

PARAGRAPH 386

We deny rehearing and clarification requests regarding state default service auctions. State default service auctions meet the definition of State Subsidy to the extent they are a payment or other financial benefit that is a result of a state-sponsored or state-mandated process and the payment or financial benefit is derived from or connected to the procurement of electricity or electric generation capacity sold at wholesale, or an attribute of the generation process for electricity or electric generation capacity sold at wholesale, or will support *the construction, development, or operation of a capacity resource*, or could have the effect of allowing a resource to clear in any PJM auction. 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. Nor do we find it meaningful that the New Jersey Basic Generation Service auction is voluntary or used by power marketers because a state default service auction qualifies as a State Subsidy because it is a state-sponsored process and includes indirect payments to the resource.

NEW PROPOSED DEFINITION:

Entity Providing Default Retail Service:

“Entity Providing Default Retail Service” shall mean an any entity providing default retail service, including but not limited to a load aggregator or power marketer, that enters into a contract or similar obligation with an electric distribution company to provide default electric services for retail customers who do not participate in the selection of a competitive retail provider that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Region.

REVISED STATE SUBSIDY DEFINITION:

State Subsidy:

“State Subsidy” shall mean a direct or indirect payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is as a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state, or an electric cooperative formed pursuant to state law, and that

- (1) is derived from or connected to the procurement of (a) electricity or electric generation capacity sold at wholesale in interstate commerce, or (b) an attribute of the generation process for electricity or electric generation capacity sold at wholesale in interstate commerce; or*
- (2) will support the construction, development, or operation of a new or existing Capacity Resource; or*
- (3) could have the effect of allowing the unit to clear in any PJM capacity auction.*

Notwithstanding the foregoing, State Subsidy shall not include (a) payments, concessions, rebates, subsidies, or incentives designed to incent, or participation in a program, contract or other arrangement that utilizes criteria designed to incent or promote, general industrial development in an area or designed to incent siting facilities in that county or locality rather than another county or locality; (b) state action that imposes a tax or assesses a charge utilizing the parameters of a regional program on a given set of resources notwithstanding the tax or cost having indirect benefits on resources not subject to the tax or cost (e.g., Regional Greenhouse Gas Initiative); (c) any indirect benefits to a Capacity Resource as a result of any transmission project approved as part of the Regional Transmission Expansion Plan; (d) any contract, legally enforceable obligation, or rate pursuant to the Public Utility Regulatory Policies Act or any other state-administered federal regulatory program (e.g., the Cross-State Air Pollution Rule); (e) any voluntary bilateral transaction (including but not limited to those reported pursuant to Tariff, Attachment DD, section 4.6), such as a power purchase agreement or other similar contract, where the buyer is an Entity Providing Default Retail Service that does not directly or

indirectly own a Capacity Resource and the transaction is (1) a short term transaction (one-year or less) or (2) a long-term transaction that is not state-directed and either (i) the seller is not an Affiliate of the Entity Providing Default Retail Service or (ii) the seller is an Affiliate and the transaction is not unit-specific and is at prevailing market rates, subject to the below condition, and provided further that nothing herein would exempt a Capacity Resource that would otherwise be subject to the MOPR pursuant to this Tariff~~any state-directed default service procurement program that is competitively procured without regard to resource fuel type (e.g., New Jersey Basic Generation Service, Maryland Standard Offer Service);~~ (f) any revenues for providing capacity as part of an FRR Capacity Plan or through bilateral transactions with FRR Entities; or (g) any voluntary and arm's length bilateral transaction (including but not limited to those reported pursuant to Tariff, Attachment DD, section 4.6), such as a power purchase agreement or other similar contract where the buyer is a Self-Supply Entity and the transaction is (1) a short term transaction (one-year or less) or (2) a long-term transaction that is the result of a competitive process that was not fuel-specific and is not used for the purpose of supporting uneconomic construction, development, or operation of the subject Capacity Resource, provided however that if the Self-Supply Entity is responsible for offering the Capacity Resource into an RPM Auction, the specified amount of installed capacity purchased by such Self-Supply Entity shall be considered to receive a State Subsidy in the same manner, under the same conditions, and to the same extent as any other Capacity Resource of a Self-Supply Entity. For purposes of subsection (e) of this definition, a Market Seller that is an Entity Providing Default Retail Service or an Affiliate of an Entity Providing Default Retail Service and certifies that a Capacity Resource is not eligible for a State Subsidy under this provision must prepare documentation (upon execution of the retail contract or similar obligation with an electric distribution company) that demonstrates that the long-term transaction with an Affiliate is at prevailing market rates by showing that the price was consistent with the forward price curve, generally available to all buyers, or that it was consistent with other competitive supply bids at the time. A Market Seller that certifies that a Capacity Resource is not eligible for a State Subsidy under subsection (e) of this definition shall retain all supporting documentation and make such documentation available for inspection upon request from PJM or the Independent Market Monitor.

Tariff, Attachment DD, section 5.14(h)(1)(A)

Effect of Exemption. To the extent a Sell Offer in any RPM Auction is based on a Capacity Resource with State Subsidy, a combustion turbine resource, or a combined cycle resource and qualifies for any of the exemptions defined in Tariff, Attachment DD, sections 5.14(h)(4)-(8), the Sell Offer for such resource shall not be limited by the MOPR Floor Offer Price.