

From: "Borgatti, Michael" <Michael.Borgatti@bpu.state.nj.us>

Date: November 7, 2012, 6:16:39 PM EST

To: <andersd@pjm.com>

Cc:

Subject: RE: MOPR Counter Proposal for Discussion at Tomorrow's Stakeholder Meeting

Please use the attached draft, which is properly coded to reflect the IMM and NJ Parties comments.

Thank you.

From: Borgatti, Michael

Sent: Wednesday, November 07, 2012 6:06 PM

To: andersd@pjm.com

Cc:

Subject: MOPR Counter Proposal for Discussion at Tomorrow's Stakeholder Meeting

Good Evening Mr. Anders:

Please see attached a counter proposal to the Minimum Offer Price Rule ("MOPR") reforms currently under discussion at PJM. This draft represents a collaborative proposal offered by New Jersey Board of Public Utilities and New Jersey Division of the Rate Counsel (hereinafter "New Jersey Parties"). New Jersey Parties wish to make clear that this proposal in no way reflects upon our collective position in *New Jersey Board of Public Utilities et al. v. FERC*, Docket No. 11-4245, currently pending before the United States Court of Appeals for the Third Circuit. New Jersey Parties are confident in the merits of our arguments in this matter and will revisit the MOPR issue upon receiving the court's opinion. However, despite PJM's unwillingness to engage in a fair, open, and transparent stakeholder process, New Jersey Parties believe it is our responsibility to participate to the best of our limited abilities. Accordingly, the attached draft counter proposal addresses the following substantive elements:

1. **Return MOPR mitigation to 90% net-CONE** – This issue is settled at FERC and was supported by PJM during a previous iteration of MOPR. The net-CONE determination conducted by PJM is a paper exercise and does not account for market conditions that a real-world entrant would encounter. Restoring the 90% net-CONE threshold both comports with settled FERC precedent and addresses these substantive concerns;
2. **Remove the proposed requirement that non-exempt resources must pass MOPR for three non-consecutive years** – After year-one, a developer's costs are "sunk" and therefore the unit is committed to both the revenue stream provided by the capacity markets and to deliver capacity to PJM in the respective Base Residual Auction year. Thus, the three-year requirement unnecessarily excessive. Moreover, the three year clearing requirement is counter-competitive because it would require lender to offer financing based upon the risk that the unit may not clear three non-consecutive RPM auctions. This risk will have an unnecessary chilling effect on lending for new generation assets not otherwise offered an exemption under the current proposal;
3. **Reinstatement of the unit specific review exception** – Nothing about having a long-term contract with a state is tantamount to uneconomic entry – despite assertions to the contrary. Units should have the ability to justify their unique cost structure despite the presence of a

contract with a state actor. However, New Jersey Parties recognize concerns regarding the subjectivity of the current review process and added specific clarifications designed to narrow the accounting flexibility units may have when seeking such an exemption; and

4. **Clarified the competitive entry exemption** – New Jersey Parties clarified and enumerated the type of considerations a state may make when seeking to procure generation. New Jersey Parties believe that states have the right to consider certain factors other than strict capacity obligations when assessing the viability of specific resources.

Please post the attached document along with the additional materials for tomorrow's MOPR discussion. Note that New Jersey Parties' edits are in blue and build upon revisions previously offered by the Independent Market Monitor, which are in red. New Jersey Parties will be available to answer questions on this counter proposal tomorrow. However, in the event stakeholders will not have time to adequately consider this counter proposal by tomorrow, New Jersey Parties request the opportunity to discuss the matter in detail at the earliest possible date.

Very truly yours,

Michael Borgatti

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