UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

McAdoo & Allen, Inc.	)	**Docket No. EL23-49-000**
	)	**Docket No. QF22-58-000**

ANSWER IN OPPOSITION OF AMERICAN MUNICIPAL POWER INC.

Pursuant to the Federal Energy Regulatory Commission's ("Commission") March 31, 2023 notice,[1] American Municipal Power, Inc. ("AMP"), an intervenor herein,[2] respectfully submits this Answer in Opposition to McAdoo & Allen, Inc.'s ("McAdoo") March 17, 2023 Petition for Enforcement and Declaratory Order Under Section 201(h) of the Public Utility Regulatory Policies Act of 1978 ("PURPA").

While McAdoo alleges that the dispute between McAdoo and the Borough of Quakertown, Pennsylvania ("Borough") involves an electric utility's attempt to use the avoided cost of energy as a barrier to impede a Qualifying Facility's ("QF")[3] development and operation, substantial record evidence demonstrates that the Borough has provided McAdoo with non-discriminatory access to competitive markets operated by PJM Interconnection, L.L.C. ("PJM"),[4] which is a Regional Transmission Organization ("RTO"), and the Borough is therefore entitled to a presumption that its avoided cost of energy

[1] Errata Notice, Docket Nos. EL23-49-000 and QF22-58-000 (March 31, 2023).

[2] AMP submitted a doc-less motion to intervene in these proceedings on March 29, 2023. No party opposed AMP's motion to intervene. Consequently, AMP is a party to these proceedings by operation of Rule 214(c)(1).

[3] *See* 18 C.F.R. § 292.101(b)(1).

[4] As demonstrated in Sections II.A and II.B.1, *infra*, McAdoo concedes that the Borough secured an agreement to sell excess energy from McAdoo's facilities into PJM's markets.

should be based on the locational marginal price ("LMP") that PJM calculates for the applicable pricing node for the Borough.[5] Significantly, the Commission's policies and regulations afforded McAdoo the opportunity, through its Petition, to rebut that presumption by presenting evidence to demonstrate that PJM's LMPs do not reflect the Borough's true avoided costs.[6] But rather than present evidence necessary to satisfy its burden, McAdoo's principal argument is that the Commission should provide a novel "clarification" that would allow McAdoo to sidestep its burden altogether.[7] Though McAdoo's alternative request for relief attempts to challenge the propriety of using PJM's LMPs to establish the avoided-cost rate, McAdoo falls woefully short.[8] Consequently, the Commission should issue a Notice of Intent Not to Act on the Petition for enforcement, deny McAdoo's request for a declaratory order, and affirm the propriety of the Borough's proposal for determining the avoided cost of energy. In support thereof, AMP states as follows:

I. BACKGROUND

In its Petition, McAdoo explains that it is the exclusive member of McAdoo Power & Light Co., a limited liability company that will operate a 1.062 megawatt ("MW") natural gas-fired combined heat and power generation facility ("CHP Unit") and a 520 kilowatt

[5] *See* 18 C.F.R. § 292.304(b)(6) ("[T]here is a rebuttable presumption that a…nonregulated electric utility may use a Locational Marginal Price as a rate for as-available qualifying facility energy sales to electric utilities located in a [competitive] market[.]").

[6] QFs bear the burden of rebutting the "LMP Presumption" established by 18 C.F.R. § 292.304(b)(6). *See Qualifying Facility Rates and Requirements and Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order No. 872, 172 FERC ¶ 61,041, at P 152 (2020) ("Order No. 872"), *order on reh'g and clarification*, Order No. 872-A, 173 FERC ¶ 61,158 (2020) ("Order No. 872-A").

[7] *See* Section II.A, *infra*.

[8] *See* Section II.B, *infra*.

("kW") photovoltaic solar generation facility ("Solar Unit").[9] According to McAdoo, the CHP Unit is a qualifying cogeneration facility under PURPA section 201 and 18 C.F.R. § 292.203(b),[10] and the Solar Unit is a qualifying small power production facility under PURPA section 201 and 18 C.F.R. § 292.203(a).[11] While the Petition does not address ownership of the CHP Unit and the Solar Unit, the Form 556 included with the Petition for the CHP Unit indicates that McAdoo owns the CHP Unit.

