

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

Modernizing Electricity Market Design

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Docket No. AD21-10-000

**POST-TECHNICAL CONFERENCE COMMENTS OF
AMERICAN MUNICIPAL POWER, INC.**

On March 23, 2021, the Federal Energy Regulation Commission (“Commission” or “FERC”) convened a Commissioner-led technical conference to discuss the role of the capacity market constructs in PJM Interconnection, L.L.C. (“PJM”), ISO New England Inc., and New York Independent System Operator, Inc. in “an environment where state policies increasingly affect resource entry and exit.” Pursuant to the April 5, 2021 Notice Inviting Post-Technical Conference Comments (“April 5 Notice”), American Municipal Power, Inc. (“AMP”) offers the following comments for the Commission’s consideration.

I. OVERVIEW

AMP appreciates the Commission’s initiative to examine resource adequacy constructs and realization that the current state of affairs is unsustainable. AMP agrees, and offers comments for the Commission’s consideration.

First, these constructs are not markets. Attributing market-like characteristics can unintentionally misguide policymakers and lead to incorporating theoretical market safeguards where none are necessary (*i.e.*, the minimum offer price rule or “MOPR”). Buyer-side monopsony power is a concern under the theory of pure competitive markets, and, when a large buyer can force suppliers to modify pricing. That, however, is simply not the case in an administrative resource adequacy construct. Load serving entities (“LSEs”) do not have the intent or ability to achieve such a result.

In PJM, the Reliability Pricing Model (“RPM”) has a “Base Residual Auction” but it is not residual; all capacity must participate. MOPR applied in this context flies in the face of

competitive market theory where it is perfectly rational for a seller to offer \$0 in reflection of its sunk cost. Without a MOPR, self-supply entities, like public power, could transact bilaterally, in accordance with how genuine markets operate, without the fear of not clearing and paying twice for capacity. The original 2006 RPM construct recognized self-supply entities should clear even with a MOPR,¹ but these provisions were removed by PJM in 2011 in response to efforts by Maryland and New Jersey to obtain capacity due to their concern over local reliability.²

Second, these constructs are overly narrow and miss the reality of markets and exogenous events that influence markets. Markets should not force market participants to use them and treat all products as fungible.

Third, the decision to bring new capacity on line is influenced by a host of variables (capacity, energy, ancillary services, longevity of the resource, environmental attributes, etc.) beyond a confirmed contract for “capacity” for one year, three years in the future. Capacity is provided by long-lived assets. Focusing on the “right price” for a single variable for one year in the future is simply the wrong metric.

¹ See *N.J. Bd. Of Pub. Utilities v. FERC*, 744 F.3d 74 at 29 (3d Cir. 2014) “The original MOPR also provided special treatment to resources designated as ‘self-supply,’ which are capacity resources that an LSE builds to serve its own load. Such a resource had to offer its capacity into the auction, and the resource had to clear the auction, in order for it to be counted toward the LSE’s capacity obligation. Unlike the three types of resources described above, self-supply resources were not listed among the exemptions to the MOPR, and so could be subject to mitigation if they failed the three screens. But the MOPR went on to state that, after offers were mitigated as needed and the clearing price was determined, PJM must accept capacity offers in the following order: ‘(i) first, all Sell Offers in their entirety designated as self-supply committed *regardless of price*; (ii) then, all Sell Offers of zero . . . and (iii) then all remaining Sell 30 Offers in order of the lowest price. . . .’” (citing PJM Tariff Attachment DD, Section 5.14(h)(4) (emphasis in original)).

² On February 11, 2011, in response to a complaint from the PJM Power Providers Group, PJM submitted proposed changes to the original MOPR, under § 205 of the Federal Power Act, “to clarify that self-supply offers are subject to the MOPR.” PJM, Filing, Docket No. ER11-2875-000, Transmittal Letter at 21 (February 11, 2011).

Fourth, the purpose of MOPR inappropriately evolved over the course of RPM's thirty plus rule changes since 2010. Originally purported to protect against monopsony power, MOPR became the vehicle to combat the specter of price suppression resulting from states exercising their authority to do what they have always been able to do: ensure their electricity stays on.

The original MOPR from the 2006 settlement recognized the inability of self-supply to exercise monopsony power as there was no intent nor ability to do so. "PJM shall... accept Sell Offers to provide Capacity Resources in accordance with the following priority and criteria for allocation: (i) first, all Sell Offers in their entirety designated as self-supply..." The MOPR also appropriately provided states the ability to resolve an expected capacity shortfall in its state by allowing the "...Net Asset Class Cost of New Entry shall **(to be)** be zero for... any Planned Generation Capacity Resource being developed in response to a state regulatory or legislative mandate to resolve a projected capacity shortfall in the Delivery Year affecting that state...."

Nonetheless, AMP offers that there is a need for a capacity requirement for resource adequacy and reliability. Relying purely on the energy market for reliability can have disastrous consequences wholly unacceptable to our society. Electricity is an essential and life sustaining service. However, if we are going to continue to have competitive markets, which AMP believes we should and supports, we need a capacity construct that does as little harm as possible to genuine market forces while ensuring the lights stay on. It needs to be simple, inclusive of reliability needs determined by the Regional Transmission Organization ("RTO"), and accommodating of the needs of all participants. MOPR has no role in such a construct.

