

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Offer Caps in Markets Operated by            )  
Regional Transmission Organizations        )     Docket No. RM16-5-000  
and Independent System Operators         )

**COMMENTS OF AMERICAN PUBLIC POWER ASSOCIATION,  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION  
AND AMERICAN MUNICIPAL POWER, INC.  
ON NOTICE OF PROPOSED RULEMAKING**

April 4, 2016

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**I. INTRODUCTION AND SUMMARY OF POSITION**

The American Public Power Association ("APPA"), the National Rural Electric Cooperative Association ("NRECA"), and American Municipal Power, Inc. ("AMP") submit these comments on the Notice of Proposed Rulemaking ("NOPR") issued in the above-referenced proceeding on January 21, 2016.<sup>1</sup> The NOPR proposes a generic change to the energy offer cap for all regional transmission organizations ("RTOs") and independent system operators ("ISOs"),<sup>2</sup> to cap each resource's incremental energy offer at the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer. The NOPR further proposes that such verified, cost-based incremental energy offers above \$1,000/MWh would be used for purposes of calculating Locational Marginal Prices ("LMPs"). In addition to a generic offer cap for all RTOs and ISOs, the NOPR seeks comments on related items including (1) whether to impose a "hard" cap as part of the Final Rule in this proceeding; (2) whether the Market Monitoring Units ("MMUs") and/or ISO/RTO can timely verify costs prior to the day-

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<sup>1</sup> *Offer Caps in Markets Operated by Regional Transmission System Organizations and Independent System Operators*, Notice of Proposed Rulemaking, 154 FERC ¶ 61,038 (2016). Given the diversity of APPA and NRECA members based on the RTO/ISO in which they participate and status in terms of generation ownership to load, individual APPA and/or NRECA members may have different views of the NOPR. These comments reflect APPA's and NRECA's positions, on balance.

<sup>2</sup> The RTOs/ISOs that would be subject to the Final Rule in this proceeding are the California Independent System Operator Corporation ("CAISO"), ISO New England, Inc. ("ISO-NE"); Midcontinent Independent System Operator, Inc. ("MISO"); New York Independent System Operator, Inc. ("NYISO"); PJM Interconnection, L.L.C. ("PJM"); and Southwest Power Pool ("SPP").

ahead or real-time market clearing process, and whether additional information or authority is needed; (3) application of the offer cap proposal to imports; (4) treatment of virtual transactions; and (5) the impact of the proposal on seams issues.

The Commission's proposal to force a generic energy offer cap for all RTOs and ISOs ignores regional differences and is based on hypothetical concerns and theory as opposed to real evidence. The Commission has a statutory obligation to ensure just and reasonable rates, which includes ensuring that customers do not pay unreasonably high rates. Aside from anomalous weather conditions that can be addressed through mechanisms that would not unreasonably increase LMPs, the Commission has not made the case for why the existing region-specific offer caps are no longer just and reasonable and why the proposed "higher of" offer cap is just and reasonable. Further, the inability to verify some costs in advance of day-ahead or real-time energy market clearing means that the Commission cannot reasonably force an offer cap in excess of \$1,000/MWh. Rather than burden consumers with yet another additional payment to generators, the Commission should continue the regional approach to offer caps by adopting a \$1,000/MWh offer cap as a rebuttable presumption, subject to individual filings by an RTO/ISO demonstrating that a different cap is warranted.

Consistent with the recommended regional approach to offer caps, the Commission should leave to each RTO/ISO and MMU the determination whether additional information or authority is necessary in order to verify short-run marginal cost components. APPA, NRECA and AMP agree that the Final Rule in this proceeding should not generically address either external RTO/ISO resources (i.e., imports) or virtual transactions. The Final Rule also should not address other market design issues, such as scarcity pricing or other penalty prices. Those matters would require a separate proceeding altogether.

## **II. DESCRIPTION OF APPA, NRECA AND AMP**

### ***A. APPA***

APPA is the national service organization representing the interests of not-for-profit, state, municipal and other locally owned electric utilities throughout the United States. More than 2,000 public power systems provide over 15 percent of all kWh sales to ultimate customers, and do business in every state except Hawaii. Collectively, public power systems serve over 48 million persons. Most public power utilities are owned by municipalities, with others owned by counties, public utility districts and states. APPA members also include joint action agencies (state and regional entities formed by public power utilities to provide them wholesale power supply and other services) and state, regional and local associations that have purposes similar to APPA. APPA utility members' primary goal is providing customers in the communities they serve with reliable electric power and energy at the lowest reasonable cost, consistent with good environmental stewardship. Many of APPA's members operate in RTO and ISO markets and, therefore, are faced with the complexity and costs associated with these markets.

