



to recognize the actions of voluntary renewable energy buyers will not subject the projects that entered into contracts with such buyers to mitigation under the Focused MOPR. AEBG's understanding of the Focused MOPR is that such purchases and policies would not be subject to MOPR, but upfront clarity is needed to avoid risk and uncertainty that will harm voluntary procurement of advanced energy in PJM. A lack of clarity regarding the application of the Expanded MOPR to projects built to serve voluntary buyers of advanced energy has led to significant uncertainty that has already caused harm to existing and future voluntary renewable energy purchases. A Commission order that affirms that the Focused MOPR will not apply to these arrangements, and to state ratemaking policies designed to account for those arrangements in retail rates, will ensure that this harm does not continue once the Focused MOPR goes into effect.

## **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.

The Buyers Group has submitted several previous comments<sup>3</sup> 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.<sup>4</sup> 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. These transaction have been an important and growing driver of renewable energy demand in PJM and across the country. Most recently, we submitted comments in response to the Commission's March 23, 2021 Technical Conference explaining that inclusion of a retail ratemaking policy in Virginia on the non-binding list of state subsidies published by PJM and the PJM Internal Market Monitor ("IMM") has caused undue harm to voluntary buyers and renewable energy projects with voluntary offtakers, contrary to the Commission's directive that voluntary renewable energy purchases should be exempt from the Expanded MOPR.<sup>5</sup>

## II. AEBG SUPPORTS PJM'S 'FOCUSED MOPR' PROPOSAL

The Focused MOPR proposed by PJM appropriately returns the MOPR to its original purpose of identifying and mitigating the potential exercise of buyer-side market power. This course correction is necessary to avoid the adverse impacts to customers and the market of the

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<sup>3</sup> 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).

<sup>4</sup> 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>.

<sup>5</sup> Comments of Advanced Energy Buyers Group, Docket No. AD21-10-000 (April 26, 2021).

existing Expanded MOPR, included increased costs to customers (through excess capacity procurement and artificially higher market prices to account for additional long term risk) and the potential for an unplanned unwinding of the RPM market.<sup>6</sup>

First, as PJM recognizes in its filing here, the Expanded MOPR set the region on a trajectory to procure surplus capacity to meet the resource adequacy needs.<sup>7</sup> Specifically, because the Expanded MOPR forces the RPM to potentially ignore the resource adequacy contributions of many resources procured in furtherance of state policy requirements if their artificially inflated MOPR offer price fails to clear, additional unneeded resources will be procured or retained to in their place to meet resource adequacy needs. The cost of this excess procurement ultimately falls on consumers. The Focused MOPR would eliminate this risk of excess capacity procurement and cost by limiting mitigation to those state sponsored resources that are procured on the condition of clearing the RPM or engaging in certain specific bidding behavior in the RPM.

Second, the tension between PJM market rules and clean energy policies adopted by PJM states stemming from the Expanded MOPR has caused some PJM states to consider exiting the RPM altogether. Indeed, one utility has already elected to pursue the Fixed Resource Requirement (“FRR”) following the approval of the Expanded MOPR.<sup>8</sup> A regional, competitive market approach to maintain resource adequacy across the PJM states benefits consumers by ensuring the least cost resource mix to meet reliability needs over a broad geographic area. This regional market approach also provides advanced energy buyers like the members of the Buyers Group with important transparency into the value of capacity and a tool to ensure that the resource adequacy value of their investments is recognized and compensated. Bifurcating this market into individual

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<sup>6</sup> See also Comments of Advanced Energy Economy, Docket No. ER21-2582-000 (Aug. 20, 2021).

<sup>7</sup> PJM Transmittal Letter at 9-12.

<sup>8</sup> *Id* at 12-15.

state-by-state or utility-by-utility markets would undermine competition, raise costs, and ironically, create more potential opportunities for exercise of market power that would ultimately harm consumers. By recognizing states' authority to determine the mix of generating resources serving customer needs, the Focused MOPR greatly relieves the tension between state clean energy policies and PJM market rules, thereby preserving the benefits to consumers of relying on regional, market-based approaches to meet resource adequacy needs.

For these reasons, the Buyers Group believes the Focused MOPR is just and reasonable and will lead to better outcomes for consumers in the PJM region.

### **III. THE FOCUSED MOPR SHOULD NOT BE APPLIED TO PROJECTS BUILT UNDER VOLUNTARY RENEWABLE ENERGY PURCHASE ARRANGEMENTS**

The Focused MOPR defines two narrow sets of circumstances that may lead to mitigation of capacity sellers: (1) receipt of "Conditioned State Support," and (2) exercise of buyer-side market power. Voluntary purchases of advanced energy, such as contracts entered into by Buyers Group members to procure renewable energy, do not meet either of these two criteria for mitigation. The Buyers Group asks the Commission to confirm that voluntary renewable energy purchases will not be subject to the Focused MOPR.

