

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Calpine Corporation, Dynegy Inc., Eastern)	Docket No. EL16-49
Generation, LLC, Homer City Generation,)	
L.P., NRG Power Marketing LLC, GenOn)	
Energy Management, LLC, Carroll County)	
Energy LLC, C.P. Crane LLC, Essential)	
Power, LLC, Essential Power OPP, LLC,)	
Essential Power Rock Springs, LLC,)	
Lakewood Cogeneration, L.P., GDF SUEZ)	
Energy Marketing NA, Inc., Oregon Clean)	
Energy, LLC and Panda Power Generation)	
Infrastructure Fund, LLC)	
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
)	
PJM Interconnection, L.L.C.)	Docket No. ER18-1314
)	
PJM Interconnection, L.L.C.)	Docket No. EL18-178
)	(Consolidated)

COMMENTS OF ADVANCED ENERGY BUYERS GROUP

Pursuant to Rule 206(f) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ the Advanced Energy Buyers Group (“AEBG” or “Buyers Group”) respectfully submits comments in response to the March 18, 2020 Compliance Filing (“Compliance Filing”) of PJM Interconnection (“PJM”) in the above-captioned dockets.² As discussed below, AEBG largely supports PJM’s proposed process for allowing capacity resources that sell their renewable energy credits (“RECs”) to a voluntary purchaser (such

¹ 18 C.F.R. §§ 385.206(f) (2018).

² Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at Least 35 Days, Docket No. ER18-1314-000, et al., (Mar. 18, 2020) (“PJM Compliance Filing”).

as a member of AEBG) to certify that they will forego receiving any State Subsidies and avoid application of the expanded Minimum Offer Price Rule (“MOPR”) ordered by the Commission in these proceedings. This process provides a workable pathway for many voluntary purchases of renewable energy to continue without inappropriate interference from the expanded MOPR. In addition to this process, in these comments we suggest that the Commission direct PJM to allow Capacity Resources that sell some of their output to a voluntary purchaser and some of their output to a purchaser complying with a state mandate to seek an exemption from the expanded MOPR for the voluntary transaction, similar to PJM’s proposed treatment for certain jointly-owned resources.

I. INTRODUCTION

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 participated actively in the above-captioned dockets over the past two years. In response to the Commission’s June 29, 2018 Order finding the existing MOPR unjust and unreasonable and establishing a paper hearing to gather evidence regarding the appropriate scope

of an expanded MOPR,³ the Buyers Group submitted comments and reply comments explaining that renewable energy developed as a result of voluntary purchases by companies such as members of the Buyers Group is a significant and growing segment of the renewable energy market, and urging the Commission to ensure that any expanded MOPR clearly and completely excludes renewable energy projects engaging in these voluntary transactions.⁴ The Buyers Group also sought to explain the various ways that voluntary buyers purchase renewable energy, and emphasized that *all* such transactions must be exempted from the MOPR to avoid harmful and unjust over-mitigation of private activity conducted outside of any state mandate. In response to the Commission’s December 2019 Order, the Buyers Group submitted a request for clarification, or, in the alternative, rehearing, to resolve ambiguities regarding the potential application of a minimum offer price to renewable energy projects selling their output and/or Renewable Energy Certificates (“RECs”) through voluntary transactions. AEBG, working with Advanced Energy Economy, also provided information and input into the stakeholder process in PJM as this issue was discussed as part of the development of PJM’s Compliance Filing.

II. COMMENTS

At the outset, AEBG notes our continued objection to the Commission’s direction to PJM to adopt a sweeping replacement MOPR that applies broadly to renewables and other advanced energy technologies. We are concerned that the expanded MOPR may have sweeping impacts on consumer costs and renewable energy development in PJM, and we are increasingly troubled that

³ *Calpine Corporation, et al. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (“June 2018 Order”), *reh’g denied*, 171 FERC ¶ 61,034 (2020).

⁴ *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).

the Commission's choice to mitigate, rather than accommodate, state clean energy policies may undermine or erode competitive market participation in the PJM region.

