

I. ABOUT THE ADVANCED ENERGY BUYERS GROUP

The Advanced Energy Buyers Group is a business-led coalition of large energy users engaging on policies to expand opportunities to procure energy that is secure, clean, and affordable. Members of the Buyers Group are market leaders and major employers spanning different industry segments, including technology, retail, and manufacturing. Our companies are among the 71% of Fortune 100 companies and 43% of Fortune 500 companies that have established renewable and/or climate targets as part of our corporate sustainability commitments. We share a common interest in expanding our use of advanced energy, such as renewable energy like wind, solar, geothermal, and hydropower; demand-side resources like energy efficiency, demand response, and energy storage; and onsite generation from solar photovoltaics, advanced natural gas turbines, and fuel cells.

AEBG has submitted several previous comments¹ in response to the expanded MOPR, expressing our opposition to this sweeping policy change that seeks to *mitigate* rather than *accommodate* state policies and therefore risks increasing customer costs and eroding states' participation in competitive, regional markets that have brought many consumer benefits.² We have also specifically emphasized the importance of avoiding application of the expanded MOPR to voluntary, bilateral transactions such as those entered into by members of the Buyers Group,

¹ See Initial Comments of Advanced Energy Buyers Group, Docket No. EL16-49 et al. (October 2, 2018); Reply Comments of Advanced Energy Buyers Group, Docket No. EL16-49 et al. (November 6, 2018); Request for Clarification, or, in the Alternative, Rehearing of Advanced Energy Buyers Group in Docket No. EL 16-49 et al. (January 21, 2020); Comments of Advanced Energy Buyers Group in Docket No. EL 16-49 et al. (May 15, 2020).

² For more information on why AEBG supports the preservation and expansion of organized, competitive wholesale markets, see Advanced Energy Buyers Group, *Organized Wholesale Markets and Corporate Advanced Energy Procurement: How competitive markets help commercial and industrial buyers meet their sustainability goals, and how they can be improved* (Jan. 2021), available at <https://www.aee.net/aee-reports/organized-wholesale-markets-and-corporate-advanced-energy-procurement>.

which are an important and growing driver of renewable energy demand in PJM and across the country.

II. RESPONSES TO SELECT POST-TECHNICAL CONFERENCE QUESTIONS

(6) Please explain whether the implementation of PJM’s Expanded MOPR has led or may lead to unforeseen impacts, including those enumerated below:

c. Does the Expanded MOPR have any impact on the ability of resources to engage in private voluntary, bilateral transactions?

The expanded MOPR has had a detrimental impact on private voluntary, bilateral transactions despite the Commission’s intent to shield such transactions from the impacts of the policy—a decision that AEBG encouraged and supported. First, we have found that many projects with voluntary offtakers have elected to undergo a resource-specific review rather than demonstrate eligibility for the “Competitive Exemption” due to unnecessary and overly stringent requirements to qualify for the Competitive Exemption. This has subjected voluntary projects to uncertainty, risk and administrative costs through the resource-specific review, and burdened offtakers from these projects with administrative and regulatory risk they cannot control or manage. Second, non-binding guidance from PJM and the Internal Market Monitor (“IMM”) has led to some categories of entirely voluntary projects that do not receive state subsidies to be considered state-sponsored resources. In particular, the recently-approved “Accelerated Renewable Energy Buyers” provision passed into law in Virginia in 2020 was deemed by PJM and the IMM to be a state subsidy, putting existing and future voluntary renewable energy projects with offtakers in Virginia at risk of being subjected to the expanded MOPR. As long as the expanded MOPR is in effect, our companies will face a constant risk of having past or future projects subjected to MOPR as a result of such decisions, which were issued without explanation.

Our experience with the implementation of the expanded MOPR demonstrates that reform is urgently needed to avoid further harm to the growing voluntary renewable energy market in PJM.

i. Limitations in the Competitive Exemption have Forced Capacity Sellers of Voluntary Renewable Energy Projects to Undergo the Burdensome and Problematic Resource-Specific Review Process, and Left Voluntary Buyers with Unmanageable Risk.

