

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

<b>Calpine Corporation, Dynegy Inc.,</b>	)	
<b>Eastern Generation, LLC, Homer City</b>	)	
<b>Generation, L.P., NRG Power Marketing</b>	)	
<b>LLC, GenOn Energy Management, LLC,</b>	)	
<b>Carroll County Energy LLC,</b>	)	<b>Docket No. EL16-49-00__</b>
<b>C.P. Crane LLC, Essential Power, LLC,</b>	)	
<b>Essential Power OPP, LLC, Essential</b>	)	
<b>Power Rock Springs, LLC, Lakewood</b>	)	
<b>Cogeneration, L.P., GDF SUEZ Energy</b>	)	
<b>Marketing NA, Inc., Oregon Clean</b>	)	
<b>Energy, LLC and Panda Power</b>	)	
<b>Generation Infrastructure Fund, LLC</b>	)	
<b>v.</b>	)	
<b>PJM Interconnection, L.L.C.</b>	)	
<b>PJM Interconnection, L.L.C.</b>	)	<b>Docket Nos. ER18-1314-00__</b>
<b>PJM Interconnection, L.L.C.</b>	)	<b>Docket No. EL18-178-00__</b>
	)	<b>(Consolidated)</b>

**REQUEST FOR REHEARING AND REQUEST FOR CLARIFICATION OF  
PJM INTERCONNECTION, L.L.C.**

PJM Interconnection, L.L.C. (“PJM”), pursuant to section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 825*l*, and the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rule 713, 18 C.F.R. § 385.713, submits this request for rehearing and request for clarification of the Commission’s December 19, 2019 order in these proceedings.<sup>1</sup>

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<sup>1</sup> *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (“December 19 Order”).

## I. SUMMARY OF POINTS

### A. **PJM Appreciates the Commission’s Goal of Protecting Competitive Markets. However, the December 19 Order Disrupts the Careful Balance of Accommodating State Energy Policy Objectives and Self-Supply by Integrated Utilities While Maintaining the Integrity of the PJM Capacity Market.**

PJM appreciates the Commission’s recognition of the value of competitive markets and its support for efficient market outcomes and inclusive resource participation that spurs new investment and innovation.<sup>2</sup> PJM also recognizes the complexity of the issues raised in these proceedings and the Commission’s dedication of a significant amount of hard work and intellectual discourse towards the issuance of the December 19 Order.

PJM’s capacity market, known as the Reliability Pricing Model (“RPM”), is instrumental in maintaining resource adequacy, improving generator performance, and providing appropriate price signals to all market participants. Indeed, when the capacity market is considered in totality with the energy and ancillary services markets, PJM’s markets and the Commission’s regulation thereof, have been a tremendous success with the result being significant economic efficiencies that have saved PJM consumers billions of dollars.

For more than a decade, the Commission has uniformly recognized the overall value of the capacity market in sending price signals to incentivize new, more efficient and

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<sup>2</sup> The PJM capacity market enabled competition to incent the development of a more efficient fleet and has served as an important vehicle for attracting clean resources such as demand response and energy efficiency to the PJM Region by providing efficient price signals. The capacity market also has sent price signals that has led to the retirement of over 41,300 MW of inefficient generation and the introduction of almost 52,000 MW of new more efficient generation. See *2021/2022 RPM Base Residual Auction Results*, PJM Interconnection, L.L.C., at 20 (May 23, 2018), <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2021-2022/2021-2022-base-residual-auction-report.ashx?la=en>.

cleaner resources.<sup>3</sup> During this period, the Commission has approved the use of a Minimum Offer Price Rule (“MOPR”) essentially as a guardrail to protect from offers reasonably viewed as presenting a significant threat to market efficiency. In this way, the Commission has long balanced the need for the capacity market to send accurate price signals with state interests—including public policy objectives and the regulation of their utilities.<sup>4</sup>

This balance has delivered efficient price signals and overall market efficiencies, while maintaining the reliability of the system. These efficient markets have driven significant market-based investment and have resulted in improved generator performance. The December 19 Order, however, does not maintain the careful balance followed by prior Commission orders<sup>5</sup> and, in fact, disrupts the balance that has successfully worked to

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<sup>3</sup> The price signal also provides valuable information to existing resources, letting them know when it is time to invest and when it is time to retire. *See, e.g., PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236, at P 156 (2018) (“June 2018 Order”) (recognizing that the capacity market sends “price signals on which investors and consumers rely to guide the orderly entry and exit of capacity resources”); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157, at P 80 (2016) (“Capacity market clearing prices reflecting locational price adders send price signals to encourage capacity investment where it is most valuable.”). Further, PJM’s Variable Resource Requirement (“VRR”) curve has been shown to be effective in interacting with the supply curve to yield just and reasonable rates. *See, e.g., PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318 at PP 99-109 (2007) (explaining why the VRR curve results in just and reasonable rates at differing levels of supply); *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 41 (2009) (“Cleared capacity can exceed the target in some periods and fall short of it at other times. But in order for the RPM auction mechanism to achieve its reliability objectives, the demand curve needs to be properly set to reflect the actual costs of a new entrant.” (footnote omitted)); *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,183, at P 52 (2014) (“[W]e find persuasive PJM’s argument that the proposed VRR Curve is reasonably needed for PJM to achieve an acceptable level of reliability, given evolving market conditions.”). Indeed, the VRR curve itself is a guardrail in that it ensures that the correct price signal is sent when supply is below the Installed Reserve Margin (“IRM”) and provides an important price signal greater than zero when supply is greater the IRM.

<sup>4</sup> Indeed, since PJM’s capacity market was adopted in 2006, entities self-supplying their own capacity, whether through ownership or bilateral contract, has been well understood and a component of the resource supply curve.

<sup>5</sup> The December 19 Order disrupts the preexisting coexistence of the capacity market with the traditional role and participation of integrated utilities (by “integrated utilities,” PJM means integrated investor owned utilities, municipalities, and cooperatives) and relevant regulators in resource planning and resource selection. The December 19 Order also sets up a paradigm for such integrated utilities where any new resource is subjected to a material risk of not clearing based upon a prescriptive economic offer (thus

accommodate the interests of states and integrated utilities, with appropriate guardrails, while maintaining the integrity of the market and ensuring a wholesale rate in the zone of reasonableness.<sup>6</sup>

**B. The Commission Should Reconsider the December 19 Order While Prioritizing PJM’s Resumption of its RPM Auction Process.**

PJM is seeking rehearing of the December 19 Order principally because the Commission’s pursuit of greater market efficiency as communicated in the order may have paradoxically unintended consequences over time and may result in less economic efficiency. The goal of PJM’s markets (not just the capacity market, but all markets working in concert) is to provide greater economic efficiencies.<sup>7</sup> Nothing in the December 19 Order will prevent states, or for that matter integrated utilities, from pursuing their public policy objectives or maintaining traditional methods of resource procurement. However, if resources are procured outside of the PJM capacity market, and such resources do not clear an RPM auction and thus do not count towards satisfying the reliability requirements, PJM would be required to procure alternative capacity through RPM.<sup>8</sup> Such a result would

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limiting the ability of an integrated utility or regulator to value resources differently). Simply put, the December 19 Order goes beyond what is necessary to protect the integrity of the wholesale market.

