UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Modernizing Electricity Market Design	))	**Docket No. AD21-10-000**

COMMENTS OF EAST KENTUCKY POWER COOPERATIVE, INC.

East Kentucky Power Cooperative, Inc. ("EKPC") hereby submits these responses to select questions posed by the Federal Energy Regulatory Commission ("Commission") in its Notice in the above captioned docket.[1] EKPC generally supports the comments submitted by the National Rural Electric Cooperative Association ("NRECA") and the American Public Power Association ("APPA") in this docket.[2] Due to the comprehensive nature of those comments, EKPC will not repeat all of the points made by NRECA. Rather, EKPC provides perspectives unique to it being a generation and transmission cooperative in PJM. Moreover, EKPC emphasizes that all of the markets in PJM Interconnection, L.L.C. ("PJM") must work together to assure reliability as the grid transitions to a resource mix of increased penetration of intermittent resources. EKPC urges the Commission and PJM to recognize that the accelerating changes in the generation resource mix requires a systematic and comprehensive rethinking of the PJM markets to ensure that the most efficient and capable resources are available to produce energy, or reduce load, in real time with the operating characteristics needed to maintain reliability 24 hours a day, 7 days a week, 365 days a year. Failing to compensate generators with beneficial operating characteristics may lead to premature retirement and must be avoided. Similarly, failing to incentivize the entry of resources

[1] *Modernizing Electricity Market Design*, "Notice Inviting Post-Technical Conference Comments," Docket No. AD21-10-000 (Apr. 5, 2021) ("Notice").

[2] NRECA and APPA offer support for a residual, not mandatory, capacity market. EKPC has not yet taken a position on the capacity market reform necessary to implement a residual capacity market and is still considering the proposals made in the PJM stakeholder process on this issue.

that may provide necessary characteristics also must be avoided. EKPC is not advocating that the capacity market alone solve this capital allocation equation, but it certainly has played an important role to date and merits systematic exploration of its role going forward. It is imperative, however, that the capacity market not frustrate market activity and business models such as that used by electric cooperatives that reinforce reliability and affordability through a long term portfolio approach to securing resources needed to reliably serve customers.

I. East Kentucky Power Cooperative

EKPC is a not-for-profit state-regulated generation and transmission ("G&T") cooperative responsible for providing and delivering reliable energy to 16 not-for-profit distribution cooperatives that power homes and businesses for over one million Kentucky residents, including some of the most economically vulnerable communities in the nation. EKPC integrated into the PJM market in 2013 to harness the benefits of the large, regional wholesale market. EKPC purchases from the market when it is cheaper than running its owned generation assets. The PJM market has supplied an efficient mix of power supply resources that deliver reliable service, and the end-use consumer in EKPC's territory has benefitted from the cost efficiency of the regional grid operation that is passed through to EKPC's owner-member distribution cooperatives.

II. Comments on PJM's Capacity Market

A. Existing PJM MOPR Implications

(1) Please explain whether the implementation of PJM's Expanded MOPR has led or may lead to unforeseen impacts, including those enumerated below:

a. Several panelists at the conference noted the potential for greater use of the FRR construct as a result of the Expanded MOPR. Please explain any potential impacts or concerns from an increased reliance on PJM's FRR construct in this manner (e.g., adverse impacts on capacity prices in PJM in zones that remain in the market, the reduced ability to ensure resource adequacy, etc.). ***(Notice Question 6(a))***

EKPC integrated into PJM in 2013 to access the cost efficiency and reliability benefits of regional grid operations and regional markets. The Expanded MOPR considers the business model of electric cooperatives, such as EKPC, to be a State Subsidy.[3] Although the current rules provide a Self-Supply Exemption for all of EKPC's existing owned or bilaterally contracted assets, the Expanded MOPR does not exempt the assets EKPC may acquire in the future to replace an existing asset or to add to the portfolio to keep pace with load growth. EKPC is concerned that the application of the Expanded MOPR may result in resources necessary to reliably and cost effectively meet the supply needs of its 16 distribution cooperative owner members failing to clear in the market, resulting in PJM requiring EKPC to purchase from the capacity market and EKPC continuing to financially support its uncleared resources. To mitigate that outcome, EKPC may consider utilizing the Fixed Resource Requirement ("FRR") alternative. To the extent other utilities utilize the FRR alternative, the role of the centralized capacity market will change and perform more like a residual market. The regional supply diversity would fall. EKPC believes that the performance of the market would be compromised if the only change is a larger subset of resources are subject to FRR.