### ***B. NRECA***

NRECA is the national service organization for America's Electric Cooperatives. The nation's member-owned, not-for-profit electric co-ops constitute a unique sector of the electric utility industry – and face a unique set of challenges. NRECA represents the interests of the nation's more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are driven by their purpose to power communities and empower their members to improve their quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Because of their critical role in providing affordable, reliable, and universally

accessible electric service, electric cooperatives are vital to the economic health of the communities they serve.

America's Electric Cooperatives bring power to 75 percent of the nation's landscape and 12 percent of the nation's electric customers, while accounting for approximately 11 percent of all electric energy sold in the United States. NRECA's member cooperatives include 65 generation and transmission (G&T) cooperatives and 840 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. The G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives, those cooperatives that provide power directly to the end-of-the-line consumer-owners. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. NRECA members generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent from non-NRECA members. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

Together, APPA and NRECA serve nearly 90 million electric customers in all 50 states. All of their respective members are publicly owned or not-for-profit load-serving entities whose purpose is to provide reliable service at the lowest reasonable cost. Their members participate in all of the organized wholesale electricity markets through the country. APPA and NRECA participated in the prior proceedings in Docket No. AD14-14-000 regarding price formation and ancillary services markets by RTOs and ISOs, as well as other recent proceedings regarding price formation in these markets.

### ***C. AMP***

AMP is the nonprofit wholesale power supplier and service provider for 132 members, including 131 member municipal electric systems in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana and Maryland; as well as the Delaware Municipal

Electric Corporation, a joint action agency with nine members headquartered in Smyrna, Delaware. Combined these members utilities serve approximately 640,000 customers. AMP's core mission is to be public power's leader in wholesale energy supply and value-added member services. AMP offers its member municipal electric systems the benefits of scale and expertise in providing and managing energy services. AMP's primary purpose is to assist its member communities in meeting their electric and energy needs in a reliable and economic fashion. This purpose is served in a number of ways, including through the ownership of electric generating facilities, scheduling and dispatch of member-owned generation, and through power supply and transmission arrangements that AMP makes with third parties at the request of and on behalf of its members. AMP has load and generation resources in both MISO and PJM and must operate within and across MISO and PJM to effectively serve its Members and optimize its resources.

### **III. GENERAL COMMENTS**

#### ***A. The Commission Should Not Force Standardized Offer Caps for RTOs and ISOs***

The Commission proposes to require each RTO and ISO to adopt the proposed offer cap reforms. The NOPR says this generic change is proposed in order to "avoid exacerbating seams issues."<sup>3</sup> APPA, NRECA and AMP submit that the speculative notion of what "could" happen if the various regions have different offer caps is an insufficient basis to abandon the region-specific approach to energy offer caps specifically and RTO/ISO market design generally. Mandating a uniform change to the offer cap across all regions is not appropriate.

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<sup>3</sup> NOPR at P 70.

Until recently, all six FERC-jurisdictional RTOs and ISOs had offer caps of \$1,000/MWh on incremental energy offers.<sup>4</sup> In December 2015, PJM received approval for an increase in its cost-based offer cap, to \$2,000/MWh.<sup>5</sup> Each of the current RTO and ISO offer caps was established on a regional basis. Although the Commission in some instances noted consistency among the regions, each RTO/ISO offer cap was based on factors in the applicable region. This recognition of regional differences is consistent with the Commission's approach to numerous aspects of RTO market design.<sup>6</sup> It is also consistent with other aspects of the NOPR, where the Commission declines to dictate a single approach to compliance in light of existing differences in RTO and ISO verification processes and mitigation measures.<sup>7</sup>

The only justification offered in the NOPR for a uniform offer cap is concerns over seams. However, those concerns are hypothetical since until recently, regional offer caps were the same. Notably, the Commission addressed seams issues in approving PJM's \$2,000/MWh offer cap, but determined that the need for an increase in the offer cap outweighed such concerns.<sup>8</sup> The differences in factors that impact costs and, therefore, offers, have not changed such that the Commission can reasonably abandon the accommodation of regional differences. There is no evidence that the difference in offer caps between PJM and adjacent RTOs resulted in any of the problems caused by seams that are discussed in the NOPR. Indeed, instances where different offer caps between regions might come into play are expected to be rare because they

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<sup>4</sup> *Id.* at P 10. As discussed in the NOPR, PJM, MISO and NYISO have each implemented temporary offer cap increases to ensure sufficient resources during and following the Polar Vortex in 2014 and similar weather conditions over the past two winter seasons. *See* NOPR at PP 13-16.

<sup>5</sup> *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,289 (2015).

<sup>6</sup> *See, e.g., Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 at P 234 (2008) ("Although we require RTOs and ISOs to modify, where necessary, their market rules governing price formation during periods of operating reserve shortage, we will not mandate any specific approach to this reform. Rather, because each market design is different, the changes to market rules should reflect each region's market design.").

<sup>7</sup> *See* NOPR at PP 61, 66.