<sup>6</sup> See *Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 266 (D.C. Cir. 2007) (“[R]easonableness is a zone, not a pinpoint.”); see also *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at PP 99-109 (explaining why the VRR curve results in just and reasonable rates in scenarios at differing levels of supply).

<sup>7</sup> PJM recognizes that the complexity of the issues in these dockets is compounded by the lack of clarity in other dockets such as the Commission’s ongoing investigations into fast-start pricing and reserve price formation. See PJM Fast-Start Compliance Filing, Docket No. ER19-2722-000 (Aug. 30, 2019); PJM Reserve Market Enhancements Filing, Docket Nos. ER19-1486-000 and EL19-58-000 (Mar. 29, 2019). The efficiencies delivered by the markets are interdependent so PJM encourages the Commission to expeditiously issue orders in those proceedings.

<sup>8</sup> The RPM auctions procure resources in accordance with the Commission-approved VRR curve. In the future, state contracted or integrated utility resources that do not clear the auctions will not count towards meeting the requirements of the VRR curve even though those resources will exist and be committed to serve load.

clearly be inefficient and be detrimental to consumers and, further, is not necessary to ensure an efficient price signal nor a just and reasonable rate.

Furthermore, the December 19 Order suggests that the FRR alternative can be utilized by self-supply entities or states seeking to pursue their public policy objectives.<sup>9</sup> However, because FRR removes load and supply from the market, it does not provide transparent price signals to market participants. If significant additional portions of PJM's load were to utilize the FRR alternative, some of the efficiencies of a regional capacity market may be lost. PJM is concerned that the December 19 Order's pursuit of economic efficiency may in fact unintentionally cause economic inefficiencies over the long term. Therefore, PJM strongly urges the Commission to recognize that there needs to be a balancing of state policy objectives and federal interests in efficient market design in order to provide the greatest overall economic efficiency to consumers.

The orderly and timely completion of the capacity auctions is critical for maintaining investor confidence in the PJM capacity market.<sup>10</sup> To that end, PJM encourages the Commission to expeditiously resolve the issues presented on rehearing and clarification so that PJM can conduct the already-delayed Base Residual Auction ("BRA") for the 2022/2023 Delivery Year.<sup>11</sup> While achieving the clarity necessary to conduct the next BRA is the priority in the near term, in its order on rehearing and clarification, the

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<sup>9</sup> See, e.g., December 19 Order at P 12.

<sup>10</sup> Not only do generation developers rely on the forward nature of the capacity market to construct or invest in facilities as signaled by the market, Demand Resources and energy efficiency also need time to register resources necessary to fulfill any capacity obligations. In addition, the states require sufficient lead time to ensure that they can conduct default service procurement programs and for bidders in those auctions to know the capacity auction clearing prices prior to the initiation of the default service procurement processes.

<sup>11</sup> It is likely that additional BRAs beyond the 2022/2023 Delivery Year will also be delayed given the necessary pre-auction activities that must occur prior to the conduct of the auctions.

Commission should encourage PJM to pursue additional longer-term solutions in the wholesale capacity market that achieve the balance of federal and state interests consistent with the Commission's prior orders, while also accommodating the longstanding integrated utility business model.<sup>12</sup> Moreover, the Commission should expressly encourage PJM and its stakeholders to pursue new paths or products for recognizing federal and state interests that do not compromise the integrity of the wholesale capacity market, and to submit such proposals to the Commission for review.

**C. The December 19 Order Departs from the Commission's Past Approach of Using MOPR as a Guardrail to Preserve the Efficiency of the Capacity Market.**

The December 19 Order is in marked contrast from the Commission's past rationale used for the MOPR. When the MOPR was originally designed as part of the original 2006 RPM settlement, MOPR effectively applied only to certain offers for new entry by gas-fired resources, recognizing that the marginal, price-setting offer was likely to come from such resources. Given that distinction, MOPR did not apply to other resource offers that did not raise certain specific concerns relating to the interference of efficient price formation.<sup>13</sup>

Since then, the Commission expanded PJM's MOPR only in response to tangible new developments that posed a substantial risk of interference with efficient price formation, while also paying careful attention to exemptions for resources that did not

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<sup>12</sup> Again, PJM is not suggesting that the Commission delay the 2022/2023 Base Residual Auction or otherwise keep this docket open.

<sup>13</sup> See RPM Settlement Filing of PJM Interconnection, L.L.C., Docket Nos. ER05-1410-000, et al., at Explanatory Statement at 26-27, *as accepted by PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006) (MOPR applies to new entry sell offers in constrained areas, but zero is an acceptable minimum offer price for baseload and hydroelectric resources, upgrades to existing resources, and new entry developed in response to state regulatory or legislative mandates meeting certain conditions).

present the same types of concerns. For instance, the Commission eliminated the state action exemption in response to the immediate threat of interference with efficient price formation from new gas-fired resources with state revenue guarantees to cover their costs—if they cleared the PJM capacity auction.<sup>14</sup>

PJM thereafter worked with stakeholders on consensus reforms to the MOPR designed to tailor the MOPR’s impact to resource offers of concern, resulting in appropriately crafted exemptions for certain gas-fired new entry resources under the competitive entry and self-supply exemptions, which continued the practice of mitigating resources that raise concerns about efficient price formation while respecting the longstanding integrated utility resource planning models.<sup>15</sup> While the *NRG* opinion ultimately invalidated those exceptions on jurisdictional grounds,<sup>16</sup> the Commission never revisited, much less rebutted, the numerous substantive reasons it gave for previously finding those exemptions to be just and reasonable.<sup>17</sup>

PJM’s original filing in this proceeding continued the guardrails approach of focusing MOPR on identified specific developments posing a heightened risk of interference with efficient price formation.<sup>18</sup> Throughout this proceeding, PJM has strongly advocated reasonable exemptions to and constraints on an expanded MOPR to

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<sup>14</sup> See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at PP 139-43 (2011).

<sup>15</sup> See *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013), *order on reh’g & compliance*, 153 FERC ¶ 61,066 (2015), *vacated & remanded sub nom. NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (“*NRG*”).

<sup>16</sup> *NRG* at 115–16.

<sup>17</sup> See *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 (2017), *reh’g denied*, 169 FERC ¶ 61,237 (2019).

<sup>18</sup> See *Capacity Repricing or in the Alternative MOPR-Ex Proposal: Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market of PJM Interconnection, L.L.C.*, Docket No. ER18-1314-000, at 96-116 (Apr. 9, 2018) (“April 2018 Filing”).

keep the focus on resource offers that present the greatest concerns, in terms of likelihood and extent, of interfering with efficient price formation.

