requests in a timely manner.

4. Additional Answers

84. The PJM Load Group responds to NRG’s argument that PJM’s proposed exemption for self-supply will adversely impact market clearing prices and is contrary to economic theory, and good market design. The PJM Load Group argues that the purpose of the MOPR is to protect against *artificial* price suppression while not impeding the efforts of LSEs choosing to procure or build capacity under long-standing business models.

85. The PJM Load Group also responds to the arguments raised by FirstEnergy and NRG, regarding the asserted adequacy of PJM’s FRR alternative, in lieu of PJM’s proposed self-supply exemption. The PJM Load Group argues that the FRR option is poorly-suited for most municipals, cooperative utilities, and vertically-integrated utilities within PJM as a method to meet load-serving obligations, for all the reasons previously briefed by these entities in the 2011 MOPR proceeding.

86. The PJM Load Group objects to exemption request review revisions proposed by the IMM, characterizing the IMM’s proposed revisions as an attempt to give the IMM an expanded opportunity to propound information requests on the entity submitting an exemption request. The PJM Load Group argues that the changes, if adopted, would upset the careful balance between the IMM’s and PJM’s rights to seek additional information and the requesting entity’s entitlement to a time-limited review. The PJM Load Group adds that, while the IMM and PJM should have the ability to request additional information, when necessary, any such follow-ups should occur in a timely manner and should not serve to extend the determination deadline.

5. Deficiency Letter Responses

a. PJM’s Responses

87. We summarize, below, PJM’s responses to the Deficiency Letter’s questions regarding PJM’s proposed self-supply exemption.

88. In response to the Deficiency Letter's request that PJM provide the basis supporting the development of each net-short and net-long threshold for each customer class, PJM explains that its proposed thresholds were proposed by stakeholders and reviewed by PJM. PJM adds that its proposed net-short thresholds are well below the levels at which uneconomic entry would become profitable, and notes that, rather than attempting to determine the different thresholds with precision, PJM's aim was to reasonably balance the need to protect the market with the need to accommodate normal business operations. PJM states that it carefully reviewed confidential portfolio information and confirmed that, at the proposed net-short levels, LSEs were acting within the ordinary course of business. PJM states that it also gathered information from its interviews with individual LSEs regarding their multi-year business cycles, their methods for managing load forecasts, their managing of bilateral contracts, and their risk management approach for customer switching and resource planning.

89. PJM states that its proposed 150 MW net-short threshold for single customer LSEs reflects the fact that any single end-use site in PJM could choose to rely on RPM for 100 percent of its needs. PJM states that, as such, a 150 MW threshold corresponds to the largest industrial end-user in PJM. PJM states that substantial or even exclusive reliance on RPM to meet resource needs should be accommodated as long as the self-supply LSE's historical practice demonstrates that such a reliance is part of its established business model and the resulting net-short amount is small enough to make uneconomic entry unprofitable.

90. In support of its proposed 1000 MW threshold for a single-state public power entity, PJM states that the largest public power LSEs in PJM serve loads of approximately 3000 MWs and that these entities typically meet a large share of this obligation through PJM's capacity auctions. PJM adds that that the larger 1800 MW threshold for a multi-state public power entity recognizes that the entity presently qualifying for this category has historically relied on RPM for significantly more than 1000 MWs of its capacity needs. In support of its proposal to apply a 20 percent net-short threshold for vertically integrated utilities, PJM states that such a threshold will accommodate variations from time to time in RPM obligations and resource portfolios. PJM notes that these types of resources typically build, purchase, and contract for the vast majority of their capacity needs.

91. In support of its proposed net-long criteria, PJM states that its proposed levels are reasonable, given that they will both limit the incentive to overbuild while recognizing that an LSE may temporarily be in a net-long position at the beginning of a large resource's life.

92. PJM also responds to the Deficiency Letter's request that PJM provide a study identifying the minimum amount of non-self-supply that would render subsidies cost-effective for load serving entities of different sizes, and a separate analysis for each

Locational Deliverability Area that has a separate Variable Resource Requirement Curve and for the unconstrained portion of the RTO.⁶² PJM states that, as requested, it performed an analysis to determine the minimum net-short quantities at which the benefit to an LSE of a clearing price reduction for its capacity purchases would outweigh the cost to the LSE of a unit offered at an uneconomic price. PJM states that for the variety of scenarios requested, it looked at the cost to the LSE (i.e. the cost of the new entry resource less the offsetting revenue from the RPM capacity payments) and the benefit to the LSE (i.e. the reduction in the LSE's cost to serve its non-self-supply load). PJM adds that it used the auction results from last year's base residual auction, adding hypothetical uneconomic new entry offers at \$0 per MW/day through sensitivity analyses. PJM states that, as such, its analysis used the actual demand curves and supply offers from last year's auction. PJM adds that it performed this analysis for the unconstrained portion of PJM as well as all of the Locational Deliverability Areas that had a separate Variable Resource Requirement Curve in the last base residual auction, with the exception of a few zones that either have no vertically integrated utilities and/or significant public power entities or that PJM considered unlikely to separate in future auctions. PJM also states that the supply curve has become more elastic, i.e. gradual, in the last three years.

93. PJM states that its analysis considered a hypothetical 150 MW combustion turbine plant and a 600 MW combined cycle plant in the unconstrained portion of PJM. PJM chose plants of this size for its study because they are typical sizes for the types of plants to which the MOPR will apply. By comparing the LSE's capacity payment *without* new entry to the LSE's capacity payment *with* new entry (plus the new entry resource cost), PJM concludes that an uneconomic entry strategy would become profitable for a 150 MW combustion turbine in the unconstrained portion of PJM somewhere between a net-short position of 19,350 MW and 19,850 MW. PJM asserts that the profitability range for a 600 MW combined cycle unit would fall between a net-short position of 14,400-14,900 MW.⁶³ PJM performed similar analyses for the other Locational Deliverability

⁶² The Commission Staff's question also directed PJM to assume that in determining whether subsidizing uneconomic entry is cost-effective, an LSE would compare: (i) the additional cost from the subsidy, with (ii) the benefit, i.e., the reduction in the LSE's bill resulting from purchasing the non-self-supplied portion of its capacity requirement from RPM. The question further directs PJM to assume that the benefit depends on the reduction in the price resulting from the subsidized entry (as dependent on the slope of the applicable Variable Resource Requirement Curve for the applicable Locational Deliverability Area and the size of the Locational Deliverability Area), and the amount of non-self-supplied capacity purchased by the LSE.

⁶³ The proposed net-short threshold for multi-state public power entities is 1,800 MW for the unconstrained portion of PJM. PJM tested its proposed 1,800 MW threshold for multi-state public power entities using the same analysis and determined that a

(continued...)

Areas. PJM notes that in MAAC, for example, an uneconomic entry strategy for a 150 MW combustion turbine unit becomes profitable somewhere between a net-short position of 7,350-7,850 MW. For a 600 MW combined cycle unit, the range is 3,900-4,400 MW. In SWMAAC, meanwhile, an uneconomic entry strategy with a 600 MW combined cycle unit becomes profitable at a net-short position between 1,100-1,200 MW.

94. PJM also responds to the Deficiency Letter's request that PJM explain: (i) whether PJM's proposal allows resources to evade the net-short threshold, and thus receive a MOPR exemption, by contracting for capacity on a short-term basis; and (ii) whether an LSE that meets the net-short threshold, in part, or in whole, with short-term contracts, would have an incentive to reduce the RPM price by subsidizing uneconomic entry, and if so, what the minimum contract term should be in order to remove this incentive. PJM asserts that this contracting issue raises no concerns that would undermine its proposal. PJM notes that an LSE's capacity obligation is calculated based on a three-year average basis, and that a strategy using short-term contracts would present significant risks to the party contemplating uneconomic entry. PJM states that given that uneconomic new entry within its proposed net-short thresholds will likely be unprofitable, an attempt to support uneconomic entry through short-term contracts would likely prove unprofitable for the first few years. PJM argues that, as such, the LSE would be required to bet, in effect, that its uneconomic new entry would reduce prices four years into the future by a sufficient amount to make up for the initial, unprofitable years. PJM asserts that the risk entailed in any such strategy renders its potential use unlikely.

95. PJM also responds to the Deficiency Letter request that PJM explain why a resource associated with an LSE that does not qualify for the self-supply exemption should not be entitled an exemption, if it otherwise meets the relevant net-short and net-long thresholds, and why a non-self-supply LSE that meets these thresholds would still have an incentive to reduce the RPM auction clearing price. PJM notes that there are material differences between the types of traditional business models the self-supply exemption is designed to address and the restructured market context on which the MOPR is otherwise focused. PJM states that the traditional business model of the entities eligible for the self-supply exemption focuses on the development of both a long-term supply plan and integrated resource plan to serve in an economically responsible and reliable manner the customers that the LSE has traditionally served and reasonably expects to serve.

resource that is net-short 1,800 MW would not profit from an uneconomic entry strategy with a 600 MW resource. PJM's proposed threshold for an investor-owned LSE is 20 percent of the LSE's reliability requirement. PJM adds that a similar strategy would also be unprofitable for a 600 MW resource at a net-short position of 4,000 MW, which is 20 percent of the approximate size of the largest vertically integrated utility LSE in PJM.

96. PJM states that an uneconomic new entry strategy by a self-supply entity poses a substantial risk of increasing its net costs. PJM states that, as such, it is unlikely that these entities would either develop or depend upon risky strategies to address the non-self-supply portion of their portfolio. PJM adds that governmental entities, especially in restructured states, do not fit this model. PJM notes that states like New Jersey and Maryland have restructured their retail mechanisms and have opened the retail market to competition, leaving the majority of their states' power supplies to depend upon market forces. PJM argues that this market structure provides significant incentives for a state to target subsidies at new entry to lower RPM prices. PJM notes that the LCAPP program in New Jersey, for example, was intended to benefit the loads connected to the four electric distribution companies in the state, with the cost of the program recovered via non-bypassable charges. PJM states that the loads required to pay these charges would benefit from a reduction in the clearing price, and that the large amount of load affected by the clearing price is far above PJM's proposed net-short thresholds.

97. PJM asserts that the net-short criteria proposed for the self-supply exemption cannot be applied effectively in retail-choice states. PJM states that an assessment of costs/benefits to an uneconomic entry strategy would have to look at the entire state and not an individual LSE because a state approach, if designed effectively, would benefit the entire state in question but would not necessarily benefit each particular LSE in the state. PJM further notes that LSEs in traditionally regulated states are subject to state regulatory reviews of integrated resource plans, which typically involve a long-term planning horizon. PJM argues that, as such, a short-term gain through the exercise of buyer-side market power is likely to appear as a less attractive option over the long-term planning horizon. In addition, the guaranteed return on equity for LSEs in traditionally regulated states mitigates the need to engage in a strategy of uneconomic entry, PJM argues, and such entities can face cost recovery prudence disallowances if they pursue uneconomic new entry, providing another strong disincentive.

b. Intervenors' Responses

98. FirstEnergy argues that PJM has failed to provide a study, as contemplated by Commission Staff's request, that would support PJM's proposed thresholds, including a separate analysis for each Locational Deliverability Area that has a separate Variable Resource Requirement Curve and for the unconstrained portion of PJM. FirstEnergy asserts that what was required, in response, was the submission of data, methodologies, assumptions, and conclusions that would allow for the verification of PJM's results. FirstEnergy asserts that, regardless, PJM's selective analysis of the self-supply's exemption's effect on only one base residual auction is insufficient support for PJM's proposed exemption and failed to consider how market participants' decisions could be impacted by PJM's proposal. In addition, FirstEnergy states that PJM failed to analyze the effect on the market of more than one new resource from either a single or multiple self-supply LSE offering in the same base residual auction. FirstEnergy also argues that

PJM's response to the Deficiency Letter has not demonstrated that the self-supply exemption will not significantly harm the ATSI region.

99. EKPC argues that as a winter-peaking participant in RPM, it would be disadvantaged by PJM's proposed screening calculations, which are based only on summer peak demands. EKPC argues that, as such, the Commission should require PJM to revise its proposed definition of an LSE's capacity obligation, as applicable to the self-supply exemption, to account for different peak-load patterns among LSEs. EKPC requests that PJM use the LSE's own annual peak. PJM agrees that the Tariff should be revised to recognize the annual peak of a winter-peaking self-supply entity.

100. PJM Load Group asserts that the net-short and net-long position criteria for vertically integrated utilities provides an appropriate bright-line test, consistent with historical vertically integrated utility practices. PJM Load Group further states that the self-supply exemption is not a blanket exemption and requires resources from vertically integrated utilities to be planned consistent with the integrated resource plans that have 10-15 year planning time requirements, and can only be approved by a state regulatory authority before resources can be added. PJM Load Group asserts that the integrated resource plan, and its regulatory approval, suggest that the historical vertically integrated utility business practices do not consider impacts of resources on remaining open and uncertain market positions and thus, the integrated resource plan removes the vertically integrated utility's resource's supply mix from short-term procurement decisions. PJM Load Group argues that despite the state oversight and long-term planning nature that the integrated resource plan provides, the vertically integrated utility does not have an economic reason to acquire resources above the amount allowed in the integrated resource plan. PJM Load Group asserts that, like vertically integrated utilities, public power utilities cannot benefit from a strategy that attempts to affect PJM's auction prices.

101. On the issue of supply curve elasticity, the IMM explains that elasticity can be expected to vary, with high elasticity at the lower prices and inelasticity at the higher prices. The IMM adds that whether the market clears at an elastic or inelastic portion of the supply curve should not determine whether the MOPR is necessary, nor does it justify an exemption applicable to vertically integrated utilities.

102. Joint Consumer Advocates and the New Jersey Board argue that PJM's proposal would allow utility commissions in traditionally regulated states to require their LSEs to build or buy a resource and then offer that resource into the market as a price taker while not allowing a state like New Jersey to do the same. Joint Consumer Advocates dispute PJM's claim that this different treatment is warranted because of the different incentives for price suppression between traditionally regulated states and restructured states. Joint Consumer Advocates argue that having an incentive to suppress prices is an insufficient basis to interfere with resource-planning prerogatives. Joint Consumer Advocates note that there are significant similarities between New Jersey's LCAPP legislation and the

integrated resource plan of Dominion's operating companies to underscore the allegedly discriminatory treatment PJM proposes. The New Jersey Board contends that when state regulators -- whether in a traditionally regulated or in a restructured state -- seek to have new generation built, they have the same incentives: to meet the reliability needs of the state.

103. Joint Consumer Advocates also argue that a focus on "incentives" is the wrong approach regarding the operation of PJM's MOPR. Joint Consumer Advocates assert that states may seek to develop new capacity resources through long-term contracts and have them clear in the market for legitimate resource-planning reasons, for price suppression reasons, or a combination of the two. Joint Consumer Advocates also cite Commission precedent supporting the proposition that intent is not relevant to whether an offer should be mitigated.⁶⁴ Joint Consumer Advocates argues that even if intent is relevant, intent cannot be dispositive, given that the possibility of a certain motive does not justify preventing resource planning and procurement programs.

104. The New Jersey Board similarly argues that the effect, not the intent, of the new entrant should matter. The New Jersey Board asserts that, regardless, PJM's proposed self-supply exemption would *permit* theoretical price suppression. The New Jersey Board also notes that profiting from capacity revenues may not be the sole basis for a decision by a self-supply LSE to offer new entry. The New Jersey Board notes, for example, that the LSE would also see reduced energy prices as a result of the new entry (i.e. new, efficient units replacing older and costlier resources).

105. NRG challenges PJM's conclusion that exempting significant amounts of self-supply from the MOPR will not depress capacity prices. NRG argues that PJM's conclusion rests on the analysis of a single auction's results, and fails to consider other relevant market conditions. NRG asserts that, in fact, the MOPR will have its greatest impact when market conditions are tight, when high-cost new resources would set the clearing price. NRG argues that the MOPR's purpose is to ensure the when new marginal entry is needed, the new capacity entrant will not be displaced by uneconomic self-build generation. NRG adds that, because PJM did not analyze the impact of self-supply exemption during tight market conditions, it has not been demonstrated that the self-supply exemption is needed or otherwise appropriate.

106. NRG also challenges PJM's position that state rate cases and prudence reviews will prevent uneconomic new entry. NRG responds that lower prices attributable to price suppression will allow the utilities subject to state regulatory oversight to create goodwill

⁶⁴See Joint Consumer Advocates comments at 12 (citing *ISO New England, Inc.*, 135 FERC ¶ 61,029 at P 170 (2011)).

with state regulators. NRG adds that self-supply entities do not make investment decisions based on the sole objective of minimizing short-run costs.⁶⁵ NRG argues that, in fact, other factors are considered, including issues relating to the environment, employment, and/or rate stability. NRG argues that, as such, cost minimization may tip the scales in favor of investing in an uneconomic resource that will be exempt from the MOPR. NRG concludes that PJM has not supported its argument that state ratemaking will deter uneconomic entry.

6. Commission Determination

107. For the reasons discussed below, we accept PJM's proposed exemption for self-supply, subject to conditions and the submission of a compliance filing PJM proposes to define the parameters within which a self-supply LSE will be permitted to offer new capacity in PJM's capacity auctions as a price-taker. Specifically, PJM proposes both net-short and net-long tests and not a blanket, across-the-board exemption. We find that PJM's proposed net-short and net-long thresholds, in principle, adequately protect the market from the price effects attributable to uneconomic new self-supply. Accordingly, we conditionally accept PJM's proposed exemption for filing.

108. We find that, as a general matter, providing exemptions for resources properly designated as self-supply when they meet suitable net-short and net-long thresholds is reasonable. The concern giving rise to the MOPR is that buyers can reduce their total capacity cost by financing uncompetitive entry, because the cost of financing the entrant is offset by the overall cost reduction achieved by lowering the price of capacity for the remainder of the capacity purchased. While such a strategy may lower capacity costs in the short-run, over the long-run this strategy will prove more costly as it encourages early retirement and discourages new, at-risk investment. However, if a self-supply entity meets a sufficiently large proportion of its capacity needs through its own generation investment, it has little or no incentive to suppress capacity market prices. If the amount of non-self-supplied resources procured from RPM is sufficiently small, uneconomic entry would reduce the cost of procuring this portion by less than the amount spent on the uneconomic entry.

109. In the 2011 MOPR proceeding, the Commission rejected intervenors' request to categorically exempt self-supply from the MOPR, finding that a blanket exemption for resources designated as self-supply would allow for an unacceptable opportunity to

⁶⁵ NRG notes that under PJM's analysis, a new combined cycle plant lowers capacity prices for LSEs by \$5.35 MW/day, saving \$2 million annually for every 1,000 MW attributable to the entity's net-short position.

exercise buyer market power.⁶⁶ While we reaffirm that analysis here, we agree with PJM that its proposed exemption is not a blanket exemption of the sort rejected by the Commission in the 2011 MOPR proceeding. We find, rather, that with proper restrictions on the net-short and net-long positions of a resource, PJM's proposed exemption will operate in a manner that appropriately addresses the MOPR's objectives.

110. LS Power, NRG, and the IMM assert that vertically-integrated utilities should not be exempt from the MOPR, given that the FRR alternative offers an adequate mechanism for such entities to satisfy their capacity requirements. At issue here, however, is not the adequacy, or inadequacy, of the FRR option for vertically-integrated utilities. Rather, the issue is whether PJM's proposed tariff changes are just and reasonable. We find that PJM has met this burden because entities that self-supply a sufficiently large portion of their capacity requirement do not have an incentive to use uncompetitive entry to lower capacity prices. However, the effectiveness of the exemption depends critically on the thresholds that limit the incentive of self-supply entities to influence market-clearing capacity prices i.e., on the measurement issues PJM was required to address in response to Commission Staff's Deficiency Letter.

111. On the issue of the self-supply exemption's alleged discrimination between traditionally regulated states and restructured states, we agree with PJM that there are differences pertinent to these issues between the types of traditional business models the self-supply exemption is designed to address and the restructured market. An uneconomic new entry strategy by a vertically-integrated utility, for example, poses a substantial risk of increasing its net costs, as demonstrated by PJM's analysis of the net-short thresholds. For this reason, we agree with PJM that these entities are unlikely to depend on costly strategies to address the non-self-supply portion of their portfolio. The incentives for uneconomic entry in restructured states differ because, in those market structures, LSEs rely largely on the market to meet their capacity obligations. We also note that entities in restructured states that are not eligible for the self-supply exemption may still receive a MOPR exemption through the competitive entry exemption, or they may receive a unit-specific offer floor through the unit-specific review process. LSEs in restructured states are not therefore automatically subject to MOPR.

112. Several parties take issue with the notion of evaluating incentives or potential motives when designing buyer-side market power mitigation. We agree, to an extent, that an entity's incentives do not necessarily predict with perfect accuracy how a market participant will act, and these incentives or possible motives do not fully explain an entity's behavior. As Joint Consumer Advocates note, a decision to support uneconomic entry could be a function of legitimate resource planning, price suppression, or a

⁶⁶ *Id.* P 205; *see also* April 2011 MOPR Order, 135 FERC ¶ 61,022 at P 192.

combination of the two. However, PJM's proposal does not rely solely on an analysis of motivation, but establishes reasonable thresholds for evaluating whether a self-supply resource would benefit economically from uneconomic entry given the effect of that entry on the market. In cases in which those thresholds are not violated, the incentive to construct such capacity does not warrant the application of the MOPR.