<sup>8</sup> *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,289 at P 55 ("We acknowledge the seams concerns raised by protestors, but we find that on balance, based upon the record here, PJM's proposal represents a just and reasonable improvement to the current tariff . . .").



would require similar extreme conditions across regions, with similar impacts. As opposed to departing without reason from its approach of honoring regional differences in establishing RTO and ISO market design and rules, prudence calls for the Commission to continue to provide for a regional approach.

Nonetheless, as discussed herein, APPA, NRECA and AMP recommend that the Commission maintain the existing \$1,000/MWh energy offer caps for each RTO/ISO. APPA, NRECA and AMP recommend the Commission keep a \$1,000/MWh offer cap as the default, status quo offer cap for each RTO/ISO. The Commission should continue to allow for regional differences in offer caps, which would allow each RTO/ISO to petition the Commission for changes in offer cap levels as each market dictates, as discussed below. The PJM \$2,000/MWh energy offer cap was adopted with the express expectation that it would be revisited and perhaps reset when the Commission acts more generally to address offer caps in RTOs and ISOs.<sup>9</sup> This rulemaking is such a generic proceeding, so APPA, NRECA and AMP recommend the Commission direct PJM to return to its \$1,000/MWh offer cap as the just and reasonable cap.

***B. The Commission Must Bear In Mind the Critical Link Between Offer Caps and Cost Verification***

Offer caps are a necessary component of market power mitigation because they can serve as a backstop means to prevent the exercise of market manipulation.<sup>10</sup> The NOPR proposes to allow cost-based offers in excess of \$1,000/MWh to set the clearing price as long as those costs can be verified prior to clearing.<sup>11</sup> APPA, NRECA and AMP agree with the Commission that "verification of the costs underlying cost-based incremental energy offers above \$1,000/MWh is

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<sup>9</sup> *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,289 (2015) at P 14 ("PJM states that is proposing to revise its tariff now, and will await the conclusion of a Commission rulemaking that addresses offer caps in all [RTOs] and [ISOs] that might modify or supersede its proposed revisions.").

<sup>10</sup> NOPR at P 23.

<sup>11</sup> *Id.* at P 59.

warranted to reduce the potential exercise of market power."<sup>12</sup> Ex ante cost verification must be a condition precedent to offer caps in excess of \$1,000/MWh for purposes of calculating the LMP. Otherwise, load will be exposed to artificially high, unreasonable prices which would not provide any economic, reliability or price signal benefit. As discussed below, FERC has not demonstrated any benefit or need to allow offer caps greater than \$1,000/MWh to set the LMP, particularly where costs cannot be verified ex ante. Therefore, instead of allowing offers above \$1,000/MWh to set LMP, APPA, NRECA and AMP fully support recovery by resources of all legitimate, verified and prudently incurred production costs through "make whole" or uplift payments; however, these costs should not necessarily be allowed to set LMP.

#### **IV. COMMENTS ON SPECIFIC TOPICS SOUGHT IN THE NOPR**

##### ***C. Whether a hard cap on cost-based incremental energy offers used for purposes of calculating LMPs should be included in any final rule in this proceeding and, if so, whether the hard cap should equal \$2,000/MWh or another value***

The NOPR proposes to require each RTO/ISO to cap a resource's incremental energy offer used to set LMPs at the higher of \$1,000/MWh or that resource's verified cost-based incremental energy offer.<sup>13</sup> The Commission requests comment on whether it should also maintain a "hard cap" on cost-based offers, which would cap the resource's verified cost-based incremental energy offer at an amount above \$1,000/MWh.<sup>14</sup> The Commission further requests comment on whether the hard cap should be equal to \$2,000/MWh or some other value.<sup>15</sup> For the reasons discussed below, APPA, NRECA and AMP oppose the proposal to permit cost-based incremental energy offers to exceed \$1,000/MWh for purposes of setting LMP. Instead, the

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<sup>12</sup> *Id.* at P 57.

<sup>13</sup> *Id.* at P 52.

<sup>14</sup> *Id.* at P 55.

<sup>15</sup> *Id.*

Commission should retain a \$1,000/MWh incremental energy offer cap for all RTOs and ISOs, as a rebuttable presumption.

### **1. The Commission Should Maintain \$1,000/MWh Offer Caps**

The Commission's proposal to allow verified cost-based incremental energy offers in excess of \$1,000/MWh for purposes of setting LMPs is based on the Commission's *preliminary* finding that the currently effective offer caps may no longer be just and reasonable,<sup>16</sup> and its belief that the proposal will "remedy any *potentially* unjust and unreasonable rates."<sup>17</sup> There is insufficient evidence in this rulemaking, however, to support having offer caps above \$1,000/MWh in any RTO/ISO region, including PJM. Therefore, if the Commission adopts a generic rule in this proceeding, it should establish an offer cap of \$1,000/MWh for each RTO/ISO as a rebuttable presumption. Each RTO or ISO (or other party) could submit a proposal, based on specific evidence in that region, to demonstrate the need for offer caps above \$1,000/MWh and to show that such tariff changes are just and reasonable.