McAdoo also explains that it is affiliated with Quaker Color, which is an industrial customer of the Borough that owns a chemical manufacturing plant.[12] According to McAdoo, the CHP Unit and Solar Unit are designed to reduce Quaker Color's electrical demand and usage.[13] In addition, McAdoo contends that Quaker Color draws heat from the CHP Unit to serve its industrial processes.[14]

The Borough is a political subdivision of the Commonwealth of Pennsylvania.[15] The Borough owns and operates an electric distribution system to serve its retail customers, including McAdoo.[16] The Borough is a Member of AMP, which is a nonprofit corporation that provides wholesale power supply and services to 133 Members in Ohio,

[9] Petition at 8-9.

[10] *Id*. at 9.

[11] *Id*. at 10.

[12] *Id*. at 7-8. McAdoo states on the one hand that McAdoo is doing business as Quaker Color (*i.e.,* that McAdoo *is* Quaker Color), *e.g. id.* at 1, and alternatively that McAdoo is "*affiliated with* an entity that owns a chemical manufacturing plant operated under the name, 'Quaker Color,'" *id.* at 7 (emphasis added), while the Quaker Color web page linked in the Petition indicates that Quaker Color is a "division of" McAdoo, *see id.* at 8 n.18 (linking to https://quakercolor.com/about/). So the relationship between McAdoo and Quaker Color is not clear in the record.

[13] *Id*. at 8-9.

[14] *Id*. at 9.

[15] *See* Borough Motion to Intervene, Docket No. EL23-49-000, at 2 (March 27, 2023).

[16] *Id*.; *see also* Petition at 9.

Pennsylvania, Michigan, Kentucky, Virginia, West Virginia, Indiana, Maryland, and Delaware.

AMP and the Borough are parties to a Master Services Agreement through which AMP provides wholesale power supply and services to the Borough. AMP serves the Borough using its own generation resources and third-party resources. These include a partial requirements contract with NextEra Energy Marketing, LLC ("NextEra"), through which NextEra provides wholesale power supply and services that AMP uses to serve the Borough.[17] AMP and the Borough are also parties to a Designation Agreement whereby the Borough has designated AMP as its exclusive agent for purposes of meeting the Borough's RTO Load Serving Entity obligations in PJM.[18]

On September 17, 2020, McAdoo delivered a letter of intent to the Borough, proposing the terms by which the Borough would purchase energy and capacity from the CHP Unit and Solar Unit.[19] McAdoo's Petition alleges that McAdoo and the Borough have since been involved in a dispute about how to determine the Borough's avoided cost of energy.[20] AMP expects that the Borough will respond to those factual assertions. In sum, the Borough proposes to use PJM's hourly LMP for the zone in which the Borough is located to calculate the avoided cost of energy, whereas McAdoo contends the avoided cost of energy should be based on the Borough's avoided generation costs, avoided purchases under bilateral contracts, and avoided transmission and distribution costs.

[17] *See* Petition at 16-19 (providing McAdoo's understanding of AMP's wholesale supply contract with NextEra).

[18] The Designation Agreement is attached hereto as Attachment A.

[19] Petition at 21.

[20] *Id.* at 21-32.

In its Petition, McAdoo's primary request for relief is that the Commission initiate an enforcement action to require the Borough to implement McAdoo's proposed methodology.[21] In Section II.A, *infra*, AMP demonstrates that the Commission should reject McAdoo's primary request for relief.

If the Commission does not grant McAdoo's primary request for relief, McAdoo asks, in the alternative, for an order declaring, in pertinent part, that: (1) it is unlawful for the Borough to base its avoided cost of energy on LMPs calculated by PJM;[22] (2) the Borough cannot pass through any "penalties" imposed by AMP as a result of the price adjustment in AMP's contract with NextEra;[23] and (3) the Borough's avoided cost must reflect the value of the Borough's avoided transmission and distribution costs.[24] In Section II.B, *infra*, AMP establishes that the Commission should reject McAdoo's alternative request for relief.