Although EKPC was not a member of PJM when the FRR rules were first adopted, it is EKPC's understanding that the option was available to accommodate retail regulatory models, not to be an escape hatch if the centralized market disenfranchises utilities with load serving obligations.

b. Does the Expanded MOPR have any impact on the ability of resources to engage in private voluntary, bilateral transactions? *(Notice Question 6(c))*

[3] *See Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, "Order Establishing Just and Reasonable Rate," 169 FERC ¶ 61,239 (Dec. 19, 2019) ("Expanded MOPR").

The Commission's orders adopting the Expanded MOPR distinguished the entities who are parties to the bilateral contracts.[4] If the entities are public power (municipalities and electric cooperatives), the Commission's rules will impact future bilateral transactions. In rejecting NRECA's and EKPC's arguments on rehearing, the Commission found the resources subject to such transactions will be subject to the Expanded MOPR, regardless of whether the public power entity is the buyer or seller in the transaction.[5] EKPC expects this determination will have a chilling effect on such transactions.[6] Essentially, under this interpretation of the rule, the instant EKPC purchases a resource, it loses substantial value due to this regulation, an effect that will likely distort the market for voluntary bilateral transactions.

(2) Is it appropriate for the Commission to apply a MOPR to address state actions intended to suppress capacity market prices? Please explain why or why not? *(Notice Question 8)*

EKPC believes that a MOPR should focus on buyer side market power mitigation, not state policies that provide subsidies to certain sellers. Given the range of state and federal subsidies that directly and indirectly impact investment decisions in the power industry, the MOPR should not attempt to define appropriate or inappropriate subsidies subject to mitigation. Any reform of the

[4] *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035, at P 243 (2020) ("public power self-supply entities cannot engage in voluntary, arms-length bilateral contracts with unaffiliated third parties without triggering the MOPR … these voluntary bilateral agreements guarantee cost recovery for public power").

[5] *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, 173 FERC ¶61,061, at P 380 (2020) ("There is no material difference between resources owned and contracted for by self-supply entities with regard to the self-supply entities' ability to offer the resource below cost. Nor are we persuaded that bilateral contracts by self-supply entities should be exempt because seller is selling at the market price. Although an unsubsidized seller in a bilateral contract with a self-supply buyer may not have an incentive to sell at below-market prices, this does not mean that a self-supply entity would not be able to offer below cost because, no matter what the contract price is, the self-supply entity still has guaranteed cost recovery and therefore the ability to offer the resource into PJM's capacity market below cost.").

[6] EKPC has not yet been in a position to negotiate a transaction for capacity, and therefore cannot attest to any actual experiences under the new rules to date. However, were EKPC to build or purchase a new asset and not need the full output initially to serve its load, EKPC is concerned that potential counterparties may be less interested in transacting with EKPC – especially if they have a choice of transacting with an entity that is not *de facto* subject to the Expanded MOPR.