The Commission provides several reasons why it believes the current offer caps in RTOs and ISOs may no longer be just and reasonable.<sup>18</sup> At the outset, the reasons cited by the Commission focus on providing adequate compensation to generators or adequate price signals, presumably so that generators will offer their resources into the market and so that both generators and load receive accurate price signals. The Commission concludes that "adequate investment in resources and participation in RTO/ISO energy markets are necessary to ensure economic and reliable energy for consumers."<sup>19</sup> The unreasonable rates that result from artificially *high* prices must also be considered in this proceeding. Over-compensating

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<sup>16</sup> *Id.* at PP 2, 43.

<sup>17</sup> *Id.* at P 52 (emphasis added).

<sup>18</sup> *Id.* at PP 44-47.

<sup>19</sup> *Id.* at P 7.

generators on the basis of offer caps that are higher than warranted and insufficient verification requirements will distort price signals, which can encourage inaccurate load response and misinformation regarding where investment is needed. The Commission should ensure that its policies do not result in rates that are unjust and unreasonable because they are higher than necessary.

As the Commission notes in the NOPR, the \$1,000/MWh offer cap first set in PJM was based on the expectation that such prices were "beyond the possible pale"<sup>20</sup> of a resource's short-run marginal cost. Aside from the anomalous spikes in gas prices discussed in the NOPR, APPA, NRECA and AMP are not aware of any significant changes that would justify setting the offer cap higher than \$1,000/MWh. Of the remaining reasons offered by the Commission for demonstrating that the existing offer caps in RTOs and ISOs are too low, all are based on hypothetical situations as opposed to any cited evidence. The NOPR has no discussion of the actual magnitude of any of the hypothetical problems, their real-world economic significance, or the costs and benefits of the Commission's proposed remedy.

Thus, the NOPR posits that the offer cap "can impair price formation because it can result in LMPs that are suppressed below the marginal cost of production."<sup>21</sup> However, there is no evidence to demonstrate that the existing offer caps generally or uniformly result in LMPs that are below the marginal cost of production. Quite to the contrary, available data indicates that other than cost produced during the few cited occurrences of spikes in gas costs, the \$1,000/MWh offer cap sufficiently covers expected resource costs. For example, the U.S. Department of Energy's Energy Information Administration ("EIA") reports that on average, variable costs of electricity (including fuel) for major investor-owned utilities for 2014 were

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<sup>20</sup> *Id.* at P 12.

<sup>21</sup> *Id.* at P 45.

\$26.79/MWh for nuclear, \$39.04/MWh for fossil steam, and \$42.60 for gas turbines.<sup>22</sup> Further, EIA's Annual Energy Outlook 2015 provides projections of the operations and maintenance costs for 2020, including fuel, in 2013 dollars. The highest O&M projected, for combustion turbines, is \$94.6/MWh.<sup>23</sup> Thus, \$1,000/MWh represents an extreme situation and does not support offer caps in excess of \$1,000/MWh.

The Commission also reasons that the offer cap "may discourage resources from offering their supply to the RTO/ISO when their short-run marginal costs exceeded the offer cap, even though market participants may be willing to purchase that supply"<sup>24</sup> and that resources not subject to a must-offer requirement will opt not to offer into the market if their short-run marginal cost exceeds the offer cap.<sup>25</sup> Here again, this hypothetical concern has not been realized, to APPA's, NRECA's and AMP's knowledge. First, each RTO and ISO has rules that require eligible resources to offer their output into the energy markets.<sup>26</sup> Moreover, under ISO-NE's Forward Capacity Market and PJM's Capacity Performance requirements, capacity resources receive higher capacity payments to be available when needed.<sup>27</sup> Further, resources in ISO-NE and PJM have limited excuses for non-performance and face steep penalties for failure

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<sup>22</sup> U.S. Energy Information Administration, *Electric Power Annual 2014*, February 2016, Table 8.4, available at <https://www.eia.gov/electricity/annual/pdf/epa.pdf>.

<sup>23</sup> The report is available at [http://www.eia.gov/forecasts/aeo/electricity\\_generation.cfm](http://www.eia.gov/forecasts/aeo/electricity_generation.cfm).

<sup>24</sup> NOPR at P 46.