Our broader disagreement with the expanded MOPR notwithstanding, we are encouraged that PJM and the Commission have taken positive steps toward addressing the most pressing concerns to AEBG members. Specifically, AEBG members would be directly and unduly harmed by an expanded MOPR that applies not only to those resources receiving State Subsidies but also to resources that sell their output and/or RECs to voluntary buyers independent of any state mandate. As discussed below, we believe that PJM's proposed Competitive Exemption process for voluntary REC sales provides a feasible pathway to ensure that such projects are not inappropriately subjected to MOPR, consistent with FERC's December 2019 and April 2020 Orders,⁵ and we urge the Commission to approve this portion of Compliance Filing. In addition, we ask the Commission to direct PJM to provide an additional pathway for Capacity Resources that sell a portion of their output to a voluntary purchaser, and a portion to a compliance purchaser, to avoid application of the expanded MOPR to the voluntary transaction. This would resolve many of the remaining concerns of AEBG members.

A. PJM's Proposed Competitive Exemption Process Establishes an Appropriate Pathway to Avoid Inappropriate Application of MOPR to Resources Selling RECs to Voluntary Buyers, Consistent with the Commission's Recent Clarification.

As AEBG has noted in prior comments, voluntary renewable energy procurement by commercial and industrial ("C&I") customers, including members of AEBG, is an increasingly important market driver of new renewable energy development, accounting for 22 GW of

⁵ *Calpine Corp. et al. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) ("December 2019 Order"), *reh'g denied*, 171 FERC ¶ 61,035 ("April 2020 Order").

renewable energy across the U.S. since 2013.⁶ In 2018, voluntary corporate offtakers accounted for more than 20% of power purchase agreements (“PPAs”) across the country,⁷ and Bloomberg New Energy Finance recently reported that 80% of corporate renewable energy purchases in 2019 occurred in organized wholesale markets.⁸ Analysis from Wood Mackenzie projects that demand for renewable energy among the Fortune 1000 could reach 85 GW across the United States over the next decade.⁹ Put simply, while voluntary buyers may once have represented a small, marginal portion of the overall market demand for renewable energy, this is clearly no longer the case in PJM or elsewhere. Major market changes such as MOPR must therefore take the voluntary market into account.

AEBG appreciates that PJM and the Commission have both recognized that voluntary renewable energy procurements do not result from state mandates, and have both taken steps to reaffirm their intent to avoid undue harm to the voluntary market by ensuring that purely voluntary transactions are not subject to MOPR. For its part, the Commission, in its April 2020 Order denying rehearing, clarified that “purely voluntary transactions for RECs are not considered State Subsidies,” and that new or existing resources selling their RECs through voluntary arrangements may apply for the Competitive Exemption from MOPR.¹⁰ This statement resolves some of the confusion caused by the Commission’s statements regarding voluntary and compliance RECs in

⁶ Renewable Energy Buyers Alliance, “Corporate renewable energy buyers set new record in 2019,” Renewable Energy World Editors (October 2019), <https://www.renewableenergyworld.com/2019/10/29/reba-corporate-renewable-energy-buyers-set-new-record-in-2019/#gref>

⁷ REBA Institute, *Renewable Energy Policy Pathways Report* (May 2020), <https://reba-institute.org/research/>.

⁸ BloombergNEF, “Corporate Clean Energy Buying Leapt 44% in 2019, Sets New Record,” (January 28, 2020), <https://about.bnef.com/blog/corporate-clean-energy-buying-leapt-44-in-2019-sets-new-record/>.

⁹ Wood Mackenzie, on behalf of the American Wind Energy Association, “*Analysis of Commercial and Industrial Wind Energy Demand in the United States*,” (2019), <https://www.awea.org/resources/publications-and-reports/analysis-of-commercial-and-industrial-wind-energy>.

¹⁰ April 2020 Order at P 381.

its December 2019 Order, on which AEBG sought clarification/rehearing. It is now the clear position of the Commission that voluntary REC transactions are not considered State Subsidies, and that the Competitive Exemption is an appropriate pathway for such resources to avoid being inappropriately subjected to the expanded MOPR.

PJM, in turn, has proposed a workable process to allow many Capacity Resources selling RECs to voluntary purchasers to avoid the MOPR that is fully consistent with the Commission’s clarification in the April 2020 Order. Specifically, PJM proposes to allow Capacity Sellers developing such resources to utilize the Competitive Exemption process, which requires that they demonstrate that any RECs generated by the project “will only be used and retired for voluntary obligations as opposed to state-mandated renewable portfolio standards.”¹¹ The Competitive Exemption process is a relatively straightforward approach—in the context of a complex issue—that is responsive to both the Commission’s intent to exempt voluntary transactions from MOPR and its concerns regarding potential abuse of such exemptions. The process allows the applicable Capacity Market Seller to certify that RECs generated that would be *eligible* to receive State Subsidies by participating in state-sponsored programs will nonetheless not be used for such purposes, and therefore will not *receive* a State Subsidy.

