Vistra Energy
Observations on MOPR Rehearing

May 6, 2020

Default Service Auctions

"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."

Points of confusion:

- First, the majority of winner bidders in default service auctions are not tied to any particular generating resource.
  - The capacity components to those contracts are not physical – meaning they are not scheduled through PJM – they are financially settled.
  - Many non-generators serve this load and they do not contract bilaterally for the capacity. Therefore a generator would be unfairly disadvantaged from participating in default service and may cause the default service auction to be less competitive.
- Second, it will often be the case that at the time of a 3-year-forward Base Residual Auction, these default service auctions will not yet have run.
  - Because they are very competitive, it is not straightforward to estimate how much of a default service obligation you will have.

Default Service Auctions

Given FERC's finding, a possible path forward:

- PJM could propose implementing provisions that subject resources to the MOPR where a default service auction targets a particular resource, resource type/characteristic, or otherwise limits what resources are eligible to be selected (e.g., prioritizes in-zone resources).
  - This would be consistent with PJM's direction heretofore – its March 18 compliance filing proposed to codify that "a state-directed default service procurement program that is competitively procured without regard to resource fuel type" is not a state subsidy.
  - FERC would likely see this as a minimum set of criteria for triggering the MOPR, as otherwise the default service auctions would allow for program requirements much like renewable portfolio standards but not be subject to the MOPR.

Self-Supply

"We clarify that public power self-supply entities cannot engage in voluntary, arms-length bilateral contracts with unaffiliated third parties without triggering the MOPR. State law sanctions the public power business model, and these voluntary bilateral agreements guarantee cost recovery for public power.[541]"

Footnote 541 cites paragraph 70 of the December 2019 Order, which delineates between (1) not subjecting voluntary bilateral transactions to MOPR, and (2) what the expanded MOPR is meant to address – "resources receiving State Subsidies to keep existing uneconomic resources in operation, or to support the uneconomic entry of new resources."

PJM's approach in its March 18th compliance filing is a balanced and practical implementation of FERC's directive, and is informed by FERC's statements of where the enhanced MOPR is and is not meant to apply.

The April 2020 order is a crisper articulation of the finding on public power, but not a fundamental change from the December 2019 order.