<sup>25</sup> *Id.*

<sup>26</sup> See CAISO Business Practice Manual for Reliability Requirements, Sections 7.1.2 and 7.1.3 (generally requiring that Scheduling Coordinators for Resource Adequacy Resources must submit them into the market for all hours that the resource is physically available, and remain available to ISO); MISO Resource Adequacy Business Practice Manual Section 4.2.1.3 (requiring that cleared Capacity Resources must submit the full operable capacity of the Resource and make an offer into the Day-Ahead Energy market and the first post-ay Ahead Reliability Assessment Commitment for every hour of every day); PJM Manual 18, Section 5.5 (requiring that all generation resources that have a Reliability Pricing Model commitment must offer into PJM's Day-Ahead Energy Market); ISO-NE Market Rule 1, III.13.6.1.1.1 (requiring that a Generating Capacity Resource with a Capacity Supply Obligation must be offered into both the Day-Ahead Energy Market and the Real-Time Energy Market); SPP Integrated Marketplace Market Protocols, Section 4.2.1 (requiring that Market Participants offer available Resources to the energy markets); NYISO Installed Capacity Manual, Section 4.8 (requiring that for any day for which it supplies Unforced Capacity, each Installed Capacity Supplier must either schedule or bid into the NY ISO Day-Ahead Market or declare to be unavailable).

<sup>27</sup> See *ISO New England*, 147 FERC ¶ 61,172 (2014); *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015).

to perform, with the penalty revenues redounding to capacity and energy resources that do perform in exigent circumstances. The NOPR does not account for why higher offer caps are needed as an incentive to performance, given these existing incentives and compensation. The incentive of resources to simply opt to withhold from the energy market is very limited, at best.

Second, even the NOPR demonstrates that the concern over resources' short-run marginal cost exceeding \$1,000/MWh is unfounded for at least several RTOs and ISOs. The NOPR acknowledges that "CAISO, ISO-NE and NYISO assert that, because resource marginal cost are well below \$1,000/MWh, there is no evidence that the \$1,000/MWh offer cap should be raised in their respective markets."<sup>28</sup> The NYISO reported this was the case even with increased gas prices during the winter of 2014.<sup>29</sup> ISO-NE stated in its March 2015 comments on the price formation workshops that: "In New England, which has a relatively modern fleet of gas-fired generators, ISO-NE has not seen evidence that locational marginal prices are inappropriately limited below generators' marginal costs by the current \$1,000/MWh offer cap. This was the case even during the historically high natural gas prices experienced in the 2013-2014 winter."<sup>30</sup>

Finally, the Commission is concerned that in the event that several resources have short-run marginal costs above \$1,000/MWh, those resources would have to submit incremental energy offers equal to \$1,000/MWh despite their differences in cost, which would prevent the RTO/ISO from selecting the most efficient resources.<sup>31</sup> Given the evidence and data indicating that resource costs generally are not in excess of \$1,000/MWh, this concern is unfounded and does not support an increase in offer caps above \$1,000/MWh. Moreover, a methodology could

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<sup>28</sup> NOPR at P 22 (citations omitted).

<sup>29</sup> Post-Technical Workshop Comments of the New York Independent System Operator, Inc., filed on March 6, 2015 in Docket No. AD14-14-000 at page 3 ("Despite previously unseen gas prices, no supply resource in New York submitted invoices to the NYISO showing it incurred costs in excess of \$1,000 per MWh or sought recovery of actual costs in excess of the \$1,000 per MWh offer cap.").

<sup>30</sup> Post-Technical Conference Comments of ISO New England, Inc. submitted in Docket No. AD14-14-000 on March 6, 2015, at page 3.

<sup>31</sup> NOPR at P 47.

be developed to address dispatch order in the rare event that more than one resource in a dispatch interval has costs above this level, without allowing such offers to set the LMP.

Because there is insufficient evidence that \$1,000/MWh offer caps are unjust and unreasonable, the Commission should retain a \$1,000/MWh offer cap for each RTO and ISO. The \$1,000/MWh would serve as the "hard" cap as well, since there is no demonstration that blanket hard caps above \$1,000/MWh are warranted. The only instances of circumstances where costs exceeded the \$1,000/MWh offer cap that were discussed in the NOPR were anomalous, seasonal events that do not justify a higher cap that would increase the price paid to all generators in order to compensate a few. Instead, these infrequent and isolated events should be covered through uplift payments ex post once costs have been verified.

**2. To the Extent RTOs/ISOs Believe a Higher Cap is Warranted, They Should Make a Separate Filing with the Commission**

For the reasons discussed above, the Final Rule in this proceeding should retain the \$1,000/MWh cap on incremental energy offers for CAISO, ISO-NE, MISO, NYISO, and SPP, and reinstate the \$1,000/MWh offer cap for PJM. No more should be necessary in this proceeding with respect to the offer cap level. To the extent an RTO/ISO believes that the \$1,000/MWh offer cap is or becomes unjust and unreasonable, it can exercise its existing rights and authority to seek Commission approval of a different offer cap.