Expanded MOPR, however, needs to be accompanied by a review of the capacity market design for additional reforms that ensure that PJM's markets will fully support delivery of reliability, 24 hours in a day, 7 days a week, 365 days per year, from the anticipated future resource mix. PJM's capacity market is a forward market. Therefore, resource entry and exit is encouraged on a forward basis. The capacity market must work in conjunction with the other PJM markets to retain existing or attract new resources with operational characteristics needed to support the increased penetration of intermittent resources anticipated in the future. If the capacity market sends a signal to retire a resource while also not sending a signal as to what the grid needs (through some combination of energy ancillary services and capacity), not only may reliability be compromised but also the outcome will not be economically efficient. In that situation, PJM may need to take backstop actions to retain assets that otherwise received a market signal to retire.[7]

B. Potential Alternatives to Expanded MOPR in PJM

(1) Should the Expanded MOPR be revised or eliminated? If so, what, if any, are any other changes to the PJM Tariff would be necessary or appropriate? Please explain fully. *(Notice Question 9)*

It is appropriate for the market design to protect against market power abuse. Completely eliminating the Expanded MOPR without ensuring the market is protected from abuse would be harmful to the consumers who rely on the markets to provide just and reasonable rates. However, the Expanded MOPR must be reformed. From EKPC's perspective, the end-use customers who are supplied through EKPC will be harmed in the future if the Expanded MOPR remains in force. As explained above in response to question A(1)(a) above (Notice Question 6(a)), when EKPC

[7] *See, e.g.*, *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 (2011) (approving a "risk of retirement" Capacity Performance Mechanism, which permits the California Independent System Operator Corp. ("CAISO") to procure capacity from a non-resource adequacy resource that would otherwise retire because it did not have a capacity contract for the upcoming year, but was determined by CAISO to be needed for reliability reasons); *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (order enabling ISO-NE to enter into cost-of service agreements with certain retiring generators that are deemed necessary for regional fuel security and reliability).

replaces an asset or needs to procure additional assets to meet load growth, those assets will be subject to the Expanded MOPR. Should they not clear, EKPC would be in the situation of double-paying for capacity. EKPC is seeking 7th Circuit review of the Commission's orders sweeping electric cooperatives into the definition of State-Subsidy in an effort to protect against the anticipated future harm.[8]

(2) If any changes are made to the MOPR rules, is it necessary or appropriate to combine those changes with reforms to ensure that capacity resources are properly accredited for their reliability value? *(Notice Question 10)*

As EKPC explained in response to question A(2) above (Notice Question 8), any reform to the Expanded MOPR should be accompanied by a review of the current market design, and action to ensure that all of PJM's markets work together to ensure the grid remains reliable during a transition to a resource mix comprised of an increased penetration of intermittent resources. One aspect of that review needs to be a consideration of what operational characteristics are needed to ensure reliability and whether those operational characteristics are properly valued in the markets today. Another aspect of that review should be what capacity accreditation is appropriate for a particular resource type and whether that value changes when additional like resources are added to the grid. PJM and stakeholders considered this question with respect to storage and intermittent resources, but similar questions present for other resource types as well and should be explored.[9]

(3) Should a MOPR designed to address only buyer-side market power (i.e., a Targeted MOPR) replace the Expanded MOPR? How should

[8] *East Kentucky Power Coop., Inc. v. FERC*, Case No. 20-3030 (7th Cir.) (filed Apr. 13, 2020); *East Kentucky Power Coop., Inc. v. FERC*, Case No. 20-3036 (7th Cir.) (filed June 8, 2020); *National Rural Elec. Coop. Assoc., et al.* v. *FERC*, Case No. 20-3423 (7th Cir.) (filed Dec. 14, 2020).

[9] *See, e.g.*, *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,015 (2020) (establishing paper hearing proceeding to examine minimum run time requirements for capacity storage resources in PJM).

the Commission determine what constitutes a potential exercise of buyer-side market power? ***(Notice Question 12)***

The MOPR should be designed to target buyer-side market power only. It should be limited to addressing gross attempt by large net buyers to depress market outcomes through bidding their supply at prices not consistent with incremental, opportunity cost of selling reliability service. Determination of which buyers are "large" could draw upon the Commission's horizontal market power analysis, which focuses on those who represent 20% or more of the demand in the region. These net buyers offer their capacity resources into the market and have a potential to influence price outcomes (i.e., has market power) should their resource offers be concentrated on an inelastic portion of the Variable Resource Curve.

