



MOPR-Ex Self-Supply Exemption, Competitive Exemption, Public Entity Exemption, and RPS Exemption are not included in the Clean MOPR. Complaint at 18. The Complaint is supported by the affidavit of Dr. Roy J. Shanker, who asserts that the Clean MOPR is the only realistic “fix” that can work. Shanker Affidavit at P 37. Other than Dr. Shanker’s assertion that the exemptions included in PJM’s MOPR-Ex proposal are “clearly inappropriate”, the Complaint fails to justify the elimination of exemptions that have been accepted by the Commission as just and reasonable.

Dr. Shanker argues that PJM’s MOPR-Ex is “riddled with exemptions that make the mitigation meaningless.” *Id.* at P 36. Dr. Shanker claims that parties, like municipal utilities, “can self-supply over a wide range, creating excesses that suppress price and ‘lean’ on the rest of the market to carry some portion of the excess costs.” *Id.* Without any support, Dr. Shanker avers that municipal utilities are able to “exploit loopholes in the RTO structure that supports their ‘historic business models’ while at the same time rewarding them with the many benefits of RTO participation.” *Id.* Worse yet, Dr. Shanker speculates, again without any support for his conjecture, that the unnamed benefits of RTO participation “must be material as none of these parties have expressed any interest in taking on FRR status and limiting their commerce with the RTO.” *Id.*

As with other unverified claims regarding public power, Dr. Shanker’s arguments lack any understanding of the long-standing and Commission-accepted public power business model, motivation and the limits on public power’s ability to construct new generation. Moreover, Complainants have deliberately ignored the multiple filings made by public power entities in the cases referenced throughout the Complaint<sup>2</sup> that explain why Dr. Shanker’s speculation about public power is simply wrong.

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<sup>2</sup> See, for example, Protest and Request for Rejection or, In the Alternative, Request for Suspension and Further Procedures of the PJM Load Group, Docket No. ER11-2875-000 (March 4, 2011); Motion to Lodge

**A. Public Power does not raise price suppression concerns.**

By definition, public power entities are owned by the customers, the municipalities or other instrumentalities of the state that are owned, operated and controlled at the local level. Thus, there are not captive customers in public power entities – the customers are the owners and decision-makers. If the customers do not approve of decisions made, they have the option and opportunity to remove local decision-makers from office.

Moreover, as AMP noted multiple times in related cases, an essential element of public power's business model is inclusion in the utility's power supply portfolio of an appropriate component of *long-term* supply, both capacity and energy, in part in the form of asset ownership. This means that public power entities look beyond the short-term RPM window when deciding whether to undertake the time and expense to design, finance and construct new resources based upon the public power entity's holistic, long-term needs. This does not mean that public power customer-owners are saddled with unnecessary costs. Rather, it demonstrates that Complainants would have the Commission rely solely on the merchant generator model, which inappropriately excludes from legitimate consideration the use by at least some market participants of other business models and financing assumptions, including models that rely on the use of

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Evidence That There is No Need for MOPR Revisions Prior to the May 2011 Base Residual Auction, Docket No. ER11-2875-000 (March 22, 2011); Comments of PJM Load Group in Support of PJM Filing, Docket No. ER13-535-000 (December 28, 2012); Motion for Leave to Answer and Answer of PJM Load Group in Support of PJM Filing, Docket No. ER13-535-000 (January 15, 2013); Comments of PJM Load Group in Support of PJM's March 4, 2013 Response, Docket No. ER13-535-000 (March 25, 2013); Protest of Dominion Resources Services, Inc., American Municipal Power, Inc., American Public Power Association, Old Dominion Electric Cooperative, PJM Industrial Customer Coalition, and Public Power Association of New Jersey, Docket No. EL16-49-000 (April 11, 2016); Motion for Leave to Answer and Answer of Dominion Resources Services, Inc., American Municipal Power, Inc., American Public Power Association, Old Dominion Electric Cooperative, PJM Industrial Customer Coalition, and Public Power Association of New Jersey, Docket No. EL16-49-000 (April 25, 2016); Comments of American Municipal Power, Inc. on PJM interconnection L.L.C.'s Capacity Repricing or In the Alternative MOPR-Ex Proposal, Docket No. ER18-1314-000 (May 7, 2018).

long-term contracts or asset ownership to support generation infrastructure at a lower cost to consumers.

Dr. Shanker's claim that public power entities can "self-supply over a wide range, creating excesses that suppress price" ignores the fact that, even if public power entities had an economic interest in lowering capacity prices at which they must close out their net short positions, they are incapable of acting on such interest because the business models employed by municipal Load Serving Entities ("LSEs") prohibit any opportunity for municipal LSEs to build generation for market manipulation reasons.