In AMP's post technical conference comments from the 2017 Technical Conference on state policies' impact on the eastern RTOs' capacity constructs,³ AMP submitted that, to be sustainable over the long term, resource adequacy constructs must accommodate consumer preferences.⁴ AMP pointed out that one way broadly shared consumer preferences find expression is through state and local public policies and consumers have begun to place greater weight on values such as environmental compatibility, fuel source renewability, and technology diversity in the resource selection process.⁵ AMP highlighted the fact that capacity construct designs that thwart these preferences necessarily will face challenges and are more likely to fail than succeed. Instead of embracing and accommodating consumers' actual preferences, the RTOs enacted, and FERC endorsed, the construction of additional barriers to consumers' preferences.

Specifically, the Commission adopted a sweeping expansion of PJM's MOPR, which it now applies to all new public power resources and other resources that are also deemed to be supported by so-called "state subsidies."⁶ The Commission's vague and overbroad definition of "state subsidy" inappropriately deems self-supply resources built or supported by local public power utilities as "subsidized" simply because municipalities and cooperatives

³ See, *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Docket No. AD17-11-000, Notice Inviting Post-Technical Conference Comments (May 23, 2017) ("2017 Technical Conference").

⁴ *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Docket No. AD17-11-000, Post Technical Conference Comments of American Municipal Power, Inc. at 1 (June 22, 2017) ("AMP 2017 Technical Conference Comments").

⁵ Given the changes to capacity markets, states have attempted to take matters into their own hands to better control outcomes. See, e.g., *Calpine, et. al v. PJM*, FERC Docket No. EL16-49-000 (2016) and *Hughes v. Talen Energy Marketing LLC*, 136 S.Ct. 1288 (2016).

⁶ *Calpine Corp. v. PJM Interconnection, L.L.C.*, Docket Nos. EL16-49-000, ER18-1314-000, ER18-1314-001, and EL18-178-000, "Order Rejecting Proposed Tariff Revisions, Granting in Part and Denying in Part Complaint, and Instituting Proceeding Under Section 206 of the Federal Power Act," 163 FERC ¶ 61,236 (June 29, 2018); "Order Establishing Just and Reasonable Rate," 169 FERC ¶ 61,239 (Dec. 19, 2019); "Order on Rehearing and Clarification," 171 FERC ¶ 61,034 (April 16, 2020); and "Order on Rehearing and Clarification," 171 FERC ¶ 61,035 (April 16, 2020).

are authorized to exist by their state. The non-bypassable retail service charges authorized by public power's customer-owners do not in any way equate to a statewide legislative initiative to create a subsidy collected from unwilling retail customers to support generators with zero obligation to serve those customers. While the Commission appropriately adopted an exemption to grandfather existing self-supply resources from the MOPR's application, the Commission's MOPR expansion exposes public power utilities and their customers to the risk of having to pay twice for any new capacity resources, without providing them any effective way to mitigate that risk. Given the events that have transpired since the 2017 Technical Conference, it is not surprising to find ourselves in the same position as we were four years ago.

As currently configured, centralized resource adequacy constructs have little to no flexibility to accommodate anything beyond the designer's vision of the "marginal unit" as a reference.⁷ In fact, RTO capacity constructs have become increasingly inflexible as regards eligible resource technologies and fuel types. This has had the result of overly narrowing the administratively defined "market" and attempts to ignore or exclude the much larger *real* market where decisions are made beyond the confines of the centralized capacity procurement mechanism.⁸ The Commission appears to buy into the fallacy that PJM's capacity construct, the RPM, encompasses the entire "market" and, conversely, that the market should be limited to the mandatory offer and purchase requirements of RPM. Further, it is simply not true that the only way to ensure resource adequacy is through a centralized

⁷ The wholesale markets are designed to select the units with the lowest operating cost, premised on the cost of a natural gas plant and so economic efficiency is valued above all else. See PJM Open Access Transmission Tariff, Attachment DD Reliability Pricing Model.

⁸ For example, if offers were received from a fossil resource and a renewable resource that are equivalent in all pertinent respects (unit availability, transmission location, etc.), the current constructs give no weight to the fact that state or local policy-makers might prefer the solar resource for its zero-emissions and renewability attributes.

mandatory capacity acquisition construct. For example, asking whether LSEs should be able to procure capacity “outside of PJM’s capacity market” and whether such a concept would “provide sufficient incentives for capacity to enter the PJM market when needed to ensure resource adequacy” demonstrates that the Commission’s thinking is too narrow. As demonstrated by the states over the last ten years and public power entities since their inception, the decision to bring on new capacity encompasses a myriad of factors beyond a confirmed contract for “capacity” for one year, three years in the future. Bilateral procurement of capacity is already part of the real and broader reliability imperative and can coexist with a residual auction while maintaining resource adequacy. Moreover, RPM is not a true market with willing buyers and sellers, but an administrative construct, where prices and outcomes are administratively determined, producing or exceeding the desired level of reliability, while providing price support for inefficient resources that ultimately falls as an unreasonable tax on customers.

