

November 19, 2012

MEMORANDUM

To: PJM MOPR Stakeholders
c/o Dave Anders
Manager, PJM Stakeholder Affairs
955 Jefferson Avenue
Norristown, PA 19403

From: Walter R. Hall II, Senior Markets Advisor
Maryland Public Service Commission

Re: Maryland PSC Comments on RPM MOPR 2012 Modification Packages

This Memorandum is a brief written statement of the Maryland Public Service Commission (MD PSC) position on the above Modification Packages. As most Stakeholders will be aware, MD PSC has filed a letter with the PJM Managing Board objecting to its exclusion from this Stakeholder process for the initial three months of its operation and to the time and other limitations placed upon the expansion of the process permitted in October/November, requesting that a new, full and fair process be implemented or that the MOPR Modification Package 1 be rejected. That letter has been posted to the PJM website. The MD PSC has also orally stated its position on Package 1 at an earlier Discussion Meeting of November 8, 2012. That position is restated and supplemented in writing below.

Although several concerns are raised by the above MOPR Modification Packages, that most directly affecting the MD PSC is the proposal in MOPR Modification Package 1¹ that the Federal Energy Regulatory Commission (FERC) should take action, after having acted upon this matter just over a year ago, to further restrict State sponsored generation development “to meet long-term anticipated demand in the state for standard offer service and other electricity supply”.² Assuring the adequacy and reliability of electric service to Maryland’s citizens is an important Maryland State Policy objective which the Commission is directed to implement. Although the MD PSC views current MOPR Rules as imposing improper restrictions upon State Policy and action, it further believes that these rules functioned effectively in the 2012 RPM Auction and do not require “hurried” and “ill-considered” revision such as is here being proposed.

Again, as most parties will be aware, the MD PSC appealed FERC’s 2011 Orders which eliminated what was known as the “State Action Exemption”, an exemption from the MOPR negotiated as part of the settlement that enabled the RPM to be implemented and which permitted States to sponsor the development of generation pursuant to a State Regulator or Legislative mandate to resolve a projected capacity shortfall affecting the state as determined

¹ Similar positions are presented in Modification Packages 3, 4 & 5.

² Maryland Code Ann., Public Utilities Art. § 7-510(c)(6).

based upon an evidentiary proceeding permitting PJM and industry participation.³ Beginning in 2009, and continuing today, Maryland has sought the development of new generation to assure service reliability and adequacy of supply. The need for up to 1500 MW was examined, and ultimately but one plant of 600 MW was sponsored.⁴ In its appeal from FERC's 2011 Orders, the MD PSC has argued that FERC erred in eliminating the State Action Exemption and that it should be reinstated.

In the same Orders in which it eliminated the State Action Exemption, FERC also eliminated an exemption permitting the development of "Self-Supply Generation" by municipals/cooperatives and regulated, integrated utilities.⁵ However, to permit these entities, and also the States to sponsor the development of generation, FERC adopted a "Unit Specific Review" standard that provided for a cost-based review of sponsored generation that would permit it to participate in the RPM Auction if its reasonably estimated cost was below that of the PJM determined MOPR Minimum Cost for its generation class. In the 2012 RPM Auction, several State sponsored generation projects cleared the auction under this standard.

MOPR Packages 1, 3, 4 & 5, as understood by the MD PSC, each reverse FERC's withdrawal of the Self-Supply Generation Exemption, create a new Competitive Entry Exemption not effectively available for State sponsored generation development and eliminates the Unit Specific Review. None of these Packages restores the State Action Exemption and, by eliminating the Unit Specific Review standard effectively deny States the opportunity to implement legislative and other policies to assure generation development for reliability and supply adequacy. Also, while permitting Public Power the ability to develop generation for these reliability and supply adequacy objectives through RFP processes, an activity which Public Power views to be more economic for its end-users than sole reliance on PJM's RPM, this same ability and its apparent advantages are denied the remaining 94% of PJM Regional Load which consists of identical residential, commercial and industrial customers though served by other entities. State sponsored generation development for reliability and supply adequacy, if permitted to be available, can in some measure lessen the disadvantages being imposed on these customers who are otherwise not permitted the option of long-term contracting.

The MD PSC further believes that greater clarity and flexibility needs to be stated in the requirement, presently included in all Packages, that State sponsored and other generation development RFPs, except for Self-Supply RFPs, must be "competitive & non-discriminatory". The MD PSC is not prepared to accept the entirety of the restrictions that it has heard stated in the Stakeholder Process as associated with this standard. Also, these Packages each seek, improperly in the MD PSC's view, to increase the MOPR Minimum Price Floor to 100% of CONE from 90% and to impose a three year Auction clearance requirement, each of which will serve only to increase the cost of new generation development to the disadvantage of Maryland citizens. Finally, Packages 3, 4 & 5 impose even additional restrictions upon State sponsored generation by requiring specific FERC review and permission for such generation to be

³ See *New Jersey Board of Public Utilities, et al. v. FERC*, No. 11-4245 (3rd Cir.); decision not expected before Spring 2013.

⁴ *Re New Generating Facilities to meet SOS Long-Term Demand*, 297 PUR4th 336 (MD PSC 2012).

⁵ See *PJM Power Providers Group v. PJM Interconnection, LLC*, 135 FERC ¶ 61,022 (at ¶s 124-143 & 183-197), order on rehearing 137 FERC ¶ 61,145 (at ¶s 77-101 & 158-210).

developed or for review and approval of the Unit Cost Review analysis performed by PJM. Finally, the terms “irregular & anomalous”, which appear in New Jersey’s Unit Specific Review Exemption and in other Package proposed exemptions, requires further clarification and understanding before it can be accepted as an appropriate limitation upon these Exemptions, as do other limitations and standards attached to them too numerous to mention in the present summary document.

In summary, the MD PSC urges that no further changes be made in the PJM Tariff MOPR provisions until our and others Third Circuit Appeal from FERC’s 2011 Orders are adjudicated.⁶ The MD PSC further urges that the complexity of this matter necessitates that a further full and fair Stakeholder process be initiated, and that a full opportunity be provided to State Commissions and Consumer Advocates to develop and present alternative resolution packages which permit the continued implementation of State policies and actions to assure electricity reliability and supply adequacy for State citizens. Finally, the MD PSC supports a return to allowing a State Action Exemption similar to that in effect prior to FERC’s 2011 Orders. It is also prepared to discuss the option of a more transparent and defined Unit Specific Review Exemption as provided by the New Jersey Board of Public Utilities in its Package 2, but believes that considerable further work is required to clarify and improve the transparency of this alternative before it can be adopted. Also, the MD PSC believes that New Entry Pricing options, now being discussed by PJM, should be considered and resolved within this Stakeholder process.

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⁶ The MD PSC fails to see any need for rapid decision in this matter as no significant additional State sponsored generation is under development for inclusion in the 2013 RPM Auction. Rather, given the complexity of this matter and the important State Policies and interests involved, MD PSC urges that PJM, and FERC, if PJM is unwilling to do so, must permit time for full and fair study, the development of alternative resolution packages and careful deliberations to select that which will best serve the legitimate interests of end-users and industry shareholders.