The June 2018 Order in this proceeding endorsed continuation of this balanced and circumscribed approach, proposing an accommodation mechanism by which offers receiving out of market support could be removed from the market, along with a corresponding quantity of load.<sup>19</sup> PJM responded by developing a detailed set of rules to protect against the interference of efficient price formation, while exempting offers that posed less concern to reasonably accommodate state and integrated utility objectives.<sup>20</sup>

The December 19 Order unfortunately disrupts this careful balance by departing from (and actually rejecting) the past approaches of allowing substantial offer flexibility within guardrails designed to limit impacts from carefully circumscribed offers posing the greatest threat of interference with efficient price formation. Instead, the December 19 Order flips this approach and effectively applies the MOPR to all resources, unless an exemption (such as for certain existing<sup>21</sup> resources) applies. As a result, the December 19 Order could have the effect of excluding resources from the market that may not be economically competitive under the administratively-determined prescriptive offer

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<sup>19</sup> June 2018 Order at PP 157-71.

<sup>20</sup> As PJM explained in its October 2, 2018 submittal, the June 2018 Order’s approach, with PJM’s proposed terms and conditions, would have provided sufficient protection to the market. PJM also proposed an alternative Extended Resource Carve Out approach designed to protect competitive clearing prices notwithstanding the June 2018 Order’s suggested approach of allowing part of the identified demand for capacity to be met by uneconomic resources. *See* Initial Submission of PJM Interconnection, L.L.C., Docket Nos. EL16-49-000, et al. at 64-75 (Oct. 2, 2018) (“October 2018 Filing”).

<sup>21</sup> Because the term “grandfathering” carries historically negative connotations, PJM encourages the use of an alternative term (*i.e.*, Pre-December 19 Resources).

parameters,<sup>22</sup> but that are nonetheless desirable to the state or an integrated utility for the purpose of self-supplying load obligations.<sup>23</sup> Further, under the expansive new approach contemplated by the December 19 Order, PJM will need to administratively establish and enforce minimum offer prices based upon a prescriptive formulation for a significant number of offers in the capacity market.

That new approach is over-broad and over-prescriptive and will dramatically curtail new resource options for integrated utilities, including those that meet the previously accepted net short and net long tests, whose offers have not previously been viewed as posing unacceptable risks to efficient price formation.<sup>24</sup> The new approach also needlessly interferes with state resource policies well beyond what is needed to protect the market against inefficient price formation and achieve rates within a zone of reasonableness.<sup>25</sup>

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<sup>22</sup> Such administratively-determined offer parameters include both Net Cost of New Entry (“CONE”) or Avoidable Cost Rate (“ACR”), for new and existing resources, respectively, or alternatively the unit-specific financial assumptions.

<sup>23</sup> An integrated utility may decide to build a new, but more efficient resource as a replacement for an existing resource of the same size. Such a replacement would have little effective impact on the capacity market, provided that the integrated utility meets the long-recognized net short and net long tests or similar protections. However, under the December 19 Order, the new resource is at risk of not clearing in the capacity market.

<sup>24</sup> See *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145 at P 208 (2011) (agreeing that “the purpose and function of the MOPR is not to unreasonably impede the efforts of resources choosing to procure or build capacity under long-standing business models”), *aff’d sub nom. N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014); *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at P 107 (“We find that PJM’s proposed net-short and net-long thresholds, in principle, adequately protect the market from the price effects attributable to uneconomic new self-supply.”).

<sup>25</sup> PJM’s capacity market is composed of several mechanisms designed to work together to produce a just and reasonable rate. For example, the Commission has found that the VRR demand curve, which is keyed to Net CONE, ensures just and reasonable rates at each point along the curve, both when the PJM Region is short on supply and when it has more than enough supply. See, e.g., *PJM Interconnection, L.L.C.*, 128 FERC ¶61,157, at P 41; *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 106 (“[T]he value of capacity does not plummet to zero simply when supply equals the Installed Reserve Margin. Capacity above the Installed Reserve Margin still has value because it makes the system even more reliable, albeit at a declining level.”).

Although PJM proposed various means to accommodate state policies (indeed such accommodation was a common theme among PJM’s MOPR-Ex, Resource Carve-Out (“RCO”), and Extended RCO proposals), the December 19 Order takes a far more aggressive stance relative to accommodating state resource policies as applied to new resources. The expansion of MOPR and denial of reasonable exemptions<sup>26</sup> (including size and impact) unfortunately works to the detriment of a practical outcome that accommodates state policy objectives. Similarly, the December 19 Order, with insufficient record evidence, disrupts the pre-existing coexistence of the capacity market with the traditional role of integrated utilities, as well as the subject states, in resource planning and selection.

In doing so, the Commission departs from prior orders that have charted a more accommodative course, including the June 2018 Order,<sup>27</sup> ISO-NE’s competitive auctions with sponsored policy resources (“CASPR”) Order,<sup>28</sup> and (as shown above) earlier PJM MOPR orders that defined a narrower MOPR scope, and that have permitted additional appropriately crafted exceptions. The December 19 Order therefore creates a needless tension, pitting an expansive reading of the Commission’s authority against the realities of the need to recognize the nature of cooperative federalism that underpins administration of the Federal Power Act.<sup>29</sup>

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<sup>26</sup> As a particularly stark example of such denial, the December 19 Order chooses to continue to apply the existing MOPR to CCs and CTs without any exemptions other than the unit-specific exemption.

<sup>27</sup> June 2018 Order at PP 157–71.

<sup>28</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (2018).

<sup>29</sup> See *FERC v. Elec. Power Supply Ass’n*, 136 S. Ct. 760, 776 (2016) (explaining that, under the FPA, the federal and state spheres of jurisdiction “are not hermetically sealed from each other”); *Hughes v. Talen Energy Mktg. LLC*, 136 S. Ct. 1288, 1300 (2016) (Sotomayor, J., concurring) (recognizing that the cross-jurisdictional effects of collaborative federalism are the product of the “congressionally designed interplay between state and federal regulation”) (quoting *Nw. Cent. Pipeline Corp. v. State Corp. Comm’n*, 489 U.S. 493, 518 (1989)).

In short, PJM seeks rehearing and clarification, on a limited number of issues in which the December 19 Order goes too far in denying sufficient accommodation of state policy objectives and integrated utility resource choices. As shown in the record of this proceeding, and consistent with the Commission's prior findings, accommodations with guardrails and protections are compatible with competitive auction prices, and will allow the PJM capacity market to continue to deliver efficient market outcomes and benefits to PJM consumers. Indeed, such accommodations can help ensure the PJM Region's continued reliance on a robust capacity market mechanism for resource adequacy.