113. With respect to the proposed net-short and net-long thresholds, we note that the thresholds and PJM's Deficiency Letter analysis are based on data from the 2012 base residual auction. We find that this data adequately justifies PJM's proposed net-short and net-long thresholds, as they will be applied in existing market conditions. We share intervenors' concerns, however, that evolving market conditions could affect the accuracy and/or usefulness of these thresholds in the future. Intervenors note, for example, that a significant supply surplus existed during the most recent base residual auction and that, as such, the capacity supply curve was relatively elastic. However, in auctions when supplies are tighter and the supply curve becomes inelastic, offering additional capacity below cost will reduce prices at a steeper rate. Accordingly, we require PJM to submit tariff language memorializing its obligation, as established here, to review and, if necessary, revise these thresholds on an appropriate, periodic basis, as proposed and supported by PJM in a compliance filing to be made within 30 days of the date of this order.

114. We agree with EKPC and PJM that, as a winter-peaking self-supply system, EKPC's summer peak will not represent its actual peak load. We will accordingly require PJM to propose revised tariff language in its compliance filing modifying the net-long test to recognize the winter peak for a winter-peaking LSE.

115. Finally, we reject the IMM's proposed revisions to PJM's proposed procedures governing the IMM's and PJM's review of exemption requests.⁶⁷ For the reasons set forth by PJM, in its answer, we agree that PJM's proposed revisions to sections 5.14(h)(8)(i) and (ii) provide an appropriate degree of certainty and finality to the exemption request process, with respect to requests for additional information and the issuance of a final determination, without unduly impeding the ability of PJM and the IMM to conduct their reviews. For this same reason, we also reject the IMM's proposal to: (i) extend the deadline applicable to an IMM determination, i.e., to tie the deadline to the IMM's receipt of a "completed request;" and (ii) allow for the adoption of additional document submission requirements, as may be specified in PJM's Manuals. We also reject, as unnecessary, the IMM's proposed clarification that the *basis* for the authorizations granted to PJM, in the case of an exemption request that includes fraudulent misrepresentations, include PJM's reasonable belief (as proposed by PJM) *and*

⁶⁷ See PJM OATT, Attachment DD at proposed sections 5.14(h)(8) and (9).

(as proposed by the IMM) information received from the IMM or other party. We read PJM's proposed language as reasonably including *any* fraudulent misrepresentation made by the requesting entity to *anyone* involved in the review process, including the IMM or other party.

C. Unit-Specific Review

1. PJM's Proposal

116. PJM proposes to eliminate its existing unit-specific review process, given its proposed categorical exemptions (discussed in sections V.B and V.C below). PJM argues that the elimination of the unit-specific review process is appropriate because projects that fail to qualify for an exemption from the MOPR under one of PJM's proposed categorical exemptions will necessarily present a high risk of price suppression that need not be further considered by a case-specific review. PJM states that reliance on broad categorical exemptions in place of a unit-specific review process is also preferable, given the complexities involved in a case-specific cost and revenue review, the lack of transparency this process entails, and the resulting uncertainty in the market regarding the plausibility of the capacity market price signal.

2. Responsive Pleadings

117. A number of intervenors filed comments generally supportive of PJM's proposed elimination of the unit-specific review process.⁶⁸ Intervenors characterize PJM's existing unit-specific review process as overly-burdensome, administratively unfeasible, and non-transparent, with standards that are ambiguous, overly-subjective, and ultimately arbitrary. In addition, intervenors argue that this process, as employed in connection with PJM's 2012 capacity auction, produced market uncertainty and otherwise proved ineffective in achieving the MOPR's stated objectives. The Competitive Markets Coalition argues, for example, that at least three state-subsidized units (two from New Jersey and one from Maryland) cleared the 2012 auction.⁶⁹ The Ohio Commission argues that replacing PJM's existing procedures with categorical exemptions, as proposed, will reduce litigation and enhance competition. ODEC and the PJM Load Group argue that

⁶⁸ See comments submitted by the Pennsylvania Commission, the PJM Load Group, ODEC, the Competitive Markets Coalition, EPSA, P3, Calpine, and the Ohio Commission.

⁶⁹ The Competitive Markets Coalition asserts that in the first year of delivery, the guaranteed state-contract payments for the two New-Jersey sponsored units are 30 to 70 percent higher than the capacity auction clearing price.

PJM's existing process needs to be replaced with exemptions able to accommodate LSEs' long-standing business models.

118. Comments and protests objecting to PJM's proposal were filed by the Ohio Consumers Counsel, the Joint Consumer Advocates, the Maryland Commission, the New Jersey Board, CPV Power Development, Inc. (CPV), and Hess. The IMM disagrees with PJM that the unit-specific process is inherently flawed, but the IMM contends that the unit-specific review process is not necessary for an effective MOPR.

119. The IMM recommends that PJM's proposal be revised to address the circumstances presented when a state, but not PJM, believes that a reliability issue must be addressed, i.e., where the dispute concerns a specific disagreement about a specific aspect of PJM's analysis (such as the likelihood of a significant transmission line being completed within a defined time period). The IMM asserts that, under these circumstances, where PJM would be unable to render an independent determination, any new project selected under a state procurement process, even one that discriminates against existing resources and seeks incremental capacity, should have the ability to avail itself of a unit-specific review process using unambiguous standards that match those used in the PJM tariff calculation of gross CONE, net of expected first year energy and ancillary service net revenues.

120. The Maryland Commission argues that the unit-specific review process should be retained, given the failure of any party to demonstrate that this review procedure has produced an unjust or unreasonable rate. The Maryland Commission adds that, absent its opportunity to participate in this process and present documentation regarding the net costs of its RFP project, as offered into PJM's 2012 base residual auction, a Maryland-based project would have been mitigated, without justification, and would not have cleared.

121. The Maryland Commission and the Joint Consumer Advocates also dispute PJM's claim that the review process has not engendered confidence in RPM. The Maryland Commission asserts that this allegation reflects only the view of some in the investment community, but that PJM, in its filing, never states that it shares this alleged perception.

122. The New Jersey Board argues that PJM's proposed elimination of the unit-specific review process will prevent economic state-sponsored new entry from participating in RPM auctions and thus interferes with the responsibility reserved to the states under the FPA.⁷⁰ The New Jersey Board asserts that states are constitutionally permitted to

⁷⁰ See also Hess protest at 3 (arguing that PJM's proposal violates the FPA by depriving new entrants that participate in state programs from establishing cost-based offer floors).

execute various choices with respect to resource dynamics within their boundaries, provided that any result of that choice is economic. The New Jersey Board adds that PJM is barred, under the FPA, from seeking MOPR revisions that presume that *all* resource choices made by restructured states are inherently uneconomic. The New Jersey Board also argues that a unit-specific review process is appropriate because it results in a cost-based, positive-value offer price equivalent to the actual first year Net CONE. The New Jersey Board argues that, by contrast, a categorical exemption process of the sort proposed by PJM would benefit LSEs that receive state or local subsidies under business models that predate RPM, specifically including LSEs that receive state subsidies in states with regulated markets.

123. CPV argues that prohibiting suppliers from showing that their actual costs are lower than 100 percent of Net CONE deprives the market of lower-cost generation. CPV further asserts that because PJM's administratively-determined Net CONE is susceptible to errors, as calculated by PJM, a unit-specific review procedure should be retained as a necessary safety valve. CPV also challenges PJM's focus on the asserted non-transparency of the unit-specific review process, arguing that the need for price transparency need not extend to cost transparency.

124. Hess notes that three resources that are participating in state programs, including Hess's Newark project, submitted cost data to the IMM and PJM as part of unit-specific review requests applicable to the 2012 base residual auction, and that each of these projects was found to be economic, with legitimate net unit costs falling below PJM's administratively-determined Net CONE. Hess adds that each of these projects cleared the auction, an outcome that would not have been allowed under PJM's proposed elimination and replacement of the unit-specific review process. Hess argues that PJM's proposed elimination of this process should be rejected, given that it would reverse the Commission's findings, in the 2011 MOPR orders, that this process was appropriate, and would do so on the basis of unsupported allegations relating to a single auction. Finally, Hess argues that, in the absence of a unit-specific review process, PJM is left with a MOPR that unreasonably *assumes* that every new entrant that participates in a state program designed to attract new entry is uneconomic – an assumption belied by PJM's own findings, as applicable to its 2012 auction.

3. PJM's Answer

125. PJM responds to intervenors' argument that eliminating the unit-specific review process violates the Commission's compliance mandates, as issued by the Commission in the 2011 MOPR orders. PJM argues that its proposed reliance on categorical exemptions, in place of a unit-specific review process, is nothing more than a simplification of the exemption process that can be characterized as a *process* improvement, not a change in the fundamental operation of the MOPR, as approved by the Commission's 2011 MOPR orders.

126. PJM states that these changes are designed to address transparency concerns and the appropriateness of freeing PJM, and the IMM, from the obligation to review every item of cost, fixed and variable, and every item of revenue – for every project sponsor requesting that it be treated as exempt from the MOPR. PJM asserts that with its proposed revisions, expressly enumerating permissible revenues and costs under both its self-supply exemption and competitive-entry exemption, project developers will have the guidance they need as to how their project proposals should be structured.

4. Additional Answers

127. The Maryland Commission supplements its protest in opposition to PJM's proposed elimination of the unit-specific review process, arguing that the Commission, in defending its 2011 MOPR orders before the U.S. Court of Appeals for the Third Circuit, underscores the value of retaining these existing procedures.

128. The Competitive Markets Coalition argues that the 2012 RPM auction demonstrates that PJM's unit-specific review process is unworkable and must be replaced, given that three state-sponsored resources cleared the auction at prices much lower than would have been expected in the competitive market. They argues that these resources went unmitigated due to the failure of the unit-specific review process, as plagued by subjective factors, projections, and estimates that cannot be readily evaluated (such as relating to *future* energy and ancillary services revenues).

129. Hess, in its answer, challenges the Competitive Markets Coalition's assertions, regarding the results of PJM's 2012 capacity auction, in which three resources that are participating in state programs, including Hess's Newark project, cleared. Hess notes that, in connection with that auction, it submitted cost data to the IMM and PJM, which was ultimately found to be more economic than the reference unit offer floor.

5. Deficiency Letter Responses

a. PJM's Responses

130. PJM defends its proposed elimination of the unit-specific review process in response to the Deficiency Letter's question regarding a resource that has failed to qualify for PJM's proposed MOPR exemptions but has competitive costs lower than those assumed in determining the default offer price. PJM notes that both the current unit-specific review process and PJM's instant proposal to focus on broad exemptions are just and reasonable approaches to mitigating buyer-side market power. PJM asserts that while both approaches have advantages and disadvantages, a reliance on categorical exemptions has the additional benefit of setting a clear rule that provides market certainty and eliminates opportunities for discrimination and abuse.

131. PJM states that part of the potential for abuse in the current process stems from the fact that the unit-specific review process entails estimating all of a plant's capital costs, fixed operating costs, and non-fuel variable operating costs, in addition to estimating revenues from the PJM markets. PJM asserts that under this existing approach, parties may justify their own method of determining capital costs, including the levelization method and other parameters such as equity costs, interest rates, taxes, and inflation rates. PJM adds that estimating future revenues involves assumptions on future fuel costs, future energy prices, the timing, frequency and duration of when a plant will be called upon by PJM, etc. PJM argues that given this level of discretion, the IMM and PJM can (and have) come to different conclusions about requests for a unit-specific offer floor, and that this uncertainty undermines investor confidence. Accordingly, PJM argues that perfect flexibility to accommodate individual market participants is outweighed by the need to ensure that the market has confidence in capacity market price signals.

132. PJM states that while it has thus far administered the unit-specific review process to ensure just and reasonable results, maintaining the highly discretionary process may invite sellers to attempt to "work backward" from an out-of-market subsidized offer level to find cost and revenue assumptions that justify such an offer. Finally, PJM distinguishes the circumstances at play in the operation of its existing review procedures relative to the circumstances at play in ISO-NE's operation of its unit-specific review process.⁷¹

b. Intervenors' Responses

133. Maryland responds to PJM's assertion that the unit-specific review process gives the IMM and PJM too much discretion in determining which offers will be accepted, or mitigated. The Maryland Commission argues that the Commission already addressed this perceived concern when it recognized, in the November 2011 MOPR Order, that some amount of discretion is unavoidable and perhaps even necessary.⁷² The Maryland Commission adds that PJM has offered no evidence to support its claims that the unit-specific review process may discourage lenders and investors from making commitments to a project, drive capital elsewhere, or raise risk premiums increasing the cost of capital. The Maryland Commission asserts that, regardless, the unit-specific review process assures that resources offers represent their actual costs and appropriately preserves market participants' legitimate confidentiality interests.

⁷¹ See *ISO New England, Inc.*, 142 FERC ¶ 61,107 (2013).

⁷² Maryland Commission comments at 13 (citing November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 245).

134. The Maryland Commission and the Illinois Commission argue that PJM's Deficiency Letter response fails to support its proposed application of a generic default offer in those instances where a mitigated, i.e., state-initiated, resource has lower competitive costs. The Maryland Commission adds that PJM's reliance on unsubstantiated, erroneous suspicions about states' motives fails to address Commission Staff's specific question seeking to understand the effect of mitigating a resource a resource to an above-cost offer.

135. Competitive Markets Coalition asserts that the unit-specific review process is unworkable, given the now publicly-disclosed offer prices used in last year's auction for CPV's 725 MW plant in St. Charles, Maryland.⁷³ The Competitive Markets Coalition argues that, rather than the bid offer submitted by CPV, for \$13.95 MW/day, a reasonable estimate for the Net CONE for a new combined cycle unit in that zone would have been \$232 MW/day. The Competitive Markets Coalition adds that while PJM and the IMM disagreed, they set the offer floor at 41 percent of CONE and 59 percent of CONE, at \$96.13 MW/day and \$136 MW/day, respectively. The Competitive Markets Coalition states that despite the Commission's approval for the unit-specific review for ISO-NE, there are significant differences between the PJM market and the ISO-NE market, and a one-size-fits-all approach should not be applied.

136. The IMM argues that maintaining the unit-specific review process is necessary because the proposed MOPR offer floor, i.e. Net CONE, does not reflect the actual, competitive cost of new entry. The IMM then argues that this higher than necessary Net CONE benchmark, without an opportunity for unit-specific review, creates a harmful barrier to entry. The IMM states that requiring a resource to bid above its competitive costs is not reasonable. The IMM notes that PJM proposes to calculate the energy and ancillary services revenues by using average historical data. This approach, according to the IMM, results in an incorrect forecast, especially as changes in market conditions result in substantial differences between historical and expected market revenues. Lower gas costs and improvements in combined cycle technology mean that market revenues will be higher than the historical average, the IMM argues. The IMM further argues that the gross CONE levels are inflated because they do not reflect recent competition among equipment manufacturers. Finally, the IMM disputes PJM's claim that the unit-specific review cannot be applied consistently. The IMM argues that the modeling assumptions used to calculate net costs for a unit should be identical to the assumptions used in the development of Net CONE. The unit-specific review process would therefore be limited

⁷³ See Competitive Markets Coalition comments at 3 (citing *PPL EnergyPlus, LLC v. Nazarian*, Docket No. MJG 12-1286, Tr. at 37: 19-22 (Mar. 7, 2013)).

to establishing offers based on competitive cost differences and not based on different modeling assumptions.

137. Joint Consumer Advocates also disagree with PJM's assertion that eliminating the unit-specific review process eliminates the need for PJM to make the difficult and discretionary decisions associated with estimating net costs. Joint Consumer Advocates argue that, instead, PJM's proposal simply makes the generic benchmark estimates binding on certain parties. They add that if PJM concludes that the unit-specific review process affords too much discretion to PJM and the IMM, PJM need only better define the parameters rather than dispensing with the process entirely. Joint Consumer Advocates also dispute PJM's claim that resources failing to qualify for either the self-supply or competitive entry exemption pose a heightened capability to suppress prices. Joint Consumer Advocates argue that, in fact, the price effect of a unit's entry depends on the slope of the supply and demand curves and the size of the new unit, not on how net-short or net-long a unit is or what the structure of the retail market is where the resource operates.

138. Joint Consumer Advocates and the New Jersey Board assert that by eliminating the unit-specific review and instituting the proposed exemptions, PJM's proposal would unreasonably prevent economic entry by gas-fired units that fail to qualify for one of the two proposed exemptions. These intervenors further argue that PJM's proposal would allow resources eligible for the exemptions to clear in the auction despite having actual net costs of new entry greater than the benchmark. They add that the unit-specific review process merely allows for the opportunity to demonstrate net costs to a neutral party. The New Jersey Board concludes that such a review process is qualitatively different from and more stringent than an outright exemption as PJM proposes for self-supply and competitive entry.

139. The New Jersey Board asserts that PJM has not claimed that any sellers have manipulated data submitted for review and that PJM has failed to offer any compelling reason why such behavior would occur in the future. The New Jersey Board adds that vague claims of eroding market confidence cannot justify depriving competitive new entry the opportunity to participate in PJM's capacity market. The New Jersey Board further asserts that standardizing the modeling assumptions identified by the IMM would resolve the concerns over discretion in the review process. The New Jersey Board notes that the Commission has sufficient enforcement power to deter parties from seeking to evade the purpose and intent of the market rules. The New Jersey Board also argues that PJM's study for the self-supply thresholds demonstrates the increasingly diminished returns of sponsoring uneconomic entry. To that end, the New Jersey Board states that its primary interest is the maintenance of a review process that permits competitively priced state-sponsored new entry the ability to provide incremental capacity that protects the state's statutory duty to ensure the reliability needs of its residents.

140. Finally, Hess asserts that there are ways to make the MOPR process clearer without eliminating the unit-specific review process. Hess states that developers should be able to put forth certain, unit-specific factors, such as heat rate and operating cost, but other inputs and assumptions should be determined by PJM. For example, Hess argues that PJM could use its own price forecasts to determine energy and ancillary services offsets to develop a unit's Net CONE. Hess also argues that PJM could use reference-unit finance structure instead of individually-proposed finance structures.

6. Commission Determination

141. For the reasons discussed below, we find that PJM's proposed changes are not just and reasonable standing alone, and therefore we accept the filing subject to PJM's retention of its unit-specific review process. While we find, as discussed above, that PJM's proposed reliance on categorical exemptions is just and reasonable, subject to conditions, we find that there may be resources that have lower competitive costs than the default offer floor, and these resources should have the opportunity to demonstrate their competitive entry costs.

142. In support of its proposed elimination of this allowance, PJM argues that the "perfect flexibility" assumed to be obtainable upon review is illusory and otherwise outweighed by the lack of confidence that may be engendered in PJM's capacity auction price signals. However, PJM does not argue that a unit-specific review process is unjust and unreasonable, and PJM indeed recognizes that other RTOs/ISOs use such a process. Based on this record, we cannot find that PJM's proposal is just and reasonable without the retention of a unit-specific review process.

143. PJM's categorical exemptions, as addressed above, will generally allow qualifying market participants to avoid the need of seeking a unit-specific review of their offers. The unit specific review process, however, recognizes that some resources, including those that would fail to qualify for PJM's proposed exemptions, may nonetheless have competitive costs that fall below the benchmark price. We note, moreover, that the benchmark price is only an estimate that several intervenors, including the IMM, argue is currently too high.⁷⁴ In the base residual auction for 2012, resources that likely would not have qualified for either of PJM's proposed exemptions were able to justify their net costs through the unit-specific review process. PJM, moreover, concedes that the

⁷⁴ While intervenors' assertions regarding PJM's existing estimates for Net CONE are beyond the scope of this proceeding, we agree with the IMM and others that the accuracy of this estimate is crucial to an effective MOPR and therefore encourage PJM to review this matter in its stakeholder process.

resulting auction prices were just and reasonable.⁷⁵ Based on this record, we are not persuaded that the exemptions put forward by PJM are just and reasonable without the retention of a unit-specific review process.

144. While PJM asserts that, under its existing procedures, estimating certain costs and revenues is difficult, PJM can submit a section 205 filing to remedy these asserted deficiencies. We encourage PJM and its stakeholders to consider, for example, whether the unit-specific review process would be more effective if PJM requires the use of common modeling assumptions for establishing unit-specific offer floors while, at the same time, allowing sellers to provide support for objective, individual cost advantages. Moreover, we encourage PJM and its stakeholders to consider these modifications to the unit-specific review process together with possible enhancements to the calculation of Net CONE.⁷⁶

D. Resources Subject to MOPR

1. PJM's Proposal

145. PJM notes that, technically, the MOPR currently applies to resources of all types, whether gas-fired, coal, nuclear, or renewable, and then the MOPR sets the benchmark price to zero for certain designated resources (effectively exempting such resources). PJM argues, however, that the MOPR should be more explicitly limited to those resources that are most likely to be associated with offers that raise price suppression concerns. PJM further argues that an over-broad MOPR applicable to all resource types only causes uncertainty for project developers and the market.

146. Accordingly, PJM proposes to apply the MOPR only to gas-fired resources, namely, combustion turbine, combined cycle, and integrated gasification combined cycle (IGCC) resources. PJM asserts that these resources are most likely to raise price suppression concerns. PJM proposes to exempt from the MOPR two other classes of combined cycle, combustion turbine, or IGCC resources that are unlikely to raise price suppression concerns, i.e., Qualifying Facilities and landfill gas facilities.⁷⁷ PJM also proposes to exempt from the MOPR any resource that has cleared an RPM auction conducted before February 1, 2013.⁷⁸ PJM states that its proposal will honor the

⁷⁵ See, e.g., PJM Deficiency Letter response at 3 (“[P]JM and the IMM have administered the current exemption process to ensure reasonable results . . .”).

