

Potential Compliance Approach: Inclusion of State Default Procurement Auctions in State Subsidy Definition

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Rehearing Order:

- 301. We deny rehearing requests seeking to include an exemption for state competitive procurement processes. Although, as parties point out, the Commission previously approved an exemption for competitive, non-discriminatory state procurement processes proposed by PJM in 2013, we do not believe such an exemption is necessary for a just and reasonable replacement rate here. The purpose of the expanded MOPR is to ensure that resources participating in the capacity market with the benefit of State Subsidies do not suppress capacity market prices by offering lower than their costs. Under these circumstances, subjecting all State-Subsidized Resources to the expanded MOPR ensures that subsidized resources do not have the ability to affect competitive price signals and protects capacity market integrity. An exemption for competitive procurement processes is not necessary because if a State-Subsidized Resource is truly competitive, the resource can use the Unit-Specific Exemption to offer less than the default offer price floor for its resource type. Thus, a resource has the opportunity to demonstrate its costs are competitive and participate in PJM's capacity auction at less than Net CONE or Net ACR, while also protecting market integrity.
- 386. We deny rehearing and clarification requests regarding state default service auctions. State default service auctions meet the definition of State Subsidy to the extent they are a payment or other financial benefit that is a result of a state-sponsored or state-mandated process and the payment or financial benefit is derived from or connected to the procurement of electricity or electric generation capacity sold at wholesale, or an attribute of the generation process for electricity or electric generation capacity sold at wholesale, or will support the construction, development, or operation of a capacity resource, or could have the effect of allowing a resource to clear in any PJM auction. If these auctions are truly competitive, as parties assert, and a winning resource wishes to offer below the default offer price floor for its resource type, the resource may demonstrate that its costs are competitive through the Unit-Specific Exemption, or qualify for another exemption elaborated on in the December 2019 Order. Nor do we find it meaningful that the New Jersey Basic Generation Service auction is voluntary or used by power marketers because a state default service auction qualifies as a State Subsidy because it is a state-sponsored process and includes indirect payments to the resource.

- Under the Rehearing Order, revenues from state default procurement auctions are a form of State Subsidy.
- Implementation challenges:
 - Bidders in state default procurement auctions do not necessarily participate in PJM's RPM Auctions
 - Bidders in state default procurement auctions may contract with owners of Capacity Resources to fulfill the default service obligations.
 - Revenues from state default procurement auctions may not be traceable back to the specific underlying Capacity Resources.

Objectives of the straw proposal:

- Develop a workable rule within the confines of the rehearing order
- Preserve normal commercial activity associated with state default procurement auctions

Approach:

Include default service auctions in the definition of State Subsidy, but exclude from that definition certain voluntary bilateral transactions that do not present a sufficiently clear nexus between revenues from a state default procurement auction and a Capacity Resource.

This approach complies with the Rehearing Order by treating any Capacity Resource with a clear link to revenues from a state default procurement auction as receiving or entitled to receive a State Subsidy, including:

1. An owner of a Capacity Resource that directly clears (or intends to clear) such resource in a state default procurement auction;
2. Long-term transactions between a default retail service provider and an owner of the Capacity Resource in response to a state directive;
3. Long-term transactions between a default retail service provider and an affiliated owner of the Capacity Resource where the transaction is:
 - a) unit-specific; or
 - b) not at prevailing market rates

These transactions would be subject to MOPR (if known prior to the RPM Auction) or the Capacity Resource would be subject to the asset life ban and/or forfeiture of RPM revenues provisions (if not identified as State Subsidized at the time of the RPM Auction)

The following types of transactions related to provision of default retail service will be excluded from the definition of State Subsidy (not subject to MOPR):

1. Short-term transactions between a default retail service provider and the owner of the Capacity Resource
 - Such transactions are not designed to support the development, construction, or operation of a Capacity Resource
2. Long-term transactions between a default retail service provider and an unaffiliated owner of the Capacity Resource
 - Presumed to be competitive so long as such transaction is not directed by a state
3. Long-term transactions between a default retail service provider and an affiliated owner of the Capacity Resource where the transaction is not unit specific and is at prevailing market rates
 - Presumed to be competitive so long as such transaction is not directed by a state (must provide supporting documentation of prevailing market rates upon request from PJM or IMM)

- This approach outlines one potential approach to address the April Rehearing Order.
- PJM welcomes feedback and discussion on this straw proposal.