## **II. REQUEST FOR REHEARING**

### **A. The December 19 Order Unreasonably, and Without Sufficient Explanation, Departs from the Commission's Prior Orders Using MOPR as a Guardrail to Protect the Markets While Simultaneously Accommodating State Resource Policy Choices.**

The December 19 Order's rejection of any accommodation to state resource policy interests falls short of reasoned decision-making and goes too far in eliminating sufficient accommodations for integrated utility self-supply resource choices and state resource policies. On multiple issues, as shown below, the Commission rejected PJM's proposals to accommodate state policy choices while still ensuring just and reasonable capacity auction rates. As noted above, the December 19 Order represents a marked departure from the Commission's prior orders on the MOPR and its proposed resource-specific FRR alternative (what PJM called in its October 2 compliance filing, the RCO option), and does not properly consider the accommodative aspects of PJM's proposals, including MOPR-Ex and/or RCO, each of which were designed to achieve a balance in accommodating state policy choices.

The December 19 Order’s approach departs without sufficient explanation from prior Commission orders that have focused on ensuring efficient market outcomes in the capacity market, while also appropriately accommodating state resource objectives.<sup>30</sup> In fact, the June 2018 Order explicitly proposed accommodating state policy choices through a resource-specific FRR alternative.<sup>31</sup>

The December 19 Order departs from this history, indicating that its protection of market prices justifies a broad application of the MOPR to all new state-supported resources regardless of their size or market impact without examining the impact of that action on the states’ achievement of their energy policy objectives. Yet, the December 19 Order did not adequately justify—through explanation or record evidence—the rejection of the prior accommodative approach. As noted above, PJM is concerned that over time, the complete lack of accommodation for state resource objectives may result in market inefficiencies to the detriment of consumers.

PJM therefore asks the Commission to strike a better balance by accepting the accommodations enumerated herein and by granting rehearing and clarification on the other points discussed in this filing.

#### *1. Self-Supply Exemption*

The December 19 Order’s sweeping rejection of PJM’s proposed self-supply exemption for integrated utilities raises unreasonable barriers to such market participants’ continued pursuit of their long-standing approach to planning for and meeting their capacity needs. The blanket assumption that all such offers developed in the ratepayer-

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<sup>30</sup> See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Hatch v. FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981) (“An agency must provide a reasoned explanation for any failure to adhere to its own precedents.”).

<sup>31</sup> See June 2018 Order at PP 157–71.

supported or municipal/cooperative member-supported regime are non-competitive and interferes with efficient price formation is overbroad and unwarranted. PJM previously implemented with the Commission's approval, and proposed to maintain, the net short and net long rules specifically to protect against any self-supply new entry resources from interfering with the efficient formation of capacity prices.<sup>32</sup> Moreover, although elsewhere the Commission points to the growing number of subsidies as the sole reason distinguishing its prior decisions, there is no similar growth in public power or the integrated resource model in the PJM Region and no other record evidence cited for this change in long-standing Commission policy.

The Commission previously recognized the distinct and legitimate self-supply model,<sup>33</sup> and its rejection of that model now is not adequately supported. For instance, the Commission fails to adequately explain why the public power model for ensuring adequate capacity that it previously deemed an acceptable exemption to the MOPR rules has changed in a way that would justify such model now being treated as an unacceptable subsidy. Its only rationale is that it "see[s] no reason to treat" new self-supply resources differently from other new resources receiving out of market support. However, such rationale simply does not rise to reasoned decision-making given that the Commission previously found the existing net long and net short threshold adequately protected against market inefficiencies.<sup>34</sup> Similarly, the Commission fails to provide a reasoned basis for reversing

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<sup>32</sup> MOPR Tariff Filing of *PJM Interconnection, L.L.C.*, Docket No. ER13-535-000, at 19-21 (Dec. 7, 2012) (specifying that "[t]o qualify for the self-supply exemption, a self-supply LSE must not be either significantly net short on capacity, or significantly net long on capacity").

<sup>33</sup> See *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at P 107 ("We find that PJM's proposed net-short and net-long thresholds, in principle, adequately protect the market from the price effects attributable to uneconomic new self-supply."); see also *id.* at P 108.

<sup>34</sup> *Id.* at PP 107-115; *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066, at PP 52-61.

its prior findings regarding the vertically integrated procurement model.<sup>35</sup> Indeed, the December 19 Order itself justifies exempting existing public power resources on the grounds of the Commission’s past accommodation of that model.<sup>36</sup>

Moreover, given that the integrated resource model and the public power model have been in a relative ‘steady state’ in the PJM Region since their inception (and certainly predate the development of the PJM capacity market), investors have long since taken into account the impact of those alternative models on the overall capacity market investment signal. The record demonstrates that PJM has more than achieved the new investment (and retirement of inefficient investment) that the capacity market was designed to achieve<sup>37</sup> notwithstanding any impact of the long-standing integrated utility models.<sup>38</sup> For this reason alone, the Commission’s decision is not adequately supported by record evidence and its reversal of prior precedents does not constitute reasoned decision-making as that standard has been defined by the courts.<sup>39</sup>

## 2. *Energy Efficiency Exemption*

The December 19 Order errs in rejecting PJM’s proposed exemption for energy efficiency resources.<sup>40</sup> Energy efficiency refers to one-time expenditures that result in a

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<sup>35</sup> See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43; *Office of Consumers Counsel v. FERC*, 783 F.2d 206, 227 (D.C. Cir. 1986); *Hatch*, 654 F.2d at 834

<sup>36</sup> See December 19 Order at P 12 (The December 19 Order’s “Self-Supply Exemption . . . recognizes that many self-supply entities made resource decisions based on Commission orders indicating that those decisions would not be disruptive to competitive markets, including the Commission’s acceptance in 2013 of the affirmative exemption for new self-supply resources prior to our order on remand from *NRG*.”).

<sup>37</sup> April 2018 Filing at 9-12.

<sup>38</sup> And, lest the Commission have a concern that granting rehearing on this point will allow an integrated utility’s ability to severely impact the competitive prices, the Commission need only re-impose the net short and net long tests that previously existed in the self-supply exemption.

<sup>39</sup> See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43; *Office of Consumers Counsel v. FERC*, 783 F.2d 206, 227 (D.C. Cir. 1986); *Hatch*, 654 F.2d at 834.

<sup>40</sup> See December 19 Order at P 54.

permanent reduction of energy consumption below the level that would have been expected absent that expenditure. When the reduction is at peak, the effort can produce a quantifiable reduction in capacity needs, warranting capacity market participation. Energy efficiency resources are unlike any other capacity resource; their focus is on reduced consumption and energy conservation, which are on the demand side of the equation,<sup>41</sup> and therefore they do not raise concerns regarding efficient price formation.<sup>42</sup> For this reason, along with the fact that energy efficiency resource capacity market penetration is very limited, there is no record evidence that energy efficiency resources interferes with efficient price formation, regardless of whether they are supported by state policy objectives.