⁷⁶ See *infra* P 182.

⁷⁷ *Id.* at proposed section 5.14(h)(2).

⁷⁸ *Id.* at proposed section 5.14(h)(2)(i).

Commission's policy that the MOPR apply to new resources, while also ensuring that PJM's proposed MOPR revisions will not disrupt any settled expectations among current project developments.

147. Finally, PJM proposes that the MOPR apply to incremental increases of 20 MW or more to the installed capability of existing plants. In addition, PJM proposes to treat the repowering of certain plants (the replacement of a plant's existing equipment using combustion turbine, combined cycle, or IGCC technology) as a new resource.

2. Responsive Pleadings

148. Comments generally supportive of PJM's proposal were submitted by the Competitive Markets Coalition. The Competitive Markets Coalition asserts that PJM's proposal appropriately represents a more targeted MOPR and appropriately addresses both repowerings and uprates.

149. The IMM, FirstEnergy and Dayton argue that the MOPR should apply to all resource types, not only to natural gas-fired generating units, given that any resource can be used by a seller to exercise monopsony power. FirstEnergy asserts that from an economic perspective, monopsony power does not depend on any specific technology type and notes that legitimate offers from any asset that does not receive an out-of-market subsidy will be able to qualify for the competitive-entry exemption. FirstEnergy asserts that applying the MOPR to all new entry without distinction would avoid the need to make MOPR adjustments every time there is a change in market dynamics and would further ensure that the application of the MOPR would not be unduly discriminatory or preferential. Dayton asserts that PJM's approach, by contrast, opens the door for potential market manipulation, in the future, through a state subsidy program that could, for example, promote oil-fired combustion turbines or oil-fired combined cycle units.

150. CPV and the Illinois Commission protest PJM's proposal to subject IGCC resources to the MOPR. The Illinois Commission argues that PJM's proposal is unsupported. CPV challenges PJM's claim that PJM's narrow iteration of resources subject to the MOPR is likely to exempt the vast majority of new generation projects and leave only a small number subject to mitigation. CPV argues that, in fact, natural gas-fired generation is the base-load and intermediate power plant technology of choice for the foreseeable future, given the historic low prices and abundant supply of natural gas, and its additional favorable characteristics as a replacement technology for retiring coal plants. CPV adds that, while PJM's list of resource-types subject to the MOPR may be transparent, it is also unduly discriminatory and should be rejected.

151. NRG and the Pennsylvania Commission argue that PJM's proposed exemption for Qualifying Facilities is inappropriately limited, without support, to sellers who own the Qualifying Facility. The Pennsylvania Commission argues that this proposed limitation is

unjustified, given that the beneficial off-taker of steam, energy, and capacity may prefer not to be the owner and operator of generation built to meet the host load requirements.⁷⁹

152. The Ohio Commission supports PJM's proposal to exempt Qualifying Facilities from the MOPR, but claims that PJM's proposed language, at proposed section 5.14(h)(2), may not accomplish this objective.⁸⁰ The Ohio Commission asserts that, instead of exempting all cogeneration units from the MOPR, PJM's proposed language would appear to only exclude those units that are not sized larger than the host load. The Ohio Commission submits that such a cap is unwarranted. In addition, the Ohio Commission is concerned that a cogeneration unit may be subject to the MOPR, without justification, where a cogenerator receives incentives in the form of state or federal grants, loans and other financial assistance designed to promote the development of cogeneration.

153. The IMM generally supports PJM's proposal to exempt from the MOPR new entry and incremental capability increases that are less than 20 MW. The IMM asserts, however, that this aspect of PJM's proposal, if approved, warrants ongoing evaluation.

154. With respect to PJM's proposal to exempt from the MOPR any resource that has cleared an RPM auction conducted before February 1, 2012, Hess requests clarification that this MOPR exemption will apply to the entire unforced capacity of Hess's Newark project – a new resource that cleared in PJM's 2012 auction, including a relatively small amount of additional capability of that same, yet-to-be completed, plant which has been more recently identified and thus not yet offered and cleared in a capacity market auction.⁸¹ Hess adds that it has been authorized by PJM to state, on PJM's behalf, that

⁷⁹ See NRG protest at 20 (comparing PJM's proposal to PJM OATT, Attachment DD, section 5.14(h)(vi)(H), which provides that self-supply resources can be "owned or contracted").

⁸⁰ Proposed section 5.14(h)(2) provides as follows:

(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.

⁸¹ Hess asserts that its concern can be addressed by amending the relevant tariff provision to provide that the MOPR does not apply to a resource's capacity that has cleared an RPM auction conducted prior to February 1, 2012 "or an uprate of such

(continued...)

PJM did not intend that its filing would require PJM's settled MOPR determinations to be revisited, or otherwise have a punitive impact on uprates to resources that have already cleared under previous rules.

155. With respect to PJM's proposal to treat the repowering of gas-fired plants as a new resource, NRG argues that the MOPR should contain an alternative "repowering" Net CONE. NRG is concerned that the current proposal would preclude the repowering of existing facilities via state contracts, and that such projects are environmentally and fiscally beneficial. Such repowering projects would avoid many costs that green field projects have to incur, such as those related to land, emission reduction credits, natural gas infrastructure, administration buildings, transmission system upgrades, and others. NRG requests the Commission to require that PJM establish a class-specific repowering Net CONE, based on the Brattle report.

156. Finally, LS Power notes that PJM, in connection with the extension of the time period for which it proposes to apply the MOPR, proposes to use a new defined term, i.e., "MOPR Screened Generation Resources," and further proposes that any resource that has cleared an RPM auction conducted before February 1, 2013 will not be treated as a MOPR Screened Generation Resource.⁸² LS Power notes that while the purpose of this proposed revision is to avoid disrupting any settled expectations on the part of developers whose project has cleared an RPM auction conducted prior to the effectiveness of PJM's proposed revisions, PJM's proposed tariff language creates inconsistencies with other provisions of PJM's tariff addressing the term "Generation Capacity Resource."⁸³ Accordingly, LS Power requests that PJM clarify: (i) whether its proposed exemption is

resource to the extent that the developer or owner of the uprate timely submitted a request for, and PJM issued, an offer floor pursuant to [the MOPR] before the start of the [May 2013] Base Residual Auction . . . and the capacity associated with the uprate clears the May 2013 Base Residual Auction."

⁸² See LS Power comments at 6-7 (citing PJM OATT, Attachment DD at proposed section 5.14(h)(2)).

⁸³ *Id.* at 7, citing PJM OATT, Attachment DD, at section 6.5(a)(ii) and Reliability Assurance Agreement at sections 1.20B and 1.70 (providing, in relevant part, that "a Generation Capacity Resource for which construction has not commenced and which would otherwise have been treated as a Planned Generation Capacity Resource but for the fact that it was bid into RPM Auctions for at least two consecutive Delivery Years, and cleared the last such auction only because it was considered existing and its mitigated offer cap was accepted when its price offer would not have otherwise been accepted, shall be deemed to be a Planned Generation Capacity Resource.").

applicable, regardless of whether a Generation Capacity Resource has commenced construction; and (ii) if not, within what time period must construction commence if the Generation Capacity Resource is to remain eligible for this exemption.

3. PJM's Answer

157. PJM responds to intervenor proposals challenging PJM's proposed designation of IGCC resources as subject to the MOPR, or otherwise attempting to re-open a debate regarding which resource-types should, or should not, be subject to the MOPR. PJM argues that its limited proposal, classifying an IGCC plant as a gas-fired resource subject to the MOPR, simply makes explicit the practical effect of the rules previously accepted by the Commission in the 2011 MOPR proceeding, and follows directly from the Commission's prior findings that the MOPR may be properly focused on the types of plant technologies that, given their dependable capacity output and relatively shorter lead times, are most likely to be the vehicles for attempted price suppression.⁸⁴

158. PJM adds that while its existing MOPR nominally applies to all plant types, these provisions are focused on gas-fired projects and include expressly-noted exceptions (or zero-price floor allowances) for a variety of other baseload and renewable resources. PJM argues that its proposed clarifications here, then, are only intended to reduce uncertainty by eliminating the possibility that the MOPR could apply to a resource type not expressly exempted under the current rule.

159. PJM also responds to Hess's request for clarifying tariff language addressing its development of a new combined cycle power plant in New Jersey. PJM states that it has no objection to treating the seven percent increase in capacity identified for Hess's new plant as remaining subject to PJM's existing MOPR, provided that this allowance remains in effect for the May 2013 base residual auction only.

4. Additional Answers

160. The Competitive Markets Coalition responds to the argument made by NRG and the Pennsylvania Commission, and argues that while PJM's proposal appropriately includes a limited exemption for some cogeneration supplying on-site load, there is no justification for expanding this allowance to include additional resources.

161. The Competitive Markets Coalition also responds to Hess's argument that it is entitled to an exemption for a 45 MW uprate to its Newark project, given that it relied on PJM's existing rules, under which the Newark project cleared in PJM's 2012 capacity

⁸⁴ PJM answer at 4 (citing November 2011 MOPR Order, 137 FERC ¶ 61,145 at PP 109-10).

auction. The Competitive Markets Coalition notes that the Newark project is one of the new resources that cleared in the 2012 auction with a state-guaranteed contract at rates well above market clearing prices. The Competitive Markets Coalition argues that, as such, Hess's request seeks, in effect, the continued, back-door application of a unit-specific review process to ensure that its proposed 45 MW uprate will also escape mitigation. The Competitive Markets Coalition argues that such a request is unwarranted and should be rejected, given that any uprate should be evaluated by the same set of rules that will otherwise apply to PJM's 2013 capacity auction.

162. The Competitive Markets Coalition also opposes NRG's request that a separate Net CONE should be established for repowering projects. The Competitive Markets Coalition notes that, under PJM's proposal, repowering projects will only be mitigated if they receive subsidy payments or otherwise are procured as part of a discriminatory process.

5. Deficiency Letter Responses

a. PJM's Responses

163. In response to Commission Staff's request that PJM provide additional support for its proposal to apply the MOPR to IGCC resources, PJM states that IGCC resources present a legitimate concern about uneconomic entry. PJM explains that IGCC plants are expensive and that the cost of such plants will likely not be recovered fully by competitive market prices. In addition, PJM expresses a concern about the ability to eliminate the gasification component of an IGCC plant such that the project originally planned as an IGCC plant could become a combined cycle plant fueled, at least initially, by natural gas.

b. Intervenors' Responses

164. The Illinois Commission asserts that PJM's rationale for subjecting IGCC resources to the MOPR is speculative and without substantive support. The Illinois Commission notes, for example, that while PJM claims that IGCC is currently an expensive technology that is not likely to clear an RPM auction based on its actual costs, PJM fails to cite a single case in which such a resource has submitted an offer. The Illinois Commission argues that, regardless, it is unlikely that construction of an IGCC resources would be undertaken with the intent to suppress capacity prices.

165. The IMM agrees with PJM that IGCC units should be subject to the MOPR. The IMM notes that IGCC units are not viable without some form of a subsidy.

6. Commission Determination

166. We accept PJM's proposal to apply the MOPR to gas-fired combustion turbine, combined-cycle, and IGCC resources. The IMM, FirstEnergy, and Dayton argue that the MOPR should apply to all resource types and that any resource type can be used to exercise market power. We agree with PJM, however, that the MOPR may be focused on those resources that are most likely to raise price suppression concerns.

167. As the Commission found in the 2011 MOPR proceedings,⁸⁵ according different treatment to different resource-types does not amount to undue discrimination under the FPA when these resource classes are not similarly situated. Combustion turbine and combined cycle resources have the shortest development time and thus are resources capable of suppressing capacity clearing prices. Moreover, given these units' low construction costs, they may be the most cost effective resources with which to suppress market prices. Nonetheless, we recognize, as FirstEnergy argues, that PJM's proposed limitation to certain resources reflects current technologies and conditions, which may change in a dynamic marketplace. As such, we encourage PJM to continue to review these market conditions and propose tariff revisions updating resource types subject to MOPR, as necessary.

168. PJM has explained that its proposed application of the MOPR to gas-fired combustion turbine, combined cycle, and IGCC plants focuses the MOPR on those resources most likely to attempt to suppress prices. We agree with PJM that applying the MOPR to these resource types is appropriate. PJM has adequately explained its concern about uneconomic entry given the economics of IGCC units, which suggests the likely need for out-of-market revenue. PJM has further explained its concern that an IGCC plant could be dramatically modified such that a project originally proposed as an IGCC unit could become a combined cycle plant. We therefore accept PJM's proposal to apply the MOPR to these resource types, including IGCC units.

169. NRG and the Pennsylvania Commission object to PJM's limitation of its proposed MOPR exemption for Qualifying Facilities *owned* by a capacity market seller. NRG, for example, argues that this proposed limitation is inconsistent with the MOPR exemption for self-supply resources that can be either "owned or contracted." We agree that PJM has failed to support its proposed limitation. Accordingly, we direct PJM to submit in its compliance filing either justification for not exempting Qualifying Facilities that are contracted by a capacity market seller, or tariff language clarifying that Qualifying Facilities contracted to a host are also exempt from the MOPR.

⁸⁵ See April 2011 MOPR Order, 135 FERC ¶ 61,022 at P 155; November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 109.

170. We accept PJM's proposal to exempt from the MOPR incremental capacity increases of less than 20 MW. We encourage PJM to continue to monitor the adequacy of this threshold and to propose any changes if necessary. We also conditionally accept PJM's proposal to treat repowering projects as new resources to the extent of the capability of the repowering equipment, subject to submission of the definition of repowering projects in a compliance filing, as discussed below. We reject NRG's proposal to develop a repowering Net CONE and find that PJM's proposal would not preclude the repowering of facilities via state contracts. We note that a gas repowering project may avail itself of the unit-specific review process.

171. We require PJM to define "repowering" in its compliance filing. PJM's and interveners' descriptions differ on whether repowering projects include technology substitution at an existing plant that does not increase capacity, upgrades that provide additional capacity, and/or retirement followed by entirely new plant ownership at an existing site.

172. LS Power seeks clarification regarding an asserted inconsistency between PJM's proposed tariff language and existing provisions in PJM's OATT addressing seller market power, in one context, and buyer market power, in the case of the MOPR.⁸⁶ We find that the referenced section of PJM's tariff⁸⁷ does not imply that construction must commence within a given time period in order to maintain the MOPR exemption for a resource that cleared any RPM auction prior to February 1, 2013.

173. With respect to the Ohio Commission's request for clarification on the issue of cogeneration, we will require PJM to clarify whether cogeneration and combined heat and power facilities are resources that, if not entirely exempted from MOPR, will be eligible for the competitive entry exemption, even when such facilities receive state and federal incentives.⁸⁸

174. Finally, we accept Hess's proposed revision, which PJM states that it does not oppose, clarifying that an uprate to a unit that already cleared in an auction will receive a unit-specific offer floor from PJM before the May 2013 capacity auction and will be able to bid that capacity into that auction at the PJM-determined offer floor. Accordingly, we direct PJM to include in its compliance filing Hess's proposed language, at Attachment

⁸⁶ See PJM OATT, Attachment DD at section 6.5(a)(ii).

⁸⁷ *Id.*

⁸⁸ See Ohio Commission comments at 11.

DD, section 5.14(h)(2). The Competitive Markets Coalition argues that Hess' proposal amounts to a back-door application of a unit-specific review process to ensure that the 45 MW uprate will escape mitigation. We find Hess's proposal to be a reasonable solution to this transitional issue and agree that the company proceeded in good faith to proceed with investments under the then-existing MOPR rules.

E. Benchmark Values

1. PJM's Proposal

175. PJM notes that the current MOPR prescribes how to calculate the benchmark competitive net cost (the Net CONE), for two resources types, i.e., for combustion turbine and combined cycle resources, and provides that the benchmark value shall be zero for sell offers based on nuclear, coal, or IGCC facilities, and for sell offers based on hydroelectric, wind, or solar facilities.

176. PJM's proposal, as summarized in section VI.E of this order, above, makes IGCC resources subject to the MOPR. Accordingly, PJM proposes to calculate a Net CONE for these resources. Specifically, PJM propose to establish a Net CONE for IGCC units, based on estimates of the levelized costs to install an IGCC plant in each of PJM's CONE areas, and proposes criteria for determining the energy and ancillary services revenue offset to the IGCC gross CONE. PJM proposes to rely on estimates by the U.S. Energy Information Administration of the capital, fixed operating and maintenance, and variable operating costs for a potential new IGCC plant addition of 1,200 MWs. PJM then proposes to use a financial *pro forma* model to determine the nominal, levelized gross CONE for each CONE area. PJM states that its proposal tracks the existing provision of the MOPR, concerning the energy and ancillary services revenues for combustion turbine and combined cycle plants, but uses parameters, such as heat rate, appropriate for an IGCC plant.

2. Responsive Pleadings

177. The IMM argues that PJM's definition of Net CONE is not adequate to serve as a competitive benchmark for new generation projects. The IMM asserts that the Net CONE calculation is flawed as a MOPR screen because it relies on a three year historical average of net revenues from energy and ancillary services markets. The IMM argues that these historical net revenues are not a reliable guide to the expected net revenues in the first year of operation and that, as such, Net CONE is not a reliable screen to measure non-competitive behavior. The IMM argues that the MOPR screen will be too high if net revenues are expected to increase compared to the last three years, while the MOPR screen will be too low if net revenues are expected to decrease compared to the last three years. The IMM notes that these differences can be large and explains why PJM's existing unit-specific review procedures permit the use of a forward-looking net revenue offset.

178. Dayton also objects to PJM's use of a Net CONE, as derived from costs associated with new gas-fired combustion turbine, combined cycle, and ICGG resources. Dayton notes that while these resources may be the most cost-effective and efficient new units currently available, for reference purposes, PJM should not be permitted to limit its tariff in this manner. Instead, Dayton requests that PJM be directed to revise its tariff to provide that any unit that is currently the most cost-effective can be used as the test unit for new entry cost.

3. Additional Answers

179. The Competitive Markets Coalition also responds to NRG's request that, for MOPR purposes, a separate Net CONE should be established for repowering projects. The Competitive Markets Coalition argues that, under PJM's proposal, repowering projects will only be mitigated if they receive subsidy payments, or otherwise are procured as part of a discriminatory process, i.e., mitigation, under PJM's proposal, is already sufficiently narrow.

4. Commission Determination

180. We accept PJM's proposed IGCC Gross CONE values, as based on U.S. Energy Information Administration estimates of the capital, fixed operating and maintenance, and variable operating costs for a potential new IGCC plant addition of 1,200 MWs.

181. While, as discussed above, we condition our acceptance of PJM's filing, in part, on PJM's retention of the unit-specific review process, given our concern that resources that fail to qualify for PJM's two exemptions may nonetheless have competitive costs lower than the Net CONE, we find that revision of the Net CONE numbers as used for other purposes, such as determining the demand curve, are outside the scope of this proceeding. Nonetheless, we recognize that accurately estimating Net CONE is critical to an effective application of the MOPR. Accordingly, we strongly encourage PJM to initiate a stakeholder process that addresses concerns over the lagging nature of Energy and Ancillary Services Revenue Offset calculations and other potential problems associated with the calculation of Net CONE.

182. We reject Dayton's request that PJM be directed to revise its tariff to provide that any unit that is currently the most cost-effective can be used as the benchmark unit for new entry cost. We reiterate our earlier statement encouraging PJM to continue to review market conditions and to propose tariff revisions updating resource types subject to MOPR, and the corresponding benchmark values for any such new resource types, as necessary.

F. Net CONE Percentage Factors

1. PJM's Proposal

183. PJM proposes to revise its existing MOPR benchmark values, i.e., the value level triggering mitigation under the MOPR, from 90 percent of Net CONE to 100 percent of Net CONE. Under PJM's proposal, a sell offer that is *less* than Net CONE and not otherwise exempt from the MOPR will be subject to mitigation. PJM asserts that this increased benchmark value is appropriate, given the categorical exemptions included in its proposed revisions. Specifically, PJM argues that with its proposed elimination of the unit-specific review process, sparing sellers from the administrative burdens of that process (the rationale embedded in its existing use of a discount factor) is no longer necessary. PJM adds that a project that fails its two proposed categorical exemptions is likely to present a significant risk of price suppression.

2. Responsive Pleadings

184. Comments generally supportive of PJM's proposed revision to its MOPR benchmark values were submitted by the IMM, P3, FirstEnergy, the Pennsylvania Commission, Duke, EPSA, the Competitive Markets Coalition, and the Ohio Commission. P3 argues that any discount factor, less than 100 percent of Net CONE is not required, and cannot be justified, given that any project that fails PJM's two categorical exemptions are likely to present significant risks of price suppression. The IMM agrees that setting the default MOPR off to 100 percent of the applicable Net CONE will improve the operation of the MOPR.

185. Other intervenors object to PJM's proposal, noting that PJM's proposed increase in its MOPR benchmark values was rejected by the Commission in the 2011 MOPR proceeding and should not be re-litigated here.⁸⁹ The New Jersey Board argues that the Commission, in that proceeding, expressly rejected intervenors' requests for an increase in Net CONE, finding that a benchmark value set at 90 percent of Net CONE struck "a reasonable balance between the need to prevent uneconomic entry, the inherent imprecision of cost estimation, and the administrative burdens involved in providing data to justify a unit-specific lower threshold."⁹⁰ The Joint Consumer Advocates add that nothing has changed since the Commission reasoned that the 90 percent conduct screen was reasonable due to the imperfection of administrative estimates.