PJM’s compliance filing included a “Competitive Exemption,” which AEBG supported and the Commission approved, allowing capacity sellers to demonstrate to PJM that a project or portion of a project had committed to sell its renewable energy certificates (“RECs”) to a voluntary purchaser.³ Projects able to make such a demonstration would be exempted from application of the expanded MOPR. However, this Competitive Exemption requires a capacity seller to forego accepting a State Subsidy at any point in its 20-year asset life or face a penalty of being excluded from the capacity market for that entire 20-year period.⁴ Many voluntary renewable energy power purchase agreements (“PPAs”) have term lengths shorter than 20 years, with many ranging from 12-15 years. Despite the fact that these PPAs—and not the potential for REC revenue in later years—are what enable such projects to move forward, this ‘asset life ban’ puts an untenable contracting risk on renewable asset owners and their offtakers and sponsors.

Rather than accept an unmanageable risk, many capacity sellers otherwise eligible for the Competitive Exemption have instead elected to undergo the resource-specific review process. However, this pathway has itself proven to be rife with risks for both capacity sellers and project offtakers. Buyers Group members understand, from working with developers, that the resource-

³ PJM Interconnection, L.L.C., 171 FERC ¶ 61,035 at P 381 (2020). FERC accepted PJM’s proposal to allow a resource supported by a voluntary transaction to elect the Competitive Exemption and designate its RECs in the Generation Attribute Tracking System (“GATS”) as retired for voluntary purposes. See PJM Interconnection, L.L.C., 173 FERC ¶ 61,061 at PP 154, 176 (2020).

⁴ PJM Interconnection, L.L.C., 173 FERC ¶ 61,061, at PP 168, 169.

specific review process has been labor-intensive, costly, and non-transparent. The review process also leaves buyers on the sidelines, with no agency to ensure that capacity sellers are best representing their interests and no insight or recourse over decisions made by PJM and the IMM. While companies are accustomed to navigating a range of risks and uncertainties when entering into PPAs, this administrative and regulatory risk is both novel and difficult to manage. In addition to impacting existing contracts, this uncertainty and risk is also causing companies to delay or forego entering into new contracts in PJM. The fate of contracts entered into voluntarily should not be caught up in deliberations intended to apply to state sponsored resources, and the harm caused to our companies and to the project owners who are losing the business of voluntary buyers must be reversed.

ii. Unclear and Inconsistent State Subsidy Determinations that Lack Justification May Unfairly Subject Voluntary Renewable Energy Purchases to the Expanded MOPR, and Introduce Future Risk that Must be Managed.

In response to uncertainty regarding what does and does not constitute a state subsidy, PJM agreed to issue non-binding guidance delineating, in its view and the view of the IMM, which state policies constitute a subsidy subject to the expanded MOPR. While the intent of this guidance, as AEBG understands it, was to provide actionable information to inform decisions by capacity sellers, the result has been non-transparent guidance that threatens to unfairly deem some voluntary renewable energy projects to have received a state subsidy and therefore subject these projects to the expanded MOPR. Although the guidance is non-binding, it introduces risk and may force buyers or capacity sellers to put time and resources into seeking remedies with uncertain outcomes.

In particular, PJM and IMM both issued a non-binding guidance finding that the “Accelerated Renewable Energy Buyer” (“AREB”) provision passed into law in Virginia in 2020

constitutes a state subsidy.⁵ AEBG explained to PJM and the IMM why this provision does not constitute a state subsidy, but rather sound application of cost causation principles.

Specifically, the AREB provision was included in the broader Virginia Clean Economy Act to ensure that large voluntary buyers who had already made their own renewable energy purchases and had plans to continue making such purchases would not be penalized by also being charged for the cost of the utility's compliance with the renewable portfolio standard ("RPS") mandate included in the legislation.⁶ The AREB provision is a retail arrangement that removes from the utility's RPS obligation the load for which eligible customers will, at their own cost, voluntarily procure and retire Renewable Energy Certificates ("RECs"). These REC purchases by voluntary buyers are "purely voluntary transactions for RECs," which the Commission has ruled are "not considered State Subsidies."⁷ Because these voluntary buyers will retire the RECs they procure through direct purchases, and the utility will not incur any costs to procure and retire RECs to serve the load of voluntary buyers, the AREB provision ensures that customers will not be allocated utility costs associated with meeting RPS requirements. In other words, the AREB provision prevents voluntary buyers from paying RPS costs incurred by the utility, pursuant to the RPS mandate, to meet the needs of other customers.⁸

⁵ PJM, Non-Binding MOPR Subsidy Opinions (Apr. 9, 2021), available at <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/non-binding-mopr-subsidy-opinions.ashx>.