The Commission in the Expanded MOPR Order appropriately recognized that voluntary purchases of renewable energy do not constitute state support and should be exempted from mitigation; while the "Competitive Exemption" approach (the mechanism chosen by PJM and the Commission to facilitate exemption of voluntary renewable energy purchases) was flawed in implementation in many respects, the Buyers Group nevertheless encouraged and supported the

principal of exempting voluntary purchases from application of the Expanded MOPR.<sup>9</sup> Voluntary purchases should be deemed to not satisfy the narrower set of triggers for mitigation under the Focused MOPR without the need for any kind of exemption or review.

Specifically, the Focused MOPR allows for mitigation of the impact on RPM clearing prices “from state programs or policies that condition receipt of benefits on certain bidding behavior (“Conditioned State Support”) and includes provisions to mitigate exercise of buyer-side market power if PJM determines that “the Capacity Market Seller has the ability and incentive to suppress the capacity auction clearing price, and that such potential price suppression would provide an overall net benefit to an affiliated Load Interest.”<sup>10</sup> Renewable energy purchases entered into voluntarily by individual customers meet neither of these requirements. Such purchases are not pursued in compliance with any state policies and do not receive any state financial support; they therefore cannot be deemed to receive “Conditioned State Support.” Offtakers of such projects are individual customers who are taking action in furtherance of their own energy and sustainability goals, independent of state law and mandates. These customers lack the ability and intent to suppress the capacity auction clearing price through their actions, and the vast majority are retail customers who do not even purchase capacity directly from the RPM.

While the Buyers Group is not aware of any provisions within the Focused MOPR proposal that would cause voluntary renewable energy purchases to be subject to mitigation, we nonetheless ask the Commission to proactively confirm that such purchases would be exempt from mitigation.

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<sup>9</sup> See Comments of Buyers Group at 4, Docket No. AD21-10-000 (April 26, 2021) (explaining that many renewable energy projects with voluntary offtakers have chosen to undergo a resource-specific review rather than elect the Competitive Exemption due to the unnecessary and overly stringent requirement that election of the 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).

<sup>10</sup> See PJM Transmittal Letter at 3.

This clarity will greatly alleviate the risk of uncertainty in the application of the Focused MOPR that could put such a project in jeopardy.

In addition, we note that PJM proposes to codify a non-exhaustive list of policies and programs that would not constitute “Conditioned State Support.”<sup>11</sup> As explained in more detail below, uncertainty regarding the application of the Expanded MOPR to voluntary renewable energy purchases stemming from the inclusion of certain state retail ratemaking policies on a similar non-exhaustive and “non-binding” list on the PJM website has caused significant harm for advanced energy buyers; as a result, the Buyers Group seeks to avoid such harm under the Focused MOPR from the start. While it is not clear that including a non-exhaustive list of policies and programs that do not constitute Conditioned State Support in the tariff is necessary, given that the Commission will ultimately decide whether a policy or program constitutes Conditioned State Support to which MOPR will apply, the fact that voluntary renewable energy contracts and state retail ratemaking policies that recognize these contracts are not listed heightens the need for clarity from the Commission. Without Commission confirmation that these commercial arrangements and related state policies fall well outside the bounds of the Focused MOPR, the fact that they are not included on this list (even though it is deemed non-exhaustive) could create damaging uncertainty, similar to that experienced previously. Upfront clarity from the Commission would greatly enhance market certainty for voluntary renewable energy buyers and preserve the robust voluntary market for renewable energy in PJM.

**IV. THE BUYERS GROUP ASKS THE COMMISSION TO CONFIRM THAT STATE POLICIES RECOGNIZING VOLUNTARY RENEWABLE ENERGY PURCHASES WILL NOT TRIGGER MITIGATION**

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<sup>11</sup> PJM Transmittal Letter at 45-46.

While voluntary renewable energy purchases are exempt from the Expanded MOPR, there has nonetheless been some confusion regarding voluntary purchases by companies also electing to participate in retail ratemaking policies that recognize the cost allocation implications of these voluntary purchases. Specifically, as states have set more ambitious clean energy policies, some have recognized that these policies must account for purchases made by voluntary renewable energy buyers by removing such customers from the utility’s renewable portfolio standard (“RPS”) obligation and exempting them from the cost of meeting the RPS, since no costs are incurred on their behalf to meet the RPS. Such policies do not confer financial benefit to renewable energy projects nor impact the ability of such projects to clear the RPM. Nevertheless, under the Expanded MOPR both PJM and the IMM included one such policy, the Accelerated Renewable Energy Buyer (“AREB”) provision in Virginia,<sup>12</sup> on a non-binding list of “state subsidies.”<sup>13</sup>

The Buyers Group disagrees that the AREB provision should qualify as a state subsidy under the Expanded MOPR, for the reasons discussed below. For the same reasons and more, Virginia’s AREB and similar policies and programs should be exempt from mitigation under the Focused MOPR. While it is our understanding that the Focused MOPR would *not* trigger mitigation of projects that have entered into contracts with counterparties eligible for the Virginia AREB provision, we ask that the Commission clarify this interpretation of PJM’s proposal. Confusion regarding the application of the Expanded MOPR to projects with offtakers participating in the Virginia AREB provision has led to risk and uncertainty that has harmed existing projects and ongoing contract negotiations. Clarity from the Commission on this issue will avoid such harm under the Focused MOPR.