⁸⁹ See comments submitted by the Maryland Commission, the New Jersey Board, the Joint Consumer Advocates, and the Illinois Commission.

⁹⁰ New Jersey Board protest at 42, *citing* November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 44.

186. The Maryland Commission argues that the requirement to bid at 100 percent of Net CONE will produce inefficient and uncompetitive prices, given that the offer floor represents an unreasonably conservative and unrealistic administrative estimate that has little relationship to any given resource's actual costs and business plan. The Maryland Commission adds that PJM's existing 90 percent MOPR benchmark value is, if anything, set too high relative to the actual, current costs of new entry, as influenced by: (i) new technologies and the economies of scale they make possible; (ii) the ability, in a weak economy, to lower costs attributable to engineering, procurement, construction, and equipment; and (iii) lower financing costs. Given this asserted overstated estimate of the Net CONE, the Maryland Commission argues that raising the conduct screen to 100 percent of Net CONE is unwarranted.

187. The Joint Consumer Advocates argues that, if PJM's proposal to eliminate the unit-specific review process is accepted, the conduct screen percentage factor should be lowered, not raised. The Illinois Commission argues that PJM's proposal could prevent a new entrant from being able to clear in PJM's capacity auction,

188. CPV argues that prohibiting suppliers from showing that their actual costs are lower than 100 percent of PJM's administratively-determined Net CONE deprives the market of lower-cost generation, and deprives competitors of the price transparency that PJM states it is seeking.⁹¹ CPV asserts that, in an absence of a unit-specific review process, and because PJM's administratively-determined Net CONE has been shown to be in error, PJM's proposed prohibition against bidding at less than 100 percent of Net CONE will present a virtually insurmountable, anti-competitive barrier to entry, when the Net CONE is above seller's true costs.

189. NRG argues that a MOPR offer floor should be set at 70 percent of Net CONE, PJM's approved default level prior to PJM's 2011 MOPR revisions. NRG further argues that PJM should be required to establish, for MOPR purposes, a separate calculation of the Net CONE for projects that are characterized as "repowering" projects. NRG argues that it is both environmentally and fiscally responsible to encourage the repowering of older power plants. NRG adds that many such repowerings will utilize aspects of their existing infrastructure and would likely avoid many costs that would be incurred by green field projects.⁹²

⁹¹ CPV cites a PJM statement to the investment community in June 2012, that actual expected combined cycle Net CONE was approximately \$100/MW-day less than posted and below RPM clearing prices.

⁹² NRG notes, for example, that repowering projects may not have to incur costs for land, emission reduction credits, natural gas infrastructure and liquid-fuel storage

(continued...)

3. PJM's Answer

190. PJM argues that its proposal, narrowing the focus of the MOPR to projects that present the most concern, regarding price suppression, distinguishes the circumstances at play in the instant filing with those presented in the 2011 MOPR proceeding, in which the Commission declined to adopt stricter limits applicable to benchmark values.⁹³ PJM argues that narrowing the application of the MOPR, as proposed by PJM in its filing, here, warrants stricter benchmark values for the projects that will remain subject to the MOPR.

4. Additional Answers

191. PPL, in its answer, responds to CPV's argument opposing PJM's proposed increase of the MOPR percentage factor. PPL argues that, while CPV's protest raises the hypothetical of a seller's actual project costs being lower than Net CONE, in fact, CPV's own required year-one, contractual payment for the CPV Woodbridge project (a New Jersey-procured project that cleared the 2012 auction), is roughly equivalent to the current Net CONE, and much higher than the current Net CONE in later years of the contract.

192. The Competitive Markets Coalition responds to the Illinois Commission's concern that PJM's benchmark proposal could operate to prevent a new entrant from being able to clear. The Competitive Markets Coalition argues that any unsubsidized new entrant, under PJM's proposal, will not be subject to the MOPR, while any new generation that is more efficient than existing generation will not require a subsidy.

193. The Competitive Markets Coalition also responds to intervenors' arguments that: (i) the actual economics of new entry for combined cycle resources are more favorable than PJM's current Net CONE screen; and (ii) the actual expected combined cycle Net CONE was less than posted and below RPM clearing prices. The Competitive Markets Coalition argues that the only remedy offered by intervenors to these asserted calculation errors – the unit-specific review process – relies upon numerous subjective cost projections and estimates, all of which are supplied by a subsidized new entrant with every incentive to keep its offer floor as low as possible to ensure that it clears.

194. The Competitive Markets Coalition also responds to NRG's request that an offer floor of 70 percent of Net CONE be established for all new entrants who satisfy PJM's

upgrades, administration buildings, and electric interconnection and transmission upgrades.

⁹³ See November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 47.

proposed merchant exemption. The Competitive Markets Coalition argues that NRG's proposed offer floor was arbitrarily selected and should be rejected.

5. Commission Determination

195. For the reasons discussed below, we accept PJM's proposed increase of its MOPR benchmark values to 100 percent of Net CONE. In the 2011 MOPR proceeding, the Commission found that increasing these values to 100 percent of Net CONE, as then proposed by P3 and PPL, was inappropriate under then-existing circumstances, given that such an increase failed to balance the need for effective mitigation against the administrative burden imposed on sellers required to undergo a unit-specific review of their sell offers.⁹⁴ Here, however, where PJM has proposed two broad, categorical exemptions from the MOPR, discussed above, the burden to which the November 2011 MOPR Order refers has changed significantly.

196. We therefore find just and reasonable, under the changed circumstances presented here, PJM's proposal to raise the conduct screen to the full cost of new entry and to further use the full cost of new entry as the mitigated price. Accordingly, we reject arguments that the precedent established by the Commission, under a distinguishable set of facts, in the 2011 MOPR proceeding, precludes PJM from seeking its proposed section 205 revision here.

197. We also reject the Maryland Commission's argument that a 100 percent offer floor, as proposed, will produce inefficient and uncompetitive prices. Under PJM's proposed exemptions, as conditionally accepted in this order, we expect that economic new entrants will be able to receive a MOPR exemption. Given the narrow application of the MOPR, we anticipate the impact on future capacity prices to be minimal.

198. Finally, we reject the argument made by the Joint Consumer Advocates that the MOPR benchmark should be set at a level lower than PJM's existing 90 percent value. Lowering the MOPR benchmark value would provide potential uneconomic new entrants the opportunity to significantly suppress capacity prices, circumventing the purpose of the MOPR. On this basis, we also reject NRG's proposal to subject all resources to the MOPR at 70 percent of Net CONE.

⁹⁴ See November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 47.

G. Mitigation Period

1. PJM's Proposal

199. PJM proposes to apply the MOPR for a three-year period, or on a one-year basis, if PJM's base residual auction clears a quantity of capacity less than the installed reserve margin minus three percentage points, i.e., if the region is short on capacity.

200. PJM states that, given its proposal's focus on those resources most likely to raise price suppression concerns, it is appropriate that the MOPR remain in effect for a longer term, as proposed. PJM asserts that applying the MOPR for only one year allows 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 adds 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.⁹⁵

2. Responsive Pleadings

201. Comments generally supportive of PJM's proposed mitigation term revision were submitted by EPSA, the IMM, P3, the Competitive Markets Coalition, the Pennsylvania Commission, and the Ohio Commission.

202. EPSA argues that, given PJM's proposed categorical exemptions for self-supply and competitive entry, application of the MOPR for a three-year period is appropriate. The IMM supports applying the MOPR until a subject resource has obtained an exemption of cleared three RPM auctions for three delivery years, but recommends continued evaluation of its effect on the market. P3 agrees with PJM that the revised MOPR should apply for a three-year period, given the stricter focus on resources that are most likely to pose price suppression concerns changes the circumstances under which application of the MOPR should be considered. P3 contends that the broad exemptions will sift out all but the most suspect projects, eliminating the prospect of "over-mitigation."

203. The Competitive Markets Coalition argues that for a new resource, with a useful life of several decades, one year's mitigation is a small cost and can be strategically minimized or gamed. While the Competitive Markets Coalition believes that technically,

⁹⁵ PJM notes, for example, that a one-year approach could result in subsidized units perpetually bidding into RPM and then building in the first year they clear when all future risk will have been eliminated.

uneconomic resources should be mitigated for the life of the unit, it accepts the three-auction compromise because it will make the MOPR more effective.

204. The New Jersey Board argues that PJM's proposal to extend the mitigation period beyond a one-year term was rejected by the Commission in the 2011 MOPR proceeding and should not be re-litigated here. Specifically, the New Jersey Board notes the Commission's finding that the appropriate duration is to apply the MOPR offer floor to each new resource in the base residual and each incremental auction until the resource demonstrates that its capacity is needed by the market at a price near its full entry cost – by clearing one of the PJM capacity auctions.

205. The Maryland Commission, the Maryland Energy Administration and the Joint Consumer Advocates protest PJM's proposal. The Maryland Commission and the Joint Consumer Advocates note that the Commission rejected similar proposals in prior orders, finding that a resource demonstrates that it is needed by the market by clearing just once.

206. CPV objects to PJM's proposal, given that no developer will reasonably commence construction without the certainty that it has been accepted in RPM as a new capacity resource. CPV argues that existing generators were not required to clear in three auctions and that, as such, PJM's proposal would unjustly discriminate against potential new entrants. CPV urges the Commission to reject PJM's proposal and thus retain PJM's existing requirement.

207. Finally, FirstEnergy asserts that in the event that the Commission directs PJM to remove all exemptions from the MOPR, then the proposal to apply MOPR until the resource clears for three separate delivery years no longer would be needed, and in that instance, should not be adopted. .

3. PJM's Answer

208. PJM argues that its proposal, narrowing the focus of the MOPR to projects that present the most concern, regarding price suppression, distinguishes the circumstances at play in the instant filing from the 2011 MOPR proceeding, in which the Commission rejected an argument, advanced by P3 and PPL, that clearing in one capacity auction is insufficient to prove that resources are economic.⁹⁶ PJM argues that narrowing the application of the MOPR, as proposed, justifies a broader application of the MOPR for a three-year period.

⁹⁶ See November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 130.

4. Additional Answers

209. The Competitive Markets Coalition responds to the arguments made by the Maryland Commission and the Joint Consumer Advocates that nothing material has transpired since the Commission, in the 2011 MOPR proceeding, expressly rejected PJM's prior proposal to extend MOPR mitigation through three auctions. The Competitive Markets Coalition argues that PJM's proposal in this proceeding to extend the MOPR mitigation period is appropriate and should be accepted, given the changed circumstances presented by PJM's proposal narrowing the MOPR.

5. Commission Determination

210. For the reasons discussed below, we reject PJM's proposal to change the duration of mitigation from one to three years. The Commission, in the 2011 MOPR proceeding, rejected proposed mitigation periods of more than one year. Specifically, in the April 2011 MOPR Order, as affirmed in the November 2011 MOPR Order, the Commission rejected PJM's section 205 proposal seeking to impose mitigation for two capacity auctions following the auction in which the resource initially clears.⁹⁷ The Commission similarly rejected P3's alternative proposal to continue mitigation until a resource clears in two base residual auctions.⁹⁸

211. In doing so, the Commission found that applying the MOPR offer floor to a resource already determined to be economic would be unreasonable and could inefficiently discourage the entry of new capacity that is economic.⁹⁹ The Commission further found that, after clearing in the market at the offer floor price, "there is no reasonable basis for continuing to apply the MOPR," given the market's demonstration of its need for the resource.¹⁰⁰ The reasoned basis on which the Commission made its earlier decision on this matter is not altered by PJM's filing, and we are therefore not persuaded that PJM's proposal is just and reasonable.

⁹⁷ April 2011 MOPR Order, 135 FERC ¶ 61,022 at P 175; November 2011 MOPR Order, 137 FERC ¶ 61,145 at P 122.

⁹⁸ April 2011 MOPR Order, 135 FERC ¶ 61,022 at PP 160-62, 175.

⁹⁹ *Id.* P 175.

¹⁰⁰ *Id.*; *see also* November 17 Order, 137 FERC 61,145 at P 131 ("[C]learing in one auction, whether the base residual auction or in an incremental auction, and committing to provide capacity for a full year, reasonably demonstrates that a new resource is needed by the market at a price near its full cost of entry and ... it is reasonable not to subsequently apply the MOPR to such a resource.").

212. We also reject PJM's argument, as supported by EPSA and P3, that increasing the duration of mitigation is warranted given that the focus of the MOPR, after the exemptions is on those entities most likely to pose price suppression concerns. Once a new resource has cleared an auction, it is obligated to begin building in order to provide capacity in the corresponding delivery year for which it has cleared. We agree with CPV's assertion that no developer would reasonably commence construction without the certainty that the project has been accepted as a new capacity resource in PJM's capacity auction. We further agree with the Maryland Commission that PJM's proposal could lead to over-mitigation by requiring a commercially operational resource to bid at an offer floor that would likely be substantially above its going-forward costs. The narrowed application of the MOPR to those deemed more likely to present price suppression concerns does not justify an unreasonably prolonged mitigation term.

H. Geographic Scope

1. PJM's Proposal

213. Under PJM's existing MOPR, the MOPR applies only to constrained Locational Deliverability Areas.¹⁰¹ PJM proposes to broaden this existing geographical reach to a PJM region-wide application. PJM asserts that this broader reach is appropriate, given that PJM's proposed categorical exemptions, as summarized above, are likely to exempt most projects from the MOPR.

2. Responsive Pleadings

214. Comments generally supportive of PJM's proposal to apply the MOPR on a region-wide basis were submitted by the IMM, P3, FirstEnergy, the Pennsylvania Commission, and the Ohio Commission. The IMM notes that because the potential for the exercise of market power exists throughout the PJM region, applying the protection afforded by the MOPR to the entire PJM region is appropriate regardless of whether a region is constrained. P3 states that price suppression could occur anywhere within the PJM region and must be mitigated to assure just and reasonable rates.

215. The Illinois Commission protests PJM's proposal as unsupported and otherwise unwarranted. The Illinois Commission argues that while PJM's proposed net-short/net-long proposal, as applicable to PJM's proposed self-supply exemption was developed following PJM's review of confidential LSE load data and was scaled, as appropriate, PJM's proposed region-wide application of the MOPR was presumably developed without any such data and is not scaled, as might be warranted.

¹⁰¹ See PJM OATT, Attachment DD at section 5.14(h)(4).

3. Answers

216. The Competitive Markets Coalition responds to the Illinois Commission's argument that PJM's proposal is unsupported. The Competitive Markets Coalition argues that, to the contrary, PJM's proposal to extend the geographical reach of the MOPR to the PJM region is sufficiently supported, given PJM's asserted argument that with a more targeted application of the MOPR to only resources that are likely to be used for price suppression, it is no longer necessary to restrict the MOPR's application to constrained areas. The Competitive Markets Coalition adds that, in the analysis submitted by their consultant (in an affidavit made a part of their comments), the point was made that the ability to suppress prices on a PJM-wide basis remains significant.

4. Commission Determination

217. We accept PJM's proposal to broaden the existing geographical reach of the MOPR to the entire PJM region, as proposed. We agree with PJM and intervenors, including the IMM and the Competitive Markets Coalition, that the potential for the exercise of market power exists throughout the PJM region. Moreover, given the more limited nature of the MOPR through the availability of the self-supply and competitive entry exemptions, as accepted, subject to conditions, we find that applying the MOPR to the entire region is not likely to lead to over-mitigation. We therefore agree with PJM that applying the MOPR to all PJM regions is just and reasonable.

I. Stakeholder Review

1. PJM's Position

218. PJM acknowledges that it received complaints regarding the adequacy of the stakeholder review procedures overseen by PJM in advance of its filing concerning in particular its facilitation of a confidential settlement negotiation among entities representing supply-side interests and load-serving interests.¹⁰² PJM concedes that better, earlier communication might have been helpful with those entities that were excluded from this process, including state representatives and consumer advocates. PJM argues, however, that its filing is not procedurally defective and should be considered on the merits. Specifically, PJM argues that its filing received broad stakeholder support (an 89 percent sector-weighted vote) and arose from a stakeholder proceeding that fully complies with PJM's stakeholder review procedures.

¹⁰² PJM states that the entities that participated in these settlement negotiations consisted of seven supply entities (Exelon; Calpine; Edison Mission; GenOn Parties; NextEra; PPL; and PSEG Companies) and five load-serving entities (AMP; ODEC; Public Power Association of New Jersey; the PJM-ICC; and Dominion).

2. Responsive Pleadings

219. Intervenors argue that PJM's filing arose out of a defective stakeholder process that violated PJM's stakeholder review procedures, as set forth in PJM Manual 34. The Maryland Commission argues that PJM's participation in the negotiation process, in which state commissions and other interested entities were excluded, violated section 4.2 of Manual 34, which imposes an obligation on PJM, in the course of a stakeholder process, to facilitate a "fair, non-partisan . . . meeting for all participants."

220. The Joint Consumer Advocates allege that PJM's participation in the confidential negotiation process, among a subset of its members, was at least arguably in violation of PJM's obligation to share information, as set forth in its Code of Conduct.¹⁰³ The Joint Consumer Advocates note that PJM's Code of Conduct also requires PJM to avoid even the appearance of a conflict of interest and to never give or appear to give a preference to any member or market participant.

221. The Maryland Commission notes that the Commission has rejected proposals that have received majority stakeholder approval when it suspects an injustice to a class of stakeholders.¹⁰⁴ Specifically, the Maryland Commission states that, in the ISO-NE 2010 Order, the Commission rejected proposed capacity market rule changes that had failed to gain support among generators, finding that the proposed changes did not represent a broad consensus among all sectors.

222. Other intervenors support the adequacy of the stakeholder process giving rise to PJM's filing. PJM Load Group agrees with PJM that PJM's filing was the product of a fair and reasonable stakeholder process that does not render PJM's filing procedurally defective. The Competitive Markets Coalition agrees that there was nothing improper about the stakeholder process giving rising to PJM's filing. The Competitive Markets Coalition notes that the Commission, in the 2011 MOPR proceeding, found acceptable a far more abbreviated, ten-day deliberation giving rise the 2011 MOPR, whereas here stakeholders discussed alternative proposal over a two month period.

¹⁰³ PJM's Code of Conduct provides, among other things, that all PJM employees must "[d]istribute information promptly to all who are affected [and p]roactively share information, expertise, processes and ideas openly and accurately. See www.pjm.com/~media/about-pjm/who-we-are/code-of-conduct.ashx).

¹⁰⁴ Maryland Commission protest at 19, *citing ISO New England, Inc.*, 131 FERC ¶ 61,065 at PP 36-37 (2010) (ISO-NE 2010 Order).

3. PJM's Answer

223. PJM responds to intervenors' argument that the process by which PJM's proposed tariff revisions were developed was improper. PJM argues that the Commission should place no impediments in the path of any stakeholders that choose to come together on an informal basis to settle their differences and develop consensus proposals for market rule changes, as long as any resulting proposals are then brought before the responsible stakeholder body for further development and final action. PJM also rejects the suggestion that its limited participation in the negotiation process, to facilitate discussion and provide technical input, was improper, or in any way violated the provisions of PJM's manuals or its code of conduct.

224. PJM disputes intervenors' assertion that the private, confidential negotiations among a subset of PJM's stakeholders, prior to PJM institution of a broader stakeholder proceeding, violated the provisions of PJM Manual 34. PJM argues that the negotiation process at issue was not a stakeholder process and, thus, was not subject to Manual 34, which does not purport to govern or limit any discussions that any PJM stakeholder may have outside the formal stakeholder process. PJM adds that nothing in Manual 34 bars PJM from responding to requests for input, or technical assistance, from any such group.¹⁰⁵

225. PJM also disagrees with the suggestion that it may have violated its Code of Conduct, given its asserted failure to distribute the information made available in the settlement negotiation to all of its members. PJM argues that it is appropriate and not uncommon for stakeholder factions, seeking to settle their differences, to seek PJM's technical input, on a confidential basis. PJM adds that honoring a request for confidentiality, in these circumstances, is a well-recognized practice that does not violate PJM's Code of Conduct.

4. Additional Answers

226. The Competitive Markets Coalition responds to the arguments made by the New Jersey Board and the Maryland Commission regarding the alleged procedural defects in PJM's filing, and argues that it was erroneous to suggest, as claimed by the Maryland Commission, that the final stakeholder-approved proposal was identical, in all material respects, to the negotiated settlement proposal.

¹⁰⁵ PJM notes that, to the contrary, section 12 of Manual 34 provides that any member "may call on PJM for assistance and feedback or any operational, market, or reliability issue, including utilizing [PJM's] technical expertise," and that, if practicable, PJM shall provide" such assistance, but "shall not offer strategic advice nor advocate solely on behalf of one Member." *Id.*

5. Commission Determination

227. For the reasons discussed below, we find that the settlement negotiations, that preceded PJM's institution of a broader stakeholder proceeding do not render PJM's filing procedurally defective. As PJM stated, the filing received broad stakeholder support with an 89 percent sector-weighted vote and was fully vetted through a stakeholder process detailed in PJM OATT and Operating Agreement.

228. PJM states in its filing that, following its May 2012 capacity auction, a number of its members publicly expressed their displeasure with the MOPR process, in a variety of views as represented by certain supply-side entities, on the one hand, and by certain load-serving entities, on the other hand. PJM states that, based on its own concerns and the need to reach at least a preliminary consensus on an expedited basis, in advance of the May 2013 auction, it suggested that the concerned stakeholders discuss potential solutions to these issues amongst themselves, prior to PJM's institution of a broader stakeholder proceeding. The initial meetings were held in July 2012, with both PJM and the IMM subsequently invited to attend and provide technical assistance. In September 2012, the negotiating entities reached agreement on a settlement proposal.¹⁰⁶ Stakeholder meetings to consider the proposal commenced on October 17, 2012, with votes cast by the Markets Reliability Committee and Members Committee, on both the proposal and five alternative proposals, on November 29, 2012.