The arguments and evidence discussed in Section II below demonstrate that the Commission should issue a Notice of Intent Not to Act on the Petition and deny the request for a declaratory order. Any other result would be arbitrary and capricious.[25]

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[21] *Id*. at 64 (accusing the Borough of being in "clear violation" of Commission rules and policy related to "production of avoided cost data, purchase obligations for QFs, [and] rates for purchases from QFs"). McAdoo also alleges that the Borough is "potentially" in violation of rules and policies governing rates for sales to QFs. *Id*.

[22] *Id*.at 4, 64-65.

[23] *Id*. at 4, 48-51, 64-65.

[24] *Id*. at 4, 51-58, 64-65.

[25] *See* 5 U.S.C. § 706(2)(A) (reviewing courts "shall…hold unlawful and set aside agency action, findings, and conclusions found to be…arbitrary [and] capricious"); *see also Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 964 F.3d 1177, 1189 (D.C. Cir. 2020) ("The Court must set aside the Orders if they are "arbitrary [and] capricious[.]").

II. ANSWER IN OPPOSITION

A. The Commission Should Reject McAdoo's Attempt to Sidestep Its Burden of Providing Evidence Rebutting the LMP Presumption.

The "LMP Presumption" is established by 18 C.F.R. § 292.304(b)(6), which establishes a "rebuttable presumption" that nonregulated electric utilities such as the Borough "may use [LMP] as a rate for as-available qualifying facility energy sales to electric utilities located in a market" that the Commission's PURPA regulations recognize as a competitive market.[26] The Commission's regulations specifically identify markets operated by PJM as competitive markets.[27] QFs may rebut the nonregulated electric utility's use of the LMP Presumption to set avoided costs by providing evidence demonstrating that LMPs do not represent the electric utility's true avoided costs.[28]

The Borough proposes to determine its avoided cost using LMPs calculated by PJM. Unsatisfied with PJM LMPs, however, McAdoo invents a pricing structure that it finds more economically attractive.[29] But rather than satisfy its burden of rebutting the LMP Presumption by presenting evidence demonstrating that PJM's LMPs do not represent the Borough's true avoided costs, McAdoo's primary argument is that the Commission should blaze a new path and "clarify" that an electric utility that is physically located within a competitive market should only be deemed to be "located" in that market for purposes of the LMP Presumption if it is a member of the RTO operating the market

[26] 18 C.F.R. § 292.304(b)(6) (referring to a "market defined in § 292.309(e), (f), or (g)").

[27] 18 C.F.R. § 292.309(e) (specifically identifying PJM).

[28] Order No. 872 at P 152.

[29] *See* Petition at 47 ("[T]he Commission should hold the Borough's generation and noncompetitive wholesale energy purchases—not LMP—establish the [Borough's] avoided cost."); *see also id*. at 51-52 (alleging that the CHP Unit and Solar Unit allow the Borough to "avoid transmission and distribution costs" and, as a result, "such costs should be incorporated into the [Borough's] avoided cost methodology.").

or otherwise participates directly in the RTO's markets.[30] The Commission should reject this theory and decline to provide the requested carve-out.

First, the Commission identifies the markets operated by PJM as competitive markets.[31] There is no dispute that the Borough is physically located within PJM's footprint and that the CHP Unit and the Solar Unit are situated within the Borough's service territory.[32] Nor is there any dispute that the Borough's electric distribution system is interconnected with and utilizes power supplied from the transmission grid operated by PJM.[33] It is therefore patently unreasonable to conclude that the Borough, the CHP Unit, and the Solar Unit are not located within PJM's competitive markets. As such, the Commission should find that LMP Presumption applies.

Second, nothing in PURPA or the Commission's regulations supports limiting the LMP Presumption to electric utilities that are members of the RTO or that participate directly in the RTO's competitive markets. There is no factual basis to discriminate against transmission-dependent municipal utilities like the Borough, whose power supply costs correlate with RTO market LMPs even though they are not themselves RTO members. Rather than carve out an unjust, unreasonable, and unduly discriminatory exception to the LMP Presumption, the Commission should reject the requested carve-

[30] *See* Petition at 38 ("The Commission should clarify that the LMP Presumption was not intended to apply to circumstances presented by the Borough, where a nonregulated utility is 'located in' an Organized Market but does not participate in that market.") (emphasis omitted, internal footnote omitted); *see also id*. at 35 (asking the Commission to interpret 18 C.F.R. § 304(b)(6) as not applying "to nonregulated utilities (like the Borough) that are located in competitive wholesale markets but do not participate in those markets or do not otherwise offer QFs access to those markets.") (emphasis omitted).