Although there have been relatively few requests to increase the cap, particularly prior to the anomalous winter weather and resulting fuel price spikes over the past few winters, APPA, NRECA and AMP recognize the Commission might wish to clarify its expectations with respect to increased offer caps. APPA, NRECA and AMP recommend the Commission adopt a \$1,000/MWh incremental energy offer cap for each of the six RTOs/ISOs. The \$1,000/MWh offer cap would be subject to a rebuttable presumption that it is just and reasonable. Individual

RTOs/ISOs that wish to increase their offer cap would be required to demonstrate that the existing cap is no longer just and reasonable, and propose a just and reasonable alternative, which may not necessarily entail having offers above the cap determine the LMP and instead would allow such higher offers to be reimbursed via uplift. Critical to the approval of an increased offer cap, especially where these higher offers are setting the LMP, the Commission must require the RTO/ISO to demonstrate that it has in place the rules and resources to accurately verify cost-based offers in excess of \$1,000/MWh. In the absence of such a demonstration, offers above the cap should not set LMP, because absent verification, load is exposed to artificially high prices and LMP price signals will be distorted. Also, in the event the Commission approves an RTO/ISO incremental cost-based energy offer cap above \$1,000/MWh, the Commission must also adopt a "hard" cap as a stop-loss mechanism, at a level that is reasonable for the individual RTO/ISO. Any verifiable costs in excess of the hard cap should not be included in calculating LMPs, but instead should be paid through uplift charges. APPA, NRECA and AMP do not believe a uniform hard cap above \$1,000/MWh needs to be adopted in the Final Rule. Instead, a hard cap of \$1,000/MWh is sufficient.

***B. The ability to timely verify the costs within incremental energy offers above \$1,000/MWh prior to the day-ahead or real-time market clearing process, including whether the verification of physical offer components is also necessary***

The issue of cost verification for offers above \$1,000/MWh prior to real-time or day-ahead market clearing only arises if offers in excess of \$1,000/MWh are included in the calculation of LMPs. As discussed above, because there is insufficient evidence to support a determination that the current \$1,000/MWh incremental cost-based energy offer cap is unjust and unreasonable and that a higher cap is just and reasonable, the Final Rule should maintain a



\$1,000/MWh incremental cost-based energy offer cap for day-ahead and real-time markets in each RTO/ISO.

The ability to verify the costs supporting an incremental energy offer prior to the day-ahead or real-time market clearing process is difficult at best, and may not always be possible. As the Commission observed in another proceeding, ". . . in practice, however, measuring marginal cost can be a complicated endeavor. For example, fuel costs, particularly the costs of natural gas and fuel oil, can change substantially day-to-day and potentially within the day; further opportunity costs for some resources can be difficult to determine with precision."<sup>32</sup> On this issue, PJM has stated as follows:

Finally, the real-time and day-ahead market clearing processes do not allow sufficient time to verify the cost-basis of the marginal resources that exceed any fixed offer cap. Verifying such costs must occur after such markets close, as PJM did in the winter of 2014 for units that had cost-based offers in excess of \$1,000/MWh, and for which the Commission gave PJM temporary authority to do for costs incurred above \$1,800/MWh for winter 2015. It is important to note that any costs that are recoverable based on this after-the-fact review must be credited through uplift payments in PJM's market design.

Comments of [PJM], submitted in Docket No. AD14-14-000 on March 6, 2015, at 4. In its presentation on the NOPR, PJM stated that "ex ante verification of cost-based offers will require additional data collection and system changes. . ."<sup>33</sup> MISO previously submitted comments indicating that in light of difficulties with its system, it implemented a short-term fix, as follows:

MISO's Day-Ahead and Real-Time market clearing processes provide sufficient time and procedures for cost verification as long as Market Participants: 1) follow the procedures to notify MISO that the gas price has caused their Energy Offer to exceed the \$1000 Energy Offer Price Cap; and, 2) before submitting an Offer, have consultation calls with the Independent Market Monitor to initiate the adjustment of reference levels based on cost. . .

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<sup>32</sup> Staff Analysis of Energy Offer Mitigation in RTO and ISO Markets, Docket No. AD14-14-000, October 2014 at page 1.

<sup>33</sup> PJM presentation on the NOPR, dated March 9 and available at <http://www.pjm.com/~media/committees-groups/committees/mic/20160309/20160309-item-15-mic-offer-cap-nopr.ashx>, slide 6

Comments of the [MISO] submitted in Docket No. AD14-14-000 on March 6, 2015. In addition to these indications from PJM and MISO that they may be challenged in verifying costs prior to close of the day-ahead and real-time markets, some costs such as fuel are difficult if not impossible to verify at times. As the NOPR observes, fuel cost verification can be difficult.<sup>34</sup> Further, the need for the MMU and/or ISO/RTO to verify costs within incremental energy offers above the cap will most likely occur during periods of exigent or emergency circumstances, which is when costs would be expected to increase above the \$1,000/MWh cap. These exigent circumstances will add further complexity and challenges to verifying costs in advance of the day-ahead and real-time market clearings. Changes in the timelines for offer submission, verification and clearing, particularly earlier clearing, will further challenge the ability to verify costs in advance of market clearing.