229. Intervenors challenge the legitimacy of this process, in particular the confidential negotiations conducted among a subset of PJM's members prior to PJM's institution of its broader stakeholder proceeding. However, we agree with PJM that these confidential negotiations were not held in violation of PJM's stakeholder procedures.

J. Additional Issues

1. New Entry Price Adjustment

230. LS Power asserts that, in addition to the rule changes at issue in this proceeding, PJM should also be required to address related revisions to the New Entry Price Adjustment (NEPA) mechanism in its tariff.¹⁰⁷

¹⁰⁶ Notice of the proposal was provided to the PJM Members Committee on September 27, 2012, followed by public briefings open to all members on October 4, 2012 and October 12, 2012.

¹⁰⁷ LS Power notes that, to date, only a single resource has qualified for NEPA, while 29 new resources have requested, but have not been awarded, NEPA treatment.

231. The Competitive Markets Coalition, in its answer, argues that the concerns raised by LS Power, regarding NEPA, are not addressed by PJM's filing, and should not otherwise be litigated here.

232. We agree with the Competitive Markets Coalition that LS Power's request to address NEPA issues is beyond the scope of this proceeding. We note that PJM recently proposed, and the Commission accepted, certain changes to NEPA.¹⁰⁸

2. Drafting Errors

233. The IMM, in its comments, identifies an apparent drafting oversight, i.e., PJM's proposed requirement that PJM post the Preliminary Market Settlement Screen.¹⁰⁹ The IMM argues that this provision would have no useful purpose, given that the Commission recently approved PJM's removal of this screen, as unnecessary, in an order issued November 28, 2012.¹¹⁰ The IMM further notes that the screen at issue never applied to new entrants, i.e., to the concern addressed by the MOPR. The IMM contends that when it raised this issue, PJM explained that its inclusion of this language was inadvertent.

234. We agree with the IMM that the reference made by PJM in its filing to the Preliminary Market Settlement Screen is outdated and otherwise unnecessary. Accordingly, we direct PJM to submit revised tariff language, as appropriate, in its compliance filing.

The Commission orders:

(A) PJM's filing is hereby rejected, in part, and accepted, in part, subject to conditions, as discussed in the body to this order.

¹⁰⁸ *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,083 (2013).

¹⁰⁹ See PJM OATT, Attachment M-Appendix, at proposed section 5.11(x).

¹¹⁰ See *PJM Interconnection, L.L.C.*, Docket No. ER13-149-000 (Nov. 28, 2012) (delegated letter order).

Docket No. ER13-535-000, *et al.*

- 71 -

(B) PJM is hereby required to submit a compliance filing with 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.

Appendix

Docket No. ER13-535-000, *et al.*
Intervenors

American Electric Power Service Corporation
American Municipal Power, Inc.
American Public Power Association
Borough of Chambersburg, PA
Brookfield Energy Marketing LP
Buckeye Power, Inc.
Calpine Corporation
Compete Coalition
CPV Power Development, Inc. (CPV)
Dayton Power and Light Company (Dayton)
D.C. Office of People's Counsel
Delaware Division of the Public Advocate
Delaware Public Service Commission
Dominion Electric Cooperative
Dominion Resources Services, Inc. (Dominion)
Duke Energy Corporation (Duke)
Duquesne Light Company
Dynergy Marketing and Trade, LLC
East Kentucky Power Cooperative (EKPC)
Edison Mission Energy
Electric Power Supply Association (EPSA)
Exelon Corporation
FirstEnergy Companies (FirstEnergy)
Hess Corporation (Hess)
Illinois Commerce Commission (Illinois Commission)
LS Power Associates, L.P. (LS Power)
Maryland Energy Administration
Maryland Office of People's Counsel
Maryland Public Service Commission (Maryland Commission)
Monitoring Analytics, LLC (IMM)
Natural Rural Electric Cooperative Association
New Jersey Board of Public Utilities (New Jersey Board)
New Jersey Division of Rate Counsel
NextEra Energy Generators
North Carolina Electric Membership Corporation
NRG Companies (NRG)
Office of the Ohio Consumers' Counsel
Pennsylvania Public Utility Commission (Pennsylvania Commission)

Docket No. ER13-535-000, *et al.*

- 73 -

PJM Industrial Customer Coalition (PJM-ICC)
PJM Power Providers Group (P3)
Public Power Association of New Jersey
PPL Companies (PPL)
PHI Companies
PSEG Companies (PSEG)
Public Utilities Commission of Ohio (Ohio Commission)
Rockland Electric Company
Shell Energy North America (U.S.), L.P.
Southern Maryland Electric Cooperative, Inc.
West Virginia Consumer Advocate Division

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket Nos. ER13-535-000
ER13-535-001

ERRATA NOTICE

(May 13, 2013)

On May 2, 2013, the Commission issued “Order Conditionally Accepting in Part, and Rejecting in Part, Proposed Tariff Provisions, Subject to Conditions,” in the above-captioned proceeding. *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013). This errata notice hereby corrects the Appendix of intervenors to include Hess Newark, LLC and Hess NEC, LLC.

Kimberly D. Bose,
Secretary.

153 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

PJM Interconnection, L.L.C.

Docket Nos. ER13-535-002
ER13-535-003

ORDER ON REHEARING AND COMPLIANCE

(Issued October 15, 2015)

Table of Contents

	<u>Paragraph</u>
I. Background	<u>2.</u>
II. Requests for Rehearing	<u>7.</u>
A. Unit-Specific Review Process	<u>7.</u>
1. May 2013 Order	<u>7.</u>
2. Requests for Rehearing	<u>9.</u>
3. Commission Determination	<u>15.</u>
B. Competitive Entry Exemptions	<u>24.</u>
1. May 2013 Order	<u>24.</u>
2. Requests for Rehearing	<u>25.</u>
3. Commission Determination	<u>32.</u>
C. Self-Supply Exemptions	<u>43.</u>
1. May 2013 Order	<u>43.</u>
2. Requests for Rehearing	<u>45.</u>
3. Commission Determination	<u>52.</u>
D. Integrated Gasification Combined Cycle Units	<u>62.</u>
1. May 2013 Order	<u>62.</u>
2. Requests for Rehearing	<u>63.</u>
3. Commission Determination	<u>66.</u>
E. Mitigation Period	<u>72.</u>
1. May 2013 Order	<u>72.</u>
2. Requests for Rehearing	<u>73.</u>
3. Commission Determination	<u>77.</u>

III. Compliance Filing	<u>82.</u>
A. Net Thresholds	<u>84.</u>
1. May 2013 Order.....	<u>84.</u>
2. Compliance Proposal	<u>85.</u>
3. Protests and Comments	<u>87.</u>
4. PJM’s Answer.....	<u>91.</u>
5. Additional Answers	<u>94.</u>
6. Commission Determination	<u>95.</u>
B. Reinstated Provisions.....	<u>101.</u>
1. May 2013 Order.....	<u>101.</u>
2. Compliance Proposal	<u>102.</u>
3. Protests and Comments	<u>103.</u>
4. PJM’s Answer.....	<u>104.</u>
5. Additional Answers	<u>105.</u>
6. Commission Determination	<u>107.</u>
C. Other Matters	<u>108.</u>

153 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

PJM Interconnection, L.L.C.

Docket Nos. ER13-535-002
ER13-535-003

ORDER ON REHEARING AND COMPLIANCE

(Issued October 15, 2015)

1. We address, below, requests for rehearing of an order issued May 2, 2013, concerning revisions to a capacity market buyer-side market power mitigation measure, the Minimum Offer Price Rule (MOPR), as proposed by PJM Interconnection, L.L.C. (PJM).¹ For the reasons discussed below, we deny rehearing. We also address a compliance filing submitted by PJM on June 3, 2013. For the reasons discussed below, we accept PJM's compliance filing.

I. Background

2. PJM first established the MOPR in 2006, as part of its capacity auction protocols, to address the concern that load may have buyer-side market power, i.e., an incentive to suppress market clearing prices by offering supply at less than a competitive level.² The Commission has also addressed the performance of PJM's capacity auctions and the continuing validity of the MOPR in a series of orders.³

¹ *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013) (May 2013 Order).

² *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 103 (2006).

³ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,037 (2008); *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272 (2008). See also *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, *order on reh'g and compliance, PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 90 (2009); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 242 (2011).

3. PJM's MOPR is designed to protect against buyer-side market power by setting a price floor, i.e., a minimum bid, and by requiring that all new, non-exempted resources bid at that floor, or higher, absent a demonstration, through a unit-specific review process, that a lower bid is justified based on the resource's operational economics. PJM uses this process to assess costs and revenues of the resource and to ensure that any alleged cost advantages are not the result of uncompetitive, discriminatory subsidies or out-of-market payments.

4. In the instant proceeding, PJM submitted proposed revisions to the MOPR on December 7, 2012, pursuant to section 205 of the Federal Power Act (FPA).⁴ As relevant here, PJM proposed to: (i) narrow the list of resource types that would be subject to the MOPR; (ii) eliminate the unit-specific review process and, in its place, establish two categorical exemptions for competitive entry and self-supply resources; and (iii) extend from one to three years the period over which MOPR mitigation may apply. In support of its filing, PJM stated that its proposed revisions were designed to provide a better-defined and more transparent process for granting exemptions to the MOPR, in place of PJM's unit-specific review process,⁵ and address the numerous concerns raised by market participants regarding the competitiveness of PJM's 2012 capacity market auction.

5. As further detailed below, the May 2013 Order conditionally accepted PJM's filing, in part, including PJM's proposed categorical exemptions, subject to a compliance filing, and rejected other aspects of PJM's filing. As relevant here, the Commission directed PJM to submit a compliance filing providing for retention of its unit-specific review process, and tariff language obligating PJM to review and, if necessary, revise its net-short and net-long thresholds, as applicable to PJM's self-supply exemption.

⁴ 16 U.S.C. § 824(d) (2012).

⁵ PJM's unit-specific review process was accepted by the Commission in 2011. See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at P 118 (2011) (*April 2011 MOPR Order*) (rejecting PJM's proposal to permit sellers whose sell offers have been mitigated to seek unit-specific review from the Commission), *order on compliance filing, rehearing, and technical conference*, 137 FERC ¶ 61,145 (2011) (*November 2011 MOPR Order*) (granting partial rehearing of the standard of review applicable to a unit-specific review process to be overseen by PJM), *order on reh'g*, 138 FERC ¶ 61,194 (2012), *appeal pending*, Case No. 11-4245, *et al.* (3rd Cir.) (collectively, 2011 MOPR proceeding).

6. Rehearing of the May 2013 Order was timely sought by: (i) NRG Companies (NRG); (ii) the Joint Consumer Advocates;⁶ (iii) the PJM Power Providers Group (P3); (iv) the Competitive Markets Coalition;⁷ (v) the Illinois Commerce Commission (Illinois Commission), (vi) Calpine; and (vii) FirstEnergy Companies (FirstEnergy).⁸ On June 3, 2013, PJM submitted its compliance filing to the May 2013 Order. Below we first address the requests for rehearing and then turn to the compliance filing.

II. Requests for Rehearing

A. Unit-Specific Review Process

1. May 2013 Order

7. In its filing, PJM proposed to replace its unit-specific review process with two categorical MOPR exemptions. Under the unit-specific review process, generators seeking a MOPR exemption are required to submit detailed cost data to PJM to justify a bid lower than the default offer floor. In place of the unit-specific review process, PJM proposed two categorical exemptions for competitive entry and self-supply resources. PJM asserted that its categorical exemptions would operate in a manner that identifies all competitive generator offers.

8. The May 2013 Order found that PJM's categorical exemptions were just and reasonable and appropriately identified generators whose bids could be accepted as competitive without the need for submission of financial information. The Commission, however, conditioned its acceptance of PJM's filing on PJM's retention of its unit-

⁶ The Joint Consumer Advocates consist of the following entities: the New Jersey Division of Rate Counsel, Maryland Office of People's Counsel, Attorney General of the State of Delaware, and the District of Columbia Office of the People's Counsel.

⁷ The Competitive Markets Coalition consists of the following entities: Calpine Corporation (Calpine), Exelon Corporation, PPL Companies, and PSEG Companies.

⁸ Answers to Rehearing Requests were submitted by the Maryland Public Service Commission (Maryland Commission), and the New Jersey Board of Public Utilities (New Jersey Board). Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a rehearing request unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers submitted by the Maryland Commission and the New Jersey Board and therefore reject them.

specific review process.⁹ The Commission found that, while PJM's proposed reliance on categorical MOPR exemptions was warranted, there may be other resources that would be unable to qualify for these exemptions but whose project costs might nonetheless be competitive, i.e., at or below Net CONE for a typical marginal capacity resource.¹⁰ The Commission concluded that market participants should continue to have the additional opportunity to demonstrate, through a unit-specific review process, that their entry costs are competitive,¹¹ and therefore "accept[ed] PJM's filing conditioned on the retention of its unit-specific review process."¹²

2. Requests for Rehearing

9. NRG asserts that, by accepting PJM's proposal subject to retention of the unit-specific review process, the Commission altered PJM's proposed rate change, without authority under FPA section 205, without invoking or meeting the requirements set forth under FPA section 206.¹³ NRG argues that PJM's filing was submitted as an integrated rate proposal under section 205 – as a package of provisions that contemplated both a reliance on categorical MOPR exemptions *and* the elimination of PJM's unit-specific review process. NRG argues that under FPA section 205, the Commission could only accept PJM's filing or reject it.

10. NRG asserts that the Commission effectively acted under section 206 by both rejecting PJM's proposed rate and imposing its own rate consisting of a mix of PJM's proposal and the Commission's modifications. NRG argues, however, that the Commission's findings failed to satisfy the requirements of section 206, because, according to NRG, the Commission failed to institute a section 206 proceeding or

⁹ May 2013 Order, 143 FERC ¶ 61,090 at P 141.

¹⁰ Under PJM's Open Access Transmission Tariff (OATT), the Net CONE serves as the MOPR screen, or default offer floor, governing the submission of bids and sell offers into PJM's capacity auctions. *See* PJM OATT at Attachment DD, section 5.14(h)(5)(iii).

¹¹ May 2013 Order, 143 FERC ¶ 61,090 at P 141.

¹² *Id.* P 26.

¹³ 16 U.S.C. § 824(e) (2012).

otherwise carry its section 206 burden of proof.¹⁴ NRG asserts that under section 206 the Commission was required to show that the proposed and rejected rate is unjust and unreasonable and that its alternative rate is just and reasonable.¹⁵

11. Petitioners further argue that, under section 205, PJM was only required to establish that its proposal was just and reasonable. Petitioners assert that in rejecting PJM's proposal to eliminate unit-specific review, the May 2013 Order erroneously relied on its finding that "PJM does not argue that a unit-specific review process is unjust and unreasonable."¹⁶

12. FirstEnergy argues that regardless of whether the Commission acted within its statutory authority, in requiring PJM to retain an allowance for unit-specific review, such a directive is unwarranted on the merits. FirstEnergy argues that the unit-specific review process is flawed, given its lack of objectivity and transparency.¹⁷ The Competitive Markets Coalition agrees, stating that the May 2013 Order failed to address record evidence that for the May 2013 auction three resources that had been developed under state-subsidized initiatives were permitted to submit bids and were subsequently cleared at price levels well below Net CONE.¹⁸

¹⁴ NRG Rehearing Request at 21 (citing *Western Resources, Inc. v. FERC*, 9 F.3d 1568 at 1579 (D.C. Cir. 1993) (*Western Resources*)). See also Competitive Markets Coalition Rehearing Request at 19.

¹⁵ *Id.* (citing "*Complex*" *Consolid. Ed. Co v. FERC*, 165 F.3d 992 at 1003 (D.C. Cir. 1999)); see also P3 Rehearing Request at 13 (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002)).

¹⁶ P3 Rehearing Request at 13 (citing May 2013 Order, 143 FERC ¶ 61,090 at P 142); see also Competitive Markets Coalition Rehearing Request at 4, 7, 16; Calpine Rehearing Request at 4.

¹⁷ See also P3 Rehearing Request 7.

¹⁸ Specifically, the Competitive Markets Coalition identifies a project, as developed pursuant to a Maryland Request For Proposals initiative (i.e., the St. Charles, MD project, a 725 MW facility sponsored by Competitive Power Ventures) and two additional projects, as developed through New Jersey's Long-Term Capacity Agreement Pilot Program (i.e., the Woodbridge, NJ project, a 700 MW project sponsored by Competitive Power Ventures, and the Newark, NJ project, a 655 MW facility

13. Calpine adds that the Commission, in the May 2013 Order, did not disagree that the unit-specific review process is flawed, and therefore it was erroneous to have left the flaws in place. The Competitive Markets Coalition states that the Commission erred by conditioning its acceptance of PJM's filing on the retention of the unit-specific review process without any reforms, such as requiring that subsidies and other guaranteed revenue streams be properly accounted for when calculating a project's competitive costs.

14. Calpine and P3 argue that the May 2013 Order failed to take into consideration the broad stakeholder support for PJM's proposed package of reforms. Calpine further argues that, in the past, the Commission has deferred to the will and intent of negotiating parties.¹⁹ P3 states that PJM's compromise package reflected a balanced approach among a divergent range of interests, the rejection of which will discourage future negotiations.²⁰ Finally, FirstEnergy argues that the May 2013 Order erred by providing for both categorical exemptions and unit-specific review, with the result, according to FirstEnergy, that the MOPR will be largely ineffective and rarely, if ever, invoked.

3. Commission Determination

15. For the reasons discussed below, we deny rehearing. With respect to our review authority, we recognize that under FPA section 205 and section 4, the comparable provision of the Natural Gas Act (NGA),²¹ our authority permits us to accept or reject a proposal submitted by the utility depending upon whether the utility has carried its burden of proof to show that its proposal is just and reasonable. As such, we cannot impose on the utility significant changes, without satisfying our burden under FPA section 206, or NGA section 5, to find the existing tariff provisions unjust and unreasonable.

sponsored by the Hess Corporation). *See* Competitive Markets Coalition Rehearing Request at 10-16.

¹⁹ Calpine Rehearing Request at 7 (citing *Southern Nat. Gas Co., L.L.C.*, 142 FERC ¶ 61,078, at PP 34-35 (2013); *Maine Pub. Utils. Comm'n v. ISO New England, Inc.*, 126 FERC ¶ 61,090, at P 46 (2013)).

²⁰ *See also* Competitive Markets Coalition Rehearing Request at 22 ("The Commission's material changes to the stakeholder package will chill future attempts to reach compromise on issues where various interested parties have strong differences of opinion.").

²¹ 15 U.S.C. § 717c (2012).

16. Nonetheless, an applicant that fails to satisfy its burden to show that its FPA section 205, or NGA section 4, proposal is just and reasonable may prefer to implement its proposal with the changes necessary to make that proposal just and reasonable rather than continue to operate under its existing just and reasonable tariff. Accordingly, the Commission, in exercising its FPA section 205 and NGA section 4 authority, has utilized a long standing practice of accepting filings conditioned on the utility or pipeline revising its proposal, when the Commission finds the filing generally just and reasonable, but further determines that certain components of the filing are not just and reasonable. The Commission adopted this approach given the complexity of FPA section 205 and NGA section 4 filings, which, like the proposal submitted here by PJM, may consist of numerous inter-related tariff revisions. In these circumstances, a conditional acceptance serves the need for administrative efficiency by avoiding the necessity of rejecting the filing in its entirety.

17. We emphasize, however, that the Commission is not improperly imposing those conditions under FPA section 205 or NGA section 4. The Commission, rather, is finding only that the filing has not been shown to be just and reasonable as filed, unless the utility or pipeline makes the revisions identified by the Commission. Accordingly, the utility or pipeline is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing and returning to the use of its prior rate. As the U.S. Court of Appeals for the District of Columbia Circuit found in *City of Winnfield v. FERC*,²² the Commission can revise a rate proposal under section 205 as long as the utility "accepts" the change.²³ The court recognized, as has the Commission, the administrative convenience of not having to reject a filing only to have the utility refile to signify its acceptance later:

It would be empty formalism to strike down those rates solely because they were initially introduced into the proceeding by Commission staff rather than the utility itself. And it would be wasteful to require, instead of the sensible procedure adopted here, that the Commission first deny LP&L's requested increase and that the utility then commence a separate § 205 proceeding proposing the acceptable increase of rates under the existing scheme that the Commission staff had suggested.²⁴

²² 744 F.2d 871 (D.C. Cir 1984) (*City of Winnfield*).

²³ *Id.* at 875.

²⁴ *Id.*

In *Western Resources*, the court similarly recognized the Commission's ability to act under section 205 or section 4 when the utility or pipeline "consents" to the change.²⁵

18. In line with the sensible procedure in *City of Winnfield*, the conditional acceptance process utilized by the Commission gives the utility or pipeline an opportunity, through a compliance filing, to cure the problems the Commission has found in its filing, without having its entire filing rejected. As long as the utility or pipeline accepts the condition, this process allows their FPA section 205 or NGA section 4 filing to take effect, without the delay and administrative difficulties attributable to the submission of a new FPA section 205 filing or NGA section 4 filing to cure the problems identified by the Commission.

