

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

**PJM Interconnection, L.L.C**

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**Docket No. ER21-2582-000**

**COMMENTS OF JOINT PJM COOPERATIVES  
IN SUPPORT OF  
PJM’S PROPOSED TARIFF REVISIONS  
TO APPLICATION OF MINIMUM OFFER PRICE RULE**

On July 30, 2021, PJM Interconnection, L.L.C. (“PJM”) filed revisions to the PJM Open Access Transmission Tariff (“Tariff”) to reform the application of the Minimum Offer Price Rule (“MOPR”).<sup>1</sup> PJM requested an effective date of September 28, 2021 for the proposed revisions in order for them to apply to the Base Residual Auction to be conducted in December 2021 for Delivery Year 2023/2024. Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,<sup>2</sup> East Kentucky Power Cooperative, Inc. (“EKPC”), Buckeye Power, Inc. (“Buckeye”), and Southern Maryland Electric Cooperative, Inc. (“SMECO”) (collectively, “Joint PJM Cooperatives”) submit these Comments in support of the PJM Filing. The revisions to the MOPR proposed in the PJM Filing replace the “Expanded MOPR” ordered by the Commission in December 2019,<sup>3</sup> and replace elements of the previously existing MOPR, with more narrowly tailored provisions. From the perspective of members of the electric cooperative community in PJM, these reforms are essential to properly and appropriately respect the long-standing business model of electric cooperatives and their contribution to regional grid reliability. The reforms

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<sup>1</sup> *PJM Interconnection, L.L.C.*, “PJM Section 205 Submittal to Revise Application of the Minimum Offer Price Rule,” Docket No. ER21-2582-000 (filed July 30, 2021) (“PJM Filing”).

<sup>2</sup> 18 C.F.R. § 385.213 (2020).

<sup>3</sup> *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (“December 2019 Order” or “Expanded MOPR Order”), *order on reh’g & clarification*, 171 FERC ¶ 61,035, *order on reh’g*, 173 FERC ¶ 61,061 (2020), *appeals pending sub nom. Ill. Com. Comm’n v. FERC*, Nos. 20-1645, *et al.* (7th Cir. Apr. 20, 2020). The Expanded MOPR Order directed changes to the MOPR (the “Expanded MOPR”).

replace rules that otherwise had the potential to frustrate elements of the electric cooperative business model that reinforce grid reliability, namely the long portfolio approach to secure cost-efficient resources needed to reliably serve electric cooperative members over the long-term. Joint PJM Cooperatives also do not object to Tariff language clarifications we understand other electric cooperatives in PJM will be requesting as those clarifications should ensure that no electric cooperative in PJM is inadvertently excluded in the application of these important MOPR reforms. Joint PJM Cooperatives commend PJM and the PJM stakeholders for taking care to understand the unique business model and regulatory and owner member/customer oversight of asset ownership and power purchase decisions which appropriately constrain any incentive and ability of electric cooperatives to exercise Buyer-Side Market Power leading to an appropriate resolution of the Joint PJM Cooperatives' significant concerns with the current MOPR provision in effect. Joint PJM Cooperatives support PJM's proposed MOPR reforms and urge the Commission's timely approval of reforms to enable their implementation for the 2023/24 Delivery Year Base Residual Auction.

## **I. Background**

### **A. Joint PJM Cooperatives**

#### **1. East Kentucky Power Cooperative, Inc.**

EKPC is a not-for-profit state-regulated generation and transmission 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. EKPC integrated into the PJM market in 2013 to harness the benefits of the large, regional wholesale market. PJM dispatches generation resources for economics and reliability. This often results in EKPC purchasing from the market when it is cheaper than running its owned generation assets.

The PJM market has ensured the most efficient mix of power supply resources to ensure reliability, and the end-use consumers in EKPC's territory have benefitted from the cost efficiency of the regional grid operation that is passed through to EKPC's owner member distribution cooperatives.

## **2. Buckeye Power, Inc.**

Buckeye is an Ohio non-profit generation and transmission cooperative and Load Serving Entity that produces, procures, and provides at wholesale all the electric capacity and energy required by its 25 member electric distribution cooperatives operating predominantly in the State of Ohio and a small portion of the State of Indiana. Buckeye is owned and governed by its member distribution cooperatives, which are in turn each Ohio non-profit cooperatives owned by their retail member-consumers.

Buckeye's mission is to provide "to all member systems, stably and competitively priced, economical and highly reliable wholesale power, for the benefit of their members and their communities."<sup>4</sup> Buckeye provides this supply through wholesale power agreements in which it obtains generation and transmission resources to meet the demand of its members, and its members pay a cost-based rate for these resources. Buckeye or its affiliates own or have the right to the output of approximately 2,445 MW of generating capacity located in or delivered into PJM. Buckeye engages in long-term planning and makes long-term investments in generation resources to meet the existing and anticipated growth of its members' load and provide a hedge against the market at the lowest cost consistent with reliability, rate stability, environmental responsibility,

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<sup>4</sup> Buckeye's mission statement can be found on its website at <https://ohioec.org/buckeye-power> (accessed Aug. 19, 2021).

and other factors important to Buckeye and its members. This business model is essential to Buckeye's mission of providing reliable, stably priced, and affordable electricity to its members.

### **3. Southern Maryland Electric Cooperative, Inc.**

SMECO is a distribution cooperative, non-profit membership corporation, incorporated under the Electric Cooperative Act of Maryland. SMECO operates over 9,100 miles of line to serve over 160,000 consumers located in the Maryland counties of Calvert, Charles, St. Mary's, and Prince George's.

#### **B. Electric Cooperative Business Model**

Electric cooperatives are not-for profit entities that provide electricity service to rural and, in some cases, metropolitan populations, many of whom are economically challenged.<sup>5</sup> Some own generation and transmission assets and, pursuant to full-requirements wholesale power contracts, supply and deliver power to distribution owning cooperatives that serve retail customers. Others do not own transmission and are reliant on other transmission-owning utilities for transmission service to fulfill their full-requirements obligation to supply and deliver power to retail customers. Joint PJM Cooperatives are generation and transmission or distribution owning electric cooperatives.

Although the oversight mechanisms vary from cooperative to cooperative, a similarity among them is that their generation supply decisions to satisfy their full-requirements obligations

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<sup>5</sup> According to NRECA's CEO Jim Matheson, collectively NRECA's members "serve 92% of the persistent poverty counties in America." He explains that "[w]hen co-ops talk about affordability, we're talking about consumer-owned utilities, and those consumers are in challenging economic circumstances." See "Matheson: Co-ops Ready to Support Policies That Help Challenged Communities," available at: <https://www.electric.coop/jim-matheson-co-ops-ready-to-support-policies-that-help-challenged-communities> (Feb. 1, 2021).

are constrained by long-term resource portfolio plans or other long-term hedging plans approved by their owner members/customers.