The uncertainty associated with cost verification and resulting possibility of artificially high costs to be paid through either LMPs or uplift payments will come at load's expense. Given the known difficulties in verifying costs prior to market clearing, it is imprudent at best to gamble with prices to be paid by consumers, on the assumption that all necessary costs can be timely verified.

***C. Whether the Market Monitoring Unit or RTO/ISO may need additional information to ensure that all short-run marginal cost components that are difficult to quantify, such as certain opportunity costs, are accurately reflected in a resource's cost-based incremental energy offer and to the extent that RTOs/ISOs currently include an adder above cost in cost-based incremental energy offers, whether such an adder is appropriate for incremental energy offers above \$1,000/MWh***

APPA, NRECA and AMP support the Commission's efforts to ensure that RTOs/ISOs and MMUs have sufficient information to determine whether cost-based energy offers are an accurate reflection of the resource's short-run marginal cost. However, consistent with the recommended regional approach to reforms, the Commission should allow each RTO/ISO and

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<sup>34</sup> NOPR at P 36.

MMU to determine, in the first instance, what additional information is necessary in order to ensure that all short-run marginal cost components are accurately reflected in offers.

Each RTO and ISO already has in place provisions requiring the submission of data to support cost-based energy offers.<sup>35</sup> The offer data submission, review and mitigation provisions were developed by each RTO/ISO as part of their respective integrated market structure. The Commission should not in this proceeding mandate or prescribe the information that each RTO/ISO will need to review in order to verify costs within incremental energy offers above \$1,000/MWh. Instead, if an RTO/ISO wishes to propose a cost verification process, particularly as part of the recommended demonstration to satisfy the rebuttable presumption discussed above, then the RTO/ISO should conduct a stakeholder process, develop a proposal that receives the requisite stakeholder support, and submit a filing under FPA Section 205 or 206, as applicable.

APPA, NRECA and AMP maintain that it is very difficult, and not always possible, to verify all cost components of an incremental cost-based energy offer prior to day-ahead or real-time market clearing. However, if the Commission reviews individual RTO/ISO cost verification plans and determines that they can verify costs prior to market clearing, then an adder would not be appropriate. The purpose of such adders is to provide generators a "cushion" to address the risk that their actual costs, not verifiable prior to clearing, exceed the offer cap. To the extent costs can be verified with accuracy, there is no need for an adder.

***D. Whether the Market Monitoring Unit or RTO/ISO may need additional information or new authority to require revisions or corrections to a cost-based incremental energy offer to ensure that a resource's cost-based incremental energy offer is an accurate reflection of that resource's short-run marginal cost***

APPA, NRECA and AMP propose that the Commission retain the current \$1,000/MWh offer cap for all RTOs/ISOs except PJM, and adopt \$1,000/MWh for PJM. Therefore, there

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<sup>35</sup> See SPP Tariff Attachment AE, Section 3.2E and Market Protocols Appendix G; PJM Manual 15.

should be no need to revisit information requirements or the authority of RTOs/ISOs or MMUs. Similar to the previous comment regarding information requirements, APPA, NRECA and AMP urge the Commission not to take up in this proceeding any revisions to information requirements or authority. In addition to being developed in the context of the integrated markets operated by RTOs and ISOs, the delineation of authority between RTOs/ISOs and their MMUs has developed over time and in many instances as a result of disputes that were resolved by the Commission. This generic rulemaking proceeding regarding offer caps is not the appropriate forum to revisit these issues. Instead, in the event the Commission decides in this proceeding to revise offer caps, over APPA's, NRECA's and AMP's objection, then each RTO and ISO can inform the Commission on compliance and after a stakeholder process whether any revisions are necessary with respect to information and authority.

***E. Whether the proposal should apply to imports and whether a cost verification process for import transactions is feasible***

The NOPR observes that since RTO/ISO processes to develop cost-based incremental energy offers for mitigation purposes typically apply only to internal resources, and the NOPR proposes to build on existing mitigation processes, external resources would not be eligible to submit cost-based incremental energy offers above \$1,000/MWh.<sup>36</sup> APPA, NRECA and AMP oppose generic adoption of incremental cost-based energy offer caps at the higher of \$1,000/MWh or a resource's verified cost-based incremental energy offer. Therefore, the issue of imports submitting cost-based incremental energy offers above \$1,000/MWh should not arise in this proceeding. Consistent with the recommendation in these comments that individual RTOs/ISOs can make the requisite demonstration to overcome the rebuttable presumption that \$1,000/MWh is the just and reasonable offer cap, individual RTOs and ISOs could have the

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<sup>36</sup> NOPR at P 63.

option of including in their filings a proposal to allow imports to submit cost-based incremental energy offers above \$1,000/MWh. Absent the RTO/ISO-specific filings, the Commission should not take up allowing imports to submit cost-based incremental energy offers as part of this proceeding. Inclusion of imports in the data submission, review and possible mitigation may require additional technical or other resources, as well as perhaps coordination or data sharing with neighboring regions. Individual RTOs and ISOs are in a better position than the Commission to determine whether inclusion of imports in the higher offer caps is feasible.

