UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF THE AMERICAN COUNCIL ON RENEWABLE ENERGY (ACORE)

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,[1] ACORE respectfully submits these comments in response to the Commission's June 19, 2018 order establishing a paper hearing on PJM capacity market design.

ACORE is a national non-profit organization dedicated to advancing the renewable energy sector through market development, policy changes and financial innovation.

I. Summary

In previous communications to the Commission, ACORE has stated that "Wholesale market rules should respect state and locally governed utility policies and resource choices without making customers pay twice for the same service. "Accommodating" state and local utility policies by forcing customers to pay once for the capacity obtained pursuant to state and local policies and again for resources allowed to clear in wholesale markets does not result in just and reasonable rates."[2]

ACORE joined other clean energy associations in submitting a request for rehearing of the June 29 order, and we reserve the right to challenge all of aspects of the order expressed in that pleading. Here we provide comments on capacity market design and answer questions posed by the Commission in this paper hearing.

To minimize the potential damage caused by broad Minimum Offer Price Rule (MOPR) application, ACORE supports narrow application of the MOPR and a flexible and workable Fixed Resource Requirement (FRR). PJM's MOPR and FRR proposals are designed to counteract the effects of state-sponsored support for specific generation resources. PJM has proposed that the MOPR and FRR would apply to state policy support for resources with "Material Subsidies" defined as "material payments, concessions, rebates, or subsidies directly or indirectly from any governmental entity connected to the construction, development, operation, or clearing in any capacity auction, of the capacity resources, or . . . other material support or payments obtained in any state sponsored or state-mandated processes[.]"[3] While PJM's proposed

[1] 18 CFR § 385.212
[2] https://elcon.org/coalition-letter-ferc-chairman-commissioners-re-electricity-market-principles/
[3] Calpine Corporation et al v. PJM Interconnection, LLC, 163 FERC ¶ 61,1236 at PP 17 (2018).

definition includes a number of exemptions[4], it is clear that state renewable portfolio standard (RPS) programs are considered material subsidies. State policies, including RPS, often play an important role in ensuring electric system resource diversification, reliability and affordability. A narrow application of the MOPR and a more flexible FRR would better accommodate such state policies and consumer interests. With regard to RPS policies, which have played a major role in resource diversification and supporting deployment of renewable energy generation, we agree with the statement in Commissioner Cheryl LaFleur's dissenting opinion: "State renewable portfolio standards (RPS) are generally longstanding state programs that often pre-date the capacity market, and are not intended to prop up specific uneconomic units that would otherwise leave the market, but rather to help shape a state's resource mix over time through competitive procurements. As such, I believe that current state RPS programs in PJM are distinguishable from other state support programs that might pose a threat to the viability of the PJM capacity market."[5]

II. MOPR Should Be Applied Only in Narrow, Well-Defined Circumstances

Since the MOPR can cause customers to pay twice for capacity, its application should be as narrow as possible to address only clearly identified harm. The Commission's June order stated, "if PJM's MOPR applies to state subsidized resources with few or no exceptions, and yet the states continue to support those resources, some ratepayers may be obligated to pay for capacity both through the state programs providing out-of-market support and through the capacity market."[6] We offer these suggestions to narrowly tailor MOPR application:

- **The MOPR should not apply to voluntary Renewable Energy Certificate (REC) sales**. We are pleased that PJM's proposal clarifies this point. This proceeding concerns the impact of state policies on markets. There is a large market for RECs that are based on purely voluntary actions by market participants, separate from any public policy. Customers including the very large and growing group of corporate energy customers often procure RECs in bundled or unbundled contracts from capacity sellers in PJM and other RTO areas. These contracts reflect consumer preferences, no different from consumers choosing one type of car over another, and the RECs are outside of the Commission's jurisdiction. We request that the Commission clarify that such revenue sources should not be mitigated.

- **The MOPR should not apply to policies unknown in value at the time of capacity market auctions**. RECs that are associated with state policies, known as "compliance RECs," should not be considered material subsidies. These RECs are typically unknown in value at the time of capacity market auctions, vary over time, and are not used in the financing of new generation

[4] "Specifically, PJM proposes to exclude: (1) payments (including payments in lieu of taxes), concessions, rebates, subsidies, or incentives designed to incent, or participation in a program, contract or other arrangement that utilizes criteria designed to incent or promote, general industrial development in an area; (2) payments, concessions, rebates, subsidies or incentives designed to incent, or participation in a program, contract or other arrangements from a county or other local governmental authority using eligibility or selection criteria designed to incent, siting facilities in that county or locality rather than another county or locality; or (3) general government production tax credits, investment tax credits, and similar tax advantages or incentives that are available to generators without regard to the geographic location of the generation." Id. at 17.