[31] *See supra* note 27.

[32] *See* Petition at 24 (acknowledging that the Borough is located in PJM's footprint); *id*. at 8-9 (describing the locations of the CHP Unit and Solar Unit).

[33] *See id*. at 11 (identifying PPL Electric Utilities Corporation ("PPL") as the Borough's transmission service provider); *id.* at 13 n.53 (providing a link that identifies PPL as a Transmission Owner in PJM).

out and require McAdoo to make the same showing required of all other QFs seeking to rebut the LMP Presumption.

But assuming for the sake of argument that the lack of direct participation by the Borough in PJM's competitive markets is a relevant or material consideration, that circumstance is not sufficient to rebut the LMP Presumption in this case. Under the Designation Agreement between AMP and the Borough, AMP has assumed the Borough's obligations as a Load Serving Entity in PJM.[34] Specifically, AMP takes responsibility for arranging the purchase of capacity, energy, and ancillary services, as well as the purchase and scheduling of transmission service.[35] AMP's participation in PJM on the Borough's behalf belies McAdoo's arguments.

Third, McAdoo supports its requested clarification with the erroneous claim that the Borough "does not offer QFs access to competitive energy markets (by way of an open access transmission tariff, reciprocity tariff, or otherwise)."[36] As a threshold matter, neither PURPA nor the Commission's regulations require electric utilities to provide market access to qualifying facilities through an open access transmission tariff or reciprocity tariff. Rather, the existence of an open access transmission tariff or reciprocity tariff is relevant to the Commission's consideration of whether the electric utility is entitled to a rebuttable presumption that QFs of greater than 5 MW have nondiscriminatory access to competitive markets in the context of requests to terminate the mandatory purchase obligation.[37] But more importantly, the Borough has offered to provide McAdoo

[34] *See* Attachment A hereto at 1-2.

[35] *Id*. at 2.

[36] Petition at 4.

[37] Order No. 872 at P 625.

access to PJM's markets. Indeed, McAdoo concedes that the Borough "secured NextEra's agreement to sell 'excess energy from the [CHP Unit and Solar Unit] into the PJM Market[.]"[38] In addition, McAdoo could participate directly in PJM's markets by executing a Wholesale Market Participant Agreement under Part IX, Subpart C of PJM's tariff. These three independent reasons—AMP's participation in PJM on the Borough's behalf, McAdoo's incorrect and inapposite assertions regarding its own inability to access PJM's markets through the arrangement with NextEra, and McAdoo's ability to participate directly in PJM's markets through a Wholesale Market Participant Agreement—demonstrate that McAdoo's attempted rebuttal of LMP Presumption in this case is both insufficient and unsupported.

Finally, the Commission has explained that "it is fair to expect that small power production facilities above 1 MW can acquire the administrative and technical expertise necessary to obtain nondiscriminatory access to a market."[39] In its Petition, McAdoo emphasizes its consultants' technical abilities and sophistication.[40] McAdoo has therefore demonstrated its ability to acquire the administrative and technical expertise necessary to obtain such access.[41] This ability further undermines the basis or need for the discriminatory carve-out that McAdoo requests.

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[38] Petition at 47; *see also id.*, Attachment DD at 2 ("NextEra has offered to sell any excess energy created by the operation of the Quaker Color facility into the PJM market and provide the Borough with a credit equal to the hourly LMP price received for such energy. The Borough will, in turn, flow through the full amount of this avoided cost to Quaker Color.").

[39] *See, e.g.*, *Implementation Issues Under the Pub. Util. Reg. Policies Act of 1978*, Notice of Proposed Rulemaking, 168 FERC ¶ 61,184, at P 127 (2019).

[40] *See* Petition at 13, 22-25.

[41] *Accord* Order No. 872 at P 9 ("PURPA was not a directive to the Commission to encourage QF development without limitation.").

