UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Modernizing Electricity Market Design)   Docket No. AD21-10-000

COMMENTS OF NRG ENERGY, INC.

Pursuant to the Federal Energy Regulatory Commission's ("FERC" or "Commission") April 5, 2021, Notice Inviting Post-Technical Conference Comments, NRG Energy, Inc. ("NRG") provides these comments for the Commission's consideration. NRG appreciates the opportunity to share these viewpoints. NRG engages in the sale of electricity and natural gas to residential, commercial and industrial customers, supported by NRG's wholesale generation. As an integrated power company, NRG currently serves approximately 6.7 million retail customers and owns approximately 23,000 MW of generation across the United States. Additionally, NRG provides power and natural gas to the business-to-business markets in North America, as well as retail services, including demand response, commodity sales, energy efficiency and energy management solutions to commercial and industrial customers.

In this docket, FERC will receive multitudes of information from market participants and stakeholders regarding their views of resource adequacy, the Minimum Offer Price Rule ("MOPR"), and the role of state policy in PJM markets. NRG's interests in this proceeding are unique and multifaceted, covering nearly every corner of the resource adequacy chain including generation and demand response participation in the capacity markets as well as operating as one of the largest competitive load-serving entities that serves retail customers and buys both sufficient capacity and pays for the costs of state policies. Our broad perspective leads us to believe the Commission should evaluate any reform on whether it squares with three core principles:

- reliability through competition to discipline costs and incent innovation;
- stability in market design to promote a willingness to make long-term investments; and
- consistency with both federal and state law, including state clean-energy requirements.

There is no question that the electric grid is evolving with significant technological advances and changing energy policies that often, though not always, prefer low- and no-carbon resources. It is reasonable for market participants, whether they are buyers, sellers, or policy makers, to expect the market to evolve, too.

NRG has long promoted creative ways to accommodate state goals that appear at the heart of this current scrum, while maintaining the vital market signals for reliable and efficient resource entry and exit. For example, at the May 2017 *Staff Technical Conference on State Policies and Wholesale Markets Operating by ISO-NE, NYISO, and PJM*, NRG articulated three steps to significantly advance market design: Accommodate, Achieve, and Adapt. These principles were intended to, and remain focused on, facilitating the evolving resource mix and to support efficient competitive operations and investment decisions.[1] More recently, NRG has promoted a Forward Clean Energy Market as a regional platform designed to achieve state clean energy objectives via market mechanisms that have worked for investors and consumers in other

[1] *See* Pre-Technical Conference Comments of Mr. Peter Fuller on Behalf of NRG Energy, Inc. FERC Docket No. AD17-11. April 25, 2017. *See also* Pre-Technical Conference Comments of Mr. Abraham Silverman on behalf of NRG Energy, Inc. FERC Docket No. AD17-11. April 25, 2017. *See also* NRG Energy, Inc. Comments in Response to the May 1st & 2nd Technical Conference. FERC Docket No. AD17-11. June 22, 2017. See also Post-Conference Reply Comments of NRG Energy, Inc. FERC Docket No. AD17-11. July 14, 2017.

contexts to discipline costs while achieving transformative capital investment.[2] Finally, NRG has clearly articulated both the principles and routes to achieve a cooperative federalism that could help resolve federal-state tensions, which the Federal Power Act was intended to resolve and not exacerbate.[3]

The purpose for MOPR, and the need for revisions and advances in its design, have been described in depth over several years of litigation.[4] NRG remains open to further constructive adjustments to MOPR so long as market protections remain in place while those adjustments are being contemplated and implemented. The tensions between state electric generation policy preferences and wholesale market efficiency will not go away simply with a snap of one's fingers. The MOPR drew a bright line between the domains belonging to the federal and state jurisdictions. The Commission in returning to a *status quo ante* on a premise that a state may do largely whatever it cares to regardless of its impacts on the federal wholesale market is equally

[2] Spees, *et al*. "How States, Cities, and Customers Can Harness Competitive Markets to Meet Ambitious Carbon Goals Through A Forward Market For Clean Energy Attributes." September 2019. https://brattlefiles.blob.core.windows.net/files/17063_how_states_cities_and_customers_can_harness_competitive_markets_to_meet_ambitious_carbon_goals_-_through_a_forward_market_for_clean_energy_attributes.pdf

[3] Kavulla, Travis. NRG Energy, Inc. "Moving Forward: Approaches For State-Federal Cooperation in a Decarbonizing Electricity Sector." January 2021. https://www.nrg.com/assets/documents/white-papers/moving-forward-approaches-for-state-federal-cooperation-in-a-decarbonizing-electricity-sector.pdf *See also* "Opening Remarks of Travis Kavulla, NRG Energy, Inc., at the September 30 Technical Conference on Carbon Pricing, Panel 3, Group 2." FERC Docket No. AD20-14-000. September 11, 2020.

