



FERC PJM MOPR ORDER

OVERVIEW

On Dec. 19, 2019, the Federal Energy Regulatory Commission (FERC) issued its long-awaited order on PJM Interconnection, L.L.C.'s (PJM) capacity construct, the reliability pricing model (RPM). The December 2019 Order is a direct attack on the public power business model by removing the right to self-supply resources by significantly expanding the Minimum Offer Price Rule (MOPR). For public power, this means that every new resource built in the future risks not clearing the capacity auction, resulting in public power utilities and their customer-owners potentially paying twice for capacity.

BACKGROUND

On June 29, 2018, FERC rejected two proposals filed by PJM purportedly designed "to address supply-side state subsidies and their impact on the determination of just and reasonable prices in the PJM capacity market" and found that PJM's existing MOPR was unjust and unreasonable because it failed to address subsidies to existing resources that suppress capacity market clearing prices.

The target of FERC's determination included, for example, subsidies to nuclear facilities from Illinois and Ohio that were being used by the utility owners to reduce their respective capacity offer prices in order to ensure that the nuclear facilities cleared the capacity auctions and were paid the clearing prices.

The MOPR works by requiring capacity resources offering into an auction to offer at a price floor. If the resource does not clear the auction at the price floor, it is not selected as a capacity resource and does not receive capacity revenues. The MOPR was designed to protect the market from a net buyer of capacity exercising "buyer-side market power" by driving prices to unreasonably low levels. The theory is that this could be accomplished through financing the uncompetitive entry (namely, natural gas plants that can be constructed and online within a three-year window), 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 the RPM is sufficiently small, an uneconomic entry would reduce the cost of procuring this portion by less than the amount spent on the uneconomic entry.

Nonetheless, FERC's December 2019 Order directs PJM to expand the MOPR beyond what was proposed by PJM or discussed in the June 29, 2018 Order, purportedly to protect the competitiveness of the PJM capacity construct from "state-subsidized" electric generation resources. The Order expands application of the MOPR to any new or existing resource that receives, or is entitled to receive, a state subsidy, unless an exemption applies. FERC defines a state subsidy broadly as: any direct or indirect payment or other financial benefit that is a result of any action of a state government, a political subdivision or agency of a state or an electric cooperative that is connected to the procurement of capacity sold at wholesale or an attribute of the generation process for capacity sold at wholesale or that will support the construction, development or operation of a new or existing capacity resource or that could have the effect of allowing a resource to clear in any PJM auction. Accordingly, "state-subsidized" resource now captures generating facilities owned or contracted by public power utilities, including individual municipal utilities and joint action agencies.

There are several exemptions from the MOPR, including: existing renewable resources that are participating in state renewable portfolio programs; existing demand response, energy efficiency and storage resources; existing self-supply resources; and competitive resources that do not receive state subsidies. Additionally, the existing unit-specific exemption may be used for a new or existing resource that does not otherwise qualify for an exemption. The unit-specific exemption requires review and approval from PJM.

The Commission's definition inappropriately deems self-supply resources built or supported by public power utilities as "subsidized" because the customer-owners finance the self-supply resources and have take or pay contracts and the financial support and revenue from those contracts is considered "out of market" support from an entity authorized to exist pursuant to state law.

Each of the default offer price floors for capacity resources will be administratively determined by PJM.

One of the December 2019 Order's fundamental errors is claiming that PJM's resource adequacy construct is actually a market and that competitive markets require administrative interference to determine price outcomes. The Commission says that the core problem it is addressing is the price distortion caused by subsidized resources in "a capacity market that relies on competitive actions to set just and reasonable rates." In reality, RPM is a mandatory resource adequacy construct that offers a single product. "Competitive" prices are determined by PJM applying cost development guidelines with no empirical link to actual market conditions or consumer decisions. Ironically, by its latest action, the Commission has removed any remaining market component of RPM by requiring all "competitive" offers to be determined administratively in Valley Forge, Pennsylvania.

AMP/OMEA CONCERNS

The Order: (1) disregards and severely damages the public power business model; (2) will increase prices to customers; and, (3) moves the PJM capacity construct further from a competitive market. Applying the MOPR to new public power resources will put those resources at risk of not clearing the capacity auction each year, potentially requiring customers to pay twice for capacity. Additionally, the order negatively impacts the ability to develop renewable and emerging technologies and inhibits efforts to transition to clean energy resources.

On Jan. 21, 2020, AMP joined the American Public Power Association (APPA) and the Public Power Association of New Jersey (PPANJ) in filing a request for rehearing of the FERC PJM MOPR Order.

The joint rehearing request argues that FERC overstepped its jurisdiction and ignored substantial evidence in reaching the conclusion that the public power business model should be considered a state subsidy. The rehearing request asks FERC to reconsider its ruling and exclude public power from application of the MOPR.

CONCLUSION

Simply put, the FERC PJM MOPR Order benefits only a small group of merchant generators and disadvantages public power and self-supply entities. Ironically, this version removes any market element from this administrative construct. As the 28th major rule change since its inception in 2011, this is another clear example that mandatory capacity constructs like PJM's RPM are unworkable.

As such, we request that Congress weigh in with FERC on the importance of protecting the public power business model.

American Municipal Power, Inc. (AMP) is the nonprofit wholesale power supplier and services provider for 135 members, including 134 member municipal electric systems in Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia, as well as the Delaware Municipal Electric Corporation — a joint action agency with nine member communities. Combined, these member utilities serve more than 650,000 customers. AMP is one of the largest organizations of its type in the country and has total assets of more than \$6.7 billion, annual revenues of approximately \$1.2 billion and total annual sales of approximately 15 million MWh. For more information, please contact Jolene Thompson, AMP Executive Vice President of Member Services & External Affairs at 614-519-8901 or jthompson@amppartners.org.