PJM therefore reasonably proposed to exempt energy efficiency from the expanded MOPR. The Commission's rejection of that proposal is an unnecessary over-reach.<sup>43</sup> If and when energy efficiency achieves greater penetration, and evidence arises that it threatens efficient price formation, PJM will seek appropriate mitigation measures at that time.

### 3. *Exemption for Facilities Whose Primary Purpose Is Not Power Generation*

The December 19 Order errs in rejecting PJM's proposed exemption for facilities whose primary purpose is not power generation, such as resources whose primary business

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<sup>41</sup> In fact, the mechanics for how energy efficiency resources actually clear in an RPM Auction prevent them from lowering the capacity market clearing prices. Specifically, because energy efficiency measures are reflected in the peak load forecast for a Delivery Year for which an auction is being conducted, the auction parameters are adjusted by adding the MWs in approved energy efficiency plans that are proposed for that auction back into the reliability requirements. See Capacity Market Operations, *PJM Manual 18 PJM Capacity Market*, PJM Interconnection, L.L.C., section 2.4.5 (Dec. 5, 2019), <https://www.pjm.com/-/media/documents/manuals/m18.ashx>.

<sup>42</sup> See April 2018 Filing at 73.

<sup>43</sup> See *Motor Vehicles Mfrs. Ass'n*, 463 U.S. at 43; *Office of Consumers Counsel*, 783 F.2d at 227.

model is focused on reuse of what would otherwise constitute waste products such as trash and black liquor.<sup>44</sup> Sweeping these resources into MOPR is an unnecessary complication. In proposing the exemption, PJM provided a rational basis for excluding such resources: they have limited penetration, have significantly more complicated calculations of competitive costs for power generation, and almost certainly are not being used as vehicles to interfere with efficient price formation.<sup>45</sup> The December 19 Order does not adequately address PJM's rationale and lacks reasoned decision-making.<sup>46</sup>

#### 4. *Minimum Resource Size and Maximum Impact Tests*

The December 19 Order's rejection of PJM's exemption for resources that are smaller (*i.e.*, an Unforced Capacity value of 20 MW or smaller) or have less revenue impact (*i.e.*, value of the subsidy is less than 1% of the resource's annual revenues) lacks sufficient support in the record, creates sweeping additional burdens on PJM and stakeholders, and will create needless uncertainty for smaller resources at a time when their participation in the PJM markets is otherwise being welcomed by the Commission.<sup>47</sup> In particular, the presumption that all resource offers must be reviewed and mitigated regardless of size or impact, or else auction prices will become unreasonable, is imposed with no record support and without adequate consideration of the administrative burdens<sup>48</sup> to either PJM or

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<sup>44</sup> December 19 Order at P 51.

<sup>45</sup> April 2018 Filing at 74.

<sup>46</sup> See *Motor Vehicles Mfrs. Ass'n*, 463 U.S. at 43; *Office of Consumers Counsel*, 783 F.2d at 227.

<sup>47</sup> See, e.g., *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127, at P 271 (2018) (as amended February 28, 2018) (explaining that "requiring the RTOs/ISOs to establish a minimum size requirement not to exceed 100 kW for the participation model for electric storage resources balances the benefits of increased competition with the potential need to update RTO/ISO market clearing software to effectively model and dispatch smaller resources"); see also *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,049 (2019).

<sup>48</sup> The additional administrative burden includes potential inclusion of such resources in the review of unit-specific exemptions.

Capacity Market Sellers. Moreover, the December 19 Order fails to ‘scale’ these burdens relative to the minimal market impact that any subsidies to such smaller resources would have given the overall size of the PJM market.

In sum, the December 19 Order fails to adequately consider that it is effecting a sweeping expansion of the application of MOPR with concomitant burdens on PJM and, in this case, smaller market participants.<sup>49</sup> In that context, the humble course is to moderate that expansion with reasonable limits on minimum resource size and impact, at least at the outset. If evidence later develops that these mild restraints on MOPR application might be creating significant opportunities that interfere with efficient price formation, then they could be revisited and adjusted at that time.

**B. The Commission Should Find that Payments Through Voluntary REC Programs Are Not State Subsidies.**

In contradictory holdings, the December 19 Order recognized that payments to resources for renewable energy credits (“RECs”) from buyers that do not use them for compliance with state renewable portfolio standards (“RPS”) mandates are not subsidies, but then arbitrarily held all REC purchases should nonetheless be treated as subsidies.<sup>50</sup> The Commission based this latter holding on the notion that “it is not possible, at this time, to distinguish resources receiving privately funded voluntary RECs from state-funded or state-mandated RECs because resources typically do not know at the time of the auction

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<sup>49</sup> See *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43; *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303–04 (D.C. Cir. 1992).

<sup>50</sup> December 19 Order at P 176.

qualification process how the REC will be eventually used.”<sup>51</sup> However, this finding is arbitrary and capricious and not supported by substantial evidence in the record.<sup>52</sup>

The record shows the sale of voluntary RECs often occurs in a parallel market—apart from RECs purchased by load-serving entities to meet state requirements—and therefore sellers have an avenue to ensure their RECs are not purchased as the result of state requirements.<sup>53</sup> Rather than an arbitrary refusal to address the acknowledged fact that some significant quantity of REC purchases are not required by a state-mandated or state-sponsored program, the Commission should, at a minimum, have adopted a “safe harbor” for such arrangements similar to that proposed by PJM. For example, resources that certify they will only sell their RECs to “a purchaser that is not required by a state program to purchase the REC, and that purchaser does not receive any state financial inducement or credit for the purchase of the REC”<sup>54</sup> and likewise agrees to contractually bind any broker or direct buyer to a restriction on resale to such state compliance purchasers, should not be considered as receiving a State Subsidy<sup>55</sup> from the sale of their RECs.<sup>56</sup> Such a safe harbor would be just and reasonable, based in the record, and consistent with the Commission’s

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<sup>51</sup> December 19 Order at P 176.

<sup>52</sup> See *Sithe/Independence Power Partners, L.P. v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999) (to meet the arbitrary and capricious standard, the Commission must demonstrate that it made a reasoned decision based on substantial evidence and its path of reasoning must be clear).

<sup>53</sup> See October 2018 Filing at 22.

<sup>54</sup> October 2018 Filing at Attachment A, proposed pro forma definition of Material Subsidy (“A Material Subsidy shall not include . . . (7) A renewable energy credit (including for onshore and offshore wind, as well as solar, collectively, RECs) will not be considered to be a Material Subsidy, if the Capacity Market Seller sells the REC to a purchaser that is not required by a state program to purchase the REC, and that purchaser does not receive any state financial inducement or credit for the purchase of the REC.”).

<sup>55</sup> Throughout this pleading, “State Subsidy” refers the term as defined in the December 19 Order.