***F. Whether excluding virtual transactions above \$1,000/MWh could limit hedging opportunities, present opportunities for manipulation or gaming, create market inefficiencies, or have other undesirable consequences, and whether alternatives exist which would allow virtual increment offers and decrement bids to be submitted and cleared at prices above \$1,000/MWh***

APPA, NRECA and AMP oppose allowing virtual transactions to clear above \$1,000/MWh for the same reasons above with respect to other types of supply components. Allowing virtual transactions above \$1,000/MWh could have undesirable consequences as opposed to adverse consequences as a result of prohibiting them as the NOPR contemplates. Any proposal to permit virtual transactions above a cap must provide assurance that the RTO/ISO and/or MMU will have the ability and necessary data to detect any gaming or anti-competitive conduct, and mitigate or refer to FERC's Office of Enforcement as necessary.

***G. The impact the proposal would have on seams***

The NOPR discusses seams issues as a reason to generically adopt an offer cap applicable to all RTOs and ISOs.<sup>37</sup> APPA, NRECA and AMP disagree. While it is indisputable that seams issues have arisen between RTOs under certain circumstances, concerns about potential seams have also become a convenient, red herring argument to disregard regional differences and force a uniform offer cap. We have not seen empirical evidence of seams problems that resulted solely

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<sup>37</sup> NOPR at P 70.

from different offer caps among regions. PJM has a different offer cap than neighboring regions and seams issues have not been raised as a reason to revise PJM's cap. In approving PJM's \$2,000/MWh energy offer cap, the Commission weighed the benefits of the cap versus possible seams issues, and found that "on balance, based upon the record [there], PJM's proposal represents a just and reasonable improvement over the current tariff . . ." <sup>38</sup> Also, while the Commission seems to rely on its desire to "avoid exacerbating seams issues" on the one hand in proposing a uniform offer cap in the NOPR, it also acknowledges that its proposal could nevertheless result in seams issues and finds that those differences "will not adversely affect seams . . ." <sup>39</sup>

APPA, NRECA and AMP acknowledge that it is possible that seams issues could arise as a result of regional differences in offer caps. However, APPA, NRECA and AMP caution against the Commission allowing seams to dictate offer caps. Instead, as discussed above, the Commission should permit regional differences in offer caps, based on individual RTO/ISO filings to be submitted should they determine the \$1,000/MWh cost-based incremental energy offer cap is no longer just and reasonable. In the event that we have actual experience of seams issues that result from differences in offer caps, the Commission should evaluate whether modifications need to be made.

#### ***H. The Final Rule in this Proceeding Should be Restricted to Offer Caps***

The NOPR invites RTOs and ISOs to take up in their compliance filings "other market design changes, such as changes to scarcity or shortage pricing or other penalty prices." <sup>40</sup> The Final Rule in this proceeding should be limited to offer caps. The price formation issues are complex and have been developed through separate proceedings which afford an opportunity for

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<sup>38</sup> *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,289 at P 55 (2015).

<sup>39</sup> NOPR at P 71.

<sup>40</sup> *Id.* at P 72.

thorough consideration. If each RTO/ISO is invited to take up any and all market design changes they determine are "associated" with the Commission's Final Rule in this proceeding, the stakeholder compliance process will likely become bogged down first in a debate over which other factors should be taken up, and then in trying to resolve associated complex issues as part of the offer cap issue. APPA's, NRECA's and AMP's recommendation to maintain a \$1,000/MWh incremental cost-based energy offer cap for all RTOs and ISOs should not require a compliance filing by any RTO except PJM. In that case, there will be no need for each RTO/ISO to identify associated factors to take up in a compliance filing. In any event, the Commission should not broaden this proposal to include any items beyond offer caps. Issues such as scarcity or shortage pricing, or other penalty prices, are far too complex and central to energy markets to be relegated to compliance filings without any guidance from the Commission.

## **V. CONCLUSION**

WHEREFORE, for the foregoing reasons, APPA, NRECA and AMP request that the Commission consider these comments, maintain a \$1,000/MWh incremental cost-based energy offer cap for the day-ahead and real-time markets for each RTO and ISO; refrain from directing further rule revisions regarding information, authority, external resources or virtual transactions, and restrict this proceeding to offer caps.

Respectfully submitted,

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Dated: April 4, 2016



CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of April, 2016, I have caused a copy of the foregoing to be served upon each party designated on the Official Service list in this proceeding.

/s- Adrienne E. Clair