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INSIGHT

PJM Minimum Offer Price Rule Impact on Future Renewables

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On December 18, 2019, the Federal Energy Regulatory Commission (FERC) issued an order directing the PJM regional transmission organization (RTO) to expand its Minimum Offer Price Rule (MOPR) as a move to address subsidies to electric power generation resources by states, with certain exemptions. FERC stated that it acted "to protect the competitive capacity market administered by PJM" by requiring PJM to expand its MOPR to apply to any new or existing power generation resource that receives, or is entitled to receive, a state subsidy, unless a FERC-determined exemption applies. FERC stated that resources that do not otherwise qualify for an exemption may seek a unit-specific exemption. FERC also clarified that the MOPR applies to state-subsidized resources (and not resources with federal subsidies). In April 2020, FERC denied requests for rehearing.

Background

RTOs and independent system operators (ISOs) manage the electric transmission systems and the competitive wholesale electric energy markets, under FERC's oversight. RTOs essentially operate as a broker between generation companies that offer to sell power into the wholesale markets, and distribution companies that submit bids to buy power from the markets. RTOs generally run several markets (including a capacity market) to ensure that enough generation is available to reliably meet peak power demands. Some RTOs use forward capacity markets to ensure that sufficient generation will be available years in the future. As RTO developed these markets, some participants and observers raised concerns that new generators could undermine competitiveness by submitting artificially low offers. In response, some RTOs, including PJM, added the regulatory concept of "Cost of New Entry" (CONE) to represent the estimated cost of building and connecting a reference power plant (typically, a natural gas-fired combustion turbine serving peak loads) to the grid in a particular location.

CONE values can help provide a screen for possible exercise of "buyer-side" market power under an RTO MOPR. MOPRs provide a process for RTOs to determine whether low offers from new projects are consistent with a project's costs, and are not, therefore, anticompetitive. MOPRs require new resources to offer at, or above, a floor price (equal to the net CONE for the asset generator type and location), and therefore prevent an artificial depression of capacity market prices.

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In recent years, several states have criticized various aspects of the performance of the competitive markets, especially in areas with transmission congestion (i.e., "load pockets") where high prices for electricity persist. Proposals from New Jersey and Maryland to subsidize generation in these load pockets were challenged in courts. In 2016, the Supreme Court issued a decision that Maryland's program to encourage development of in-state generation was preempted by FERC's exclusive jurisdiction over interstate wholesale electricity rates under 16 U.S.C. §824.

FERC's PJM MOPR Order

In 2017, several generators filed a complaint with FERC arguing that PJM's market rules essentially allowed state nuclear subsidies and renewable portfolio standard requirements to suppress capacity market prices. Alternatively, some observers argued that the real problem for PJM's capacity market was oversupply. In response to the generator complaint, PJM filed market reform proposals. FERC rejected PJM's proposals, finding that the out-of-market payments threatened the competitiveness of PJM's capacity market. FERC directed PJM to expand the MOPR to apply to all new or existing resources that can or do receive a state subsidy, unless an exemption applies. Existing resources are largely exempted from FERC's order, including those with state subsidies. FERC's order could require future state-subsidized resources to use the MOPR, thus limiting the resource's ability to submit lower-priced offers.

Current Expectations and Concerns

Several states, including Maryland, New Jersey, and Illinois, have reportedly contemplated leaving PJM's forward capacity market due to concerns that the FERC MOPR decision could undermine their clean energy goals. These states could use an existing provision in PJM's rules for a Fixed Resource Requirement to determine their own power needs outside of the capacity market, and still participate in PJM's real-time and day-ahead electricity markets (so long as they meet PJM's reliability requirements). Some are concerned that by mostly affecting new resources, the MOPR would exclude new offshore wind from the capacity market and negatively impact development of the offshore wind industry. The capacity market accounts for about 20% of the wholesale price of electricity in PJM, meaning that the loss of capacity market revenues may lead new renewable developers to increase their prices.

The United States has one 30 MW offshore wind farm in operation, with over 25,000 MW in the development pipeline as identified by the Department of Energy in 2018. Opinions differ on whether the loss of revenue from participation in the capacity markets would be a "deal-breaker" for the offshore industry. Some states within PJM, including Maryland, New Jersey, and Virginia, have installation commitments or established goals for offshore wind development. It is unclear how states within PJM intend to meet their offshore wind goals and commitments while meeting the requirements of the MOPR.

In March 2020, PJM filed its MOPR compliance filing with FERC. PJM's interpretation of FERC's direction could reportedly alleviate some of the concerns for future renewable development. PJM's compliance proposal would allow "unit-specific reviews" to allow energy projects to justify a lower clearing price based on specific attributes of the project. PJM argues that voluntary renewable energy credits are not state subsidies and would allow an asset life of up to 35 years. Together, such allowances could potentially enable new renewable projects to offer below the default MOPR floor values and be available for the market. It remains to be seen if FERC will accept PJM's proposals in the filing.

Arguably, at the heart of the debate is a state's authority under the Federal Power Act over in-state generation facilities (16 U.S.C. §§791a–825r), as opposed to FERC's exclusive authority over sales in interstate wholesale electricity markets (16 U.S.C. §824). Congress may consider whether the MOPR follows that divide. Congress may also consider whether the MOPR presents a barrier to the adoption of newer technologies with lower greenhouse gas emissions.

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