Substantial record evidence supports preservation of the LMP Presumption in this case. To rebut that presumption, McAdoo was required to present evidence demonstrating that PJM's LMPs do not reflect the Borough's avoided costs. McAdoo's primary argument, however, is not that it made the requisite demonstration, but rather that the Commission should clarify that this demonstration is not necessary under these circumstances. As shown above, there is no rational basis for providing the requested carve-out. The inescapable conclusions are that McAdoo is located in the Borough's service territory, the Borough is located within PJM's competitive markets, the Borough has facilitated McAdoo's access to PJM's competitive markets, and, therefore, McAdoo has failed to rebut the LMP Presumption.[42] These conclusions support issuance of a Notice of Intent Not to Act on the Petition and denial of the request for a declaratory order.

B. McAdoo's Alternative Request for Relief Fares No Better than Its Primary Request for a Clarification That Would Allow It to Sidestep Its Burden of Rebutting the LMP Presumption.

"If the Commission declines to clarify the breadth of the LMP Presumption," McAdoo alternatively requests that the Commission issue an order declaring, in pertinent part, that: (1) it is unlawful for the Borough to base its avoided cost of energy on LMPs calculated by PJM;[43] (2) the Borough cannot pass through any "penalties" imposed by AMP as a result of the price adjustment in AMP's contract with NextEra;[44] and (3) the Borough's avoided cost must reflect the value of the Borough's avoided transmission and distribution costs.[45] For the reasons set forth below, the Commission should reject

[42] *See* Petition at 22 ("McAdoo does not intend (and has never intended) to sell power from the Facility to the PJM Market.") (emphasis omitted).

[43] *Id*. at 4, 64-65.

[44] *Id*. at 4, 48-51, 64-65.

[45] *Id*. at 4, 51-58, 64-65.

McAdoo's alternative request for relief and decline to make any of the requested declarations.

1. Contrary to McAdoo's Contention, Substantial Record Evidence Supports Using PJM's LMPs to Determine the Borough's Avoided Costs.

McAdoo asks the Commission to declare "that the Borough cannot avail itself of LMP because [it] does not represent the Borough's avoided energy cost."[46] McAdoo claims that three factors articulated in Order No. 872 demonstrate the impropriety of basing the Borough's avoided costs on PJM's LMP: (1) whether the Borough procures energy from an LMP market; (2) whether the Borough procures energy from a resource tied to LMP; and (3) whether the Borough adequately justified its use of the rebuttable presumption.[47] According to McAdoo, these factors militate against basing the Borough's avoided cost of energy on PJM's LMPs because the Borough's "'purchases from another source' are not made at LMP and cannot be made at LMP."[48] McAdoo reiterates that the Borough is not a PJM member, and also claims that the Borough "is contractually prohibited from going to the PJM Market (or other Organized Market) for energy and capacity purchases, despite being 'located in' the PJM territory."[49]

McAdoo's argument, and the conclusion it draws from it, suffer from the same fatal flaw discussed in Section II.A., *supra*. Specifically, under the Designation Agreement,

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[46] *Id*. at 39; *see also id*. at 48 ("Alternatively, McAdoo requests that [the Commission] hold that the Borough is not entitled to the LMP Presumption because the particular facts concerning its operations and supply portfolio demonstrate that LMP does not represent its energy cost."); *id*. at 64-65 (same).

[47] *Id*. at 39 (citing Order No. 872 at P 159 and Order No. 872-A at P 65).

[48] *Id*. (quoting Order No. 872 at P 155) (emphasis omitted). Paragraph 155 of Order No. 872 quotes 18 C.F.R. § 292.101(b)(6).

[49] *Id*. at 39-40 (footnote omitted); *see also id*. at 40 ("LMP is not the price at which the Borough purchases power" because the Borough purchases energy from AMP "based on fixed volumetric charges for energy") (emphases omitted).