<sup>56</sup> To facilitate such agreements, PJM is able to develop tools through its existing generation attribute tracking system so that certain RECs can only be used for purposes of satisfying voluntary renewable programs.

findings in the December 19 Order that “voluntary, arm’s length bilateral transactions” do not constitute State Subsidies.<sup>57</sup>

**C. The Commission Should Not at this Time Require PJM to Develop CONE Values for Resources for Which Energy Production Is Not the Primary Purpose, but Should Instead Defer Such Development Until PJM Gains Experience with New Entry Costs of Such Resources.**

In the December 19 Order the Commission found that resources (new and existing) whose primary function is not energy production should not be categorically exempt, and will be subject to the MOPR to the extent they receive or are eligible to receive State Subsidies.<sup>58</sup> The Commission then directed PJM to determine default offer floor prices for such resources.<sup>59</sup> As explained previously, the December 19 Order, insofar as it does not exempt such resources from the MOPR in the first instance is in error. However, to the extent the Commission does not grant rehearing on that point, PJM seeks limited rehearing of the requirement to develop—by March 18, 2020—Net CONE and Net ACR values for resources whose primary purpose is not energy production. PJM requests that the Commission instead (1) defer the development of applicable default values until PJM has acquired sufficient experience with such resources’ costs; and (2) require such resources (to the extent necessary) to use the Unit-Specific Exemption in the meantime.<sup>60</sup>

PJM has little experience with the costs of resources whose primary function is not energy production. In fact, there are only two such resources currently in the interconnection queue and PJM is aware of only twelve such resources that currently

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<sup>57</sup> December 19 Order at P 70.

<sup>58</sup> December 19 Order at P 51.

<sup>59</sup> December 19 Order at PP 146, 150.

<sup>60</sup> See *Pub. Utils. Comm’n of Cal. v. FERC*, 988 F.2d 154, 163 (D.C. Cir. 1993) (“[A]gency discretion is often at its zenith when the challenged action relates to the fashioning of remedies.”); cf. *N.Y. Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,058 (2011) (allowing for the deferral of an effective date for a change in the demand curve filed under section 205).

participate in PJM’s capacity market. Accordingly, the 90-day compliance timeframe is insufficient for PJM to develop reasonable and supportable Net CONE and Net ACR values for such resources. PJM can propose such values in the future through a section 205 filing, as it gains more familiarity with such resources. In the interim, the unit-specific review process will protect the market against the possibility of uncompetitive subsidized offers from such resources.

### **III. REQUEST FOR CLARIFICATION**

In addition to correcting the errors identified above, PJM requests that the Commission clarify certain aspects of the December 19 Order. These clarifications are necessary to fully understand the Commission’s directives in order to finally run the long-delayed 2022/2023 Base Residual Auction (and additional delayed auctions). Resolving the clarifications listed below in a timely manner will allow PJM to incorporate these clarifications in its pre-auction actions and market participants can have certainty around these specific implementation questions concerning the December 19 Order.

#### **A. The Commission Should Clarify that a Resource with Any Type of Interconnection Service Agreement, Not Just PJM’s Interconnection Construction Service Agreement, Should Be Eligible for the Same MOPR Exemptions as Resources with Interconnection Construction Service Agreements.**

The December 19 Order found that resources with (1) “executed interconnection construction service agreement on or before the date of this order” or (2) “an unexecuted interconnection construction service agreement filed by PJM for the resource with the Commission on or before the date of this order” may be eligible to be exempt from the MOPR under the RPS, self-supply, and capacity storage exemptions.<sup>61</sup> The Commission

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<sup>61</sup> December 19 Order at PP 12-14, 173, 202-03, 208.

found such resources to be “existing” and should be exempt from the MOPR “because traditionally they have been exempt from application of the MOPR and market participants that reasonably relied on that guidance in formulating their business plans prior to the June 2018 Order were not on notice that they would be mitigated.”<sup>62</sup>

For those same reasons, the Commission should clarify that resources with any type of interconnection service agreement executed as of December 19, 2019, or unexecuted and filed with the Commission by that date, should also be eligible for the RPS, self-supply, and capacity storage MOPR exemptions. The reason for this clarification is simple. To properly capture the universe of all planned resources that “reasonably relied” on prior Commission orders, the Commission should include all resources that advanced to that final stage of the interconnection process and signed an interconnection service agreement—and not necessarily limited to those with PJM.

While all resources interconnecting to the PJM system require an interconnection service agreement, not all require an interconnection construction service agreement. An interconnection construction service agreement is only required to the extent that network upgrades are required to accommodate the interconnection.<sup>63</sup> Accordingly, resources with an executed (or unexecuted, but filed at the Commission) interconnection service

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<sup>62</sup> December 19 Order at P 208 (footnote omitted) (Capacity Storage Exemption); *see also id.* at P 174 (same for RPS Exemption), P 203 (same for Self-Supply Exemption).

<sup>63</sup> For example, a 30 MW uprate of an existing resource is considered a planned resource that must progress through PJM’s interconnection queue and qualifies as a new resource for capacity market purposes. The planning studies may not identify any network upgrades to accommodate the uprate, and in that case, no interconnection construction service agreement would be required (only an interconnection service agreement). Certain new resources, besides uprates, may also not require network upgrades and therefore also may not require an interconnection construction service agreement.

agreement (or type thereof<sup>64</sup>) are similarly situated to resources with an interconnection construction service agreement and should be eligible for the same MOPR exemptions.

**B. The Commission Should Clarify that the Regional Greenhouse Gas Initiative and Default Service Procurement Programs Do Not Provide State Subsidies.**

The Commission should clarify the definition of State Subsidy to prevent it from being interpreted overly broadly in certain respects. For example, Commissioner Glick suggests in his dissent to the December 19 Order that the Regional Greenhouse Gas Initiative (“RGGI”) would fall within the Commission’s State Subsidy definition.<sup>65</sup> The Commission should confirm that this suggestion is mistaken, and that the RGGI cap, allowance, and auction system is not a State Subsidy for MOPR purposes.

RGGI is a regional compact that sets an overall limit on carbon dioxide (“CO<sub>2</sub>”) emissions from the power sector, requires fossil-fuel-fired electric power plants in the participating states to obtain allowances for each ton of CO<sub>2</sub> they emit, and provides for regional auctions in which such power plants can purchase those allowances at a single clearing price, determined each quarter.<sup>66</sup>

In short, the RGGI program’s central regulatory feature—a regional cap on CO<sub>2</sub> emissions—is a limit on those that emit, just like any other environmental regulation or limit on power plant operations, whether for NO<sub>x</sub> or SO<sub>2</sub> emissions or water discharge rates. RGGI’s auction is a mechanism by which those that emit CO<sub>2</sub> can compete with one

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<sup>64</sup> Wholesale Market Participation Agreement (“WMPA”) is another type of agreement that allows a generator that is interconnected to non-jurisdictional facilities to participate in PJM’s markets, including the capacity market. Resources with a WMPA executed prior to December 19, 2019, reasonably expected to participate in the capacity market and not be subject to the MOPR, as set forth in the December 19 Order.