Specifically, in order to secure long-term capacity supply arrangements in the form of asset ownership at the lowest possible cost, municipal LSEs utilize tax exempt and tax advantaged financing, such as Build America Bonds (collectively "tax-advantaged obligations"). In order to maintain the critically important tax exempt and tax advantaged status, municipal LSEs must meet and maintain several mandatory conditions including limiting the use of the project to governmental purposes of such municipal LSE or project participant and the prohibition against "private use." These federal tax requirements on tax-advantaged obligations that are critical to the long-standing business models of public power entities serve as effective barriers against such entities building generation as merchant generation, market manipulation, or anything other than legitimate self-supply. Accordingly, it is not unduly discriminatory to exclude public power entities from capacity offer mitigation regardless of its form.

**B. Fixed Resource Requirement is not a workable option for public power entities.**

Dr. Shanker avers that public power entities must find the benefits of RTO participation, while "exploiting the loopholes" of the PJM structure to be material; otherwise, public power entities would use the Fixed Resource Requirement ("FRR")

option to limit commerce with PJM. Shanker Affidavit at P 37. This is a false option and one that AMP has made clear is not a workable alternative for public power entities. In short, the difficulties that a PJM-style FRR presents for public power entities include:

- ) **Variability of Capacity Obligations**: The FRR Alternative is designed for LSEs that are net long on capacity resources and requires the LSE to supply all of its capacity obligations plus its reserve requirements for a five-year period. But AMP meets its members' needs through a combination of the ownership of electric generation, the scheduling and dispatch of member-owned generation resources, and the entry into power supply and transmission arrangements with third parties at the request and on behalf of their members. Contractual arrangements can vary from year to year, depending on which members sign up to take power from which projects. Thus, there is great variability in how our members use AMP for their power supply needs. Because of this variability, AMP's unforced capacity obligations can fluctuate materially over time. Also – AMP as a whole is net short and will likely remain so for the foreseeable future. So, the five-year FRR commitment without any ability to make residual RPM purchases fails to effectively accommodate the public power business model, which includes the variability in how AMP meets its capacity obligations.
- ) **No Residual RPM Purchases**: LSEs electing the FRR Alternative may not purchase capacity in the RPM auctions. AMP is net short on capacity and plans to remain so as part of a diverse portfolio.
- ) **Restrictions on the Sale of Excess Capacity**: The lumpy nature of investment in generation results in a risk to the LSE using the FRR Alternative that the capacity in the early life of the resource that likely will be in excess of the LSE's needs, will become stranded given the significant restrictions under the FRR rules on an LSE's ability to sell that excess capacity into RPM auctions.
- ) **Changes in LDA Boundaries**: The potential for changing Locational Deliverability Area ("LDA") boundaries with differing internal minimum resource requirements, in combination with the five-year length of the existing FRR Alternative rule, makes the use of FRR a riskier option for public power LSEs serving loads in constrained LDAs. A change in such boundaries during a five-year FRR plan may well result in a requirement to obtain a greater percentage of resources to satisfy capacity obligations from resources within the new LDA boundaries than existed at the time the LSE developed its initial five-year FRR resource plan.
- ) **Unanticipated RTO Migration**: The five-year FRR plan requirement also adds risk resulting from transmission owner migration between RTOs. AMP's members are embedded in the transmission systems of transmission owners and, when the transmission owner migrates, AMP must be able to export power from resources in one RTO for the beneficial use of AMP's members located in another RTO or in non-RTO areas. This is not theoretical – it happened to AMP when ATSI and Duke migrated to PJM from MISO.
- ) **Unavailability of Bilateral Contract Options in the Marketplace**: While bilateral contracts may be included in an LSE's FRR supply plan to cover any shortfall that would otherwise be purchased through RPM, it may be difficult to find existing generators in PJM willing to sell capacity in bilateral arrangements at competitive prices that reflect their long-run cost of investment.

Under both of PJM's proposals, PJM recognized the long-standing public power business model as legitimate and not the type likely to raise price suppression concerns. Complainants have not provided any evidence to the contrary. Accordingly, adopting the PJM MOPR-Ex but eliminating the reasonable exemptions included therein renders the Clean MOPR unjust, unreasonable and unduly discriminatory. The Commission should continue to recognize the public power business model regardless of whether any revisions are made to the capacity construct.

## **II. CONCLUSION**

For the reasons set forth herein, the Commission should reject Complainants' Clean MOPR proposal to eliminate protections for the long-standing business models of public power entities as unjust, unreasonable and unduly discriminatory.

Respectfully submitted,

/s/ Lisa G. McAlister

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## CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated this the 20th day of June, 2018.

/s/ Lisa G. McAlister  
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