[5] ORDER REJECTING PROPOSED TARIFF REVISIONS, GRANTING IN PART AND DENYING IN PART COMPLAINT, AND INSTITUTING PROCEEDING UNDER SECTION 206 OF THE FEDERAL POWER ACT, June 29, 2018. Dockets No. ER18-1314-000, ER18-1314-001, EL18-178, LaFleur, Commissioner, dissenting.

[6] FERC June 29 Order at Par. 159.

projects. We request the Commission clarify that a policy that results in unknown, unpredictable revenues at the time the capacity seller must either bid or opt for the FRR option, should not be considered material actionable subsidies.

- **The MOPR should not apply to small generators below 20 MW in size.** There are administrative costs associated with project-by-project applications of bid mitigation, both for the capacity seller and PJM. Applying the MOPR to small generators carries costs with only *de minimus* benefit. Since capacity markets trade "unforced capacity," the 20 MW exemption should apply to the unforced capacity of a unit.

- **The MOPR should not apply to policies that are competitive, and thus compatible with competitive market operation.** Outcomes of competitive processes should not be considered market distortions. Revenues from RECs or power purchase agreements (PPAs), where many sellers compete reflect competitive market dynamics, should not be considered material actionable subsidies.

- **The MOPR should not apply to low or *de minimus* levels of state incentives, and there should be an opportunity for resource-specific bids reflecting actual incentives received.** Increasingly, renewable projects are being developed without any policy support. There should be an option to have no MOPR apply when state policy support is *de minimus* or not present.

- **The MOPR should not apply to federal incentives.** Congress could not have intended that one of its laws be used to mitigate another. The Federal Power Act should not be used to mitigate Congressionally passed tax credits. The Production Tax Credit (PTC) and Investment Tax Credit (ITC) should not be considered actionable subsidies.

- **The MOPR should not apply differently to state resource policies applied to sources owned by independent power companies versus units in the rate base of vertically integrated utilities.** Approximately 25 percent of the generation in PJM receives state policy support in the form of retail rate recovery.[7] There should be no legal distinction between this form of support and state RPS programs.

III. The Resource-Specific Fixed Resource Requirement (FRR-RS) Should be Workable and Flexible

State renewable energy policies often internalize external costs borne by consumers, such as the impact of environmental emissions, and are outside of the Commission's jurisdiction. ACORE's view is that such policies should not be subject to the MOPR[8], and ACORE therefore supports a workable and flexible FRR. We agree with the Commission's finding that "it may be just and reasonable to accommodate resources that receive out-of-market support and mitigate or avoid the potential for double payment and over procurement, by implementing a resource-specific FRR Alternative option."[9]

[7] PJM Capacity Repricing filing, ER18-1314 at 9.
[8] Rehearing request of Clean Energy Associations in ER18-1314, page 15.
[9] FERC June 29 Order at Par. 160.

To successfully implement the Commission's FRR Alternative, ACORE supports the following FRR-RS design elements:

- The treatment of load and resources under the FRR-RS, together with capacity procurement under the Reliability Pricing Model (RPM), should continue to satisfy PJM's RTO-wide and locational resource adequacy objectives.
- Price formation under RPM should continue attracting and retaining sufficient resources to meet resource adequacy objectives.
- Subject to these resource adequacy and price formation goals, the FRR-RS should be as flexible as possible to best accommodate resources that are receiving support according to state policy objectives.
- Through RPM and the FRR-RS, the contributions to resource adequacy of all capacity resources should be recognized (loads should not have to "pay twice" for capacity).
- All resources that provide capacity, whether cleared through RPM or under the FRR-RS, should provide the same Capacity Performance product. There should be no difference in the obligations of RPM and FRR-RS-committed resources; the only difference is in how the resources are contracted and compensated. All provisions of the PJM Tariff and associated agreements should apply equally to FRR-RS-cleared and RPM-cleared resources to the maximum extent.
- The introduction of the FRR-RS rules, and of the expanded MOPR rules they will accompany, should be coordinated to ensure a smooth transition and minimize uncertainty and disruption in the capacity market.
- Allow for a smooth transition by giving states enough time to work through any difficult implementation issues before fully imposing the MOPR. States must be able to understand the new rules and clarify state law as needed to take full advantage of FRR-RS optionality. Because implementing the FRR-RS effectively will require new regulation and/or legislation in many states, a transition mechanism must be established that allows for these processes to be carried out without forcing customers to pay excess costs in the interim.

We appreciate the opportunity to provide comments. Respectfully submitted October 2, 2018.

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