### **1. Regulatory Oversight and Governance**

Some electric cooperatives, like EKPC and SMECO, are regulated by the state utility commissions of the states in which they are located. State regulation may involve both rate approval as well as oversight of long-term resource plans<sup>6</sup> and asset ownership or long-term contract commitment decisions.<sup>7</sup> Other electric cooperatives are rate-regulated by the Commission. And yet other electric cooperatives, like Buckeye, have their rates approved by their governing board, which is comprised of their owner members/customers.

All electric cooperatives have in common the need to obtain owner member/customer approval of specific asset dispositions or long-term contract commitment decisions. The governing board comprised of the owner members, who are or represent the end-use customers who will pay for the investment or financial obligation, make those decisions. The board, comprised of the owner members/customers, decides whether the electric cooperative should build a new asset, purchase an available existing asset, retire an asset, or enter into a long-term financial commitment to purchase the capacity and/or energy from a generation asset owned by another entity. The guardrails for those decisions are the long-range resource plans or long-range hedging plans that look out over a multi-year horizon and factor in reliability and affordability considerations. The

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<sup>6</sup> See, e.g., 807 KAR 5:058 (requiring “regular reporting and commission review of load forecasts and resource plans of the state’s electric utilities to meet future demand with an adequate and reliable supply of electricity at the lowest possible cost for all customers within their service areas, and satisfy all related state and federal laws and regulations”). Pursuant to this requirement, EKPC must file an Integrated Resource Plan every three years with the Kentucky Public Service Commission.

<sup>7</sup> See, e.g., KRS 278.020(1) (requiring Kentucky Public Service Commission approval before an electric cooperative “begin[s] construction of any plant, equipment, property, or facility for furnishing to the public” electric service).

governing board comprised of the cooperative's owner members approves the long-term resource plan or other long-term hedging plan.

An electric cooperative's long-range resource plan or long-range hedging plan is critical to ensuring reliable electricity supply and stable rates for the customers at the end of the line. Specifically, the plan ensures that the electric cooperative has generation supplies sufficient to meet the peak load needs of its owner members and mitigates market volatility risk that could impose additional costs that would be borne by the cooperative's owner members. The long-range resource plan or long-range hedging plan may also address its customer preferences and any other policies that influence decisions among which assets to rely upon and whether to build, acquire or contract for such assets.

Importantly, the decision to acquire an asset or enter into a long-term contract, or to retire a particular generation asset, is driven by multiple factors. Near-term market prices are not the key driver, but they are a factor. Expectations of future electricity and fuel market conditions, resource investment and maintenance cost, environmental and other policy requirements, load growth, and operational characteristics needed to ensure reliability are the key considerations in the decision. An electric cooperative seeks to add the lowest-cost resources to its portfolio that meet its customers' needs consistent with the owner member approved long-range resource plan or long-range hedging plan. An electric cooperative's self-supply decisions are fully consistent with well-functioning competitive markets.<sup>8</sup> Decisions are driven by the long-term reliability and

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<sup>8</sup> PJM has proposed to define Self-Supply Sellers as: "(1) vertically integrated utilities that include their generation assets 'in its regulated rates, and earns a regulated return on its investment in such generation;' and (2) public power entities, i.e., 'electric cooperatives that are either rate regulated by the state or have their long-term resource plan approved or otherwise reviewed and accepted by a Relevant Electric Retail Regulatory Authority and municipal utilities or joint action agencies that are subject to regulation by a Relevant Electric Retail Regulatory Authority.'" PJM Filing at 41.

affordability obligations and necessarily reflect a balance of cost-risk tradeoffs, environmental and other policy requirements, and reliability needs. Again, the owner members/customers who are responsible to pay the costs associated with these decisions make these decisions in the first instance. To the extent an electric cooperative, like EKPC or SMECO, is regulated by the state, the state regulator also would need to issue an approval.

Moreover, there may be even one more layer of scrutiny over electric cooperative asset ownership decisions in the form of the Rural Utilities Service (“RUS”) financing oversight. RUS considers various factors in deciding whether to extend loans to electric cooperatives, including (1) whether the proposed generation facilities are the most economical and effective means of meeting the borrower’s power requirements, and (2) whether the loan is feasible in that there is reasonable assurance that the loan, together with all outstanding loans and other obligations of the borrower, may be paid as required.<sup>9</sup> Some electric cooperatives like EKPC and Buckeye have secured loans from RUS to support asset investments and capital projects. As a condition of those loans, RUS reviews the long-term load forecast and economic forecasts that underpin asset decisions prior to and through the term of the loan.<sup>10</sup>

## **2. Long-Term Resource or Hedging Plans**

Planning for the long-term is an essential feature of the electric cooperative business model. However, short-term markets play an important role in optimizing potential cost savings in near-

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<sup>9</sup> See 7 C.F.R. §§ 1710.303, 1710.112 (2020). RUS evaluates the engineering and cost studies of the construction or purchase of additional generation capacity. See 7 C.F.R. § 1710.253 (2020) (“The studies must include comprehensive economic present-value analysis of the costs and revenues of the available self-generation, load management, energy conservation, and purchased-power options, including assessment of service reliability and financing requirements and risks. An analysis of purchased power options, including an analysis of available alternate sources of power shall be included.”).

<sup>10</sup> See 7 C.F.R. § 1710.152; 7 C.F.R. Part 1710, Subparts E & G (2020).

or real-time when it is cheaper to purchase from the market than operate a more expensive owned or contracted resource. Electric cooperatives are incented by their mission to deliver reliable, affordable power to their members/customers to plan for the long-term and not rely solely on the markets for that reliability and price stability. Price outcomes from regional transmission organization (“RTO”) administered markets are a factor that is included in the long-term resource plan, but they are not the sole determinant of asset decisions electric cooperatives make in support of their mission.

All electric cooperatives must comply with long-term resource plan guidance or other long-term hedging policy approved by their members/customers. These provide the guardrails for their supply portfolios to ensure sufficient reliable supply at lowest cost over the long-term is secured.

## **II. Comments**

In 2006, the Commission approved the initial MOPR in the PJM Reliability Pricing Model as a method of assuring that net buyers do not exercise monopsony power.<sup>11</sup> The MOPR further evolved in 2011 to address state-supported resources.<sup>12</sup> In 2012, the Commission made clear that “long standing and well-recognized business models should not be deemed ‘automatically suspect’ under the MOPR.”<sup>13</sup> The Commission found that a “blanket across-the-board MOPR exemption for resources designated as self-supply would allow for an ‘unacceptable opportunity to exercise buyer side market power’” and thus approved a MOPR that evaluated whether the net position of the Load Interest was long or short of the capacity obligation.<sup>14</sup> However, the Commission directed

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<sup>11</sup> *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 104 (2006).

