

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

Independent Market Monitor for PJM	)	Docket No. EL19-47-000
v.	)	
PJM Interconnection, LLC	)	

**INITIAL BRIEF OF  
THE ORGANIZATION OF PJM STATES, INC.**

Pursuant to Rule 706 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”)<sup>1</sup> and the Commission’s March 18, 2018 order in the above captioned proceeding granting complaints of the Independent Market Monitor for PJM (“IMM”) and a group of joint consumer advocates and ordering additional briefing (“March 18 Order”),<sup>2</sup> the Organization of PJM States, Inc. (“OPSI”), respectfully submits this initial brief recommending use of the net avoidable cost rate (“ACR”) as the just and reasonable replacement rate for the market seller offer cap (“MSOC”) in the PJM capacity market.<sup>3</sup>

**I. BACKGROUND**

In its March 18 Order, the Commission found that it is no longer just and reasonable for the PJM Interconnection, L.L.C. (“PJM”) to use 360 as the number of Expected Performance Assessment Intervals (“PAI”)<sup>4</sup> in calculating the default MSOC, since 360 “exceeds market participants’ reasonable, actual expectations” for PAI in a given year.<sup>5</sup> Accordingly, the default

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<sup>1</sup> 18 C.F.R. § 385.706.

<sup>2</sup> *Indep. Market Monitor for PJM v. PJM Interconnection, LLC, et al.*, 174 ¶ 61,212 (2021) (“March 18 Order”).

<sup>3</sup> Approved by the OPSI Board of Directors from the following states: Delaware PSC, Illinois CC, Indiana URC, Kentucky PSC, Maryland PSC, Michigan PSC, New Jersey BPU, North Carolina UC, PUC of Ohio, Pennsylvania PUC, Virginia SCC and PSC of West Virginia on May 3, 2021.

<sup>4</sup> One PAI is one twelfth of a Performance Assessment Hour (“PAH”).

<sup>5</sup> March 18 Order at P 65; *see also* PJM Open Access Transmission Tariff (“Tariff”), Attach. DD, § 6.4 (defining the default MSOC).

MSOC is “incorrectly calibrated” and therefore “inappropriate.”<sup>6</sup> Instead of relying on the existing record to set the appropriate replacement rate, the Commission requested additional briefing on the issue.<sup>7</sup> OPSI addresses select questions from the Commission’s March 18 Order below, and reserves the right to respond to other issues throughout this proceeding.

## **II. ARGUMENT**

### **A. The New MSOC Should Equal Net ACR**

The purpose of placing a cap on market seller offers is to create a threshold for seller offers that allows for adequate review and mitigation of offers when necessary.<sup>8</sup> Consistent with its past positions, OPSI restates here that the Commission should utilize net asset-class ACR as the default MSOC. For resources that wish to quantify risks resulting from potential penalties, PJM and the IMM should review unit-specific ACR offers consistent with the process developed in response to the Capacity Performance (“CP”) paradigm.<sup>9</sup> Notwithstanding the recognized difficulty in forecasting expected PAIs, use of the default and unit-specific ACR calculations, together with unit-specific evaluation and review of risk premiums, as described below, will ensure competitive outcomes in PJM’s capacity market. Net ACR is also reflective of the marginal cost of capacity.<sup>10</sup> For these and other reasons discussed below, the Commission should rely on ACR to set the MSOC.

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<sup>6</sup> March 18 Order at PP 65-67.

<sup>7</sup> *Id.* at P 71.

<sup>8</sup> *Id.* at P 67 (“The question addressed in this order is not whether market power has already been exercised, but rather whether the default offer cap enables the appropriate review of offers and imposition of mitigation in order to ensure competitive market outcomes. In order to do so, the default offer cap should be set at a level that permits the Market Monitor and PJM to review offers that may constitute an attempt to exercise market power and mitigate offers where appropriate. We find that the current default offer cap is not achieving this objective because, as discussed above, it is incorrectly calibrated.”).

<sup>9</sup> Tariff, Attach. DD, § 6.8(a).

<sup>10</sup> *Answer of PJM Interconnection, L.L.C.*, Docket No. EL19-47-000, at 8 (April 9, 2019) (“Capacity Market Sellers in PJM are incented to offer at or near their avoidable costs (i.e., the marginal cost of capacity) . . .”); *see also*, *Answer and Motion for Leave to Answer of the Indep. Market Monitor for PJM*, Docket No. EL19-47-000, at 9 (April 30, 2019).

The Commission should not be deterred by claims that ACR fails to account for CP risk.<sup>11</sup> As part of the CP proceeding, the Commission approved a broadening of the definition of ACR to include a term for “Capacity Performance Quantifiable Risk” (“CPQR”).<sup>12</sup> Indeed, after initial review of PJM’s proposed CPQR, the Commission found the proposal “insufficiently narrow to permit resources to include quantifiable and reasonably-supported risks in their [ACR],” and required the term to be expanded on compliance.<sup>13</sup> In the compliance order, the Commission accepted PJM’s newly-formed CPQR, noting it appropriately allowed inclusion of “expected risk associated with the submission of a capacity offer in the revised [CP] capacity market construct.”<sup>14</sup> In response to prior comments that the CPQR term of ACR did not allow all risks to be recovered, the Commission explained that it “was not intended to permit market sellers to include all market risks a capacity resource faces from participating in PJM’s markets . . . .”<sup>15</sup>

While the Commission has recognized “other risks, such as those associated with volatile energy prices, these risks should not be an element of a cost-justified offer under PJM’s revised Capacity Performance market rules.”<sup>16</sup> When setting the replacement rate, the Commission should reiterate its finding that revisions to the offer cap will not prohibit resources from exercising reasonably-supported risks in the development of their offer<sup>17</sup> and set the MSOC at net ACR.