It is time for the Commission to reexamine the need for mandatory centralized capacity auctions. While elimination of MOPR is needed, the time is ripe for wholesale revisions to RPM, and not just additional, minor tweaks to PJM’s current construct. AMP first presented an alternative to RPM at the 2017 Technical Conference⁹ and reiterates herein that reliability and resource adequacy can and should be achieved by permitting supply and demand to set prices by negotiating bilateral transactions. Such an approach would provide the much needed balance of flexibility and reliability that RPM has always lacked.

Through the responses to the questions below, AMP once again encourages the Commission to enable a more flexible resource adequacy framework that is not confined by rules that lag behind market innovations and evolutions in consumer preferences.

⁹ AMP 2017 Technical Conference Comments at 4-9.

II. COMMENTS ON SUPPLEMENTAL NOTICE

A. Panel 1 – ISO New England, NYISO, and PJM Capacity Constructs

1. RTO/ISO Capacity Construct Goals.

The primary purpose of the Eastern RTO/Independent System Operator (“ISO”) capacity constructs should be to provide a backstop toward ensuring resource adequacy. Primary responsibility for meeting resource adequacy requirements properly lies with the LSEs; however, the RTOs should be responsible for determining the LSEs’ obligations based upon the regional resource mix, anticipated new entry and locational constraints, as well as confirming compliance. The capacity constructs themselves should: (1) be simple; (2) ensure resource adequacy; (3) be resilient;¹⁰ (4) balance the numerous goals of safety, resource adequacy, consumer affordability, environmental sustainability, and financial stability to provide less price volatility to consumers; (5) be consistent with the needs of wholesale customers and consumer preferences (and operate within the constraints) as reflected through applicable state environmental programs and all other jurisdictional policy objectives; (6) accommodate all types of business platforms (merchant or competitive entries, investor owned utilities, and public power self-supply); (7) facilitate trade to include bilateral contracting and not have market rules that restrict the use of available capacity; (8) enable LSEs to reasonably create, maintain and adjust their portfolios as needed to meet ever changing and evolving regulatory requirements and other exogenous influences (in accordance with RTO reliability requirements) in a non-discriminatory fashion; and, (9) align with the transmission planning process for maximum efficiency and optimal consumer affordability.

¹⁰ By “resilient,” we mean that a capacity construct should not require constant and significant modifications as unforeseen events arise. A capacity construct that requires essentially top-to-bottom redesign in response to a three-day cold snap, for example, would not be considered “resilient.”

2. Q2 Missing Money.

The legitimate purpose of the RTO/ISO capacity constructs should never have been to minimize “missing money.” No “enhancements” should be made solely for the purpose of providing additional revenue to generators or any other resources, whether characterized as “missing money” or otherwise. Capacity constructs are necessary to reflect the reality that electricity is an essential service and the stark fact that supply and demand of such a service left to a purely competitive market could result in periods of in-actionable prices, emergency operations, and irreparable harm to consumers. If the electric utility industry is going to continue to embrace competition and markets, enhancements and modifications to energy and ancillary service markets are the appropriate vehicle in the event that those markets are not properly allowing resources to recover their costs of providing energy or ancillary services, or are being over-compensated. This would include the need to define possible new ancillary services to achieve operational objectives.

3. Price Signals.

“Price signals” always play a role in determining proper utilization of efficient resources over inefficient resources. Price signals (whether from an auction clearing price or prices paid in bilateral transactions) reward efficiency and drive the most inefficient resources out of the market. This remains true when state actions favor a particular class of resource. If state action favors solar resources, for example, price signals determine which solar facilities are viable and which are not.

4. Evolving Resource Mix.

The design of an effective capacity construct must accommodate an evolving resource mix. The same is true of energy and ancillary services markets. The appropriate role for the RTO/ISO is to avoid impeding state efforts to achieve diverse policy goals while providing a resource adequacy backstop, which a well-crafted capacity construct would do. Centralized

procurement by the RTO/ISO is only appropriate in the limited resource adequacy backstop context and does not help states achieve diverse policy goals – it is solely designed for reliability.

5. Factors Driving Entry and Exit.

Appropriate entry and exit decisions result from co-optimizing all three wholesale supply segments: energy, ancillary services, and capacity. Resource entry decisions are not based solely on anticipated revenues for one year, three years in the future.

6. Durability of the Status Quo MOPR.

The status quo MOPR is not a durable construct. If left in place, the status quo MOPR will severely damage the long-standing public power business model.

7. The MOPR's Effect on the Ability of Resources to Clear.

The status quo MOPR in PJM applies to many resources without regard to whether those resources actually receive revenue pursuant to state programs. The current PJM MOPR imposes a minimum offer price on new public power resources, which do not receive any sort of measurable revenue subsidy from any state program. The MOPR impairs the ability of public power entities to build new capacity resources because these resources will not be able to clear in PJM's RPM auctions when required to offer at Net Cost of New Entry ("CONE"). As a result, PJM's current MOPR will destroy the longstanding public power self-supply business model.

8. Factors Behind Over-Procurement of Capacity.

In PJM, thirty-plus rule changes since the inception of RPM have each been designed to artificially prop up prices, leading to oversupply. Reliability benefits of this over-procurement, if they even exist, are grossly outweighed by the exorbitant incremental costs. Inflation of capacity prices by keeping inefficient old units on line slows the transition to more efficient new units, including renewables. Capacity price inflation also dampens energy and

ancillary services prices and flies in the face of supply and demand fundamentals. PJM needs appropriate capacity, energy and ancillary services pricing that will lead to inefficient units retiring.