<sup>12</sup> *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011).

<sup>13</sup> *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,194, at P 19 (2012).

<sup>14</sup> *Id.*

substantial changes to the MOPR in 2019.<sup>15</sup> In its Expanded MOPR Order leading to the current Expanded MOPR that is in effect, the Commission eliminated the Self-Supply Exemption provisions that recognized the important reliability contribution that self-supply resources provide to the region.<sup>16</sup>

The Expanded MOPR considers the business model of electric cooperatives to be a State Subsidy. Although the Expanded MOPR provides a Self-Supply Exemption for all of an electric cooperative's existing owned or bilaterally contracted assets, it does not exempt the assets an electric cooperative may acquire in the future to replace an existing asset or to add to the portfolio to keep pace with load growth.<sup>17</sup> As EKPC explained in the Commission's "Modernizing the Electricity Grid" docket, EKPC is concerned that the application of the MOPR may result in resources necessary to reliably and cost-effectively meet the supply needs of its 16 distribution cooperative owner members may not clear in the market and not count toward EKPC's capacity obligation to the PJM region, resulting in PJM requiring EKPC to purchase from the capacity market and EKPC continuing to financially support its uncleared resources.<sup>18</sup> Yet, the resources would still be in service and provide reliability assurance to the region. PJM synthesizes the result – the auction clearing would present an incorrect view of both the price and quantity of providing reliability service in PJM.<sup>19</sup> The Expanded MOPR thus has the effect of producing wholesale rates

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<sup>15</sup> See December 2019 Order at PP 202-04 (directives specific to Self-Supply).

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

<sup>17</sup> See *id.*

<sup>18</sup> *Modernizing Electric Market Design*, "Comments of East Kentucky Power Cooperative, Inc.," Docket No. AD21-10-000 (filed Apr. 26, 2021).

<sup>19</sup> PJM Filing at 8. See also PJM Filing at 12 ("[T]he Expanded MOPR's broad reach and expanded definition of subsidies poses an increased risk that resources receiving such perceived subsidies will not clear the market, resulting in either (1) frustration of state policy objective or Load Serving Entity ("LSE") resource strategy; or (2) customer payment for duplicative resources. A fundamental flaw in the Expanded MOPR is that affected parties will find this risk tolerable.").

that are not just and reasonable since they do not reflect the fundamentals of the real supply balance in the region. Marc Montalvo, President, Daymark Energy Advisors, reinforces the point in explaining:

All resources that contribute to resource adequacy should have that contribution measured and appropriately compensated. If resources, by virtue of mitigation, are not included in the recognized supply, even though they exist, then the price produced by the market actually does not reflect the real supply/demand balance and could falsely be indicating the need for more resources (or retirement of resources). This results in an uneconomic allocation of capital resources and will lead to distortions in all of the other markets that PJM runs. If the prices do not reflect the fundamentals, they cannot be deemed just and reasonable.<sup>20</sup>

To mitigate potential harmful effects of the Expanded MOPR on self-supply electric cooperatives, should the Commission not adopt reforms proposed by PJM that address these concerns, self-supply electric cooperatives may need to consider utilizing the Fixed Resource Requirement (“FRR”) alternative. To the extent other utilities utilize the FRR alternative as well, the reliance on the centralized capacity market will diminish. The regional diversity, which drives supply diversity, would diminish.<sup>21</sup> The economic efficiency of the centralized capacity market likewise would diminish. PJM shares this view, indicating that the conflict created by the Expanded MOPR has “the potential to cause significant loads to be removed from the capacity market altogether and can erode the fundamental purpose of the centralized capacity market to provide, among other things, efficiencies and accurate price signals both for investment and retirement decisions so that the capacity can be provided at least cost to consumers.”<sup>22</sup>

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<sup>20</sup> Affidavit of Marc Montalvo on behalf of Joint PJM Cooperatives, at ¶ 38 (“Montalvo Aff.”) (included as Attachment 1 to these Comments).

<sup>21</sup> *Id.* at ¶ 38.

<sup>22</sup> PJM Filing at 6. *See also* PJM Filing at 15 (“Expanded MOPR exacerbates the very price suppression issue I seeks to mitigate because it can motivate entities to take their entire portfolio out of the capacity auction.”).

PJM's proposed MOPR revisions more appropriately tailor the MOPR to address buyer-side market power concerns and undo the potential harmful overcorrection that may have occurred with the Expanded MOPR's potential future impact on electric cooperatives. The proposed revisions are much more accommodating to the long-standing business model of electric cooperatives.

PJM's proposal explicitly recognizes the important role electric cooperatives play in ensuring regional reliability and does not seek to apply the MOPR based solely on the electric cooperative business model. Joint PJM Cooperatives agree with PJM's characterization of the revisions as being accommodating to Self-Supply, including electric cooperatives, while providing appropriate guardrails to ensure the integrity of the market and just and reasonable wholesale electricity rates.<sup>23</sup> PJM's proposal restores the consideration of market fundamentals in the real supply existing on the system and contributing to the region's reliability in the clearing result, ensuring just and reasonable wholesale rates. The rules proposed in the PJM Filing are tailored to mitigate only those actions that improperly affect the market clearing price.

Joint PJM Cooperatives appreciate PJM's revisions to accommodate Self-Supply, and urge the Commission to accept PJM's MOPR proposal. Joint PJM Cooperatives also do not object to Tariff language clarifications we understand other electric cooperatives in PJM will be requesting as those clarifications should ensure that no electric cooperative in PJM is inadvertently excluded in the application of these important MOPR reforms.

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<sup>23</sup> *Id.* at 24 (citing Affidavit of Lisa Morelli on Behalf of PJM Interconnection, L.L.C., at ¶ 7 (Attachment F of PJM Filing) ("Morelli Aff.")).