19. The Commission has recognized that, with the consent of the public utility or interstate natural gas pipeline, it may implement, under FPA section 205 and NGA section 4, provisions that differ from those initially proposed. In a proceeding instituted by ISO New England Inc. (ISO-NE), for example, the Commission found that it had properly acted under section 205 in requiring ISO-NE to utilize one of three rate design options, as outlined in the pleadings, each of which ISO-NE had made clear it would accept.²⁶ The Commission noted that, "[w]hile ISO-NE [had] not propose[d] the three-tiered rate design in its initial filing, [its] acceptance of this rate design . . . established that [it] has not been imposed unwillingly on the utility under section 206."²⁷

20. The Commission similarly permits utilities and pipelines that are unwilling to consent to the Commission's conditional acceptance of their filings to withdraw those filings and thus retain the effectiveness of their existing tariffs. In *PJM Interconnection, L.L.C.*,²⁸ the Commission, after conditionally accepting a filing by American Electric Power Service Corporation (AEP), subject to hearing and settlement judge procedures, permitted AEP to withdraw its filing and terminate the proceeding, given that "AEP no

²⁵ See *Western Resources*, 9 F.3d at 1579.

²⁶ *ISO New England, Inc.*, 106 FERC ¶ 61,294, order on reh'g, 108 FERC ¶ 61,138 (2004), order on remand, *ISO New England, Inc.*, 113 FERC ¶ 61,055 (2005).

²⁷ *Id.* P 27. See also *Municipal Defense Group v. FERC*, 170 F.3d 197, 201 (D.C. Cir. 1999) (finding that a pipeline, which had submitted multiple tariff options, but had not withdrawn its initial tariff option, which the Commission accepted, remained the proponent of that initial option under NGA section 4).

²⁸ 143 FERC ¶ 61,009 (2013).

longer support[ed] its [FPA] section 205 filing rate increase filing, and because no charges [had been] assessed . . . under the proposed formula rate filing.”²⁹ Similarly, in *Columbia Gulf Transmission Company*,³⁰ the Commission accepted a filing subject to a technical conference and the pipeline later moved to withdraw the proposal, which the Commission accepted. The Commission explained: “since Applicants are not required to offer the proposed [rate] service, and are not prepared to support their proposed tariff sheets, applicants may withdraw the [relevant] tariff sheets.”³¹

21. Here, PJM’s OATT, as of the date of PJM’s filing, provided for a unit-specific review process, with PJM’s filing proposing to rely on two categorical MOPR exemptions as a replacement mechanism, among other changes. While the Commission, in the May 2013 Order, found that the categorical exemptions did identify competitive offers, the Commission concluded that PJM had not shown that these provisions, standing alone, were just and reasonable because generation offers that did not fall within these exceptions might also be just and reasonable.³² The Commission therefore accepted PJM’s filing conditioned on PJM’s retention of its current just and reasonable unit-

²⁹ *Id.* P 3.

³⁰ 127 FERC ¶ 61,059 (2009).

³¹ *Id.* at P 19. See *Texas Gas Transmission Corp.*, 100 FERC ¶ 61,126 (2002) (accepting and suspending filing subject to conditions and outcome of technical conference), *order on technical conference*, 101 FERC ¶ 61408 (2002) (imposing conditions), *delegated order*, Docket Nos. RP02-378-000, *et al.* (July 18, 2003) (accepting withdrawal of tariff provisions); *Columbia Gas Transmission Corporation*, *delegated order*, Docket No. RP00-374-002 (April 9, 2001) (accepting withdrawal of a tariff filing where the pipeline did not agree with the Commission’s condition); *Columbia Gulf Transmission Company*, 132 FERC ¶ 61,134 (2010) (permitting the pipeline to submit a new filing to reinstate its prior just and reasonable rates where the pipeline was unwilling to accept Commission’s conditions, as applicable to the filing at issue, and thus elected to withdraw its filing). See also *Columbia Gulf Transmission Company*, 134 FERC ¶ 61,194 (2011) (rejecting a filing when the pipeline filed for rehearing disagreeing with the Commission’s interpretation of its tariff).

³² May 2013 Order, 143 FERC ¶ 61,090 at P 26.

specific review process for resources that do not qualify for PJM's categorical MOPR exemptions.³³

22. We clarify, however, that this action was not taken pursuant to section 206 given that the Commission did not find the existing unit-specific review process unjust and unreasonable; indeed, the Commission's compliance directive provided for its retention. The conditional acceptance pursuant to section 205 provided PJM with the opportunity to move forward with its two new categorical exemptions and the rest of its filing while retaining the just and reasonable unit-specific review process. Based on the fact that PJM neither sought rehearing of the May 2013 Order, nor submitted a request to withdraw its filing, and that PJM submitted its compliance filing to retain the unit-specific review process, it appears that PJM has consented to the Commission's condition. Nonetheless, given the requests for rehearing on this issue and the unique facts and circumstances of this case, and to avoid any possible confusion as to PJM's acceptance of the unit-specific review condition, PJM must file a notice within 30 days of the date of this order if it determines to withdraw its filing.

23. Finally, we reject petitioners' argument that the unit-specific review process is not just and reasonable. As discussed above, the Commission found the unit-specific review process just and reasonable in the 2011 MOPR proceeding.³⁴ While the Commission, in the May 2013 Order, acknowledged that this review process warranted additional stakeholder review and the consideration of certain enhancements, we cannot conclude, based on the record before us, that review of individual units' costs and revenues is an unjust and unreasonable method of determining rates.³⁵ To the contrary, the Commission noted in the May 2013 Order that, based on PJM's assessment, the clearing prices in PJM's capacity auctions held during the period in which the unit-specific review process

³³ *Id.* See also *City of Winnfield*, 744 F. 2d at 875 (“the structure of the [FPA] . . . is not ‘undermined’ or even threatened when, in a § 205 proceeding, the Commission declines to permit a new form of rate calculation but grants a rate increase under the form the utility had previously been using, which increase the utility accepts.”).

³⁴ See *April 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 119.

³⁵ Cost of service ratemaking has been a long fixture in ratemaking. See *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

has been in effect have been just and reasonable.³⁶ The Commission further found that this process yields benefits that warrants its retention.³⁷

B. Competitive Entry Exemptions

1. May 2013 Order

24. As discussed in the May 2013 Order, under PJM's competitive entry exemption, a new entry project will be exempt from the MOPR, subject to a demonstration that: (i) the costs of the project will not be recovered from customers either directly, or indirectly, through a non-bypassable charge linked to the construction or clearing of the project in PJM's auction; and (ii) the project will not receive certain types of payments from any governmental entity connected to the project.³⁸ The Commission also conditionally accepted PJM's proposal to extend its exemption to any new entry project that has been developed through a state-sponsored, or state-mandated, procurement process, provided that this process was undertaken on a competitive and non-discriminatory basis.³⁹ The Commission found that such an exemption will remove an unnecessary barrier to entry for merchant projects and other new entry resources procured on a competitive, non-discriminatory basis.⁴⁰

2. Requests for Rehearing

25. Joint Consumer Advocates argue that, in accepting PJM's proposed competitive entry exemption, the May 2013 Order unduly discriminated between restructured and traditionally-regulated states by imposing on the former more restrictive treatment of offers for new resources. Joint Consumer Advocates argue that, in fact, all states in the

³⁶ May 2013 Order, 143 FERC ¶ 61,090 at P 143.

³⁷ *Id.* The May 2013 Order found, for example, that the unit-specific review process recognizes that some resources, including those that would fail to qualify for PJM's proposed exemptions, may nonetheless have competitive costs that fall below Net CONE. *Id.* The May 2013 Order further noted that this benchmark price was only an estimate that several intervenors had argued was currently too high, thus further justifying the need to provide unit-specific review, upon request. *Id.*

³⁸ *Id.* P 53.

³⁹ *Id.*

⁴⁰ *Id.*

PJM region seek to ensure that any load serving entity within their jurisdictions can offer state-selected resources as price-takers in PJM's capacity auctions.⁴¹ Joint Consumer Advocates argue, however, that under the May 2013 Order, only new gas-fired generation in a restructured state will continue to be subject to the MOPR.

26. Joint Consumer Advocates also challenge the May 2013 Order's finding that the incentives for uneconomic entry in a restructured state differ from those in a traditionally-regulated state. In the former, it is claimed, a load serving entity relies largely on the market to meet its capacity obligations. Joint Consumer Advocates argue, however, that the concern over the possibility of price-suppression, in this instance, does not justify interfering with legitimate state generation development and resource procurement policies. Joint Consumer Advocates add that basing a mitigation policy on whether a price-suppressing motive can be ruled out is inconsistent with Commission precedent.⁴²

27. Joint Consumer Advocates also challenge the competitive entry exemption's eligibility restriction, regarding RFP processes that are limited to the procurement of new resources. Joint Consumer Advocates argue that while this restriction is based on PJM's asserted need to clear least-cost resources, such a rationale mischaracterizes the purpose and function of PJM's capacity auctions, which are limited to the procurement of PJM's *residual* capacity needs.⁴³ Joint Consumer Advocates assert that under PJM's capacity auction rules, as initially established, independently-procured capacity was intended to be integrated into PJM's auction by way of price taking offers – not as an independently-determined least-cost resource.

⁴¹ Joint Consumer Advocates note, for example, that the policy mandates as between New Jersey and Maryland, on the one hand, and Virginia and North Carolina, on the other hand, are fundamentally similar, as evidenced by a comparison of the New Jersey legislature's establishment of the Long-Term Capacity Agreement Pilot (LCAPP) Program, the Maryland Commission's Request for Proposal (RFP) Initiative, and the integrated resource plan filed by Dominion Resources with state regulators in Virginia and North Carolina. *See* Joint Consumer Advocates Rehearing Request at n.10.

⁴² *Id.* at 19-20 (citing *ISO New England, Inc.*, 135 FERC ¶ 61,029, at P 170 (2011) (uneconomic entry suppresses prices regardless of intent); *New York Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,170, at P 37 (2010) (an individual state in a multi-state region like PJM's is unlikely to subsidize new entry for price suppressing reasons, given that the free-rider effects would disadvantage the state *vis a vis* its neighbors).

⁴³ Joint Consumer Advocates Rehearing Request at 11 (citing *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079, at P 169 (2006)).

28. Joint Consumer Advocates further assert that the procurement of least-cost resources is inconsistent with the MOPR's categorical exemption as applicable to non-gas-fired resources, including wind and solar units, which are likely to be more expensive than gas-fired resources. Joint Consumer Advocates assert that the May 2013 Order fails to explain why the downward price pressure created by exempting *some* new resources is compatible with the Commission's policy of maintaining auction price signals and market health, while downward price pressure from exempting new resources in restructured states is not.

29. Joint Consumer Advocates also argue that the May 2013 Order erred by not conditioning its acceptance of PJM's proposed exemption on a broader definition of the term "fair competition," as applicable to restructured states' resource planning and generation development programs. Specifically, Joint Consumer Advocates argue that PJM's exemption should apply to procurement processes that consider qualitative factors other than price, including: (i) difference in location; (ii) expected service life; (iii) efficiency; (iv) anticipated capacity factors and effects on energy prices; (v) emissions levels and other environmental impacts; (vi) market concentrations; and (vii) effects on local economic conditions. Joint Consumer Advocates add that a MOPR exemption should apply where an act of a state legislature, or a ruling issued by a state regulatory entity, support a given project based on a legitimate intent.

30. The Illinois Commission asserts as error the May 2013 Order's requirement that PJM, and not the Commission, make the initial determination, upon request, that a given state-sponsored procurement process is competitive and non-discriminatory. The Illinois Commission argues that such a determination warrants the Commission's involvement, without the imposition of any intermediary procedures overseen by PJM, or the Market Monitor. The Illinois Commission adds that delegating this determination to PJM and/or the Market Monitor may discourage participation in state-sponsored initiatives and deprive the affected state of the time it may require to re-run its procurement in advance of PJM's auction.

31. Finally, NRG asserts as error the Commission's acceptance of a categorical exemption. NRG argues that, having rejected PJM's proposal to eliminate the unit-specific review process, and having found the existing rate under this process to be just and reasonable, the Commission's work in this proceeding was done.⁴⁴ NRG adds that a categorical exemption is not required when a unit-specific review mechanism is available

⁴⁴ NRG Rehearing Request at 26 (citing May 2013 Order, 143 FERC ¶ 61,090 at P 143).

and that such an exemption is inconsistent with the Commission's past statements regarding the need for all uneconomic entry to be mitigated.

3. Commission Determination

32. For the reasons discussed below, we deny rehearing on this issue. The economic justification for a competitive entry exemption is grounded in competitive market design principles where merchant, at-risk investment is disciplined by market forces. A resource can obtain a competitive entry exemption in either of two ways.⁴⁵ The first is to show that one hundred percent of the revenues such investment earns must be derived by meeting market demand for energy, capacity, and ancillary services; and that no revenues are earned by non-by-passable charges to ratepayers. The second way is to show that any contractual revenues received by the resource are as a result of a nondiscriminatory procurement process that is competitive and open to all resources, including existing resources. Subjecting investment that meets either of these conditions to any buyer-side market power mitigation that could penalize its entry does not enhance competition because in either case, competitive forces are a sufficient protection against uneconomic entry.⁴⁶

33. Joint Consumer Advocates maintain that the competitive exemption unduly discriminates between resources in restructured states and resources in traditionally-regulated states. Specifically, they argue that generation in restructured states fails to qualify for the self-supply exemption and that the competitive entry exemption qualification requirements are more stringent than those for self-supply in traditionally-regulated states. They also maintain the competitive entry exemption does not recognize that state subsidized generation seeks to implement legitimate state policy goals and that state sponsored generation should be exempt from mitigation.

34. We disagree and continue to find that mitigation of resources that have the incentive and ability to reduce capacity prices through uneconomic entry is appropriate and necessary to ensure just and reasonable rates. In contrast, a resource that can show that it does not have an incentive to exercise buyer-side market power should not be subject to market power mitigation. As we have stated previously, subjecting state-sponsored resources to the MOPR does not prevent the states from pursuing their own

⁴⁵ See PJM OATT at proposed Attachment DD, section 5.14(h)(7).

⁴⁶ See May 2013 Order, 143 FERC ¶ 61,090 at P 57.

public policy requirements.⁴⁷ Rather, it is intended to ensure that whatever subsidy is received does not discriminatorily affect the outcome of the PJM auction.⁴⁸

35. We also do not find undue discrimination between restructured and traditionally-regulated states based on the differences between the eligibility requirements for the competitive entry exemption and the self-supply exemption. Both the competitive entry and self-supply exemptions are tailored to ensure that merchant resources that have no incentive to artificially suppress capacity prices are able to offer into the capacity auction at prices that are not subject to mitigation. In traditionally-regulated states, a large majority of load is typically satisfied by generation owned by the load serving entity and recovered through state cost of service rates. Because of this financing model, the competitive entry exemption is not applicable to resources developed through that model. PJM, therefore, appropriately developed the self-supply exemption to determine under this financing model whether an investment in new generation is consistent with a competitive market.

36. When a self-supplying entity owns or has contractual rights to an amount of generation that is close to its capacity requirement, the entity's net purchases or sales are not significantly affected by changes in the capacity market price. As a result, the load serving entity will not have an incentive to suppress PJM's capacity market price because there will not be a significant benefit from doing so. Mitigating the offer prices of resources owned by such an entity is therefore not necessary to ensure just and reasonable rates. PJM developed thresholds to ensure that self-supply investment is eligible to be exempt from mitigation only when the self-supply entity provides a large proportion of its own power. We, therefore, do not find undue discrimination between the exemptions applicable to restructured and traditionally-regulated states. Both exemptions are structured to exempt resources of entities that lack the incentive or ability to suppress prices.

37. Joint Consumer Advocates also renew the argument raised by intervenors below that PJM's asserted need to limit the reach of its competitive entry exemption to state procurement processes that are competitive and non-discriminatory is contrary to the purpose and function of PJM's capacity auctions. Joint Consumer Advocates argue that

⁴⁷ See *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 89.

⁴⁸ See *PPL Energyplus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (the FPA preempts state program conditioning payments to a generator on their participation in PJM's capacity auctions); *PPL Energyplus, LLC v. Solomon*, 766 F.3d 241 (3rd Cir. 2014) (same).

the capacity market's role is limited to the procurement of PJM's *residual* capacity needs, and that the competitive entry exemption interferes with both state and load serving entity's ability to decide what to buy or build to meet their total capacity needs. In the May 2013 Order, the Commission disagreed that the competitive entry exemption will unlawfully interfere with the ability of a restructured state to (i) ensure adequate capacity for consumers within its jurisdictions; or (ii) pursue its legitimate policy interests, including the procurement of cleaner generation resources and/or state economic development.⁴⁹ Further, residual needs must not be satisfied in a way that allows for the exercise of buyer-side market power.

38. The May 2013 Order found that, notwithstanding these retail interests, PJM's capacity market was designed to procure on a least-cost basis sufficient capacity to meet the reliability needs of the region as a whole and do so on a long-term basis. While uneconomic new entry may lower prices in the short-run, over the long-run it will dampen incentives to invest, thereby jeopardizing the reliability of the PJM system. The May 2013 Order further found that, given these broader needs, it was appropriate for PJM to limit its MOPR exemption to ensure that subsidized entry supported at the state level does not have the effect of disrupting the competitive price signals that PJM's wholesale capacity market protocols are designed to produce.

39. We also reject the Joint Consumer Advocate's argument that restricting the competitive entry exemption to state procurements that are competitive and non-discriminatory (and doing so based, in part, on a least-cost resources rationale) is inconsistent with the MOPR's categorical exemptions as applicable to non-gas-fired resources. The purpose of the MOPR, as the Commission found in the May 2013 Order, is to protect the market from the exercise of buyer-side market power.⁵⁰ The May 2013 Order further found that a resource developed by a state in an open and non-discriminatory procurement process raises no such concerns, given that this process, by definition, will identify the least-cost resource. The Joint Consumer Advocates do not challenge this finding, or the economic principle on which it is based. The justification underlying PJM's exemptions as to non-gas-fired resources, moreover, were addressed by the Commission in full in a prior proceeding, based on the evidence presented and a finding made that these resource types do not raise market power concerns.⁵¹

⁴⁹ May 2013 Order, 143 FERC ¶ 61,090 at P 54.

⁵⁰ *Id.* P 56.

⁵¹ See *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 153; *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 110.

40. Joint Consumer Advocates next argue that the eligibility criteria proposed by PJM for its competitive entry exemption are too narrow, given the focus of these criteria on price competition at the expense of qualitative differences. As we previously held in the *November 2011 MOPR Order*,⁵² and restated in the May 2013 Order,⁵³ the Commission, in its review of PJM's MOPR needs, does not intend to pass judgment on state resource procurement policies. Rather, we find it reasonable for a regional grid operator, such as PJM, to propose tariff provisions to ensure that subsidized entry supported at the state level does not have the effect of disrupting the competitive price signals that PJM's wholesale capacity market protocols are designed to produce and on which PJM's market participants, region-wide, rely to attract sufficient capacity.

41. We also reject the Illinois Commission's argument that the Commission, not PJM, should be solely responsible for any determination as to whether a state's procurement process is competitive and non-discriminatory. In the May 2013 Order, the Commission found that, consistent with its prior rulings with respect to the unit-specific review process, PJM and its Market Monitor were better suited to make these determinations in the first instance and can make those determinations more expeditiously than the Commission.⁵⁴ We are not persuaded that the rationale underlying this policy requires reconsideration here, based on the unsubstantiated allegation that PJM will apply its procedures so as to discourage developers from participating in PJM's capacity auctions. Under PJM's procedures, a developer will obtain a determination from PJM in sufficient time to participate in the auction. If the developer objects to the determination and files a complaint with the Commission, that process may delay the project, but such a delay also is inherent in the Illinois Commission's proposal to submit the project initially to the Commission. In addition, a state can insulate itself from any such risk by making payments resulting from their competitive and non-discriminatory procurement process contingent on the resource's offer being accepted by PJM.

42. Finally, NRG argues that, having rejected PJM's proposal to eliminate the unit-specific review process, the Commission did not need to consider PJM's proposed categorical MOPR exemptions. We disagree. PJM also proposed to implement

⁵² *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at PP 89-90.

⁵³ May 2013 Order, 143 FERC ¶ 61,090 at P 57.

⁵⁴ *Id.* P 61. See also *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 118 ("a filing with the Commission *ab initio* could result in complex and lengthy litigation that may well be avoided if such determinations are made first by the [Market Monitor] and PJM.").

categorical exemptions, so the Commission appropriately addressed the merits of that aspect of the proposal, and, as discussed above, the Commission accepted it subject to condition.

C. Self-Supply Exemptions

1. May 2013 Order

43. The May 2013 Order conditionally accepted PJM's proposed exemption for self-supply, as applicable to load serving entities that: (i) operate pursuant to a long-standing business model that relies on self-supply arrangements; and (ii) do not buy substantially more capacity in PJM's capacity auction than they clear, or sell, as capacity (i.e., they are not significantly "net-short"), and (iii) do not clear, or sell, substantially more capacity than they buy (i.e., they are not significantly "net-long").⁵⁵

44. The May 2013 Order found that PJM's proposed thresholds will adequately protect the market from the price effects attributable to uneconomic new self-supply.⁵⁶ Specifically, the Commission found that if a self-supply entity meets a sufficiently large proportion of its capacity needs through its own generation investment, it will have little or no incentive to suppress capacity market prices. The Commission noted that, if the amount of non-self-supplied resources procured from PJM's capacity auction is sufficiently small, uneconomic entry would reduce the cost of procuring this portion by less than the amount spent on the uneconomic entry.⁵⁷ The May 2013 Order also found, however, that evolving market conditions can affect the accuracy and/or usefulness of these thresholds. Accordingly, the Commission required PJM to review and, if necessary, revise its thresholds on an appropriate, periodic basis, with tariff language to be submitted on compliance addressing this obligation.⁵⁸

⁵⁵ May 2013 Order, 143 FERC ¶ 61,090 at P 107. PJM proposed maximum net-short thresholds based on four customer types and a graduated net-long scale, based on estimated capacity obligations and maximum net-long thresholds. *Id.* PP 64-65.