9. State Actions Affecting Other States.

Circumstances where the actions one state takes to affect its own resource mix have an effect on other states demonstrate a market failure. In PJM, RPM is an administrative construct rather than a market and, as such, is ill-equipped to accommodate actions taken by one state without affecting other states. Ignoring this fundamental reality and insisting on adherence to an overly narrow construct has been the Achilles heel of RPM from the beginning. We need a resource adequacy construct that accommodates this reality while maintaining reliability.

10. Resource Adequacy Achieved Outside the Capacity Construct.

States must be permitted to ensure resource adequacy without relying on an RTO/ISO central procurement mechanism, except as a backstop, unless the state elects otherwise. But this doesn't need to exist "outside" of the capacity construct, rather it needs to be an essential part of the construct. Bilateral transactions exist within bilateral markets. Bilateral transactions, along with self-supply, should form the first tranche of resources that states may direct load-serving entities to utilize in ensuring resource adequacy. RTOs/ISOs must accommodate bilateral transactions and should only facilitate capacity transactions involving willing buyers and sellers, not captive customers.

B. Panel 2 – Implications of Status Quo MOPR in the PJM Capacity Construct

1. Appropriate Role of the PJM Capacity Construct.

The appropriate role of the PJM capacity construct should be to ensure resource adequacy. The current MOPR has not made any documented contribution toward ensuring

just and reasonable rates for capacity in PJM. In fact, application of the current MOPR rules ensures that less efficient resources displace more efficient resources in the mix of resources that clear in the Base Residual Auction (“BRA”). Elimination of the MOPR would therefore not pose any challenges to ensuring resource adequacy and just and reasonable rates.

2. Role of Capacity Revenue and Price Signals Under Current PJM Rules.

Capacity revenues and price signals under PJM’s current market rules are not a good reflection of the region’s resource adequacy objective because these rules ensure that PJM over-procures capacity. Capacity revenues alone do not engender entry or exit.

3. Redundant Payments for Capacity Under Current Rules.

As noted at II.A.7 *supra*, PJM’s current MOPR impairs the ability of public power entities from building new capacity resources because these resources will not be able to clear in PJM’s RPM auctions when required to offer at Net CONE. As a result, any public power entity that completes a new resource would pay for the cost of that resource and an equivalent amount of capacity procured in RPM. More likely, no new public power resources will be completed under the current PJM MOPR, which will destroy public power’s longstanding self-supply business model. It is not just and reasonable to require a class of market participants to choose between: (i) paying twice for capacity, or (ii) foregoing the opportunity to acquire their own resources and being forced to rely entirely on short-term supply arrangements in PJM’s capacity construct. This is patently unduly discriminatory and is one primary reason why the current PJM MOPR should be eliminated immediately.

4. State Resource Mix Decisions and Resource Adequacy.

The assertion that if states want to exercise their rights over the resource mix they must be responsible for resource adequacy is false. States can choose the resource mix and can also influence the methods by which LSEs under their jurisdiction acquire capacity,

including through bilateral transactions, a PJM backstop capacity construct, or otherwise. This flexibility in no way mandates that states take absolute responsibility for resource adequacy. PJM should continue to assess regional and local resource adequacy requirements (including the mix of resources), advise market participants, and provide a reliability backstop mechanism, which could be more broadly relied upon in the event a state elects to more directly prescribe the resource mix.

5. Relationship of Resource Adequacy Requirements to Entry and Exit Signals.

RPM is an administrative construct responsible for gross over-procurement of capacity in PJM, rather than a market. As such, RPM is incapable of serving as the primary vehicle to send economically efficient entry and exit signals to capacity resources. Even though auction-based constructs offer some useful disclosure, clearing prices are too erratic to serve as a basis for making long-term resource decisions.¹¹ The notion that only a mandatory centralized auction offers price discovery is false. LSEs can and do discover prices in a number of ways other than auction clearing prices. Moreover, auction clearing prices are but a single factor in a multi-variate decision-making process.¹² Resource commitments emerge from a multifaceted decision-making process in which price (if considered at all) is but one of many economic, engineering and policy-based factors evaluated; for that reason,

¹¹ See PJM Open Access Transmission Tariff, Attachment DD, Reliability Pricing Model. The PJM capacity construct uses an administratively determined CONE, adjusted by estimated Energy and Ancillary Services (“EAS”) revenues to develop a Net CONE upon which capacity costs should be expected to be based. The CONE is based on detailed engineering estimates of fictitious natural gas fired units and used to anchor an administratively determined artificial demand curve (because demand is inelastic in the electric utility industry) to calculate the clearing price for each capacity auction. This clearing price is a price for a single year, three years into the future. There is no long-term component beyond that single year.

¹² AMP, for example, did not rely on PJM clearing prices in deciding to pursue its resource development program, which includes, among other things, a \$3 billion investment in 350 MW of capacity at four new hydroelectric projects, and up to 80 MW of solar generation (including Ohio’s largest utility-scale solar energy project). AMP made these commitments to effectuate its Members’ preferences for a power supply portfolio that incorporates diverse fuel types and renewable resources while limiting Members’ exposure to volatile market prices.