[4] *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) at P5. "Although the role of the MOPR, in PJM, originally was limited to deterring the exercise of buyer-side market power, its role subsequently expanded to address the capacity market impacts of out-of-market state revenues. However, because the current MOPR applies only to new natural gas-fired resources, it fails to mitigate price distortions caused by out-of-market support granted to other types of new entrants or to existing capacity resources of any type."

stark, and unjust and unreasonable.[5] The Commission should act consistent with the Federal Power Act, which properly understood calls for a joint resolution (and not a separation) of overlapping jurisdictional interests.

NRG encourages FERC and stakeholders to utilize more holistic market-based solutions that can address many of the underlying drivers behind the ongoing tension between state policy and wholesale electricity markets. For example, to the extent these tensions are driven by the desire for carbon reduction or other environmental-based goals, we have offered in this and other forums a path—the Forward Clean Energy Market ("FCEM")—that relies on the power of competition and provides states direct access into governance to directly address these tensions. At its core, FCEM absorbs a state's stated goals for low- or no-carbon electricity production, and relies on heads-up competition to determine the best, most efficient use of consumer dollars to meet those goals.

FCEM, and similar proposals like the Integrated Clean Capacity Market,[6] advance concepts around regional markets for environmental state policy goals, and specifically rely on cooperation among FERC and the states to achieve an efficient outcome. Choosing an approach that relies on cooperative federalism necessitates, at a minimum, consultation and possibly joint decision-making. There are multiple pathways forward that could enable FERC and the affected

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[5] The few impermissible state activities that the Commission might identify merely become invitations for states to engage in subterfuge, where practically similar effects are cloaked in a different pretense by state legislatures that, as has been seen, often operate at the direction of local monopolies contrary to the public interest. *See*: Hartman, Devin and Mike Haugh. "R Street Policy Study No. 205: Electric Competition: The Antidote for Bad Behavior." September 2020. https://www.rstreet.org/wp-content/uploads/2020/09/Final-No-205-electric-competition-updated.pdf

[6] *See* Spees, Kathleen. "The Integrated Clean Capacity Market: A Design Option for New England's Grid Transition." October 1, 2020. https://www.iso-ne.com/static-assets/documents/2020/11/2020_10_01_npc_presentation_fgp_spees.pdf

states to consider the interdependencies of their policymaking and regulations. Whether via federal-state boards, delegated authority, or some other mechanism, coordination in the spirit of cooperative federalism can achieve the parallel goals of efficient regional markets and ambitious state policies.

Some individual state policies are in tacit if not overt conflict with the policies of other states. Specific states have not elected to adopt policies with targeted subsidies, and those states have policies that are nevertheless equally valid.[7] Any Commission action should respect the states that have elected to rely on competitive markets. NRG submits that it should be possible to find a market mechanism that measures and prices an attribute that a state policy ostensibly pertains to, thus accomplishing a heads-up competition that serves state policy interests and is in concord with FERC's competitive wholesale markets. Such a market, together with an application of MOPR where such a nexus does not exist, would provide a durable answer to this vexing issue.

In all of this, there is substantial risk for consumers, who may both be asked to pay higher prices now than they should be—but, probably more importantly, may face substantial stranded costs or reliability issues in the future if the Commission and states get it wrong. Competitive retail markets developed in most PJM states in order to avoid these risks, and they rely on reliable, stable, and transactable wholesale markets for their continued success. The Commission must remain cognizant of, and avoid wherever possible, market rules that create unreasonable or unduly discriminatory rules or market designs for load-serving entities that exist to competitively serve retail customers in the PJM and other wholesale marketplaces. To this

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[7] *See* "Comments of Senator Gene Yaw (PA), Environmental & Energy Chairman." FERC Docket No. AD21-10. April 23, 2021.

end, NRG encourages solutions that address the needs of consumers and their suppliers that have been saddled with non-bypassable charges created by many of the state actions that have driven the expansion of MOPR.[8] Simply permitting subsidized resources, in the guise of "preferred policy"—or financially secure resources with contracts in excess of prevailing market prices that guarantee their attributes remain accessible, regardless of whether they are actually at risk or replaceable—unfettered access to capacity markets does not result in lower consumer costs. In many cases, consumer costs increase for sustained periods of time via non-bypassable charges for those same resources. Rarely do these charges come from resources subject to heads-up competition.