PJM’s proposed MOPR revisions represent an appropriate, well-balanced approach to ensuring the capacity market results are competitive and result in a just and reasonable rate. PJM’s proposed revisions will mitigate capacity market offers of resources that received Conditioned State Support and those that are exercises of Buyer-Side Market Power.<sup>24</sup> PJM supports the revisions with expert affidavits. Joint Electric Cooperatives, through the Affidavit of Marc Montalvo, reinforce PJM’s assessment by further demonstrating the justness and reasonableness of the proposal as it relates to the specific treatment of electric cooperatives.<sup>25</sup>

Moreover, PJM’s proposed MOPR revisions represent an approach to assuring buyers do not exercise monopsony power, thus ensuring that the price outcomes of the capacity market auctions are just and reasonable. This is consistent with the finding that the Commission must make under Section 205 of the Federal Power Act to approve the revisions.<sup>26</sup> Additionally, PJM’s proposal is consistent with the Commission’s 2012 Order in that it does not provide a “blanket across-the-board exemption” for Self-Supply, but rather places significant restrictions on the exemption that is available for Self-Supply to appropriately ensure the competitiveness of the capacity market.<sup>27</sup> Specifically, the proposed exemption requires the resources offered by the Self-Supply Seller to be consistent with the seller’s long-range resource plan.

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<sup>24</sup> PJM defines Condition State Support as “any financial benefit required or incentivized by a state, or political subdivision of a state acting in its sovereign capacity, provided outside of PJM markets and in exchange for the sale of a FERC-jurisdictional product conditioned on clearing in any RPM Auction.” PJM Filing at 25. PJM defines Buyer-Side Market Power as “the ability of Capacity Market Sellers with a Load Interest to suppress RPM Auction clearing prices for the overall benefit of their (and/or affiliates) portfolio of generation and load.” PJM Filing at 32.

<sup>25</sup> Montalvo Aff.at ¶ 45 (“In avoiding making a presumption that self-supply requires mitigation, PJM’s proposal is just and reasonable and preserves the longstanding electric cooperative business model and its contribution to reliability.”).

<sup>26</sup> *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (1990) (rules must ensure that “neither buyer nor seller has significant market power”).

<sup>27</sup> *PJM Interconnection*, 138 FERC ¶ 61,194, at P 19.

### **A. Proposed MOPR Revisions Overview**

Pursuant to PJM’s proposed MOPR revisions, all Capacity Market Sellers are subject to two screens – Conditioned State Support and Buyer-Side Market Power. Depending on the outcome of the screens and the information PJM may know in advance of applying the screens for a particular auction, PJM and the Independent Market Monitor (“IMM”) may initiate a fact-specific review in order to make a determination regarding whether a Capacity Market Seller is a recipient of Conditioned State Support or is attempting to exercise Buyer-Side Market Power. In the case of Conditioned State Support, PJM has proposed that the Commission be the ultimate arbiter of that determination. In the case of Buyer-Side Market Power, PJM is proposed to be the arbiter.

The proposed revisions include no presumption that the Self-Supply business model represents a state subsidy that requires mitigation, unlike the currently effective Expanded MOPR. Self-Supply entities, including electric cooperatives, are not singled out for application of the screens, or otherwise presumptively subject to mitigation, in the revisions proposed by PJM. This is a significant improvement that demonstrates a more complete understanding of the electric cooperative business model, including the regulatory and governance oversight that control asset decisions constrained by the long-term resource plans or long-range hedging plans<sup>28</sup> approved by the electric cooperative’s owner members/customers who bear the cost of such decisions.

### **B. Conditioned State Support**

Under PJM’s proposed MOPR revisions, all Capacity Market Sellers are subject to the review that PJM will conduct to determine whether there is Conditioned State Support that may

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<sup>28</sup> See PJM Filing, Affidavit of Dr. Walter F. Graf on Behalf of PJM Interconnection, L.L.C. (Attachment E of PJM Filing), at ¶ 25 (“Graf Aff.”).

require the Capacity Market Seller to offer into the capacity market in a manner that ensures the resource would clear and result in the clearing price to fall below the competitive level. Unlike the Expanded MOPR, PJM's proposal does not assume that Self-Supply entities are guilty of exercising market power just by virtue of their business model. PJM's proposed revisions explicitly prohibit the Self-Supply business model from being used as a basis for determining that a resource offered into the auction is a recipient of Conditioned State Support. Proposed Tariff Section 5.14 (h-2)(1)(A)(ii) clearly provides: "Conditioned State Support shall not be determined solely based on the business model of the Capacity Market Seller, such that the fact that a Self-Supply Seller is the Capacity Market Seller, for example, is not a basis for determining Conditioned State Support."<sup>29</sup>

All Capacity Market Sellers, not just electric cooperatives, need to certify that they are not currently receiving or expecting to receive Conditioned State Support under any legislative or other governmental policy or program.<sup>30</sup> For example, as a state regulated electric cooperative EKPC would need to affirm that the Kentucky Public Service Commission did not require it to offer any resources into the auction in a manner that ensures it would clear. Since all Capacity Market Sellers must certify that they are not subject to any such directive, electric cooperatives will not be treated discriminatorily in the application of the Conditioned State Support screen.

### **C. Buyer-Side Market Power**

The buyer-side market power screen looks at ability, incentive, and whether there is an actual exercise of Buyer-Side Market Power. Using this screen, PJM will evaluate a Capacity

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<sup>29</sup> See PJM Filing at 46.

<sup>30</sup> Proposed Tariff Section 5.14 (h-2)(1)(A)(i).

Market Seller's resource offer to determine if it would move the supply curve to effectuate a change in price (lower price). Also, PJM will evaluate the length of the load position of the Capacity Market Seller with a Load Interest in the Locational Deliverability Area ("LDA")/region of PJM to determine whether there could be a benefit in terms of lowering the overall cost to that entity to satisfy its capacity obligation should its offered resource clear. This assessment would evaluate whether the depressed clearing price creates a savings to the Capacity Market Seller with a Load Interest that is larger than the cost of the resource.

This assessment will not need to be undertaken, or if undertaken and evidence is presented that allows a determination of no buyer-side market power, if the Self-Supplier makes a demonstration included in the "nonexhaustive" list provided in the proposed MOPR revisions. Specifically, the Self-Supply Seller's offer will not be mitigated under MOPR if it is able to demonstrate that the resource offered into the capacity market is "consistent with or included in the Self-Supply Seller's long-range resource plan (e.g., a long-range hedging plan) that is approved or otherwise reviewed and accepted by the RERRA [Relevant Electric Retail Regulatory Authority]."<sup>31</sup>

Electric cooperatives develop long-term resource plans and/or long-range hedging plans to ensure reliability, hedge price volatility risk, ensure environmental and other policy compliance, and satisfy customer preferences. They factor in long-term load projections and market

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<sup>31</sup> Proposed Tariff Section 5.14 (h-2)(1)(B)(ii).

fundamentals.<sup>32</sup> They do not solely rely on price signals from RTO markets, including the capacity market.<sup>33</sup> Marc Montalvo explains in his Affidavit:

Self-supply electric cooperatives make resource decisions in the context of a resource planning process that considers and is driven by market prices and consumer preferences. Procurements made within this context are not efforts to exercise market power, but competitive transactions reflecting the efforts of cooperatives to build power supply portfolios that efficiently meet their service obligations to their customers by following capital investment strategies that balance cost-risk tradeoffs, environmental performance, reliability needs, and other objectives. The ultimate decision to self-supply by building, owning and operating generation or by entering into a long-term contract for generation is based on the application of capital budgeting principles and portfolio theory. The long-term economic investments made by an electric cooperative on behalf of its customers are clearly distinguishable from the exercise of buyer-side market power.<sup>34</sup>

Mr. Montalvo concludes that electric cooperative self-supply investments “are fully consistent with the behavior one would expect of a participant in a competitive market, and therefore it would be inappropriate to assume electric cooperatives should be subject to mitigation.”<sup>35</sup> He further cautioned that the result of applying the Expanded MOPR to electric cooperatives’ self-supplied resources improperly undoes the benefits of the cooperative non-profit business model and imposes costs they would have avoided.<sup>36</sup> Mr. Montalvo described this result as being “clearly inconsistent with the Commission’s open access and competitive market policy

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<sup>32</sup>Montalvo Aff. ¶¶ 29-30.

<sup>33</sup> *See id.* at ¶ 28.

<sup>34</sup> *Id.* at ¶ 7. *See also id.* at ¶¶ 19-20.

<sup>35</sup> *Id.* at ¶ 20.

<sup>36</sup> *Id.* at ¶ 13. *See also id.* at ¶ 37.

objectives”<sup>37</sup> and would “distort”<sup>38</sup> the PJM capacity market by not recognizing all resources that contribute to resource adequacy.

Similarly, Dr. Graf explains that the exemption focused on the consistency with a Self-Supply Seller’s long-range resource plan or long-range hedging plan recognizes that “self-supply entities construct and/or enter into long-term contracts for resources to maintain a relative balance between supply and demand. These entities and their customers benefit from relatively stable costs primarily reflecting their cost to maintain such a portfolio, rather than volatile costs reflecting large capacity purchases at uncertain prices from the PJM capacity market.”<sup>39</sup> Therefore, it is appropriate for electric cooperatives to make long-range plans and to offer the resources in their portfolio consistent with that plan into the PJM capacity market.

Electric cooperatives make long-term decisions, not decisions based on the hope of lowering the capacity market clearing price for one delivery year.<sup>40</sup> A strategy to suppress market clearing prices using a new or existing asset poses risks to an electric cooperative. As Dr. Graf noted, constructing a new resource entails long-term commitment and to recoup that commitment would require the price suppression to persist over multiple years; likewise, retaining an existing asset via capital expenditures similarly would require cost savings to persist over multiple years to make an uneconomic resource decision benefit a load interest.<sup>41</sup> This is not the type of risk that an electric cooperative balances in its long-term resource or hedging plan. Electric cooperatives’ long-

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<sup>37</sup> *Id.* at ¶ 33.

<sup>38</sup> *Id.* at ¶ 38.

<sup>39</sup> *See Graf Aff.* at ¶ 25. *See also Montalvo Aff.* at ¶ 29.

<sup>40</sup> *Montalvo Aff.* at ¶ 16.

<sup>41</sup> *Graf Aff.* at ¶¶ 11-12.

term resource or hedging plans are intended to maintain a relative balance between supply and demand looking into the long term.

An electric cooperative's long-term resource plan provides the guardrails for an electric cooperative, balancing reliability, market volatility, resource performance, environmental and policy risk. These guardrails ensure that the resources secured to meet the plan are economic, and it is appropriate to offer those resources into the capacity market.<sup>42</sup> These resources contribute to the reliable operation of the PJM region.<sup>43</sup> An exemption that assesses whether the resource offered is consistent with its long-range resource plan, therefore, provides appropriate assurance that the offer is competitive and will result in the appropriate supply and demand balance for the region.

### **III. Conclusion**

PJM's proposed MOPR revisions will ensure the competitiveness of the capacity market and will appropriately mitigate Conditioned State Supported Resources and exercises of Buyer-Side Market Power to ensure the resulting wholesale power rates reflected in the capacity auction results are just and reasonable. Joint PJM Cooperatives, therefore, respectfully request that the Commission approve PJM's proposed MOPR revisions.

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<sup>42</sup> See *id.* at ¶ 25. See also *Montalvo Aff.* at ¶ 14.

<sup>43</sup> *Montalvo Aff.* at ¶ 18.

Respectfully submitted,

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Dated: August 20, 2021

**ATTACHMENT 1**

**Affidavit of Marc Montalvo**

**on behalf of**

**Joint PJM Cooperatives**

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

PJM Interconnection, L.L.C.

Docket No. ER21-2582-000

**AFFIDAVIT OF MARC D. MONTALVO**

**I. Qualifications and Purpose**

1. My name is Marc D. Montalvo. I am President of Daymark Energy Advisors. My business address is 370 Main Street, Worcester, Massachusetts 01608. Daymark Energy Advisors is a consultancy that provides economic analysis and advisory services to the electric and natural gas industries.
2. I have significant professional knowledge and experience with electric power markets that includes competitive power market design and economics, strategic planning, and capital budgeting and investment analysis. Before joining Daymark Energy Advisors, I spent ten years at ISO New England Inc., where I served as Director of Enterprise Risk Management, Director of Market Analysis and Investigation of the Internal Market Monitor, and Director of Market Development. I have testified before the Federal Energy Regulatory Commission (“FERC” or “the Commission”) numerous times on market power mitigation and market design issues. I hold an M.S. in Finance from Clark University and a B.S. in Mathematics from Allegheny College.
3. I have prepared this declaration on behalf of the Joint PJM Cooperatives, which East Kentucky Power Cooperative, Inc. (EKPC), Buckeye Power, Inc. (Buckeye), and Southern Maryland Electric Cooperative, Inc. (SMECO). The Joint PJM Cooperatives have asked me to address

PJM's July 30, 2021, filing proposing reforms to its Minimum Offer Price Rule (MOPR). In particular, I address whether PJM's proposed changes to the treatment of Self-Supply entities, specifically the treatment of electric cooperatives, under the MOPR revisions are just and reasonable.

4. PJM's proposal would alter the application of the MOPR to state-supplied resources in a way that is consistent with the Commission's 2012 statement that "long standing and well-recognized business models should not be deemed 'automatically suspect'" under the MOPR<sup>1</sup>. Under PJM's proposal, cooperative utilities that offer self-supply into the capacity market are not subject to MOPR review if participation is not conditioned on bidding uncompetitively into the capacity market and power contracts are entered into and resources built consistent with the electric cooperative's long-range resource plan. For the reasons discussed below, I have concluded that this approach is just and reasonable, while preserving the longstanding electric cooperative business model and its contributions to reliability.