“discovering” one component (price) has little value in the overall decision-making process.¹³ Indeed, suppliers in ERCOT routinely enter into long-term capacity contracts even though ERCOT conducts no capacity auctions that would serve to make prices “transparent.”

III. COMMENTS ON PJM’S CAPACITY MARKET

A. Existing PJM MOPR Implications

1. Changes in the Nature and Scope of State Actions.

The nature and scope of state actions in support of specific resource types have changed since RPM was first implemented. RPM, however, has always been an inflexible, narrow, overcomplex, and needlessly centralized administrative construct. A wholesale revision to RPM is in order with a focus on accommodating bilateral markets and state policies regarding renewable resources, as well as to reflect the changing resource mix and the potential impact on reliability over every hour of the year to provide a capacity construct with sufficient elasticity to keep up with changing circumstances.

2. Effect of Expanded MOPR on Resource Clearing.

Assessing the quantity of state supported and non-state supported resources would require providing a meaningful and legitimate definition of “state supported,” which is currently absent. Activities undertaken in the course of pursuing the longstanding public power self-supply business model, which entail no measurable economic support, should not be classified as state-supported. While there have been some highly-publicized anecdotal events since 2018, such as state efforts to subsidize uneconomic nuclear power plants, this recent activity does not appear to be widespread or directed at new resources. Therefore, the efficacy of the Expanded MOPR as a tool to preclude new entry of demonstrably

¹³ How effective is price discovery when we have 5,000 MWs new entry to a region with 22% of capacity above that needed to serve load and another 36% available? The reserve margin calculated by PJM to reliably serve its footprint is 16.5%.

subsidized resources seems limited at best. Instead, the Expanded MOPR casts an unjustifiably wide net that interferes with legitimate state policy choices, rather than mitigating the rare or perhaps nonexistent patent subsidy.

3. State Supported Resources that are Unlikely to Clear in RPM.

In the event that states do support resources, resources with relatively higher capital costs will be most affected by the Expanded MOPR. These resources can include nuclear, hydro, and off-shore wind, among others.

4. Effects of Over-Procurement Under the Expanded MOPR.

RPM itself is fundamentally responsible for over-procurement of capacity in PJM. The Expanded MOPR exacerbates the problem of inflated prices propping up uneconomic resources and delaying their retirement. Inflated capacity prices significantly deflate energy prices because over-supply of capacity dampens scarcity pricing for energy. While energy prices tend to remain low, overall prices paid by customers in the PJM region will be uneconomic over time because of barriers to entry that preclude competition from more efficient resources. Uneconomic prices are not just and reasonable under the Federal Power Act (“FPA”) and undeserved favoritism toward inefficient incumbent resources is unduly discriminatory.

5. States’ Willingness to Remain in PJM Capacity Construct.

PJM’s Expanded MOPR strains states’ willingness to remain in PJM’s RPM capacity construct. The Expanded MOPR imposes a double-payment burden on states’ utilities where state policy favors particular resources because application of the Expanded MOPR to those resources means they are unlikely to clear in RPM auctions. Some states are exploring the Fixed Resource Requirement (“FRR”) option as a means to avoid exposure to double-charging for capacity but are finding it to be burdensome. Public power, however, is in effect precluded from utilizing the FRR option by electing to remain net short as part of a portfolio

approach to supply, as well as a result of the exposure to the excessive penalties that it entails. AMP has explained why the FRR option does not work for public power in numerous proceedings.¹⁴

6. Effects of Expanded MOPR, Including Greater Use of FRR Construct, Administrative Burdens, and Bilateral Transactions.

The potential for increased reliance on PJM's FRR construct is discussed *infra* at III.B.15. The Expanded MOPR has already created substantial administrative burdens for PJM and capacity resource owners in connection with resources exercising the unit specific option. PJM staff has been overwhelmed with these requests and resource owners report that the onerous unit-specific review process fails to yield results that will ensure that resources can offer capacity fairly in the BRA. The transition from applying the MOPR only to combustion turbines has been unsurprisingly difficult for PJM and resource owners, given that the MOPR now applies to essentially all new resources. For public power entities, the Expanded MOPR has extinguished the ability to engage in private, voluntary, bilateral transactions—effectively killing this self-supply business model.