<sup>65</sup> December 19 Order, dissent op. (Commissioner Glick) at PP 17, 23.

<sup>66</sup> See *The Regional Greenhouse Gas Initiative*, RGGI, Inc., <https://www.rggi.org/program-overview-and-design/elements> (last visited Jan. 15, 2020).

another (in a sealed bidding process) to determine the price per-ton they each will pay that quarter for their CO<sub>2</sub> emissions. The auction is not itself a purchase of “clean power credits” sold by, *e.g.*, wind or solar plants through which lower emitting plants receive transfers from others. Thus, the RGGI cap and auction system is not a subsidy, any more than any other environmental limit on a particular plant is a subsidy for any plant that does not have the same emissions or discharges or the same limit. The Commission should so confirm.

The Commission also should confirm that a state-directed default service procurement program also would not operate as a regime that qualifies as a State Subsidy subjecting resources to the MOPR, as Commissioner Glick suggests New Jersey’s Basic Generation Service program would.<sup>67</sup> The Commission’s silence on whether the December 19 Order’s definition of State Subsidy would include such programs creates uncertainty for how to implement the order. Generally, these state default service programs are mechanisms by which load-serving entities in retail choice states acquire obligations to provide energy and related services to retail customers through a state-directed auction. Absent any reason to believe that winning load-serving entities in such auctions are in any way receiving an out-of-market payment for resources they then procure to provide such retail service, it is not apparent how these auctions amount to a State Subsidy, as defined in the December 19 Order. To eliminate any concern on this point, the Commission should confirm that such default service auctions are not a State Subsidy for purposes of the MOPR.

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<sup>67</sup> December 19 Order, dissent op. (Commissioner Glick) at P 24.

**C. The Commission Should Confirm that the December 19 Order’s Reference to “Approval by the IMM” with Regard to the Unit-Specific Exemption Process Was to the Existing Process by Which the IMM Provides Substantial Input into PJM’s Determinations, as Tariff Administrator, of Whether (and at What Offer Level) to Grant a Unit-Specific Exemption.**

The December 19 Order directs PJM to “maintain” its current Unit-Specific Exemption but expand it “to cover existing and new State-Subsidized Resources of all resource types.”<sup>68</sup> Thus, the December 19 Order directs PJM to retain its “criteria, parameters, and evaluation processes . . . [for] the Unit-Specific Exemption methodology set forth in PJM’s currently-effective Tariff.”<sup>69</sup> However, the December 19 Order also states that such requests will be “subject to approval by the Market Monitor.”<sup>70</sup> PJM reads the Commission’s short-hand reference to the Independent Market Monitor for PJM (“IMM”) “approval” as intended to refer to the IMM’s currently well-developed role in providing extensive input into such PJM determinations.<sup>71</sup> The current approach has worked well and no party sought to change it in this proceeding. Accordingly, and consistent with the Commission’s prior holdings that PJM, as Tariff administrator,

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<sup>68</sup> December 19 Order at P 214.

<sup>69</sup> December 19 Order at P 214.

<sup>70</sup> December 19 Order at P 214; *see also id.* at P 16 (“[W]e direct PJM to maintain the Unit-Specific Exemption, expanded to cover existing and new State-Subsidized Resources of all resource types, to permit any resource that can justify an offer lower than the default offer floor to submit such bids to the Market Monitor for review.”).

<sup>71</sup> The current-effective unit-specific exception rules provide that the IMM will “review the information and documentation in support of the request and shall provide its findings whether the proposed Sell Offer is acceptable” to the seller and PJM. Tariff, Attachment DD, section 5.14(h)(5)(iv). PJM “shall also review all exception requests and documentation and shall provide in writing to the Capacity Market Seller, and the Market Monitoring Unit, its determination whether the requested Sell Offer is acceptable and if not it shall calculate and provide” a minimum offer price. *Id.* Further, the existing Tariff also “enable[s] the Office of the Interconnection to make the determination” in denying a unit-specific exemption if a Capacity Market Seller fails to adequately support unit-specific costs or revenues. Tariff, Attachment DD, section 5.14(h)(5)(iii) (“Failure to adequately support such costs or revenues so as to enable the Office of the Interconnection to make the determination required in this section will result in denial of an [Unit-Specific] exception hereunder by the Office of the Interconnection.”).

ultimately determines whether to grant unit-specific exceptions, while recognizing the role of the IMM and its findings,<sup>72</sup> PJM asks the Commission to confirm that the December 19 Order does not alter the current collaborative approach.<sup>73</sup>

**D. To Avoid Potential Ambiguity, the Commission Should Confirm Certain Simple Principles for Implementing the December 19 Order’s Differing Treatment of Federal and State Subsidies for Purposes of (i) Triggering MOPR; and (ii) Calculating Competitive Offers Under the Unit-Specific Exemption Process.**

While the December 19 Order found that receipt of a federal subsidy would not trigger the MOPR<sup>74</sup> and a State Subsidy would,<sup>75</sup> the December 19 Order did not provide guidance on the treatment of a resource that receives (or is eligible to receive) a mix of federal and state subsidies. To eliminate ambiguity on this point, PJM presents two implementation principles, and asks the Commission to confirm that these correctly interpret the order. PJM will codify these in the compliance filing, but also presents them here at the rehearing/clarification stage out of an abundance of caution, and to put market participants on notice.

First, PJM interprets the order as requiring PJM to apply the MOPR to any resource receiving both a State Subsidy and a federal subsidy, because the State Subsidy triggers MOPR. Second, when an offer from a resource receiving a mix of federal and state subsidies is subject to MOPR, PJM will determine the resource’s competitive net costs by *removing* the revenue benefit of the State Subsidy, but *retaining* the revenue benefit of the

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<sup>72</sup> See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at P 119 (2011).

<sup>73</sup> The existing approach is also consistent with Tariff, section 12A, which provides that PJM “determines whether an offer, bid, components of an offer or bid, or decision not to offer a committed resource complies with the PJM Market Rules” and that PJM “has the final authority to determine whether an offer, bid or decision not to offer a committed resource complies with the PJM Market Rules.”

<sup>74</sup> December 19 Order at P 89.

<sup>75</sup> December 19 Order at P 67.

federal subsidy. In other words, an offer can permissibly account for the benefits obtained from a federal subsidy (e.g., a federal investment tax credit or production tax credit). The Commission should confirm PJM's understanding of the general principles established by the December 19 Order on the differing treatment of State Subsidies and federal subsidies.