## **II. Summary of Analysis**

5. The MOPR is an administrative intervention into the PJM-administered capacity market. In 2019 the Commission issued an order expanding the scope of the MOPR to most all resources and eliminated the long-standing self-supply exemption. The expanded MOPR was intended to mitigate state-sponsored payments or subsidies to specific resources. As PJM's filing recognizes, however, the resource investment activities of Self-Supply Entities are well removed from these types of state support programs. PJM's proposed approach properly

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,194, at P 19 (2012).

assesses incentive and ability to exercise buyer-side market power, rather than presuming that self-supply resources require mitigation.

6. *Electric cooperatives' self-supply resource investments are competitive transactions, not exercises of buyer-side market power.*
7. Self-supply electric cooperatives make resource selection decisions in the context of a resource planning process that considers and is driven by market prices and consumer preferences. Procurements made within this context are not efforts to exercise market power, but competitive transactions reflecting the efforts of cooperatives to build power supply portfolios that efficiently meet their service obligations to their customers by following capital investment strategies that balance cost-risk tradeoffs, environmental performance, reliability needs, and other objectives. The ultimate decision to self-supply by building, owning and operating generation or by entering into a long-term contract for generation is based on the application of capital budgeting principles and portfolio theory. The long-term economic investments made by an electric cooperative on behalf of its customers are clearly distinguishable from the exercise of buyer-side market power.
8. *The self-supply resource decisions of electric cooperatives are consistent with the behaviors one would expect of participants in a competitive market.*
9. Arguments that the integrity of the competitive market requires applying the MOPR to self-supplied resources rely on the mistaken premise that all resource entry and exit must be coordinated solely by the PJM-administered capacity market to be economic. However, that approach would only be reasonable if PJM's capacity market design accommodated contracts that allowed participants to fully reflect all their preferences. The PJM capacity market design

does not allow buyers to select through its market resources that provide any attribute beyond resource adequacy. In addition to resource adequacy, electric cooperatives prefer low risk portfolios, that allow them to offer customers stable rates over the long term, and, as guided by their owner/customers, electric cooperative may prefer to select resources that meet their other goals, such as green energy, improving local air quality, etc.

10. Electric cooperatives use standard capital budgeting techniques to select the investments that most fully reflect their preferences and optimize the performance of their power supply portfolios. The organizational structure of an electric cooperative exposes the cooperative's customers, who are the owners, to any *ex post* gains or losses associated with those investment decisions. This result is analogous to the way any competitive market participant experiences gains or losses based on actual market outcomes through time.
11. *PJM's proposed approach, which does not presumptively assume that self-supply should be subject to mitigation, respects the long-standing business model of electric cooperatives.*
12. The expanded MOPR was intended to mitigate the effect on RPM prices of state-sponsored external payments directed at specific capacity resource types. Applying an expanded MOPR to all self-supplied resources has the effect of denying the customer-owners of electric cooperatives the benefits (e.g., access to managed portfolios and low-cost debt) that their organizational structure was intended to confer, and which are enshrined in federal and state statutes.
13. It would be incorrect to conflate the electric cooperative non-profit business model and tax advantages with state-sponsored external payments to preferred resources. Many market participants have business and tax advantages not shared universally and not subject to the

MOPR. Applying the expanded MOPR to electric cooperatives' self-supplied resources improperly undoes the benefits of the cooperative non-profit business model through wholesale market design and imposes costs on electric cooperatives that, through portfolio diversification, they would have otherwise avoided.

14. *PJM's proposed approach avoids potential market distortions by targeting entities with both the incentive and ability to exercise buyer-side market power and properly reflecting all available supply in the market.* PJM's proposed approach will provide better price signals to the PJM markets than an approach that improperly mitigates self-supplied resources. The procurement choices of electric cooperatives reflect real values and externalities currently unpriced in the capacity market, and a policy that allows these values to be reflected in market outcomes is one that will result in more efficient market outcomes.

### **III. Under the Electric Cooperative Business Model, Resource Investment Decisions Are Competitive Market Actions Made in the Context of Long-Term Planning, Not Attempts to Exercise Buyer-Side Market Power**

15. Electric cooperatives are private, non-profit businesses owned by their member-consumers. Electric cooperatives serve the interests of their member-consumers, and the interests of owner and customer are one and the same. Electric cooperatives are generally required to return to their member-consumers or re-invest in the cooperative's business any revenue above what is needed for operating costs. Cooperative utilities raise funds through loans offered by the Department of Agriculture's Rural Utilities Service or cooperative or private lenders.

16. Electric cooperatives make decisions about whether to build capacity, enter bilateral contracts, or purchase requirements through the PJM capacity market based on a set of investment

objectives and expectations regarding future market conditions. The cooperative non-profit utility business model—i.e., ownership structure, tax treatment, and resource selection process—is consistent with and benefits from the competitive market framework. An electric cooperative seeks to add the lowest cost resources to its portfolio that meet its customers’ needs and the electric cooperative’s goals, and relies on competition (competitive solicitations, fuel markets, and the FERC-jurisdictional power markets) to achieve that objective.

17. Importantly, the owners and customers of electric cooperatives fully bear the benefits and costs of any investment made. The governance structures of electric cooperatives provide for oversight by customer-owners to ensure that the resource choices are made on an economic basis and meet the long-term needs of the electric cooperative’s customers. For some, there is also an additional layer of state or federal regulatory review of rates, asset dispositions, and long term financial commitments.

18. Overall, electric cooperatives have benefited from FERC’s open-access transmission and wholesale competition policies. Electric cooperatives have been able to build their own resources and deliver their output to their customers, have access to a competitive range of contracts with wholesale power suppliers, and purchase and sell spot energy through the RTO administered markets.<sup>2</sup> In turn, existing electricity cooperative capacity resources contribute to the reliable operation of the PJM region.

19. Electric cooperatives engage in long-term planning to serve existing and forecasted customer loads, and their self-supply actions occur within the context of this planning. The electric cooperatives’ planning and investment activities occur within the context of the Commission’s

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<sup>2</sup> Jay Morrison, Public Utility Fortnightly, September 2018.

open access transmission policy and wholesale competition framework. Broadly put, electric cooperatives' investment objectives are to construct portfolios of resources (through resource ownership, bilateral contracts, and spot purchases) that meet customer loads consistent with their customer-owners' preferences and investment objectives (this includes reliability, cost and risk trade-offs [i.e., portfolio impacts], environmental impacts, and local economic development).