¹⁴ Since at least the beginning of 2011, self-supply LSEs have been explaining why the FRR option does not work for them. See, for example, *PJM Interconnection, L.L.C.*, Docket No. ER11-2875-000, Protest and Request for Rejection or, In the Alternative, Request for Suspension and Further Procedures of the PJM Load Group (March 4, 2011); *PJM Interconnection, L.L.C.*, Docket No. ER11-2875-000, Motion to Lodge Evidence That There is No Need for MOPR Revisions Prior to the May 2011 Base Residual Auction (March 22, 2011); *PJM Interconnection, L.L.C.*, Docket No. ER13-535-000, Comments of PJM Load Group in Support of PJM Filing (December 28, 2012); *PJM Interconnection, L.L.C.*, Docket No. ER13-535-000, Motion for Leave to Answer and Answer of PJM Load Group in Support of PJM Filing (January 15, 2013); *PJM Interconnection, L.L.C.*, Docket No. ER13-535-000, Comments of PJM Load Group in Support of PJM's March 4, 2013 Response, (March 25, 2013); *Calpine Corporation, et al. v. PJM Interconnection, L.L.C.*, Docket No. EL16-49-000, 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 (April 11, 2016); *Calpine Corporation, et al. v. PJM Interconnection, L.L.C.*, Docket No. EL16-49-000, 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 (April 25, 2016); *PJM Interconnection, L.L.C.*, Docket No. ER18-1314-000, Comments of American Municipal Power, Inc. on PJM interconnection L.L.C.'s Capacity Repricing or In the Alternative MOPR-Ex Proposal (May 7, 2018); and, *PJM Interconnection, L.L.C.*, Docket No. EL18-169, Protest of American Municipal Power, Inc., (June 20, 2018).

7. Benefits of the Expanded MOPR.

As discussed at II.B.1 *supra*, the Expanded MOPR has not made any documented contribution toward ensuring just and reasonable rates for capacity in PJM, and has not provided any other benefits, all while exacerbating capacity price inflation in PJM and unduly discriminating between resources.

8. State Actions Intended to Suppress Capacity Market Prices.

It is not necessary or appropriate for the Commission to apply a MOPR to address state actions intended to suppress capacity market prices. Such actions run afoul of constitutional restrictions on state interference in matters subject to federal jurisdiction, as well as the delineation of state and federal authority under the FPA. The Commission has a number of other avenues to address blatant market meddling. The Expanded MOPR is a blunt tool that, while it might successfully mitigate such actions, causes massive and wholly unnecessary collateral damage to wholesale electricity markets in the process. Furthermore, while states have acted to address legitimate concerns about capacity utilized in their own regions, there have been no demonstrations that states have acted with the intent to suppress capacity prices.

B. Potential Alternatives to Expanded MOPR in PJM

1. Elimination of the Expanded MOPR.

The Expanded MOPR should be eliminated, not revised. In addition, changes to the PJM Tariff to accommodate bilateral transactions should be made. These changes would constrain RPM to addressing the residual capacity requirements of LSEs in the PJM region.

2. Reforming Capacity Value Accreditation.

Capacity resources must be properly accredited for the reliability value that they provide. This will be especially important with the increase in intermittent renewables and

corresponding need to move from a reliability construct that focuses on peak load periods. This principle applies without regard to elimination or revision of the MOPR.

3. Implementation Timeframe.

In order to avoid delaying the December 2021 BRA, PJM must file a proposed replacement rate in July, and the Commission would need to approve that filing in September.

4. Buyer-Side Market Power.

There is no need for a MOPR designed to address buyer-side market power (*i.e.*, a Targeted MOPR) to replace the Expanded MOPR. There is no evidence available demonstrating that any party has the ability to exercise buyer-side market power in RPM, and the MOPR should be eliminated entirely. Buyer-side market power could only exist in a true market without captive buyers, in which case the Commission might consider applying a “pivotal buyer test” analogous to the pivotal supplier test it applies with respect to energy markets. RPM, however, is an administrative construct with captive buyers and therefore exercise of buyer-side market power is simply not possible.

5. Resources Subject to a Targeted MOPR.

In the event that the Commission imposes a Targeted MOPR on specific resources, then the Targeted MOPR should only apply to new resources, but should not apply to public power resources. If there is a genuine concern about the exercise of buyer-side market power, the Commission needs to consider ability and intent. Public power entities that acquire capacity resources for the purpose of self-supply, including bilateral contracts or generating assets, do not receive material subsidies that the Commission may or should mitigate by application of a Targeted MOPR. The Commission should adopt a public power exclusion from the definition of Actionable Subsidy for several reasons: (1) public power does not receive state-sponsored subsidies; (2) public power is fundamentally different from investor-owned utilities and independent power producers that are receiving state-sponsored

subsidies; and (3) the public power business model limits the opportunity to suppress market prices.¹⁵

6. Exemptions from a Targeted MOPR.

Under any Targeted MOPR that the Commission would impose, exemptions should be provided for public power self-supply for the reasons already discussed.

7. FRR and Self-Supply Options.

FRR was developed as part of the original RPM construct to allow one particular entity the ability to self-supply. It was overly narrow and unduly penalizing to any entity that sought to avail itself of this option. If FRR is to be retained as a viable option, its requirements must be adjusted to make it comparable to non-FRR resources.