Finally, NRG notes that PJM has articulated a desire to address many of these holistic issues after it addresses MOPR. This piecemeal approach is suboptimal and prevents the Commission and stakeholders from addressing the many matters in play holistically. Given the limited near-term impacts anticipated from the application of MOPR,[9] FERC and stakeholders would be wise to address these items together. At the precipice of the upcoming May 2021 PJM Base Residual Auction, which is the first PJM Base Residual Auction since May 2019, stakeholders find themselves threatened with another round of rule changes, with none-too-subtle threats of further auction delay, the continued aggressive pursuit of state-guaranteed profits in

[8] As noted by the PJM Independent Market Monitor many times, "Subsidies are contagious." *See, e.g.,* Monitoring Analytics, LLC. State of the Market Report for PJM" at 40. March 11, 2021.

[9] *See, e.g.,* Monitoring Analytics, LLC. "Potential Impacts of the MOPR Order." March 20, 2020. "[…] the IMM concludes that the December 19th Order is not expected to have an impact on the clearing prices and auction revenues in the 2022/2023 RPM BRA." http://www.monitoringanalytics.com/reports/Reports/2020/IMM_Potential_Impacts_of_the_MOPR_Order_20200320.pdf *See also*, PJM Interconnection, LLC, "Capacity Market." February 21, 2021. Wherein PJM identifies significant entry of offshore wind resources no earlier than 2024. https://pjm.com/-/media/committees-groups/committees/mic/2021/20210212-workshop-1/20210212-capacity-markets-workshop-session-1-presentation.ashx

lieu of market signals, and perceived waning interest in competitive markets. The markets need regulatory certainty. FERC policy since Order 888 has focused on competition across regions to achieve many goals. The Commission should refrain from acting in haste and take steps to preserve the competitive markets.

RESPONSES TO SELECT COMMISSION QUESTIONS

(1) Have circumstances regarding the nature and scope of state actions to support specific resource types (e.g., new state legislation, new or revised state subsidies, new or revised standards such as increased renewable portfolio standards, etc.) changed in the PJM footprint since the establishment of the Reliability Pricing Model? If so, should the purpose and goals of the capacity market evolve in response to this change? Please explain.

Circumstances are constantly changing, and often not in the same policy direction. For example, New Jersey rejoined RGGI and Pennsylvania announced it would join RGGI. Several states have adopted, whether by law or regulation, increases in renewable portfolio standards and resource-specific procurements, such as offshore wind. At nearly the same time, lawmakers in Ohio first passed legislation to provide direct financial assistance to certain nuclear and coal facilities within or utilized by the state and, before money could flow to certain resource owners, passed subsequent legislation removing support for nuclear facilities.

RTO market design should be flexible enough to incent innovation and modernization and absorb ever-changing policy priorities. This is not limited to the capacity market. Capacity markets have rightfully focused on reliability and market efficiency. NRG welcomes further evolution of the markets to rely on regional competition to achieve state policy goals as we seek new ways to advance decarbonization through competitive forces.

(9) Should the Expanded MOPR be revised or eliminated? If so, what, if any, are any other changes to the PJM Tariff would be necessary or appropriate? Please explain fully.

As noted above, NRG is open to further revisions of MOPR and other PJM market rules to better serve the electricity needs of the PJM region and to do so in a manner that relies on competition to benefit consumers. However, wholesale elimination of an Expanded MOPR is not warranted and not consistent with FERC's lengthy record on the need for protections for the FERC-jurisdictional markets. Based on the existing record reflecting the unjust and unreasonable impact of out-of-market subsidies on the market, it would not be just and reasonable to simply eliminate the Expanded MOPR without putting a market mechanism in place to holistically address out-of-market subsidies. To that end, NRG recommends a more comprehensive approach when seeking durable solutions like those described above, such as the Forward Clean Energy Market.

(10) If any changes are made to the MOPR rules, is it necessary or appropriate to combine those changes with reforms to ensure that capacity resources are properly accredited for their reliability value?