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<sup>12</sup> Va. Code § 56-585.5.G. 1.

<sup>13</sup> 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>.

The Virginia AREB statute is solely a retail ratemaking provision, and does not provide financial support to capacity resources, seek to set capacity prices, or condition its application on a resource clearing the capacity market or engaging in specific capacity market offer strategies.

Specifically, as the Buyers Group explained in previous comments:

“...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.<sup>14</sup> 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.”<sup>15</sup> 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.<sup>16</sup>

The AREB provision therefore does not provide a “State Subsidy” to any resource, as that term is defined by Commission and in the [Expanded] MOPR provisions in PJM’s tariff.<sup>17</sup> 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.<sup>18</sup> The existence of the

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<sup>14</sup> Va. Code § 56-585.5.G. 1.

<sup>15</sup> PJM Interconnection, L.L.C., 171 FERC ¶ 61,035 at P 381.

<sup>16</sup> 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.

<sup>17</sup> PJM Tariff, OATT Definitions—R-S, available at <https://agreements.pjm.com/oatt/3906>.

<sup>18</sup> 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%

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.”<sup>19</sup>

In short, the AREB provision reflects sound application of cost causation principles in retail rates, and does not confer a subsidy to the projects that eligible Virginia retail customers have voluntarily entered into contracts with who may offer capacity in the PJM market. It therefore has no bearing on the cost at which such projects offer into the capacity market, nor does it improve the ability of such projects to clear the market. It certainly does not condition eligibility on whether a project clears the capacity market, or require capacity sellers to engage in particular offer strategies meant to influence market prices. For these reasons, this provision and others like it do not constitute Conditioned State Support.

Despite the intent and structure of the AREB provision, when issuing non-binding guidance earlier this year both PJM and the IMM determined that the provision constitutes a State Subsidy subject to application of the Expanded MOPR. This caused significant risk for voluntary renewable energy buyers in Virginia who were uncertain as to whether contracts they had previously signed would become subject to the Expanded MOPR. Unlike other market or project risks, buyers are ill-equipped to mitigate or even quantify the administrative risk of buyer-side market power mitigation. Buyers in nearly all cases are not involved in offering the projects they contract with for renewable energy into the RPM nor are they involved in back-and-forth with the IMM. Buyers therefore lack transparency into this process, and certainly have no way to control and manage the

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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.

<sup>19</sup> Comments of Advanced Energy Buyers Group, Docket No. AD21-10-000 (April 26, 2021).

risk of projects not clearing the RPM. Buyers face a risk that contracts they have already signed could be impacted, which is also factoring into going-forward decisions and making it harder for buyers to enter into new contracts.

While the Buyers Group believes that the AREB provision would not subject a renewable energy project to MOPR under the revised Focused MOPR rules, as discussed above, we also did not read the Expanded MOPR to apply to such projects. In addition, as noted above, the fact that PJM is including in its tariff a non-exhaustive list of state policies and programs that will not be subject to the Focused MOPR, and the AREB provision is not on that list, creates the potential for uncertainty. To alleviate that uncertainty, we ask the Commission to verify that the Virginia AREB provision and other similar state policies will not be subject to mitigation under the Focused MOPR. Clarity from the Commission would resolve and avoid the uncertainty, risk, and confusion that buyers seeking to participate in the Virginia AREB program have experienced under the Expanded MOPR. In addition to providing clarity with respect to the Virginia AREB provision, such clarification will be helpful as other states consider enacting similar retail rate mechanisms to recognize accelerated buying of renewable and advanced energy resources by customers in the future.

## **V. Conclusion**

The Buyers Group urges the Commission to approve the Focused MOPR, and asks that the Commission confirm that voluntary purchases are exempt from the Focused MOPR and that state retail programs intended to reflect and recognize the purchase and retirement of RECs by large voluntary buyers will also not be subject to the Focused MOPR. Upfront clarity from the Commission on these issues will greatly reduce uncertainty for voluntary buyers of renewable energy and allow for the continued growth of the voluntary renewable energy market in PJM.

Failure to provide such clarity will harm voluntary renewable energy purchases, even if such purchases are never ultimately subject to mitigation under the Focused MOPR.

Respectfully submitted,

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