The Commission should ensure that states and self-supply entities, including public power, can choose to achieve resource adequacy outside of the centralized PJM capacity construct. Self-supply options should be made available in a manner that ensures the costs of a particular state's policies are confined to that state. Similarly, costs associated with policies that the state applies to investor-owned utilities' resource adequacy should be

¹⁵ See AMP/PPANJ Evidence and Arguments, Docket No. EL16-49, at 10-27 (filed October 2, 2018) (Accession No. 20181002-5215). In most states within the PJM footprint, the public utility commissions have little to no regulatory authority over public power entities. Given the lack of state authority over public power resource selection and cost recovery, the states are also not offering subsidies to specific generating resources owned by public power. Additionally, unlike other market participants, public power entities remain vertically integrated and retain the obligation to serve public power load (who are the citizen owners/operators of public power), through a combination of generation development, bilateral contracts, and purchases through the auction process. Thus, in the event that public power entities were to receive out of market support, unlike IOUs and IPPs, public power entities would have an obligation to correspondingly reduce the rates that customers pay. Finally, 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"). However, in order to maintain the critically important tax exempt and tax advantaged status, municipal LSEs must meet and maintain several mandatory conditions, including not using the project for anything other than the governmental purposes or for any activities that constitute a "private use." In other words, the federal tax requirements on tax-advantaged obligations that are critical to the longstanding 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.

recovered from the customers of those utilities, not from public power customers, and vice versa. In other words, self-supply options should be structured such that only load subject to the retail ratemaking jurisdiction of a particular Relevant Electric Retail Regulatory Authority (“RERRA”) shall pay for the costs associated with that RERRA’s resource adequacy policy choices.

Moving forward, self-supply resources should be subject to the same capacity performance requirements applicable to resources that clear in RPM auctions. Rules and practices governing the submission of offers by joint owners of individual generating units should remain unchanged and, therefore, an election by one joint owner will not affect RPM participation by other owners.

8. Residual Capacity Auction and Bilateral Procurement.

LSEs should be able to procure capacity as a part of PJM’s capacity construct such that PJM would only administer a residual capacity auction (*i.e.*, an auction where demand satisfied outside the central procurement auction is excluded from the demand curve and capacity committed outside of the central procurement auction is excluded from the supply curve) to procure the remaining capacity requirements. The process around such a residual auction would be structured as follows:

Step 1: PJM calculates indicative locational resource reliability requirement.

Step 2: LSEs procure capacity via self-supply, RFPs, bilateral transactions, exchanges, etc.

Step 3: LSEs certify their bilaterally contracted capacity to PJM.

Step 4: Residual Pool Calculation

- PJM notifies capacity resources that do not have a pre-arranged capacity obligation with an LSE that any remaining capacity goes into the residual pool, ensuring no physical withholding by resources.

- PJM notifies LSEs based on their reported supply arrangements whether they have an additional capacity obligation based on reliability calculations (e.g., Effective Load Carrying Capability (“ELCC”)) that will be met by resources clearing in the residual auction.

Step 5: PJM conducts a BRA to commit residual capacity sufficient to meet remaining load taking into account reliability needs (e.g., ELCC).

The residual auction informed by PJM’s determination of the appropriate resource mix needed to maintain reliability, coupled with bilateral transactions, will provide sufficient incentives for capacity to enter the PJM market when needed to ensure resource adequacy. The availability of long-term bilateral contractual arrangements would provide much better incentives than the one-year, three-years forward commitments currently provided by RPM. Bilateral procurement of capacity is a natural part of the broader wholesale electricity market and can coexist along with a residual auction. RPM is not a market. Bilateral transactions are fully accommodated in PJM’s energy market and there is no reason they cannot be fully accommodated in a revised PJM capacity construct.

9. No Adverse Impacts from Removing Expanded MOPR.

Removing the Expanded MOPR in PJM would not have any adverse impacts on resource adequacy and in turn reliability. PJM is already over-supplied because there are no exit signals; RPM needs a complete overhaul. Transitioning RPM to a backstop reliability function through a residual capacity acquisition mechanism would appropriately place primary resource adequacy responsibility on each LSE and would get back to the resource adequacy concept espoused when RPM began. Guided by PJM local and regional requirements, LSEs are fully capable of determining appropriate levels of capacity resources to acquire bilaterally and can then rely on PJM to facilitate acquisition of the balance required to achieve reliability targets.

10. Resource Adequacy Following Removal of Expanded MOPR.

There are differences among the expected short-term and long-term effects on resource adequacy and in turn reliability of not removing the Expanded MOPR. Resource adequacy and reliability may not suffer in the short-term because of existing over-procurement (albeit at unjustly high prices). In the long-term, however, the problem of existing RPM rules muting exit signals, which is exacerbated by the Expanded MOPR, will tend to create a concentrated retirement cohort at some point in the future. If not timely addressed, this may impair reliability in advance of replacement resources coming on line and induce rate shock afterward, all of which could be mitigated by eliminating the Expanded MOPR now and simultaneously overhauling RPM.

11. Effect of State Supported Resources on Financing Available to Merchant Resources.

There is no valid concern that merchant resources may fail to receive financing due to state supported resource entry in PJM. The Commission's responsibilities under the FPA do not include preventing exogenous state actions from interfering with the ability of merchant resource financing. The failure of merchant resources to obtain financing is a strong indicator that those resources are not needed.

The primary obstacle to merchant resources obtaining financing is the failure of PJM's administrative capacity construct to provide commitments to resources for periods longer than one year. PJM's capacity construct should address this concern by allowing bilateral markets to work and should not attempt to administratively influence merchant resource financing opportunities. Willing buyers and sellers may elect periods longer than one year commitments and these will support financing of resources sufficient to meet the resource adequacy, and therefore reliability, needs of customers in the PJM region.