⁵⁶ *Id.* P 107.

⁵⁷ *Id.* P 108.

⁵⁸ *Id.* P 113.

2. Requests for Rehearing

45. NRG argues that the May 2013 Order erred by establishing a self-supply exemption for new entry projects that are supported by a vertically integrated utility, or a public power entity, both of which have captive ratepayers and guaranteed cost recovery. NRG argues that PJM's exemption has and will allow these entities to bid into PJM's auctions at prices far below their actual costs and below Net CONE.⁵⁹ NRG also asserts that the May 2013 Order failed to address affidavit testimony submitted by NRG on this issue, including testimony to the effect that, under PJM's exemptions, four public power entities in Maryland would have the ability to suppress prices in the Southwest Mid-Atlantic Area Council zone to the level of the unconstrained rest-of-RTO region. NRG further points to the New Brunswick facility, as sponsored by Dominion Virginia Power, a project that has been allowed to bid into PJM's capacity auction at less than its actual costs.⁶⁰

46. NRG also challenges the May 2013 Order's acceptance of PJM's proposed self-supply exemption as contrary to Commission precedent. NRG argues that, in the *November 2011 MOPR Order*, the Commission rejected a proposal to allow integrated utilities and public power entities to bring new self-supply projects on line on an unmitigated basis, based on a finding that a self-supply exemption "would allow for an unacceptable opportunity to exercise buyer market power and inhibit competitive investment."⁶¹ NRG further relies on the Commission's prior finding that while a self-supply entity's "well-recognized business model[] should not be considered automatically suspect when determining whether a sell offer reflects avoidable net costs, [it is imperative that PJM] consider project costs as well as revenues the project would receive on a competitive basis[.]"⁶² In addition, NRG argues that permitting a self-supply

⁵⁹ See also FirstEnergy Rehearing Request at 10 (arguing that, under PJM's exemption, two self-supply entities located in the Southwest Mid-Atlantic Area Council region could independently offer 300 MW of new capacity into PJM's auction on a zero-price basis, the effect of which would lower their supply costs but also suppress clearing prices).

⁶⁰ NRG asserts that the estimated construction costs for the New Brunswick facility, excluding financing costs, are \$1.2 billion, or \$934/kW, while capacity market clearing prices in the Dominion zone are less than one-third of the price that PJM has determined would be needed to support new entry. See NRG Rehearing Request at 29.

⁶¹ *Id.* at 27 (citing *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 5).

⁶² *Id.*

project to bid into PJM's capacity auction at levels below its actual costs is inconsistent with the Commission's prior finding, as applicable to the New York Independent System Operator, Inc. (NYISO), that "all uneconomic entry has the effect of depressing prices below the competitive level."⁶³

47. Petitioners also challenge the Commission's acceptance of PJM's proposed net-short and net-long thresholds. FirstEnergy argues that the May 2013 Order erred by accepting threshold levels based on an analysis of a single historical auction, i.e., based on the 2015-16 auction. FirstEnergy argues that this auction was not representative of current market conditions as reflected by the increased capacity and lower prices cleared in PJM's 2016-17 auction. NRG argues that the May 2013 Order erred in assuming only a single-year outlook, contrary to the Commission's prior reliance on a multi-year analysis.⁶⁴ NRG also asserts that PJM's thresholds will be ineffective as a tool against price suppression, in the case of a net capacity purchaser incented to bring new entry into the market to suppress prices in future years – where, for example, retirements (and a corresponding movement of prices up the demand curve) might be expected. NRG further asserts that PJM's thresholds will prove ineffective, given that there are no self-supply entities for whom these thresholds will actually operate as an exemption bar.

48. NRG argues that because the demand curve PJM uses to clear its auction is steep, the price suppressing benefits of new entry will increase dramatically as the market reaches equilibrium. NRG adds that, as such, a self-supply entity is encouraged to build today to prevent the market from ever reaching an equilibrium – a strategy that PJM's thresholds will be powerless to prevent. FirstEnergy argues that because PJM's threshold levels were set using auction data that was significantly net-long, the May 2013 Order erred by not requiring PJM to analyze its threshold levels under alternative conditions, including a consideration of when the market is clearing near the reliability requirement and new supply is needed.

49. FirstEnergy argues that PJM's net-short thresholds are unduly discriminatory and preferential, given that they impose the same threshold values for three regions (the MAAC, EMAAC and SW-MAAC regions), each of which are different in size (as measured by their MWs cleared). FirstEnergy adds that in two regions in which PJM's reliability requirement is approximately equal (i.e., in the ATSI region and the SW-

⁶³ *Id.* at 30 (citing *New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301, at P 29 (2008) (*NYISO Capacity Mitigation Order*)).

⁶⁴ NRG Rehearing Request at 31 (citing *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, at P 29 (2005)).

MAAC region), PJM's net-short threshold for the former is approximately double that of the latter.

50. FirstEnergy also argues that the May 2013 Order erred by failing to address the potential that the self-supply exemption and thresholds may be gamed. FirstEnergy notes that PJM's tariff's prior inclusion of a net-short limitation was terminated by PJM, in the 2011 MOPR proceeding, based on this very concern. FirstEnergy further notes that the Commission accepted PJM's proposal, based on its own finding that defining the net-short position can involve complications and that evasion of the requirement can come in many forms, some of which may be unforeseen.⁶⁵ FirstEnergy adds that, in the instant proceeding, Commission Staff's deficiency letter appropriately inquired into this matter, with PJM, in its response, neither refuting the possibility of gaming, as set forth by FirstEnergy in its answer, or offering any explanation as to how PJM would protect against such practices. FirstEnergy argues that, in the May 2013 Order, the Commission ignored its own precedent and otherwise failed to address the facts and arguments presented on this issue

51. Finally, FirstEnergy asserts as error the May 2013 Order's failure to require PJM to disclose the underlying data supporting its threshold levels, as FirstEnergy had requested during the stakeholder process and in its protest. FirstEnergy asserts that without this data it was precluded from testing the assumptions underlying PJM's thresholds and verifying PJM's results.

3. Commission Determination

52. For the reasons discussed below, we deny rehearing on this issue. NRG argues that the self-supply exemption will result in a large number of new power plants being built by vertically-integrated utilities and public power entities, the effects of which will suppress market clearing prices. We disagree. With properly-calibrated net thresholds, PJM's self-supply exemption will not operate in a manner that encourages uneconomic entry and thus will not artificially suppress market clearing prices. PJM's analysis of offers submitted into its Base Residual Auction (BRA), moreover, reasonably identifies the threshold level at which a self-supply entity would not have the incentive to seek uneconomic entry.⁶⁶

⁶⁵ FirstEnergy Rehearing Request at 12 (citing *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 90).

⁶⁶ See PJM Deficiency Letter response, Aff. of Andrew L. Ott at 2-11.

53. NRG and FirstEnergy also assert that the Commission's acceptance of PJM's self-supply exemption was inconsistent with the Commission's rulings in the 2011 MOPR proceeding. However, in that proceeding, the Commission rejected a proposal for a blanket, across-the-board self-supply exemption.⁶⁷ Under PJM's limited exemption in this proceeding, by contrast, a net-short and net-long restriction will apply such that the exemption will not operate on a blanket, across-the-board basis.

54. NRG further notes that, in the *November 2011 MOPR Order*, the Commission found that, in considering MOPR exemptions, it was appropriate for PJM to examine "project costs as well as revenues the project [will] receive on a competitive basis[.]"⁶⁸ However, given the Commission's finding that the limited self-supply exemption proposed here (together with the competitive entry exemption) is just and reasonable, subject to the retention of the unit-specific review, the PJM MOPR continues to provide PJM an avenue to examine such project costs and revenues for units that do not qualify for either categorical exemption. Thus, the Commission's finding in the May 2013 Order did not contradict its previous findings with respect to self-supply.

55. NRG also argues that the Commission's acceptance of PJM's self-supply exemption was inconsistent with the Commission ruling, as applicable to the NYISO, that "all uneconomic entry has the effect of depressing prices below the competitive level."⁶⁹ We disagree. The May 2013 Order does not contradict the Commission's findings in the *NYISO Capacity Mitigation Order*, nor does it allow for uneconomic entry via PJM's carefully tailored self-supply exemption. Based on the record evidence, the May 2013 Order properly found that "PJM's proposed net-short and net-long thresholds, in principle, adequately protect the market from the price effects attributable to uneconomic new self-supply."⁷⁰ Specifically, the Commission reasoned that if a self-supply entity meets a sufficiently large proportion of its capacity needs through its own generation investment, it has little incentive to suppress capacity market prices. Additionally, the Commission found that if the amount of non-self-supplied resources procured from RPM

⁶⁷ See *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 192.

⁶⁸ See NRG Rehearing Request at 27 (citing *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 5).

⁶⁹ *Id.* at 30 (citing *NYISO Capacity Mitigation Order*, 124 FERC ¶ 61,301 at P 29).

⁷⁰ May 2013 Order, 143 FERC ¶ 61,090 at P 107.

is sufficiently small, uneconomic entry would reduce the cost of procuring this portion by less than the amount spent on the uneconomic entry.⁷¹

56. Petitioners also challenge the Commission's acceptance of PJM's proposed net-short and net-long thresholds. In particular, NRG argues that PJM's proposed thresholds are comparable to the market test rejected by the Commission in the *NYISO Capacity Mitigation Order*. We disagree. The proposal rejected by the Commission in the *NYISO Capacity Mitigation Order* was broader than PJM's proposal, given that it would have exempted all net sellers from offer floor mitigation and would have applied mitigation to all net buyers.⁷² By contrast, the proposal accepted by the Commission in the May 2013 Order exempts only those net-sellers with little incentive to support uneconomic new entry. PJM's MOPR, as approved by the Commission, applies mitigation to entities that are at the greatest risk of subsidizing uneconomic new entry because they are either significant net sellers or significant net buyers (based on whether the entity's net sales or net purchases exceed the applicable threshold).

57. In its rehearing request, FirstEnergy submitted new evidence regarding PJM's May 2013 auction to support its assertion that PJM's net-short and net-long thresholds are based on data reflecting market conditions that have changed. We reject this argument. A petitioner seeking rehearing of a Commission order may not submit and/or rely on new evidence that was not previously made a part of the record.⁷³ Moreover, the May 2013 Order acknowledges that market conditions may change over time, and accordingly, requires that PJM "review and, if necessary, revise these thresholds on an appropriate, periodic basis," when the analysis indicates that changes are necessary.⁷⁴

⁷¹ *Id.* P 108.

⁷² *See NYISO Mitigation Order*, 124 FERC ¶ 61,301 at P 29.

⁷³ *See FirstEnergy Solutions Corp. Allegheny Energy Supply Co., LLC v. PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,205, at P 22 (2015) ("It is well settled that the Commission does not accept new evidence at the rehearing stage of the proceeding"); *S. California Edison Co.*, 137 FERC ¶ 61,016, at P 11 & n.20 (2011). *See also San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 133 FERC ¶ 61,014, at P 24 (2010) (the Commission's procedures encourage the timely submission of evidence and adhere to the general rule that the once closed the record will not be reopened).

⁷⁴ May 2013 Order, 143 FERC ¶ 61,090 at P 113.

58. FirstEnergy asserts that, under PJM's exemption, two self-supplying entities in the Southwest Mid-Atlantic Area Council region could independently develop 300 MW of new capacity and then submit offers into PJM's auction on a zero-cost basis. We disagree. The analysis supporting PJM's exemption properly focuses on the incentives facing an individual self-supply entity, and supports PJM's claim that an individual self-supply entity that falls within PJM's thresholds will not have the incentive to suppress market clearing prices by subsidizing uneconomic entry.

59. We also reject FirstEnergy's argument that, because PJM's Net CONE regions (e.g., Southwest Mid-Atlantic Area Council) vary in size, PJM's net-short thresholds are unduly discriminatory and preferential. The distinctions on which FirstEnergy relies are not relevant here, given that PJM has tailored its net-short thresholds based not on regional characteristics, but on customer characteristics, namely: (i) 150 MW for a single-customer load serving entity; (ii) 1,000 MW for a public power entity; (iii) 1,800 MW for a multi-state public power entity, based on a PJM region-wide assessment (or 1,000 MW for three specified Locational Deliverability Areas); or (iv) 20 percent of the load serving entity's reliability requirement for an investor-owned load serving entity. PJM concluded that such thresholds were appropriate based on its review of portfolio information and actual portfolio positions in the market. Based on this and additional data submitted in its response to Commission Staff's deficiency letter, we reaffirm the Commission's finding that these requirements and related restrictions appropriately ensure that PJM's self-supply exemption will operate in a manner that sufficiently addresses the MOPR's objectives.

60. We also reject FirstEnergy's argument that the May 2013 Order erred by failing to address the potential that PJM's self-supply exemption and thresholds may be gamed. The abuses associated with gaming are comprehensively addressed elsewhere in PJM's OATT, in addition to the Commission's existing market oversight authority.⁷⁵ Therefore, gaming need not also be addressed as part of PJM's MOPR.⁷⁶

61. Finally, we reject FirstEnergy's argument that PJM failed to disclose data reasonably required by FirstEnergy in order to independently evaluate PJM's proposed thresholds. PJM clarified in its April 9, 2013 answer that its proposal was based on

⁷⁵ See, e.g., *Prohibition of Energy Market Manipulation*, Order No. 670, 71 Fed. Reg. 4244 (Jan. 26, 2006) FERC Stats. & Regs. ¶ 31,202, at P 49 (2006) (Order No. 670).

⁷⁶ See PJM OATT at Attachment M (PJM Market Monitor Plan).

scenario analyses that were posted on PJM's website and shared with its stakeholders.⁷⁷ We find that these scenario analyses were sufficient to support PJM's proposed thresholds and that the release, or consideration, of additional information was therefore unnecessary.

D. Integrated Gasification Combined Cycle Units

1. May 2013 Order

62. The May 2013 Order accepted PJM's proposal to apply the MOPR to integrated gasification combined cycle (IGCC) resources. The Commission agreed with PJM that a MOPR exemption for IGCC units was no longer appropriate given that: (i) the development of an IGCC unit typically requires out-of-market revenues and (ii) such a unit can be modified to run as a combined cycle unit, which would not otherwise qualify for a MOPR exemption.⁷⁸

2. Requests for Rehearing

63. The Illinois Commission argues that subjecting IGCC units to the MOPR is inconsistent with the Commission's finding in the *April 2011 MOPR Order*, regarding the differences among certain exempt and non-exempt resources.⁷⁹ Specifically, the Illinois Commission asserts that because the *April 2011 MOPR Order* distinguished IGCC units from combustion turbine and combined cycle units due to their development times, it was error for the May 2013 Order to have found that IGCC units may nonetheless have an equal ability to suppress capacity clearing prices.

64. The Illinois Commission also challenges the May 2013 Order's finding that a MOPR exemption for IGCC units is unwarranted based on a consideration of the out-of-market revenues that these resources will typically require. The Illinois Commission argues that the assumption underlying this finding was the very basis for the Commission's holding in the *April 2011 MOPR Order* that coal, nuclear, and IGCC resources will generally require a long development time, will likely incur significant sunk costs prior to their participation in PJM's capacity auctions, and thus will not likely

⁷⁷ See PJM's April 9, 2013 Answer at 16.

⁷⁸ May 2013 Order, 143 FERC ¶ 61,090 at P 168.

⁷⁹ Illinois Commission Rehearing Request at 5 (citing *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 155).

be capable of suppressing capacity prices. The Illinois Commission further argues that subjecting IGCC units to the MOPR based on their asserted need for out-of-market revenues, is inconsistent with PJM's treatment of wind resources, which also receive out-of-market revenues in the form of production tax credits. The Illinois Commission asserts that, regardless, the Commission has previously rejected arguments that resources are required to demonstrate that they are not receiving revenues from outside PJM's markets.⁸⁰

65. The Illinois Commission further characterizes as speculative, and thus unjustified, PJM's asserted rationale that an IGCC resource should be subject to the MOPR because such a resource, once developed, could be converted into a combined cycle unit. The Illinois Commission adds, even if this risk were real, it would only support the application of the combined cycle MOPR benchmark to an IGCC resource operating as a combined cycle unit, not a separate benchmark based on the IGCC unit's costs prior to conversion (including costs attributable to processes that would not be performed were the unit to operate as a combined cycle unit). Finally, the Illinois Commission asserts that the application of the MOPR to the IGCC resources is unduly discriminatory, given the ability of self-supply entities in traditionally-regulated states to develop such a unit in conjunction with a self-supply MOPR exemption.

3. Commission Determination

66. For the reasons discussed below, we deny rehearing of the May 2013 Order regarding the Commission's acceptance of PJM's proposal to apply the MOPR to IGCC resources. The Illinois Commission argues that the May 2013 Order's application of the MOPR to IGCC units departs without justification from the *April 2011 MOPR Order*, which distinguished certain resource types from those that are subject to the MOPR. In the *April 2011 MOPR Order*, the Commission accepted the proposal to include wind and solar facilities on the list of MOPR-exempt resources, which at that time also included coal, nuclear and IGCC resources. As the Illinois Commission notes, in doing so the Commission distinguished natural gas combustion turbine units and combined cycle units from the exempt units, in part due to the combustion turbine and combined cycle units' short development time and relative cost advantages.

67. In this proceeding, however, PJM proposed to limit the MOPR "to apply only to the gas-fired resources that are most likely to be associated with offers that raise price suppression concerns, i.e., combustion turbine, combined cycle, and IGCC [resources]."⁸¹

⁸⁰ *Id.* at 5 (citing *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 133).

⁸¹ *See* PJM December 7, 2012 Transmittal Letter at 27.

PJM noted that this approach is superior to the assumption, as previously reflected in its tariff, that an IGCC plant would have competitive net new entry costs of zero, given the actual, far higher costs of an IGCC plant and given the approaches taken toward such projects in recent years which have raised doubts as to whether these costs will be recovered as competitive market prices. Finally, PJM raised concerns regarding the ability to eliminate the gasification component of an IGCC plant such that the project originally planned as an IGCC plant could become a combined cycle plant. Based on these concerns, we continue to find the relevant characteristics of an IGCC resource justify their inclusion in the MOPR, consistent with PJM's treatment of other natural gas-fired units.

68. The Illinois Commission argues that the May 2013 Order erred by relying on the out-of-market revenue an IGCC unit may require as a basis for subjecting such a resource to the MOPR, given that wind resources, which PJM recognizes as exempt from the MOPR, also rely on out-of-market revenue. The May 2013 Order, however, did not rely on any single factor in accepting PJM's proposal to subject IGCC resources to the MOPR, but rather on a balance of factors, including a finding that the development of an IGCC unit will typically require out-of-market revenues *and* that such a unit may be modified to run as a combined cycle unit.⁸² With respect to wind resources, their intermittent energy output makes the capacity value of those resources only a fraction of their nameplate capacity, and thus an ineffective mechanism to suppress capacity prices.

69. The Illinois Commission further argues that IGCC resources should be exempt from the MOPR for the same reason that coal and nuclear-fueled resources are exempt, i.e., based on their relative expense and long lead times. For the reasons summarized above, however, PJM appropriately supported its finding that an IGCC unit should be subject to the MOPR as it may be used to suppress prices. This was based in part on the fact that various stakeholders supporting the construction of the Taylorville Energy Center IGCC plant within PJM made several (ultimately unsuccessful) attempts to change state laws to increase end-use electric rates to help support the costs of the project.⁸³

70. The Illinois Commission also asserts as error the May 2013 Order's reliance on the convertibility of an IGCC unit into a combined cycle unit as a basis for subjecting such a resource to the MOPR. Contrary to the Illinois Commission's assertion, the concern noted in the May 2013 Order was not that an IGCC resource would operate as a

⁸² May 2013 Order, 143 FERC ¶ 61,090 at P 168.

⁸³ See PJM March 4, 2013 Deficiency Letter Response at 11.

conventional natural gas-fired combined cycle unit once developed. Rather, it was that an IGCC resource would modify its planned resource during the development process to be a conventional natural gas-fired combined cycle unit, eliminating the gasification components entirely. Applying the MOPR to IGCC plants ensures that a project that ultimately is installed as a combined cycle plant (to which MOPR would apply) does not evade the MOPR by being proposed as an IGCC when it is first offered into an RPM auction.

71. Finally, we reject the Illinois Commission's argument that application of the MOPR to IGCC resources is unduly discriminatory as between restructured and traditionally-regulated states, given that a self-supplying entity in a restructured state may be permitted to exempt its IGCC unit from the MOPR under PJM's self-supply exemption. As the Commission found in the May 2013 Order, and has held previously, according different treatment to restructured and traditionally-regulated states types does not amount to undue discrimination under the FPA due to the differences in incentives between the different regulatory models.⁸⁴ In any event, an IGCC unit that does not qualify for a MOPR exemption as a self-supply project may still apply for and receive, if eligible, an exemption through the competitive entry exemption or unit-specific review process.