Yes. A holistic approach to improve the overall market is more appropriate than a piecemeal or unnecessarily narrow process. This may include enhancements to how capacity resources are accredited for capacity value. It should also include exploration of markets operated by the RTO to achieve the state policy goals on a regional basis.

(11) Please explain the timeframe in which a proposed replacement rate could be implemented to avoid delaying the December 2021 Base Residual Auction.

NRG strongly urges the Commission to avoid delay of future Base Residual Auctions. As noted, investors need market certainty. The record to date has not demonstrated that MOPR will have a significant market impact for several upcoming auction cycles. If the Commission and market participants wish to make further enhancements to the MOPR rules and PJM market design—which NRG has indicated its desire to engage in—it should do so on a holistic basis and on a timeline befitting the scope and breadth of potential revisions. Simply eliminating necessary market protections while presuming any and all policy actions are of some genuine intent in the interest of market participants and to the benefit of consumers while we contemplate the next iteration of wholesale market design is not an acceptable substitute to the Commission's deliberative and reasoned processes.

> **(16) Should load serving entities be able to procure capacity outside of PJM's capacity market such that PJM would only administer a residual capacity auction (i.e., an auction that removes demand procured outside the capacity market from the demand curve and supply curve would not include capacity procured outside of the capacity market) to procure the remaining capacity requirements? What rules should govern such a residual auction? Would a residual auction provide sufficient incentives for capacity to enter the PJM market when needed to ensure resource adequacy? Please explain.**

NRG stresses that the record of centralized capacity markets in PJM, NYISO, and ISO-NE have all clearly demonstrated success in achieving reliable commitment of resources at transparent prices. This is a benefit to all market participants, whether buyer or seller. Furthermore, these centralized capacity markets support states with retail competition with transparent price signals in ways that regions relying on residual markets (eg., MISO) cannot.

Centralized markets do not prevent bilateral contracting. Bilateral contracting does, in fact, occur in PJM and in other regions with centralized capacity markets. If "more robust" bilateral contract is desired—however that is defined—there are likely other ways to encourage such activity. Such options can be explored in a venue considering market changes beyond direct MOPR efforts.

Finally, centralized markets address a variety of market power issues in a manner that residual markets may not. Oftentimes "residual" auctions exist to cover for a purely monopolistic marketplace where retail competitive opportunities are sparse or do not exist. For example, wholesale competition might support a merchant wind generator's ability to interconnect in SPP and sell its output into the market, and that same resource owner may enter into a bilateral transaction for to sell RECs to a customer, but the actual customer load in any number of states without retail competition would not be eligible to be supplied by capacity of its choosing. The centralized capacity markets in PJM and elsewhere enhance access and opportunity that, as demonstrated in regions like MISO and SPP, a residual market cannot.

(21) What is FERC's responsibility toward states in the PJM region that have chosen a state policy of not subsidizing their preferred resources in light of the competitive capacity market?

This question is of paramount importance and we appreciate FERC raising it. Nine of PJM's fourteen state jurisdictions,[10] making up the bulk of the regions energy demand, rely on wholesale competitive markets operated by PJM to serve the electricity needs of the retail customers as a matter of law and/or policy. For many states in the PJM footprint, the old integrated resource planning model has gone by the wayside. In its stead, the states rely on PJM for their resource adequacy needs. FERC should be expected to administer the markets it regulates in accordance with those states' wishes.

It is also important to reiterate that not all state programs have the same goals, yet they all have an impact on the regional market. Some states want to support certain asset types in support of environmental goals; others support a different class of assets in support on economic development goals. These goals are neither monolithic nor permanent as seen in the recent activity in Ohio and described above.

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[10] Inclusive of Washington, D.C.

Competitive retail electricity markets and customers are at the tail end of these policies. They will likely be impacted, particularly if state policies (regardless of intent or design) impact wholesale markets. FERC has long demonstrated the ability to address the tension between multiple, and sometimes incompatible, goals. The ongoing efforts on MOPR and other market design aspects provide ample opportunity to rely on proper market design that supports, instead of hindering, retail electricity consumers.

NRG appreciates this opportunity to provide feedback to the Commission's request for post-Technical Conference Comments. As noted above, NRG stands ready to address the concerns expressed by many stakeholders in a manner that maintains FERC's responsibilities over the wholesale market, while granting the states a pathway to more efficiently and effectively meet their stated policy needs. By doing so, consumers in the region will best be served with the products desired at efficient prices.

Respectfully submitted,

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Dated: April 26, 2021