The transparency provided by specifying state policies such as renewable portfolio standards in statutes and including long-term timelines allows investors to estimate the timing, type, and of quantity resources entering PJM's markets in response to those policies and any potential market impacts. This transparency should be helpful to resources as they work out long-term arrangements with willing buyers in bilateral transactions. The incentive for resources to enter the market should be much broader than the current, flawed capacity construct and a Targeted MOPR would amount to administrative interference with market forces that would actually constitute a disincentive for new capacity to enter the PJM market when needed to ensure resource adequacy.

12. Changes to Energy and Ancillary Services Markets.

PJM has already made significant changes to its energy and ancillary services markets since implementing RPM (e.g., shortage pricing). Design of a revised capacity construct needs to specifically recognize these changes prior to PJM implementing further changes directed at sending appropriate price signals and ensuring sufficient investment incentives. PJM should consider what new products and services may be required to properly incentivize operational behavior as intermittent generation becomes more prevalent.

13. FERC Responsibilities to Resource Neutral States.

FERC bears no special responsibility toward states in the PJM region that have elected not to subsidize their preferred resources. FERC should require PJM to reform its capacity construct in a way that permits willing buyers and sellers to realize their choices by accommodating bilateral transactions and bearing the cost for such decisions. Doing so would ensure that resource neutral states do not bear any burdens associated with the resource preferences of other states.

14. Reconciling RPM with State Policies.

It is not FERC's role to reconcile PJM's capacity construct rules with state policies through modifications to the capacity construct. Rather, the Commission should seek construct and market rules that reflect reality and motivate participation by all market participants. Fully eliminating the MOPR is urgent. But FERC should also focus now on ensuring that LSEs have access to a reality based capacity construct. This would obviate the need for a MOPR and ensure just and reasonable rates over the long-term.

IV. COMMISSIONER DANLY'S PROPOSAL

It is worth noting that Commissioner Danly issued a proposal (the "State Option to Choose Resources for RTO Capacity Markets" or "SOCR") and invited comments sent via email to Matthew Estes. To avoid the potential implication of *ex parte* communications, AMP addresses Commissioner Danly's SOCR proposal in these comments.

Commissioner Danly states that the SOCR is designed to "establish the right of states to choose preferred capacity resources"; eliminate double payments for capacity; avoid over-procurement of capacity; and prevent price suppression. While AMP appreciates the proposal outlined, as with most things, the devil is in the details and the outline lacks most of the necessary details. For example, in the first step, RTOs conduct auctions under expanded MOPRs to "ensure that resources are offered into the market at their actual costs." The expanded MOPR rules are not described and it is unclear what is meant by the "actual costs" of resources. Additionally, the SOCR is overly complicated. It involves a multi-step process whereby an auction is conducted, but thereafter, states may select resources that did not clear to substitute for resources that did clear. It envisions an iterative process of resource selection and removal of resources

prior to final awards. The proposal acknowledges that special rules may need to be developed to address the details of this proposal, for example, what to do in the event that states' resource selections cannot be met or how to respect Locational Deliverability Area constraints. While not directly stated, the SOCR seems to envision that the states will pay selected "Supported Resources" the difference between their "actual costs" and the clearing price through some outside process. The SOCR also does not address public power and it is unclear whether a public power entity would be treated the same as a state.

Ultimately, the SOCR proposal fails from the same shortcomings as the current RPM model in that it is a centralized, mandatory and inflexible construct that excludes bilateral contracting. AMP encourages Commissioner Danly to review AMP's proposal that is focused on bilateral contracting with a residual auction to ensure resource adequacy while respecting state and local policy choices and preserving a competitive capacity market.

V. CONCLUSION

AMP supports competitive markets. Truly competitive markets are important to AMP and public power because they provide opportunities for our members to serve their customers at lower costs. But, regardless of how they are structured, markets must benefit consumers. Forcing all capacity procurement through an overly narrow and exclusionary centralized administrative mandatory capacity acquisition construct precludes a host of alternative supply arrangements and actually adversely impacts energy and ancillary services markets. The goal should be an actual capacity construct that participants affirmatively want to use, not one they labor to avoid. It needs to be simple, it needs to be residual, and to the extent possible, not a detriment to other aspects of the energy marketplace. Allowing all

resources to compete unfettered by a MOPR would allow consumers to select the resources that best fit their specific obligations, needs, and preferences. Transitioning to a market centered on bilateral contracting (with the smallest possible number of RTO-prescribed resource attributes) and, at the same time, development of new energy products to enable market participants and states to achieve their resource goals and address potential inequities like leakage and free riders, would produce a more flexible and enduring capacity construct while achieving resource adequacy.

AMP appreciates the opportunity to provide these comments.

Respectfully submitted,

/s/ Lisa G. McAlister

Lisa G. McAlister

Senior Vice President & General Counsel
for Regulatory Affairs

Gerit F. Hull

Deputy General Counsel
for Regulatory Affairs

American Municipal Power, Inc.

1111 Schrock Road, Suite 100

Columbus, OH 43229

(614) 540-1111

lmcAlister@amppartners.org

ghull@amppartners.org

Dated: April 26, 2021

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.

/s/ Lisa G. McAlister

Lisa G. McAlister

Senior Vice President & General Counsel

Dated at Columbus, Ohio, this 26th day of April, 2021.