⁶ Va. Code § 56-585.5.G. 1.

⁷ PJM Interconnection, L.L.C., 171 FERC ¶ 61,035 at P 381.

⁸ For example, if an accelerated renewable energy buyer acquires sufficient RECs to offset its entire electric load, it would be unjust and unreasonable to penalize that voluntary buyer by also subjecting it to a share of the utility's RPS compliance costs since the electric load of the buyer would not cause any of those costs to be incurred. Likewise, if the voluntary buyer acquired sufficient RECs to offset 50% of its load, it would be unjust and unreasonable not to reduce its share of the utility's RPS compliance cost by 50% of what it otherwise would be to bring its RPS compliance cost responsibility into alignment with cost causation principles.

The AREB provision therefore does not provide a “State Subsidy” to any resource, as that term is defined by Commission and in the MOPR provisions in PJM’s tariff.⁹ Avoiding allocating costs to voluntary buyers for services they are not receiving, which is the thrust of the AREB provision, does not provide any direct or indirect payment to a resource that would allow it to clear the PJM capacity market or impact prices in that market. As such, there is no basis to assume that new renewable projects that sell RECs to voluntary buyers in Virginia are not competitively priced; regardless of the AREB provision, a voluntary buyer still has the motivation to negotiate the best contract price.¹⁰ The existence of the AREB provision simply ensures that voluntary buyers do not incur a second charge related to the RPS mandate. As such, the AREB provision confers no financial benefit to projects that voluntary buyers contract with.

Armed with this information, PJM and IMM nonetheless declined, without explanation, to revise their determination that the AREB provision constitutes a state subsidy. With little time and few pathways to seek remedies to this flawed conclusion, voluntary buyers face a risk of having entirely voluntary transactions subjected to the expanded MOPR. More broadly, beyond the determination of PJM and the IMM on this specific policy, the confusion and lack of transparency regarding what constitutes a state subsidy will put future projects within PJM at risk and force our companies to consider whether existing or future projects could become subject to MOPR at a

⁹ PJM Tariff, OATT Definitions—R-S, available at <https://agreements.pjm.com/oatt/3906>.

¹⁰ For example, assume the utility is subject to a 14% RPS Program Requirement in 2025. If the buyer does not enter into a PPA arrangement, it is subject to its load ratio share of the utility’s costs of meeting 14% of its needs through renewable energy and REC purchases. If, on the other hand, the buyer enters into a PPA and acquires RECs sufficient to offset all of its electric load, that load is not subject to the utility charge, and would instead bear 100% of the cost of achieving 100% renewables utilization for its own load. The renewable project(s) that the accelerated buyer has entered into contract with to meet its 100% renewables utilization for its own load receives no benefit from the retail arrangement that appropriately avoids charging the AREB customer for the cost of achieving the utility’s 14% renewables utilization for its other customers. The AREB customer faces the same incentive to negotiate a competitive contract price for renewable energy projects with or without the AREB retail arrangement in place.

future date as a result of a revision to the determination of what constitutes a state subsidy. This risk alone will significantly disrupt the voluntary renewable energy market in PJM.

III. CONCLUSION

While the expanded MOPR was intended to preserve competition in the PJM markets, in practice it has been the experience of the Advanced Energy Buyers Group that the policy has hindered and impeded private market activity to procure renewable energy by introducing unnecessary and unmanageable risk and confusion. Our companies as large consumers are concerned by the foundational risk of states or utilities deciding to turn away from competitive markets altogether. More directly, as explained in these comments, the expanded MOPR has harmed our companies by impeding our ability to enter into new voluntary contracts to purchase renewable energy and introducing risk and uncertainty into existing contracts. While the intent of the expanded MOPR—albeit one AEBG disagrees with—was to narrowly target state-sponsored resources, the policy has done significant collateral damage due to its sweeping nature. AEBG strongly encourages PJM and FERC to urgently reform or repeal the expanded MOPR to avoid further damage to our companies and to the renewable energy industry in PJM. Moreover, any replacement for the expanded MOPR, or any revised and more narrowly tailored MOPR, must address the challenges experienced by purely private market actors engaging in transactions to procure renewable energy outside of any state mandated process, as explained above.

Respectfully submitted,

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