In addition, PJM states that the RECs or equivalent compliance instruments associated with such projects will be “tagged” to ensure that the promise to forego receipt of a State Subsidy cannot be broken. Specifically, PJM states that it will modify the existing Generation Attribute Tracing System (“GATs”) to allow the owner of a renewable generating resource to limit use of its RECs to ensure that they can only be used for voluntary purposes and can never be retired for purposes of compliance with a mandatory state RPS program. This relatively simple change provides a

¹¹ PJM Compliance Filing at 43.

guarantee that there can be no gaming or abuse of PJM’s proposed provisions to exempt voluntary REC purchases from MOPR. It also resolves the concerns expressed by the Commission earlier in this proceeding that voluntary RECs may be either indistinguishable from compliance RECs, or that RECs originally purchased by a non-compliance entity may subsequently be used for compliance with a state program. For example, the Commission stated in its December 2019 Order that “it is not possible, at this time” to distinguish between voluntary RECs and state-funded or state-mandated RECs.¹² PJM’s changes to the GATs system allow for voluntary RECs to be distinguished from state-funded or state-mandated RECs. Second, in its April 2020 Order, FERC emphasized that “purely voluntary transactions for RECs” would be eligible for the Competitive Exemption, but specifically noted that resources seeking such an exemption “must . . . ensure that no broker or direct buyer will resell voluntary RECs to state compliance purchasers.”¹³ The ability of Capacity Market Sellers to “tag” their RECs in GATs so that they can never be retired for a compliance purpose fully addresses this requirement.

In sum, PJM’s proposed tariff language and associated changes to GATs provide a reasonable pathway for a Capacity Resource developed to serve a voluntary renewable energy purchaser to demonstrate that it will not receive a State Subsidy and should not be subjected to the expanded MOPR, and provides PJM and the Commission with assurance that this process will only be used by projects truly intending to sell their RECs only to voluntary buyers. Accordingly, the Commission should approve this aspect of PJM’s Compliance Filing. Failure to approve PJM’s proposed process would contravene the Commission’s clear intent that the expanded MOPR not apply to “purely voluntary transactions for RECs,” and would apply the expanded MOPR to

¹² December 2019 Order at P 176.

¹³ April 2020 Order at P 381.

transactions that do not involve State Subsidies, contrary to the Commission’s stated objectives in this proceeding.

B. The Commission Should Direct PJM to Treat Bilateral Contract Structures Where Rights and Obligations Associated With a State Subsidy Are Assignable and Severable Comparably to *In Pari Passu* Joint Ownership.

While AEBG supports and appreciates the provisions that PJM has included to give voluntary buyers of renewable energy a pathway to avoid inappropriate application of MOPR to Capacity Resources from which they seek to procure RECs for voluntary purposes, we note that these provisions do not accommodate the full range of voluntary renewable energy transactions. In particular, some projects sell their RECs to multiple offtakers, including both voluntary purchasers and compliance purchasers. PJM’s Compliance Filing would subject such projects to the MOPR in their entirety.¹⁴ This results in subjecting the portion of the project engaged in “purely voluntary transactions for RECs” to the MOPR, which directly contravenes the Commission’s clarification and intent in the April 2020 Order to ensure that such transactions would not be subject to the MOPR. That result could also limit the market for voluntary purchases of renewable energy by forcing buyers to purchase the entire output of a project to avoid the MOPR, which many buyers may not be in a position to do.