(4) Please explain to which resources a Targeted MOPR should apply (e.g., only to natural gas-fired resources or to all resource types; only to new resources or to all new and existing resources). ***(Notice Question 13)***

The MOPR should not focus on specific resource types but rather on the buyer and whether the existing or new supply resources offered by that buyer would impact the price outcome of the auction.

(5) Under a Targeted MOPR construct, what exemptions, if any, should be considered (e.g., self-supply, competitive entry exemptions)? Please explain. ***(Notice Question 14)***

Any MOPR provision should explicitly exempt self-supply. Self-supply entities are of various sizes and have portfolios comprised of varying assets. Self-supply in and of itself should not cause an entity's generation to be subject to the MOPR.

G&T electric cooperatives such as EKPC make decisions about whether to build capacity, enter into bilateral contracts, or purchase requirements through the PJM capacity market based on both investment objectives and expectations of future market conditions.[10] EKPC is owned by 16 distribution cooperatives who serve over 1.1 million retail customers in Kentucky. The ownership structure holds EKPC accountable for making financially responsible decisions to ensure those customers are reliably served. The tax treatment and finance options available to EKPC by virtue of its business model serve to support the rural customers, including those characterized as in "persistent poverty." The resource selection process EKPC utilizes to assemble its supply portfolio is consistent with and benefits from the competitive market framework. EKPC seeks to assemble the lowest cost resources in its portfolio through a combination of ownership, competitive solicitations, wholesale market purchases, and fuel arrangement procurements. EKPC makes investment decisions based on its long-term obligation which reflects a balance of cost-risk tradeoffs, environmental performance and reliability needs.

A portfolio that assures the long-term reliability needs of its members are met is consistent with PJM's reliability assurance mandate. But market rules that create disincentives to establishing such portfolios, driving G&T cooperatives to rely on short-term markets, may both compromise reliability if the resources available in the market do not have the operational characteristics PJM needs to meet load needs 24 hours a day, 7 days a week, 365 days a year as the resource mix transitions in the future, and also expose the rural customers served by the cooperatives to extreme price volatility.

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[10] *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, "Initial Comments of the National Rural Electric Coop. Assoc.," Declaration of Marc D. Montalvo, at P 25 (filed Oct. 2, 2018) ("Public Power utilities make decisions about whether to build capacity, enter into bilateral contracts, or purchase requirements through the PJM capacity market based on a set of investment objectives and expectations regarding future market conditions. The customer-owners of Public Power utilities bear any gain or loss associated with those decisions. The Public Power not-for-profit utility business model—i.e., ownership structure, tax treatment, and resource selection process—is consistent with and benefits from the competitive market framework. A Public Power utility seeks to add the lowest cost resources to its portfolio that meet its customers' needs and the utility's goals, and relies on competition (competitive solicitations, fuel markets, and the FERC-jurisdictional power markets) to achieve that objective.").

An entity's business model being characterized as "self-supply" should not be a reason to subject the assets offered into the auction by that entity to MOPR. Net short/long calculations can provide practical screens to assure self-supply entities do not suppress prices through their capacity resource offers. As EKPC explains in response to question B(3) above (Notice Question 12), "large" net buyers (load serving entities), not self-supply entities, should be the target of the MOPR. As such, "small" load serving entities should not be subject to the screens. The screen should focus on the "large" load serving entities; such entities should be able to be long up to 15% of their forecasted load to accommodate development of new resources and price hedges.[11]

(6) For states that choose to achieve resource adequacy outside of the PJM capacity market, please describe any options (e.g. FRR, self-supply, etc.) that should be considered for availability to the states.

a. Should FRR or other self-supply options be modified in any way to make them more useful to states that wish to reclaim authority for resource adequacy in order to meet state policies? *(Notice Question 15(a))*