Inclusion of any CPQR term in the calculation of net ACR, however, must be limited to reasonably-supported risks, which can be verified only through unit-specific review. PJM’s

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<sup>11</sup> See, e.g., March 18 Order at P 30.

<sup>12</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 353 (2015) (“Capacity Performance Order”).

<sup>13</sup> *Id.*

<sup>14</sup> *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 at P 203 (2016) (“CP Order on Rehearing and Compliance”).

<sup>15</sup> *Id.* (emphasis added).

<sup>16</sup> *Id.*

<sup>17</sup> March 18 Order at P 70 (“Resources that can demonstrate expected costs or risk greater than those accommodated by the default offer cap parameters may submit those values for unit-specific review. Allowing resources unreasonably large latitude to include excessive risk or opportunity costs in their offers may unjustly create an opportunity for the exercise of market power.”).

calculation of default ACRs should not include any such CPQR factor. In order to quantify such risk, as required for inclusion in an ACR calculation,<sup>18</sup> an expectation of the number of PAIs is required. The Commission understands the difficulty of attempting to estimate the number of PAIs, as has been well-documented in this proceeding.<sup>19</sup> Instead of requiring PJM to estimate this potential risk, which would be required for inclusion of CPQR in any default ACR calculation, the Commission should require market sellers wishing to include CPQR to do so through the unit-specific review process.

In addition to allowing quantifiable risks to be included in ACR, the Tariff also provides for an “adjustment factor,” further insulating suppliers from under-recovery of appropriately reflected costs. This 10% adjustment factor “provide[s] a margin of error for understatement of costs,”<sup>20</sup> but is not otherwise supported in this record. OPSI encourages the Commission to recognize the existing conservatism built into the current ACR parameters, which include CPQR and the 10% adder, and that resulting ACR calculations may already be overstated in order to address uncertainties.

Moreover, the Commission should not be swayed from this requirement by claims of undue administrative burden.<sup>21</sup> The stakes are much too high. The inflated MSOC allowed noncompetitive outcomes in the last Base Residual Auction, resulting in over \$1.2 billion in excess capacity payments charged to PJM ratepayers.<sup>22</sup> The Commission must not allow these clearly

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<sup>18</sup> Capacity Performance Order at PP 266, 353; CP Order on Rehearing and Compliance at P 203.

<sup>19</sup> See March 18 Order at P 12-13.

<sup>20</sup> Tariff, Attach. DD, § 6.8(a).

<sup>21</sup> See, e.g., March 18 Order at PP 29, 69.

<sup>22</sup> *Complaint of the Indep. Market Monitor for PJM*, Docket No. EL19-47-000, at pp. 11-12 (February 21, 2019) (“Table 1 shows the results if the noncompetitive offers identified by the Market Monitor had been capped at net ACR for the 2021/2022 RPM Base Residual Auction. Based on actual auction clearing prices and quantities and make whole MW, total RPM market revenues for the 2021/2022 RPM Base Residual Auction were \$9,300,877,106. If the identified noncompetitive offers had been capped at net ACR in the 2021/2022 RPM Base Residual Auction and everything else had remained the same, total RPM market revenues for the 2021/2022 RPM Base Residual

unjust and unreasonable outcomes to continue. Unit owners are well-versed in the costs and risks of their resources and should be well-prepared to undergo IMM cost review. Market sellers should be similarly well-prepared to adequately support their anticipated risk to the satisfaction of PJM and the IMM. The default MSOC in PJM's capacity market must be recalibrated to "a level that permits the Market Monitor and PJM to review offers that may constitute an attempt to exercise market power," and "ensure competitive market outcomes."<sup>23</sup>

The Commission is right to question the level of this default offer cap, because "the Market Monitor, under PJM's Tariff, cannot mitigate a resource's capacity supply offer if that price is below the default offer cap."<sup>24</sup> Accordingly, the just and reasonable approach is to set the default MSOC at the level of net ACR for the resource-class. For these default ACR calculations, PJM should exclude any risks of CP. Even if this exposes a wider array of supply units to unit-specific review, it is appropriate to assure that any risks that are included are quantifiable and well-supported. Units that seek to offer above the default ACR should be free to seek unit-specific ACR review, where they can include quantifiable and well-supported risks in the CPQR term of net ACR approved by the Commission.

### **III. CONCLUSION**

For the reasons discussed herein, OPSI respectfully requests that the Commission direct PJM to return to its pre-Capacity Performance methodology of using the net ACR by resource class for the replacement rate default MSOC.

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Auction would have been \$8,070,050,631, a decrease of \$1,230,826,475, or 13.2 percent, compared to the actual results.") (internal citations omitted).

<sup>23</sup> March 18 Order at P 67.

<sup>24</sup> *Id.* at P 68.

Respectfully Submitted,

*/s/ Gregory V. Carmean*

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Dated: May 3, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

**s/s Gregory V. Carmean**

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Dated at Newark, Delaware this May 3, 2021.