AMP participates in PJM on the Borough's behalf.[50] Under that agreement, AMP procures incremental capacity from PJM's market to meet the Borough's PJM capacity requirements to satisfy the Borough's obligations as a Load Serving Entity. In addition, under the energy supply schedule to the Master Services Agreement through which AMP is contractually bound to provide wholesale power supply and services to the Borough, AMP flows through to the Borough the cost of energy procured from NextEra. To the extent that the Borough would reduce the amount of energy supplied by NextEra by utilizing any resources not specifically identified in the NextEra agreement, the costs passed through to the Borough by AMP under that agreement would be increased to reflect the market value of NextEra's lost sales based on hourly PJM LMPs, as discussed next. Based on the foregoing, the Commission should reject McAdoo's request for a declaration that the Borough's avoided costs are unrelated to PJM's LMPs.

2. The Re-Opener in the AMP/NextEra Contract Is Economically Rational and Does Not Hinder QF Development.

AMP's contract with NextEra includes a re-opener provision that is triggered when behind-the-meter generation is sited in the Borough.[51] When the AMP/NextEra contract was negotiated, the Borough had the option of the choosing the re-opener or choosing a higher-priced alternative approach that would have permitted the construction of behind-the-meter generation up to a specified limit without any future price impact. The Borough chose the re-opener because it was the more cost-effective of the two options—indeed, as one of the Borough's largest retail customers, McAdoo has benefitted from the energy cost savings that have resulted from the Borough's decision to choose the re-opener.

[50] *See* Attachment A hereto at 1-2.

[51] Petition at 19.

Under the re-opener, the Borough's purchases from McAdoo would increase the energy charges for remaining volumes delivered under the Borough's contract with AMP. As a result, the Borough would not avoid the full energy price under its contract with AMP. To avoid that result and assign cost responsibility to the entity that would cause the cost increase, the Borough's avoided cost methodology allows the Borough to pass cost increases through to McAdoo. This approach is consistent with the approach endorsed in Order No. 69, where the Commission allowed rate adjustments that would ensure wholesale suppliers would be in the same position they would be in had they purchased directly from the QFs.[52]

In its alternative request for relief, McAdoo asks the Commission to declare that the Borough may not pass through to McAdoo the increased costs that result from the price adjustment in AMP's contract with NextEra.[53] McAdoo does not address the fact that the Borough's proposal is consistent with cost-causation principles. Rather, McAdoo argues that Order No. 69 is inapplicable because AMP is not the Borough's full-requirements supplier and the AMP/NextEra contract post-dates Order No. 69.[54] This argument fails to provide appropriate weight to the fact that the expectations of the partial requirements supplier (*i.e.*, NextEra) underlying the price re-opener are reasonable and must offset the contract price in calculating the Borough's true avoided costs.

[52] *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128, at ¶¶ 12,219-20 (1980), *order on reh'g*, Order No. 69-A, FERC Stats. & Regs. ¶ 30,160 (1980), *aff'd in part & vacated in part on other grounds sub nom. Am. Elec. Power Serv. Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part on other grounds sub nom. Am. Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402 (1983).

[53] Petition at 4, 48-51, 64-65.

[54] *Id*. at 42-45.

In addition, McAdoo supports its alternative request for relief by relying on two Commission decisions involving Public Service Company of New Hampshire[55] and two decisions involving Tri-State Generation and Transmission Association, Inc.[56] Those decisions do not support the declaration McAdoo seeks because the underlying circumstances in those cases are fundamentally different than the circumstances underlying the Petition.

As detailed in the Petition, the wholesale supplier in *PSCNH I* and *PSCNH II* proposed a billing adjustment that would allow it to allocate to the electric-utility customer the value of the loss of load associated with the electric-utility customer's purchases from the QF. Similarly, the wholesale supplier in *Tri-State I* and *Tri-State II* proposed a billing adjustment that would allow it to recover the same amount of revenue from the electric-utility customer that it would have expected to recover had the electric-utility customer not made purchases from a QF. While the certainty of the revenue stream that requirements contracts provide to wholesale suppliers is of critical importance to the wholesale suppliers' abilities to serve their customers, the circumstances underlying the Petition are fundamentally different than the circumstances underlying the proposed billing adjustments in *PSCNH I*, *PSCNH II*, *Tri-State I*, and *Tri-State II.*

First, *PSCNH I and PSCNH II* pre-dated the advent of organized markets that are comparable to PJM's organized markets. While comparable organized markets existed when the Commission issued the *Tri-State I* and *Tri-State II* decisions, the entities involved

[55] *Id*. at 42-45, 48-51 (discussing *Pub. Serv. Co. of N.H.*, 83 FERC ¶ 61,224 (1998) ("*PSCNH I*") and *Pub. Serv. Co. of N.H.*, 85 FERC ¶ 61,044 (1998) ("*PSCNH II*")).