E. Mitigation Period

1. May 2013 Order

72. The May 2013 Order rejected PJM's proposal to change the duration of mitigation from one to three years based on the Commission's rationale in considering a comparable proposal in the 2011 MOPR proceeding.⁸⁵ The Commission explained that when a new resource clears in PJM's capacity auction, it undertakes an obligation to begin construction in order to provide the capacity it will be obligated to make available in the corresponding delivery year. The Commission found that, under these circumstances, no developer would reasonably commence construction without the certainty that its project has been accepted by PJM as a new capacity resource. The Commission added that PJM's proposal could lead to over-mitigation by requiring a commercially operational resource to bid at an offer floor that would likely be substantially above its going-forward costs. Finally, the Commission found that the narrowed application of the MOPR to

⁸⁴ May 2013 Order, 143 FERC ¶ 61,090 at P 167.

⁸⁵ *Id.* P 210 (citing *April 2011 MOPR Order*, 135 FERC ¶ 61,022 at P 175; 160-62; *November 2011 MOPR Order*, 137 FERC ¶ 61,145 at P 122).

those deemed more likely to present price suppression concerns does not justify an unreasonably prolonged mitigation term.⁸⁶

2. Requests for Rehearing

73. FirstEnergy argues that a resource that is subject to the MOPR for only a single year may be entering the market under anomalous circumstances. FirstEnergy argues that a mitigation period of three-years duration, as proposed by PJM, is essential to address this market risk. The Competitive Markets Coalition agrees, stating that a longer mitigation period is appropriate given the fluctuation of offer floors on a year-to-year basis and the inherent uncertainties in estimating new entry costs. The Competitive Markets Coalition adds that a three-year mitigation period is appropriate because it allows more time for uneconomic new entry to be absorbed by the market.

74. P3 argues that, in rejecting PJM's proposal to extend the MOPR mitigation period mitigation from one to three years, the May 2013 Order erroneously relied on the Commission's prior findings on this issue in the 2011 MOPR proceeding, regarding the significance that should be attached to a new resource's ability to clear in PJM's auction. P3 argues that clearing an auction should not result in a free pass to exercise buyer-side market power. The Competitive Markets Coalition agrees that the Commission erred in relying on its prior findings in the 2011 MOPR proceeding.

75. P3 and the Competitive Markets Coalition also argue that the May 2013 Order departs from the Commission's prior rulings on the buyer-side market power mitigation terms of the NYISO capacity market. First, the Competitive Markets Coalition and P3 argue that, in a 2010 NYISO proceeding, the Commission accepted a mitigation period that, in effect, mitigates resources for a minimum two-year period.⁸⁷ P3 also asserts that, in a 2012 NYISO complaint proceeding, the Commission required NYISO to re-apply its market power screen to the complainant's project, even though that project had already participated in and cleared several prior auctions.⁸⁸

⁸⁶ *Id.* P 212.

⁸⁷ See Competitive Markets Coalition Rehearing Request at 25-26 and P3 Rehearing Request at 10 (citing *New York Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,178, at P 49 (2010) (*In-City Buyer-Side Mitigation Order*)).

⁸⁸ See P3 Rehearing Request at 11 (citing *Astoria Generating Co. L.P. v. New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189, at P 141 (2012) (*Astoria*)).

76. Finally, P3 challenges the May 2013 Order's finding that when a new resource clears in PJM's capacity auction, it is required to begin construction in order to provide the capacity it will be obligated to make available in the corresponding delivery year. P3 asserts, to the contrary, that even subsidized resources may delay their construction starts.

3. Commission Determination

77. For the reasons discussed below, we deny rehearing. In the May 2013 Order, the Commission rejected PJM's proposal to change the duration of mitigation under the MOPR from one to three years.⁸⁹ We reject the arguments made by FirstEnergy and the Competitive Markets Coalition that a mitigation term that requires a single-year clearance is inadequate because, it is claimed, an uneconomic generator may be able to clear in a single auction solely because the market is experiencing temporary anomalous conditions. We continue to find that removing the MOPR offer floor after a resource has cleared appropriately reflects competitive offer behavior. If a generator clears a BRA, it incurs an obligation either to complete construction and become operational by the associated delivery year three years later, or else to find an acceptable replacement resource bilaterally or through an incremental auction. If the resource is to become operational by the delivery year, it typically must begin construction shortly after clearing its first BRA. Construction costs incurred prior to subsequent BRAs are sunk costs; they are not part of its going-forward costs that will affect its future decisions because competitive offers are based on going-forward costs, not sunk costs. The one year application of the MOPR therefore permits a resource to submit a competitive offer price reflecting its going forward costs and excluding construction costs incurred after the resource has cleared.

78. By contrast, a three-year clearance requirement, as advocated by FirstEnergy and the Competitive Markets Coalition, would prevent developers from offering at their going forward costs for at least two years beyond the first auction in which they clear, and instead would force these entities to offer at their Net CONE. That would create the risk that the generator would fail to clear in the second and third auctions, even though its going forward costs are below the clearing price and below the going forward costs of other, higher-cost resources. Such a proposal could deter legitimate entry by creating an extra risk that a resource may not clear at all in the second and third years, depriving it of any capacity revenue.

⁸⁹ As noted earlier, PJM must file within 30 days of the date of this order if it chooses to withdraw the filing due to the Commission's revision.

79. We also reject P3's argument that a three-year auction requirement is appropriate because it would prevent any generator that receives a discriminatory subsidy from exercising buyer-side market power. Even if a generator has received a discriminatory subsidy, it is subject to the MOPR provisions that limit its ability to exercise buyer-side market power. The subsidy, therefore, would not artificially suppress the market price, if the generator clears the auction. It is appropriate in this instance, then, to allow a generator, including one that has received a discriminatory subsidy, to bid into the market at a competitive price determined by the default offer or its actual costs. Once a generator has cleared in one auction, it will incur fixed construction costs if it intends to complete construction in advance of the applicable delivery year. It would be inefficient and inconsistent with competitive behavior to impose an offer floor at or near Net CONE on such a resource that has already incurred fixed construction costs.

80. P3 and the Competitive Markets Coalition also argue that May 2013 Order's rejection of PJM's proposed three-year mitigation term is inconsistent with the Commission's rulings in the *In-City Buyer-Side Mitigation Order* and *Astoria*. We disagree. In the *In-City Buyer-Side Mitigation Order*, the Commission accepted a provision that removes NYISO's offer floor after a resource has cleared in twelve monthly auctions, whether on a consecutive basis, or otherwise, thus allowing for the possibility that mitigation may extend beyond a one-year term. The NYISO capacity market, which is a monthly spot market, however, differs from the PJM market, which procures capacity for an *annual* period. While the number of auctions that must be cleared before removing the offer floor in NYISO's market differs from PJM's market, the time period over which capacity revenues must equal or exceed Net CONE is an equivalent twelve month period.

81. As noted above, moreover, PJM operates a three-year forward auction, while NYISO operates a monthly spot auction held only a few days before the beginning of the obligation month. PJM's forward auction allows a generator that has not yet been built to participate in the auction. Since PJM's BRA is held three years in advance of the delivery year and gas-fired generators (the only generators in PJM subject to the MOPR) typically can be built within three years, a developer of a gas-fired generator can avoid incurring most construction costs until after the auction is concluded and the auction results are known. By contrast, since the NYISO spot auction is held only a few days in advance of the obligation month, only generators that are already built can participate in the auction. As such, PJM's auction operates as an *ex ante* consideration of a resource's economic viability, able to test in advance of construction whether that resource is economic. By contrast, NYISO's auction serves as an *ex post* examination of a resource's economic viability, able to test whether a resource is economic only after the resource has been built.

III. Compliance Filing

82. On June 3, 2013, PJM submitted a compliance filing in response to the May 2013 Order. Notice of PJM's filing was published in the *Federal Register*, 78 Fed. Reg. 32,383 (2013), with interventions, protests and comments due on or before June 24, 2013.

83. Protests were timely filed by NRG and FirstEnergy. Answers were submitted by the PJM Load Group, PJM, FirstEnergy, and NRG. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁹⁰ prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the aforementioned answers because they have assisted us in our decision-making process.

A. Net Thresholds

1. May 2013 Order

84. The May 2013 Order conditionally accepted PJM's proposal on this issue, subject to PJM submitting tariff language obligating PJM to review and, if necessary, revise its net position thresholds, as may be necessary.⁹¹

2. Compliance Proposal

85. PJM proposes revised tariff language memorializing its obligation to review its net position thresholds once every four years, effective as of the commencement of the June 1, 2020 delivery year,⁹² and consistent with the four-year review period as applicable to PJM's capacity auction parameters.⁹³ PJM adds that, to address transparency concerns, it proposes to cite certain non-exclusive, non-mandatory guidelines it will be authorized (but not required) to consider in determining whether any changes are needed to its thresholds. PJM argues that it is appropriate that these guidelines not be exclusive, or mandatory, given that the considerations and analytical approaches required may change over time, and given PJM's obligation and ability to

⁹⁰ 18 C.F.R § 385.213(a)(2) (2015).

⁹¹ May 2013 Order, 143 FERC ¶ 61,090 at P 113.

⁹² See PJM OATT at proposed Attachment DD, section 5.14(h)(6)(v).

⁹³ See PJM Filing at 8 (citing *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER13-1044-000 (May 2, 2013)).

make an appropriate independent determination, as guided by stakeholder input, with any resulting proposed tariff changes subject to approval by the Commission. PJM states that its review criteria are consistent with the criteria relied upon by PJM to develop its existing thresholds.⁹⁴

86. PJM states that its proposed periodic review provision further specifies that PJM will prepare a recommendation, based on its review, either to modify or retain its existing thresholds and will post that recommendation for stakeholder comment. PJM states that its proposed provision further provides that if PJM's determination reveals that threshold changes are required, PJM will file those changes with the Commission by October 1, prior to the conduct of the capacity auction for the first delivery year in which the new values would be applied.

3. Protests and Comments

87. NRG objects to PJM's proposed standard as overly vague. Specifically, NRG asserts that while PJM proposes to balance the need to protect the market with the need to accommodate the "normal business operations" of the self-supply entity, PJM provides no detail as to how it will decide what the appropriate balance might be. NRG further asserts that the term "normal business operations" is left undefined. NRG also objects to the lack of transparency associated with PJM's proposed balancing of interests, arguing that the assessment of "normal business operations" will presumably involve the same type of confidential portfolio review that PJM utilized in setting its existing thresholds.

88. NRG argues that PJM should be obligated to determine the net-short level at which a load serving entity's strategy to offer a new unit, or portion of a new unit, as a price taker becomes profitable, taking into account the net cost of the new unit, and to update the thresholds on this basis. NRG adds that the determination made by PJM

⁹⁴ Specifically, PJM proposes revised tariff language stating that its periodic review:

[M]ay include, without limitation, analyses under various appropriate scenarios of the minimum net short quantities at which the benefit to [a load serving entity] of a clearing price reduction for its capacity purchases from the [capacity] Auction outweighs the cost to the [load serving entity] of a new generating unit that is offered at an uneconomic price, and may, to the extent appropriate, reasonably balance the need to protect the market with the need to accommodate the normal business operations of Self-Supply [load serving entities].

See proposed PJM OATT at Attachment DD, section 5.14(h)(6)(v).

should be replicable by market participants. NRG asserts that any such analyses should be applied to multiple years of auction data and should also consider scenarios other than ownership of an entire unit by a single load serving entity. NRG further asserts that, because many cooperatives and municipal organizations engage in joint development of new capacity, sensitivities that consider 50 percent and 75 percent of a combined cycle unit should be required.

89. FirstEnergy and NRG object to PJM's proposal to review its thresholds every four years, as opposed to a shorter period. FirstEnergy argues that PJM's proposal lacks evidentiary support. NRG further argues that PJM's proposed lag time fails to address the May 2013 Order's concern that market conditions may evolve and may pose risks, if not appropriately reflected in PJM's thresholds. NRG asserts that a shorter interval is required, given that PJM's thresholds are new and untested. FirstEnergy requests that PJM be required to review and revise its threshold levels annually. Alternatively, FirstEnergy requests that PJM be required to analyze market data from all capacity auctions that have occurred since its last review. NRG argues that PJM should be required to use actual net-short positions and actual supply and demand curves for the relevant year. NRG submits that, alternatively, PJM should be required to adopt the same four-year review and annual update schedule as required under PJM's existing Energy and Ancillary Services offset mechanism.

90. NRG argues that if PJM's compliance approach is accepted, PJM should be required to: (i) make a section 205 filing reflecting the outcome of its review (regardless of whether it is, or is not, proposing changes); (ii) post the outcome of its review and its proposal to update the thresholds by June 1; and (iii) identify in its posting any instances in which the balancing of a self-supply entity's business interests caused PJM to deviate from its purely mathematical analysis of what defines a net benefit.

4. PJM's Answer

91. PJM responds to NRG's assertion that PJM's proposed standard grants undue discretion to PJM and is otherwise vague. PJM notes that its proposed standard appropriately maintains PJM's ability to submit a section 205 proposal that it deems warranted, with market participants thereafter free to challenge any such filing.

92. PJM also responds to NRG's objection to the types of analyses PJM will consider in reviewing its thresholds. PJM asserts that regardless of the standards that PJM deems relevant, NRG will be free to advance any alternative analysis it deems relevant, whether in the stakeholder process or in response to PJM's filing. PJM also responds to NRG's proposal that PJM, as part of its periodic review, should be required to include an automatic, formulaic change applicable to its self-supply exemption thresholds. PJM asserts that such a proposal is beyond the scope of this compliance proceeding.

93. PJM also responds to intervenors' objections to PJM's proposed four-year review cycle. PJM argues that intervenors fail to explain why the same four-year review cycle utilized by PJM in the case of its auction parameters would be rendered inappropriate in the case of its net position thresholds.

5. Additional Answers

94. The PJM Load Group, in its answer, responds to NRG's protest and reiterates arguments raised by PJM's answer, as summarized above. NRG responds that PJM should not be given unlimited discretion to determine when and how to revise its net position thresholds. NRG argues that PJM's compliance directive, in this instance, is to establish an appropriate review standard that will ensure that its net position thresholds remain just and reasonable.

6. Commission Determination

95. For the reasons discussed below, we accept PJM's proposed revisions providing for the periodic review of its net thresholds as consistent with the requirements of the May 2013 Order.⁹⁵

96. PJM asserts, and we agree, that a review of PJM's thresholds on a four-year cycle is an appropriate timeframe, consistent with PJM's periodic review of its related capacity market parameters, including the Variable Resource Requirement (VRR) Curve and CONE updates. In addition, should PJM determine that its currently-effective net thresholds are contributing to undue price suppression in PJM's capacity market, PJM, under its proposal, will not be required to delay its reassessment of its net thresholds. Accordingly, while review under the four-year timeline proposed by PJM should suffice to ensure that changing market fundamentals do not impair the efficacy of PJM's net thresholds, PJM's section 205 filing rights provide additional assurance that new entry into PJM's capacity market will continue to be monitored, as designed under the MOPR.

97. NRG and FirstEnergy object to PJM's proposed four-year review cycle, arguing that an annual review should be adopted, instead, consistent with PJM's annual formula rate change requirements, as applicable to PJM's capacity market parameters. We are not persuaded, however, that PJM's proposed four year frequency of review is unjust and unreasonable. Nor are we persuaded that PJM's review of its auction parameters is analogous to its assessments of its net thresholds.

⁹⁵ The Commission will accept PJM's compliance filing after 30 days if PJM does not withdraw its tariff filing within that time.

98. We also accept PJM's proposed non-exclusive, non-mandatory guidelines for determining whether any changes may be needed to its net thresholds. Specifically, we agree that a requirement that these standards be specified in detail and remain fixed would deprive PJM of the flexibility that may be required in appropriately assessing both existing and evolving new entry conditions. Accordingly, we reject NRG's argument that PJM's proposed standards are overly vague. As PJM notes, because the relevant factors are subject to change, from one four-year review to the next, a requirement that these factors be specified in PJM's tariff would require PJM to file those standards in advance of each review. Moreover, under PJM's proposal, if PJM's determination reveals that revised net thresholds are required, those changes will be filed with the Commission for approval prior to the conduct of the capacity auction for the first delivery year in which the new values would be applied. Under these circumstances, we agree that requiring PJM to submit additional filings to update its methodology would be unnecessarily duplicative.

99. With respect to arguments that the Commission should prescribe to PJM the various types analyses it should undertake, such as scenarios other than ownership of an entire unit by a single load-serving entity, we find that PJM's proposed tariff language is just and reasonable, given that it does not limit PJM to certain types of analyses. The periodic review, rather, "*may include, without limitation, analyses under various appropriate scenarios*" at which the benefit to a load-serving entity of a lower clearing price outweighs the cost of making an uneconomic offer into PJM's capacity auction.⁹⁶ In addition, once PJM completes its review, it will then propose to either modify or maintain the existing thresholds, and "*post publicly and solicit stakeholder comment regarding the proposal.*"⁹⁷ Nothing in PJM's tariff language forecloses market participants from advancing alternative analyses or considerations in the stakeholder process that will accompany PJM's periodic reviews, or prevent interested parties from presenting such alternative analyses to the Commission in the ensuing section 205 proceeding on any change that may be proposed by PJM to its net thresholds.

100. Finally, we reject, as beyond the scope of this compliance proceeding, intervenors requests that PJM be required to adopt various additional obligations as a supplement to PJM's periodic review mechanism. These revisions were not part of the condition established in the May 2013 Order.

⁹⁶ See PJM OATT at Attachment DD, sections 5.14 and 8.1.0.

⁹⁷ *Id.*

B. Reinstated Provisions**1. May 2013 Order**

101. The May 2013 Order accepted PJM's proposed categorical exemptions for self-supply and competitive entry, subject to PJM's retention of its unit-specific review process.⁹⁸

2. Compliance Proposal

102. PJM proposes to restore its unit-specific review process.⁹⁹ PJM also proposes to grant a new entry auction participant the option "at its election, [to] submit a request for a Unit-Specific Exemption in addition to, or in lieu of, a request for a Self-Supply Exemption or a Competitive Entry Exemption." PJM asserts that because the deadline for seeking unit-specific review and the deadline for seeking either of PJM's two categorical exemptions is the same, and because the deadlines for the Market Monitor's and PJM's determinations relating to these requests are also the same, it is appropriate that PJM entertain and administer duplicative requests.

3. Protests and Comments

103. FirstEnergy argues that PJM's proposal to give a capacity seller the right to seek unit-specific review while simultaneously seeking a categorical exemption fails to comply with the May 2013 Order's directive that the unit-specific review process be made available only with respect to new entry resource that would not qualify for a categorical exemption. FirstEnergy argues that PJM's tariff should be required to provide that entities may apply for a categorical exemption or seek unit-specific review (but not both) and, if denied, will be required to submit an offer into PJM's auction, subject to the MOPR.

4. PJM's Answer

104. PJM responds to FirstEnergy's argument regarding PJM's proposed allowance for simultaneous MOPR exemption requests. PJM argues that its proposal is consistent with the May 2013 Order, which contemplates the availability of unit-specific review in the event a new-entry resource does qualify for a categorical exemption. PJM adds that the

⁹⁸ May 2013 Order, 143 FERC ¶ 61,090 at P 141.

⁹⁹ See PJM OATT at proposed Attachment DD, section 5.14(h)(8).

parallel submission and processing of these requests will provide PJM and the Market Monitor the time they will require to render their determinations.

5. Additional Answers

105. The PJM Load Group characterizes FirstEnergy's protest as a collateral attack of the May 2013 Order's finding that "some resources, including those that would fail to qualify for PJM's proposed exemptions, may nonetheless have competitive costs that fall below the benchmark price."¹⁰⁰

106. FirstEnergy responds that the May 2013 Order is silent on the issue of whether an entity may apply for a categorical exemption and seek unit-specific review on a simultaneous basis.

6. Commission Determination

107. For the reasons discussed below, we accept PJM's compliance proposal. FirstEnergy argues that, to comply with the condition in the May 2013 Order, PJM's tariff is required to allow a prospective resource seeking a MOPR exemption to apply for a categorical exemption or seek unit-specific review, but not both. We disagree. While the May 2013 Order found that PJM's categorical exemptions "will generally allow qualifying market participants to avoid the need of seeking a unit-specific review of their offers," the Commission did not prohibit PJM from allowing a resource to seek a categorical exemption as well as unit-specific review. Doing so is consistent with the reasoning in May 2013 Order supporting continuation of unit-specific review, because some resources that do not qualify for a categorical exemption might still merit a unit-specific exemption. Allowing a resource to seek both at the same time merely provides for administrative efficiency.

C. Other Matters

108. Pursuant to the May 2013 Order, PJM proposes additional tariff language, e.g., defining "repowering" projects; removing a reference to an outdated term; adding clarifying language regarding cogeneration and combined heat and power facilities.¹⁰¹ We accept PJM's proposed revisions.

¹⁰⁰ See PJM Load Group Answer at 5 (citing May 2013 Order, 143 FERC ¶ 61,090 at P 143).

¹⁰¹ See PJM June 3, 2013 compliance filing at 2-3.

Docket Nos. ER13-535-002 and ER13-535-003

- 39 -

The Commission orders:

(A) Requests for rehearing of the May 2013 Order are denied, as discussed in the body of this order.

(B) PJM's compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.