20. This kind of investment is not an exercise of buyer-side market power, nor is it favoritism towards specific generating resources or technologies. Under the business model described above, electric cooperatives make resource decisions to self-supply their loads in the context of a resource planning process that considers and is driven by market prices and consumer preferences, not by state-sponsored payments or other external subsidies. Even more important from my perspective, electric cooperative self-supply investments are fully consistent with the behavior one would expect of a participant in a competitive market, and therefore it would be inappropriate to assume electric cooperatives should be subject to mitigation, based on their self-supply status alone. I explain this point in the next two sections.

#### **IV. A Well-Functioning Market Must Reflect All Economic Supply**

21. Implicit in arguments that the integrity of competition in the PJM capacity market requires the application of the MOPR to self-supply resources is the mistaken premise that all resource entry and exit must be coordinated solely by the RTO-administered market to be deemed economic. In fact, as I explain in this section, this is not necessary in order to have a well-functioning market. The PJM capacity market should properly account for, not mitigate, the resource decisions made by electric cooperatives in pursuit of a portfolio of supply resources

consistent with their business objectives and their cost, risk (diversity), flexibility, security, and environmental impact goals, as these decisions are legitimate market-based decisions.

22. The term “market” refers to many different types of structures through which commerce is conducted. Markets trade many types of contracts. In this context, “contract” is a general term and can refer to all types of commercial arrangements, including asset ownership agreements, bilateral agreements, and spot purchases and sales through an exchange or pool. Participants in a market select amongst the available contracts to construct the optimal (i.e., utility maximizing) set of positions.
23. A well-functioning market is not “perfect competition” in the economics text-book sense. Rather, a market is a set of agreed-to common practices and rules developed by participants to facilitate the very practical end of commerce. A well-functioning market, then, is a set of dynamic interactions that produces prices that inform and motivate future decisions by providing information about changing conditions, and that help participants evaluate the appropriateness of past decisions and make corrections.<sup>3</sup>
24. A well-functioning market is not a static intersection of supply and demand curves at a point in time. The use of the theory of perfect competition is best applied as a counterfactual against which to assess the performance of the outcomes of the real market and to aid in the design of interventions that might push the market towards the theoretical ideal. The necessary conditions underlying the perfect competition model are unrealistic and ignore the compensating mechanisms of dynamic adjustment that exist in the marketplace.

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<sup>3</sup> Peter Boettke, *Where Did Economics Go Wrong? Modern Economics as a Flight from Reality*, Critical Review, 1997.

*A perfect market should motivate individual investment decisions leading to the socially optimal [resource] mix, but the conditions for this to hold are strong – the usual General Equilibrium assumption of a complete set of spot and forward markets or perfect foresight, price taking behavior by producers and consumers, risk neutrality (or adequate risk sharing contracts) and convex production possibilities (Arrow and Debreu 1954, Debreu 1959). The lack of informative distant futures markets may lead to a suboptimal degree of diversity. Herd behavior, in which investors observe others' choices and assume they are based on superior information that justifies their choices, may encourage investment in one or two dominant technologies as well as investment boom and bust cycles (Ford 1999, 2001, and Olsina et al, 2005).<sup>4</sup>*

25. Unless all the necessary conditions noted above are satisfied, it is all but impossible that the resulting market allocations would be socially optimal in the sense intended by academic economists. In fact, from a textbook perspective, suboptimal results are the most likely outcome.

26. It is best, then, to consider the perfectly competitive market as an ideal type, not a thing that exists or can be achieved in practice. Rather, it is at best a model we can use to help us understand how the actual market works and how it might be improved. But in practice the best we can hope for is that the dynamic, compensating, coordinating structures and arrangements that do exist allow participants to make decisions through time that result in outcomes that are as efficient as possible. I'll refer to this as a 'workably competitive' market.

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<sup>4</sup> Awerbuch & Yang, 2007.

27. It is useful to recall that in a workably competitive market, prices play two fundamental roles.

*First*, prices provide market participants with information about the relative scarcity of goods so that they can adjust their consumption or production behavior. *Second*, prices reveal the ultimate profitability or unprofitability of economic actions—such as building power plants or signing contracts—already taken. “Correct” actions are rewarded with gains; errors are penalized with losses.<sup>5</sup> Prices should signal resources to enter when additional service is demanded or exit when there is a surplus.

28. PJM’s capacity market offers only the undifferentiated resource of capacity. It is not a forum in which buyers can pursue additional goals of such as resource diversity. As a result, the prices provided through PJM’s RPM capacity market do not reflect the complete set of participant preferences and are imperfect signals for entry and exit. The RPM market limits participants to one standardized contract type and specifies bid parameters. While it is true that typical centralized market structures, such as commodity exchanges, utilize standardized contract terms and conditions to facilitate trade and increase liquidity, it is not the case that only supply that enters and exits the marketplace subject to the standardized terms and conditions is deemed economic. In addition to the prices provided through the centralized market, participants in all markets incorporate multiple criteria, both economic and non-economic, into their capital budgeting decisions. The RPM structure, however, with its reliance on a single standardized contract, does not allow participants to fully reveal their preferences, the result of which is a potentially inefficient capital allocation. Consequently, the RPM market is incapable of signaling for the types of resources that optimally satisfy **all** buyers’ preferences, particularly

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<sup>5</sup> Boettke, 1997 and 2010.

the desire for diversity, environmental and health benefits, flexibility, and security at an aggregate or economy-wide level.

**V. Electric Cooperatives' Self-Supply Portfolios Provide the System with Benefits Beyond Resource Adequacy**

29. Electric cooperatives pursue portfolios of supply resources that are consistent with their business objectives and that satisfy their set of cost, risk (diversity), flexibility, security, environmental, and other preferences. Electric cooperatives are not limited by the constraints facing merchant power producers in the broader market, who face high opportunity costs of capital and limited long-term hedging opportunities. Consequently, electric cooperatives can consider investments in all resource types and a menu of contracts as part of a broader portfolio optimization approach, seeking an optimal resource mix for their load over a long-term investment horizon.

30. Electric cooperatives make investment decisions designed to meet customer demand and preferences while minimizing cost and risk (often with an explicit stable rate objective, as discussed in paragraph 9) to the customer-owners. In this case, the electric cooperative assesses its supply needs and options and selects the portfolio of resources that it believes is most likely to meet its investment and business objectives through time.

31. One common electric cooperative business objective is to invest in different technologies and approaches (including not only diverse generation technologies, but also demand management programs, for example) in order to achieve resource diversification so as to mitigate exposure to market risks, electricity prices, fuel prices, and environmental risks. As discussed above, electric cooperatives generally strive to maintain stable rates. Thus, they seek cost effective

hedges against risky future electricity and fuel prices. Given the negative correlation between energy prices and the economy, electric cooperatives find it in the interest of their customers to minimize, to the extent cost effective, fuel price volatility. Fossil fuel price risk can only be mitigated through diversification.