[56] *Id*. at 46-47, 49-51 (discussing *Delta-Montrose Elec. Ass'n*, 151 FERC ¶ 61,238 (2015) ("*Tri-State I*") and *Tri-State Generation & Transmission Ass'n, Inc.*, 55 FERC ¶ 61,269 (2016) ("*Tri-State II*")).

in that dispute were not located within organized markets. Second, the wholesale suppliers in those proceedings each proposed their respective loss-of-load addback and lost-revenue addback without presenting the electric utilities and the QFs any alternative ratemaking methodologies. In stark contrast, the Borough is located within PJM's organized markets. Rather than unilaterally impose upon McAdoo a pass through of the increased energy price that would result from the Borough's purchases from McAdoo, the Borough secured NextEra's commitment to sell McAdoo's excess power into PJM's markets. NextEra would provide the Borough with a full credit equal to the hourly LMP price that NextEra received for selling the energy. The Borough would then pass on to McAdoo the credit in its entirety.[57] These differences are significant. Rather than propose billing adjustments that hinder the development of QFs, the Borough has agreed to facilitate McAdoo's access to PJM's markets by arranging for McAdoo to receive the full market value of McAdoo's energy.

In sum, the Commission should reject McAdoo's attempt to draw parallels to inapposite cases. The concerns and circumstances that led the Commission to reject the addback mechanisms in those proceedings are not present here. To the contrary, the Borough proactively worked with NextEra to avoid the need to pass through any increased costs. McAdoo summarily rejected the full-credit arrangement with NextEra in pursuit of its own interests. McAdoo should not complain about the consequences of its decision.

[57] *Id.*, Attachment DD at 1.

3. McAdoo Failed to Present Credible Evidence or Arguments Supporting Its Request to Include Avoided Transmission and Distribution Costs in the Avoided Cost Calculation.

McAdoo asks the Commission to declare that the Borough's avoided cost must reflect the value of the Borough's avoided transmission and distribution costs.[58] The Commission should reject this request. First, the Commission has not previously required that the avoided cost calculation include the value of avoided transmission and distribution costs, finding only that they may be relevant in certain circumstances, which are not present here.[59] Second, McAdoo has failed to demonstrate that the Borough would, in fact, avoid transmission and distribution costs as a result of its purchases from McAdoo. Third, the Borough raised a legitimate concern that McAdoo only requested that the avoided cost calculation reflect avoided transmission and distribution costs because its CHP Unit and Solar Unit were not viable without this benefit. McAdoo has failed to demonstrate that the Borough's concern lacks merit, much less even respond meaningfully to that concern. The Commission cannot reasonably grant McAdoo's request based on this inadequate evidentiary presentation.

III. CONCLUSION

Wherefore, American Municipal Power, Inc. respectfully requests that the Commission issue a Notice of Intent Not to Act on the Petition, deny the request for a declaratory order, affirm the propriety of the Borough's proposal for determining the avoided cost of energy, and grant such other relief as may be necessary and appropriate.

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[58] *Id*. at 4, 51-58, 64-65.

[59] *See, e.g., Cal. Pub. Utils. Comm'n*, 134 FERC ¶ 61,044, at P 6 (2011) ("if the CPUC bases the avoided cost 'adder' on an actual determination of the expected costs of upgrades to the distribution or transmission system that the QFs will permit the purchasing utility to avoid, such an 'adder' would constitute an actual avoided cost determination and would be consistent with PURPA and our regulations." (citing *Cal. Pub. Utils. Comm'n*, 133 FERC ¶ 61,059, at P 31 (2010))).

Respectfully submitted,

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Counsel to American Municipal Power, Inc

Dated: April 17, 2023

Attachment A

AMP Contract No. 2015-002248-MAS

DESIGNATION OF AMP AS AGENT

This Designation of American Municipal Power, Inc., ("AMP") as Agent ("Agent Designation") is made by the following AMP Member as Principal: Borough of Quakertown ("Municipality").

