

Sponsors: Delaware Municipal Electric Corporation; American Municipal Power; Ohio Municipal Electric Association; Blue Ridge Power Agency; Pennsylvania Municipal Electric Association; Illinois Municipal Electric Agency; Vermont Public Power Supply Authority

In Support of the Preservation of Public Power’s Ability to Self-Supply without Risk of Paying for Capacity Twice

1 Mandatory forward capacity markets continue to be a source of concern for public power utilities
2 operating in wholesale electricity markets run by regional transmission organizations (RTOs). The
3 concerns about these administrative constructs have been significantly exacerbated by recent Federal
4 Energy Regulatory Commission (FERC) orders that require significant changes to the mandatory capacity
5 market administered by PJM Interconnection, L.L.C. (PJM). The unreasonable changes directed by
6 FERC threaten the public power business model of relying on long-term power supply resources in the
7 PJM region. If FERC were to apply the reasoning of the recent orders to capacity markets in other RTOs,
8 public power self-supply could be similarly threatened in regions beyond PJM.

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10 Previously, in RTO regions, public power utilities and other load-serving entities could invest in or
11 contract for capacity over the long term to meet their capacity obligations (self-supply). The RTOs
12 operated centralized capacity markets to provide a residual market to satisfy any remaining short-term
13 capacity needs. These markets had rules to mitigate supplier market power. Declining energy prices have
14 led merchant generators to increase their reliance on capacity markets as a source of cost recovery. For
15 the same reasons, suppliers have also aggressively argued for a Minimum Offer Price Rule (MOPR),
16 which establishes a price floor below which new generation cannot offer into the market. These bidding
17 restrictions impose risk on public power utilities that self-supply might not clear in the capacity auction,
18 resulting in public power having to pay twice to meet their capacity obligations (once through self-supply
19 and a second through RTO market purchases). The American Public Power Association (APPA) has
20 been a vocal opponent of mandatory capacity markets in general, and the application of MOPRs to public
21 power self-supply resources in particular.

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23 The PJM capacity construct is known as the “Reliability Pricing Model” or “RPM.” Historically, RPM
24 rules included a MOPR that applies to new, natural gas-fueled generating resources, on the theory that
25 those plants could most likely be used to decrease capacity market prices (i.e., the MOPR was used as a
26 buyer-side market power mitigation). Moreover, FERC has previously acknowledged the merit of
27 exempting public power self-supply resources from the MOPR as not having the motive or the means to
28 exercise buyer-side market power. However, in response to PJM proposals to change its RPM rules (filed
29 without majority stakeholder support) and a complaint filed by a group of merchant generators, FERC
30 issued an order on June 29, 2018, in which it found, pursuant to section 206 of the Federal Power Act,

31 that the current RPM rules are unjust and unreasonable and unduly discriminatory. The basis for FERC’s
32 conclusion was that the MOPR included in the RPM rules is too *limited* because it allegedly does not
33 adequately protect “against unreasonable price distortions and cost shifts caused by out-of-market support
34 to keep existing uneconomic resources in operation, or to support the uneconomic entry of new resources,
35 regardless of the generation type or quantity of the resources supported by such out-of-market support.”

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37 APPA, together with American Municipal Power, Inc. (AMP) and the Public Power Association of New
38 Jersey (PPANJ), requested rehearing of FERC’s June 29, 2018, order, but FERC has yet to act on their
39 rehearing request. AMP, PPANJ, the Illinois Municipal Electric Agency, and APPA participated in the
40 paper hearing process initiated by the June 29, 2018 order to establish new RPM rules, urging FERC not
41 to apply the MOPR to public power self-supply resources.

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43 In an extremely troubling order issued on December 19, 2019, FERC directs PJM to implement a vast
44 expansion of the MOPR. The expanded MOPR would apply to any new or existing resource that
45 receives, or is entitled to receive, a “state subsidy,” unless an exemption applies. FERC defines “state
46 subsidies” very broadly, and the term would specifically encompass public power self-supply resources.
47 In effect, the order treats the longstanding public power business model itself as a form of “subsidy” for
48 generation resources.

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50 By broadly expanding the MOPR to include “state subsidies,” the December 2019 Order interferes with
51 the ability of state and local policymakers to exercise their authority to shape the generation resource mix
52 by supporting certain resources and resource technologies. The order unreasonably promotes a “merchant
53 model” approach to resource adequacy and increases the risk that consumers will end up “paying twice”
54 for capacity. The result is likely to be an inefficient and costly over-procurement of capacity. And while
55 FERC’s alleged aim in expanding the MOPR is to ensure the “integrity of competition,” the expanded
56 MOPR will require PJM and its Independent Market Monitor to implement a complex program to
57 administratively determine the “correct” offers for all types of capacity – an approach that bears no
58 resemblance to a true competitive market.

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60 Although the December 2019 Order adopts a MOPR exemption for existing self-supply resources, new
61 public power self-supply resources would be subject to the MOPR. The order does not offer public power
62 utilities any reasonable option to mitigate the risk and uncertainty that application of the MOPR to public
63 power self-supply resources will entail. In a dissent from the December 2019 Order, FERC
64 Commissioner Richard Glick correctly argues that the decision “fundamentally upends the public power

65 model because it limits the ability of public power entities to choose how to develop and procure
66 resources over a long time horizon.”

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68 FERC’s June 2018 and December 2019 Orders unreasonably and unlawfully expand the PJM MOPR in a
69 manner that is likely to severely hinder the future ability of public power utilities in PJM to meet the long-
70 term resource needs of their citizen-owners in a manner that is cost-effective and responsive to the values
71 and policy preferences of their communities.

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73 APPA, AMP, and PPA have requested rehearing of FERC’s December 19, 2019 Order.

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75 **NOW, THEREFORE BE IT RESOLVED:** That the American Public Power Association (APPA) urges
76 the Federal Energy Regulatory Commission (FERC), to grant rehearing of its June 29, 2018, and
77 December 19, 2019 orders in Docket Nos. EL16-49-000, *et al.* and reconsider its unreasonable and
78 unlawful decision to apply a Minimum Offer Price Rule (MOPR) to new public power self-supply
79 resources in PJM Interconnection; and

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81 **BE IT FURTHER RESOLVED:** That APPA reiterates that FERC should ensure that RTO tariff
82 provisions do not impede the ability of public power systems to obtain through self-supply sufficient
83 power supply and demand-side resources to serve their retail loads at least cost, taking into account short-
84 term and long-term portfolio needs, resource diversification, environmental considerations, and any other
85 policy preferences of their communities; and

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87 **BE IT FURTHER RESOLVED:** That APPA reiterates that FERC should ensure that capacity market
88 rules preserve the rights of state regulatory commissions and local authorities to set procurement rules to
89 meet public policy goals established by state and local regulatory authorities, including but not limited to,
90 replacing older generation, entering into long-term contracts, using tax-exempt borrowing authority, and
91 favoring resource types preferred under state and local law and policy.