32. The portfolio approach of electric cooperatives offers potential benefits beyond resource adequacy to the system. For example, Awerbuch (1999 and 2000) evaluated the US gas-coal generation mix and showed that adding wind, photovoltaics and other fixed cost renewables to a portfolio of conventional generating assets served to reduce overall portfolio cost and risk, even though their stand-alone generating costs may be higher.<sup>6</sup>
33. Electric cooperatives make economic tradeoffs amongst multiple criteria and select the investments that maximize portfolio value. The proposed self-supply exemption recognizes implicitly that for self-supply entities such as electric cooperatives, the benefits of investing in generation assets must not be determined by solely evaluating alternative assets, but by evaluating asset portfolios. It is incorrect to assess electric cooperative investments as if they were pure plays, ignoring legitimate preferences that were considered in developing the self-supply portfolio of resources. Any time the mitigated price exceeds the project cost, net of portfolio benefits, and the resource fails to clear the capacity market, the result is an economic loss to the electric cooperative and a lack of efficiency in the market, as economic capacity is not counted toward the installed capacity requirements in the region. This negative impact on electric cooperatives would be clearly inconsistent with the Commission's open access and competitive market policy objectives.

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<sup>6</sup> Awerbuch & Yang, 2007.

**VI. PJM's Proposed Approach, Which Does Not Presumptively Assume that Self-Supply Should Be Subject to Mitigation, Respects Self-Supply's Long-Standing Business Model and its Benefits**

34. In its proposal for the application of the MOPR, PJM appropriately has structured its approach to avoid discriminating against the essential features of the electric cooperatives' business model. In so doing, it protects, not just the self-supply business model, but the capacity market as a whole.

35. The electric cooperatives' non-profit business model and tax advantages impact their capital structure and financing costs. Of course, many participants in the marketplace have access to low-cost debt, and there are a multitude of investment structures used to lower the cost of capital and effect financing. Appropriately, none of this legitimate business activity is proposed by PJM to be subject to the revised MOPR.

36. As discussed at some length above, electric cooperatives conduct detailed planning and market analysis to select self-supply investments that best meet a broad set of performance criteria while conferring the greatest portfolio benefit (cost-risk tradeoff). That the economics of investment opportunities are properly evaluated in the context of the portfolio in which they would participate given multiple selection criteria (many of which are not directly valued in the RTO-administered market) is consistent with their utility business model, not anti-competitive, and should not be subject to mitigation.

37. In the case of electric cooperatives, applying mitigation to self-supply investments could have the effect of undoing the benefits (e.g., access to low-cost debt) of the not-for-profit business model that the organizational structure was intended to confer, and which are enshrined in

federal and state statutes. Moreover, application of the MOPR to electric cooperative investment choices could undermine the portfolio benefits built into an existing and future resource mix and could expose cooperative customers to costs that their prudent portfolio diversification would have allowed them to avoid. If resources procured as self-supply as part of a long-term plan are mitigated and are not able to compete in the capacity market, electricity coops may face a requirement to purchase additional, unnecessary capacity, from a market that does not accurately reflect actual resources available and providing reliability benefits to the region.

38. Not only would presumptive mitigation of self-supply undermine the legitimate aims of the electric cooperative business model, but the direct effect of such a policy would be to distort PJM's markets. All resources that contribute to resource adequacy should have that contribution measured and appropriately compensated. If resources, by virtue of mitigation, are not included in the recognized supply, even though they exist, then the price produced by the market actually does not reflect the real supply/demand balance and could falsely be indicating the need for more resources (or retirement of resources). This results in an uneconomic allocation of capital resources and will lead to distortions in all of the other markets that PJM runs. If the prices do not reflect the fundamentals, they cannot be deemed just and reasonable.

39. Worsening the impact on PJM's markets would be the potential indirect effects on the choice of electric cooperatives to exit the markets. Faced with an implementation of the MOPR that inherently penalized the self-supply activities that are essential to the cooperative business model, and in effect would require electric cooperatives (and, by extension, their ratepayer-owners) to pay for capacity twice over, electric cooperatives might be forced to take the Fixed

Resource Requirement (FRR) exit option. To the extent other utilities utilize the FRR alternative as well, the reliance on the centralized capacity market will diminish. The regional diversity, which drives supply diversity, would diminish—weakening the positive reliability impacts that is the whole purpose of PJM’s capacity market.

40. PJM’s proposed approach protects the electric cooperative business model and its benefits by focusing, not on self-supply, but on actions actually likely to be associated with market manipulation—specific instructions to suppliers about how to participate in the capacity markets, for example, and/or procurements not connected to an overall long-term resource plan. In so doing, PJM’s MOPR proposal is properly targeted against the harmful exercise of market power, while enabling electric cooperatives to procure supply in the best long-term interests of their customers

## **VII. Conclusions**

41. The Commission bases its concept of subsidy and the applicability of the expanded MOPR on state-sponsored, out-of-market payments to selected resource types. PJM’s filing on its proposed application of the MOPR appropriately recognizes that the investment activities of electric cooperatives engaged in self supply are well removed from such state-sponsored external payments to specific resources. Electric cooperatives make resource selection decisions in the context of resource planning processes that considers and are driven by market prices and consumer preferences.

42. Electric cooperatives endeavor to build power supply portfolios that efficiently meet their objectives by following capital investment strategies that balance cost-risk tradeoffs, environmental performance, and reliability needs. The ultimate decision to self-supply--that is

to build, own and operate generation--is based on the application of capital budgeting principles and portfolio theory.

43. Arguments that the integrity of the competitive market requires application of the MOPR to self-supply resources are often made based on the mistaken idea that all resource entry and exit must be coordinated solely by the RTO-administered market to be economic. PJM's proposed approach appropriately recognizes the limitations of the market and its inability, by construction, to fully satisfy the legitimate economic preferences of all market participants.
44. Electric cooperatives' resource investments are made as economic business decisions and are not the result of state-sponsored external payments, the effects of which the Commission has sought to address with the expanded MOPR. Ultimately, the self-supply decisions of electric cooperatives are consistent with the behaviors one would expect of participants in a competitive market.
45. In avoiding making a presumption that self-supply requires mitigation, PJM's proposal is just and reasonable and preserves the longstanding electric cooperative business model and its contributions to reliability.

Signature appears on the next page

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 20, 2021.

A handwritten signature in blue ink, appearing to read "Marc D. Montalvo", with a long horizontal flourish extending to the right.

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Marc D. Montalvo

**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 Washington, DC this 20th day of August, 2021.

/s/ Daniel E. Frank  
Daniel E. Frank