**E. To Avoid Potential Ambiguity, the Commission Should Clarify Its Directive for Developing the MOPR Floor Offer Price for Energy Efficiency Offers.**

As explained in section II.A.2, *supra*, energy efficiency resources should be exempt from the MOPR. However, if the Commission disagrees, PJM requests that the Commission provide additional clarity on the meaning of “verifiable level of savings” for determining the applicable MOPR floor offer price for energy efficiency resources.<sup>76</sup> Specifically, it is unclear why such price should be based on the *savings* from energy efficiency as opposed to the *costs* of installing energy efficiency resources. The Commission should also clarify whether this approach applies to the default MOPR floor offer price or unit-specific offers for energy efficiency resources since verifiable savings seemingly refer to specific energy efficiency registrations.

In addition to the aforementioned issue, PJM is unable to verify any savings for energy efficiency during the offer period because such resources are not yet installed. As a result, it is unclear whether the December 19 Order contemplates that the energy efficiency plan should include a generic calculation to show the energy efficiency savings in other installations or whether a verifiable level of savings could be demonstrated by (for example) post installation measurement and verification submitted for the energy efficiency resource for the prior Delivery Year. Additional clarity on these points will

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<sup>76</sup> See December 19 Order at P 147.

inform PJM’s approach for developing the MOPR floor price for energy efficiency resources.<sup>77</sup>

#### IV. STATEMENT OF ISSUES AND ERRORS

Consistent with Rules 203(a)(7) and 713(c) of the Commission’s regulations, 18 C.F.R. §§ 385.203(a)(7), 385.713(c), PJM provides the following Statement of Issues and Errors:

**Issue 1: The December 19 Order did not adequately support its departure from existing precedent and policy by rejecting sufficient accommodation to state policy choices and the public power/integrated utility model.**

The December 19 Order’s rejection of any accommodation to state resource policy interests falls short of reasoned decision-making. The December 19 Order represents a departure from the Commission’s prior orders on the MOPR and fails to properly consider the accommodative aspects of PJM’s proposals, which were designed to achieve a balance in accommodating state policy choices.

*See* Administrative Procedure Act, 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made’” (citation omitted)); *Hatch*, 654 F.2d at 834 (“An agency must provide a reasoned explanation for any failure to adhere to its own precedents.”).

**Issue 2: The December 19 Order’s rejection of PJM’s proposed self-supply exemption for public power entities and integrated utilities erects unjust and unreasonable barriers to such market participants’ long-standing approach to meeting their capacity needs.**

The December 19 Order’s complete rejection of PJM’s proposed self-supply exemption for public power entities and integrated utilities and the blanket assumption that all such offers developed in that ratepayer-supported or municipal/cooperative member-supported regime are non-

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<sup>77</sup> Energy Efficiency Resource installations are eligible to participate in the capacity market for four successive Delivery Years following when it first clears in a capacity market auction. *See* Reliability Assurance Agreement among Load Serving Entities in the PJM Region, Schedule 6, section L.4.

competitive and interferes with efficient price formation lacks evidentiary support and is overbroad and unwarranted.

*See* 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Office of Consumers Counsel*, 783 F.2d at 227 (ruling that the Commission’s factual conclusions must be supported by substantial evidence demonstrating that reasoned consideration was given to each of the pertinent factors underlying agency’s decision); *Hatch*, 654 F.2d at 834; *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066, at PP 52-61; *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at PP 107-115.

**Issue 3: The December 19 Order erred in rejecting PJM’s proposed exemption for energy efficiency resources as there are no evidence that such resources impact capacity prices.**

The December 19 Order not to exempt energy efficiency resources was arbitrary and unsupported by the record. Energy efficiency is unlike any other capacity resource, as they are focused on a permanent reduction in consumption and energy conservation, which are on the demand side, and thus they do not raise efficient price formation concerns. For this reason, and that its capacity market penetration is very limited, there is no compelling reason to conclude that energy efficiency resources create inefficient market outcomes.

*See, e.g.*, 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Office of Consumers Counsel*, 783 F.2d at 227 (ruling that the Commission’s factual conclusions must be supported by substantial evidence demonstrating that reasoned consideration was given to each of the pertinent factors underlying agency’s decision).

**Issue 4: The December 19 Order erred in rejecting PJM’s proposed exemption for facilities whose primary purpose is not power generation.**

The December 19 Order not to exempt facilities whose primary purpose is not power generation, such as resources whose primary business model is focused on reuse of what would otherwise constitute waste products such as trash and black liquor, was overbroad and not supported by reasoned decision-making. Sweeping these resources into MOPR is an unnecessary complication and highlights the December 19 Order’s inflexible and

arbitrary approach to defining potential threats to capacity market clearing prices.

*See, e.g.*, 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Office of Consumers Counsel*, 783 F.2d at 227 (ruling that the Commission’s factual conclusions must be supported by substantial evidence demonstrating that reasoned consideration was given to each of the pertinent factors underlying agency’s decision).

**Issue 5: The December 19 Order’s rejection of PJM’s exemption for resources that fail to meet certain materiality thresholds lacks sufficient support in the record and creates needless additional burdens on PJM and Capacity Market Sellers.**

The December 19 Order’s rejection of PJM’s exemption for resources that fail to meet size and revenue impact thresholds lacks sufficient support in the record, creates huge additional burdens on PJM and Capacity Market Sellers, and will create needless uncertainty for smaller resources.

*See, e.g.*, 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *K N Energy, Inc. v. FERC*, 968 F.2d at 1303–04 (for an agency order to pass scrutiny under the arbitrary and capricious standard, a reviewing court must be able to “discern a reasoned path . . . to the decision [the Commission] reached”).

**Issue 6: The December 19 Order erred by finding resources that only participate in voluntary REC programs receive a State Subsidy and should be subject to the MOPR.**

The December 19 Order erred in holding that resources participating in voluntary REC programs receive a State Subsidy and should be subject to the MOPR. Such a holding is contrary to the evidence in the record and not just and reasonable.

*See, e.g.*, 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Sithe/Independence Power Partners, L.P.*, 165 F.3d at 948 (to meet the arbitrary and capricious standard, the Commission must demonstrate that it made a reasoned decision based on substantial evidence and its path of reasoning must be clear).

**Issue 7: The Commission should allow PJM to defer development of offer floor price values for resource whose primary purpose is not energy production.**

The Commission should allow PJM to defer development of Net CONE and Net ACR values for resources whose primary purpose is not energy production in order for PJM to gain more experience with the costs of such resources and to ensure the development of reasonable and supported values.

*See Pub. Utils Comm'n of Cal.*, 988 F.2d at 163 (“[A]gency discretion is often at its zenith when the challenged action relates to the fashioning of remedies.”); *cf. N.Y. Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,058 (allowing for the deferral of an effective date for a change in the demand curve filed under section 205).

**V. CONCLUSION**

PJM requests that the Commission grant rehearing and clarification of the December 19 Order, as set forth above.

Respectfully submitted,

/s/ Chenchao Lu

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January 21, 2020

**CERTIFICATE OF SERVICE**

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

Dated at Audubon, PA, this 21st day of January 2020.



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Chen Lu  
Attorney for  
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