RECITALS:

WHEREAS, Municipality and AMP have entered into a Master Service Agreement ("MSA") under which certain services may be provided under schedules thereto;

WHEREAS, in order to obtain economical electric power and energy, the Municipality desires to purchase electric capacity and energy from AMP or have AMP arrange for the same on behalf of the Municipality;

WHEREAS, PJM Interconnection, L.L.C. ("PJM") and the MidContinent Independent System Operator, Inc. ("MISO") are Regional Transmission Organizations ("RTOs") that exercise operational control over their respective members' transmission facilities to provide open-access transmission service and control area functions; administer centralized markets that clear various electric energy and energy-related products; and, provide billing and settlement functions, among other things;

WHEREAS, AMP is a member of PJM and MISO and obtains services provided or administered by the RTOs, participates in RTO markets, and engages in operations that use or affect the transmission systems operated by the RTOs on behalf of and for the benefit of AMP Members; and,

WHEREAS, Municipality desires to designate AMP as its agent for the purpose of serving as Municipality's Load Serving Entity ("LSE") for the RTO services and operations performed by AMP on behalf of Municipality.

DECLARATION:

NOW, THEREFORE, Municipality and AMP make the following declarations:

1. Exclusivity of Agent's Authority.

Municipality as Principal has authorized AMP to act for Principal with respect to the rights and responsibilities as specified in Section 2 of this Declaration. With respect to such rights and responsibilities, Agent is authorized to communicate and transact with PJM and MISO as Principal's sole and exclusive agent.

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2. Specification of Authorized Rights and Responsibilities.

The following specify the rights and responsibilities with respect to which Agent is authorized to act for Principal. No additional compensation is due to AMP as a result of the designation of AMP as agent as set forth herein.

a. Agent is authorized to satisfy Principal's obligations as a Load-Serving Entity including, without limitation, its obligations to provide or arrange for capacity and capacity resources.

b. Agent is authorized to satisfy Principal's obligations to provide, arrange for, or request changes to transmission service to its loads and submit firm transmission service schedules.

c. Agent is authorized to satisfy Principal's rights and obligations to submit bids on, obtain, administer, and receive payments or credits for financial transmission rights and auction revenue rights with respect to service to Principal's loads.

d. Agent is authorized to satisfy Principal's rights and obligations to buy and sell energy and ancillary services.

e. Agent is authorized to participate and vote in all RTO committees, working groups, and other stakeholder bodies on Principal's behalf.

f. In connection with all rights and responsibilities specified in this Section, Agent shall be billed for and shall make payment to the RTOs for, all charges, penalties, costs, and fees. Agent is also entitled to receive from the RTOs in Agent's account, all credits, revenues, distributions, and disbursements. Agent shall be reimbursed by Principal or shall reimburse Principal as appropriate for the charges or credits, respectively, as specified in other schedules or Power Sales Contracts to which Principal and Agent are parties.

g. Agent is authorized to provide and receive data required by the RTOs and to cooperate on Principal's behalf in connection with any investigation or request for information by the RTOs, the Market Monitors or FERC.

h. No additional compensation shall be due to Agent as a result of Principal's designation of AMP as Agent as set forth herein.

3. Term and Termination.

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Principal may terminate this Declaration by providing at least thirty (30) days prior written notification to AMP. Upon such termination, Principal shall take full rights, responsibilities, obligations, ownership and operation of all accounts described herein.

IN WITNESS WHEREOF, Municipality and AMP execute this Declaration to be effective as of the date written above.

MUNICIPALITY AS PRINCIPAL	**AMERICAN MUNICIPAL POWER, INC. AS AGENT:**
Signature:	Signature:
Name: Scott C. McElree	Name: Marc S. Gerken, P.E.
Title: Borough Manager	Title: President/CEO
Municipality Name: Quakertown	**Approved as to Form:** Signature:
	Name: John W. Bentine
	Title: Sr. Vice President/General Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at this 17th day of April, 2023

/s/ Jason T. Gray
Jason T. Gray
Duncan & Allen LLP
1730 Rhode Island Avenue, NW, Suite 700
Washington, DC 20036
(202) 289-8400
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