PJM’s Compliance Filing does, however, contain rules that permit individual owners of jointly-owned resources to avoid the expanded MOPR if they do not themselves receive or otherwise benefit from a State Subsidy that is received by another owner. Capacity Resources that

¹⁴ PJM proposes that when “a Capacity Resource that is the subject of a bilateral transaction (including but not limited to those reported pursuant to Tariff, Attachment DD, section 4.6) shall be deemed a Capacity Resource with State Subsidy to the extent an owner of the facility supporting the Capacity Resource is entitled to a State Subsidy associated with such facility even if the Capacity Market Seller is not entitled to a State Subsidy.” See Proposed Tariff, Definitions, “Capacity Resource With State Subsidy”.

sell energy and associated RECs to multiple offtakers under similar arrangements should be treated comparably and have an equivalent pathway for the portion of the project selling only to a voluntary purchaser to avoid application of the MOPR.

Specifically, PJM states that when several Capacity Market Sellers own the rights to a single Capacity Resource, all rights and obligations must be associated with each seller individually, severally and equally, in order for a single Capacity Market Seller to not be presumed to be entitled to a State Subsidy.¹⁵ Consistent with this statement, PJM’s proposed tariff language provides that “any Capacity Resource supported by a facility where the joint ownership arrangement provides that ‘the material rights and obligations of such generating facility are in *pari passu*, meaning that such rights and obligations are allocated among the owners pro rata based on ownership share’ will *not* be considered a Capacity Resource with State Subsidy (to the extent that owner is not otherwise entitled to a State Subsidy).”¹⁶ PJM states that this approach will protect against “cross-subsidization”, where “the public benefits received by one owner can affect the ownership costs of the others, effectively providing a cross-subsidy among the owners.”¹⁷

As a result, Capacity Market Sellers of a “Jointly Owned Cross-Subsidized Capacity Resource” with *in pari passu* ownership will not be automatically deemed entitled to a State Subsidy, and thus not automatically subject to the MOPR. This same treatment could and should be applied to other comparable types of transaction structures that may exist, or that could be developed, that would ensure that the rights and obligations associated with a State Subsidy are assignable and severable between multiple Capacity Market Sellers, and where it is certain that a

¹⁵ See PJM Compliance Filing at 21-23.

¹⁶ See *id.* at 21 (quoting Proposed Tariff, Definitions I-J-K (definition of Jointly Owned Cross-Subsidized Capacity Resource)).

¹⁷ See PJM Compliance Filing at 21.

given Capacity Market Seller cannot receive any benefits from State Subsidies that they may otherwise be entitled to. Bilateral transaction structures may exist, or could be developed, that would create a relationship between multiple Capacity Market Sellers that is comparable to that of Jointly Owned Cross-Subsidized Capacity Resources with *in pari passu* ownership. For example, with respect to bilateral transactions where there are multiple Capacity Market Sellers associated with a single generation resource, it is possible to structure such transactions in a manner that ensures that the rights and obligations associated with the generation resource are *in pari passu* between the respective Capacity Market Sellers, and further, that ensures that the rights and obligations associated with a State Subsidy (such as RECs) are assignable and severable between each Capacity Market Seller. Under this scenario, the transaction structure creates a relationship between the various Capacity Market Sellers that is comparable to that of Jointly Owned Cross-Subsidized Capacity Resource with *in pari passu* ownership, even if the generation resource itself is not technically jointly owned between the Capacity Market Sellers.¹⁸

For these reasons, AEBG asks that the Commission direct PJM to provide comparable treatment to transaction structures that are similar to, and address the same cross-subsidy concerns, as the Jointly Owned Cross-Subsidized Capacity Resources with *in pari passu* ownership addressed in the PJM Compliance Filing. Doing so would resolve a gap in the treatment of purely voluntary REC transactions left by the PJM Compliance Filing and the Commission's decisions, and further the Commission's clear intent to ensure that these purely voluntary purchases are not subjected to the expanded MOPR.

¹⁸ A seller seeking to utilize this transaction structure could be required to submit documentation supporting this treatment upon the request of PJM or the IMM.

III. Conclusion

WHEREFORE, for the foregoing reasons, AEBG respectfully urges the Commission to accept the provisions in PJM's Compliance Filing addressing voluntary purchases of RECs, with the additional directive to PJM discussed above.

Respectfully submitted,

/s/ Caitlin Marquis _____

Caitlin Marquis
Director, Advanced Energy Economy
On behalf of
Advanced Energy Buyers Group
133 Federal Street, 7th Floor
Boston, MA 02110
(781) 261-6047
cmarquis@aee.net

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document via electronic means upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Boston, MA, this 15th day of May 2020.

/s/ Caitlin Marquis
Advanced Energy Economy