As EKPC explained in response to question A(1)(a) above (Notice Question 6(a)), FRR is not EKPC's preferred option for satisfying the resource adequacy requirements in PJM. However, should EKPC determine that it may best manage reliability and cost exposure by utilizing the FRR alternative while the capacity market, and potentially other markets, undergo reform to best ensure they may manage the transition to a resource mix characterized by an increased penetration of intermittent resources, it would need to utilize that alternative for a minimum of five years under the current rules.[12] Although the logic for that minimum stay requirement may be appropriate for

[11] Market participants like EKPC develop resources as a hedge. Variations to the plan of an entity like EKPC include load forecast errors, and development of new resources cannot be a perfect fit to load. Outages could leave load unhedged. In other words, smaller entities like EKPC need more than parity with its load to assure there is an adequate physical hedge.

[12] *See* PJM Reliability Assurance Agreement, Section 8.1.

a steady state, that may operate to prevent entities from utilizing the centralized capacity market and garnering additional efficiencies from the supply diversity in a broad, regional capacity market (as compared to the FRR alternative) once the market reforms are complete.

(7) What changes are needed to ensure PJM's energy and ancillary services markets send appropriate price signals and ensure sufficient incentives for investment? *(Notice Question 20)*

EKPC has not proposed specific energy and ancillary service market reforms that may work in conjunction with the capacity market to ensure that the grid reliably navigates the transitioning resource mix. An evaluation of the operational characteristics needed to support the reliable supply of power to customers 24 hours a day, 7 days a week, 365 days a year in various weather scenarios should be undertaken to drive consideration of what changes in market design may most reliably and cost-effectively meet the grid's needs.

(8) What is FERC's responsibility toward states in the PJM region that have chosen a state policy of not subsidizing their preferred resources in light of the competitive capacity market? *(Notice Question 21)*

All states have energy policies. States may develop their policies in different ways – through legislation, through regulation, through regulatory approvals of utility plans, etc. An RTO should not be in a position to determine what is a good or bad state policy. Additionally, participation in a multi-state, regional market should not lead to one state's policies trumping, overriding, or otherwise thwarting another state's policies. The utilities in PJM have joined together, among other reasons, to benefit from the mutual assurance of resource adequacy. Market rules are in place to ensure that no entity "leans on" another entity.

(9) How urgent is the need to reconcile PJM's capacity market rules and state policies? Could PJM or the Commission adopt a phased approach with short-term and long-term solutions? For example, could short-term actions include eliminating the Expanded MOPR and replacing it

with a Targeted MOPR? What long-term solutions are needed, if any? *(Notice Question 22)*

EKPC suggests that the Commission revert back to the version of the MOPR in place in 2019 prior to the Commission's order on the Expanded MOPR and that a clear timeline needs to be established to ensure consideration of both short-term and long-term solutions are identified and considered. EKPC also supports in the near-term narrowing the MOPR to address buyer-side market power. Such a revised MOPR would be limited to addressing gross attempts by large net buyers to depress market outcomes through bidding their supply at prices not consistent with incremental/opportunity cost of selling reliability service. PJM and stakeholders have begun to tackle reforming the MOPR in the short-term, but have not yet identified the scope of issues to be tackled in the next phase or the timeline for that evaluation to be undertaken. EKPC encourages the Commission to require PJM to provide periodic updates on the efforts of the stakeholder process to ensure that those efforts are productive and moving with an appropriate scope and pace to ensure that the region reliably and cost-effectively meets the needs of the future.

III. Conclusion

EKPC is encouraged that the Commission is re-evaluating the role and design of the MOPR in PJM's capacity market. Electric cooperative business models should be respected and not frustrated through RTO market design. The business model of electric cooperatives should be encouraged; securing a portfolio to meet long-term needs of customers enhances reliability.

EKPC urges the Commission to consider how market design may best ensure that resources necessary to reliably serve customers 24 hours a day, 7 days a week, 365 days a year are retained (not prematurely retired) and incentivized to enter the market, and to require PJM to provide periodic updates on the progress of the stakeholders in evaluating the current markets and developing reforms to best ensure reliability will be ensured cost efficiently into the future.

Respectfully submitted,

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