UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	Docket No. ER25-682-000

PROTEST OF JOINT CONSUMER ADVOCATES

Pursuant to Rule 211(a)(1) of the Federal Energy Regulatory Commission's (Commission's) Rules of Practice and Procedure, 18 C.F.R. § 385.211(a)(1), the December 9, 2024, Combined Notice of Filings #1,[1] and the December 10, 2024, Errata Notice Extending Comment Period,[2] the Joint Consumer Advocates (JCA)[3] protest the first of two Federal Power Act (FPA) section 205[4] filings submitted by PJM Interconnection, L.L.C. (PJM) addressing the rules under which PJM will conduct the Base Residual Auction (BRA) for capacity to be delivered in the 2026/2027 Delivery Year. Joint Consumer Advocates have moved for consolidation of the two section 205 dockets and two pending section 206 complaints, [5] all of which concern proposed changes to the 2026/2027 BRA rules.[6] That motion remains pending.

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[1] eLibrary No. 20241209-3060.

[2] eLibrary No. 20241210-3016.

[3] Joint Consumer Advocates are: the Illinois Attorney General's Office; Illinois Citizens Utility Board; Maryland Office of People's Counsel; New Jersey Division of Rate Counsel; Office of the Ohio Consumers' Counsel; and Office of the People's Counsel for the District of Columbia. Each of the Joint Consumer Advocates has moved separately to intervene in the above-captioned proceeding.

[4] 16 U.S.C. § 824d.

[5] 16 U.S.C. § 824e.

[6] Motion to Consolidate and for Extension of Time to Submit Comments and Request for Expedited Action of Joint Consumer Advocates, Docket Nos. EL24-148-000, *et al.* (Dec. 27, 2024), eLibrary No. 20241227-5209. Since the consolidation motion was filed, a third complaint concerning the market rules for the upcoming auction has been filed. Complaint of Governor Josh Shapiro and the Commonwealth of Pennsylvania, Docket No. EL25-46-000 (Dec. 30, 2024), eLibrary No. 20241230-5225 (Pennsylvania Complaint).

Although the changes proposed in PJM's section 205 filing in this docket are modest improvements over the status quo, they fall far short of what will be needed to achieve a just and reasonable capacity market design—one that ensures consumers will pay no more than a just and reasonable rate. As shown more fully below, PJM predicts that even if its proposed changes are accepted, there is a high probability that the upcoming 2026/2027 BRA will produce prices at a market offer cap of $500/MW-day, region-wide. This would subject ratepayers to capacity charges in the next auction of roughly $25 billion. That bill to consumers represents a twenty-fold increase in total capacity costs from the 2024/2025 BRA held just two years ago and does not accurately reflect market fundamentals or a competitive market price. Instead, these excessive prices are driven by what PJM concedes are existing barriers to new entry, artificial supply constraints, and unmitigated sources of incumbent market power and by what JCA witness Marc D. Montalvo explains are poor market design choices.

PJM itself foresees "sustained price cap events"[7] such "'that the capacity auctions could produce prices at or near the price cap for multiple years in a row,'"[8] and its expert witness acknowledges that if current "supply-side barriers and other challenges persist, the result could be to produce more concentrated compensation than the [auction rules were] designed for."[9] Yet PJM fails to address sufficiently the market's core failure. Contrary to the market's fundamental design, [10] barriers prevent new entry from competing with and

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[7] PJM Interconnection, L.L.C., Revisions to Reliability Pricing Model at 62 (Dec. 9, 2024), eLibrary No. 20241209-5207 (PJM December 9 Filing).

[8] *Id.* at 40 (quoting PJM December 9 Filing, Attach. C, Aff. of Samuel A. Newell on Behalf of PJM Interconnection, L.L.C., ¶ 5 (Brattle Aff.)).

[9] Brattle Aff. ¶ 5.

[10] The Commission has held generally that "relatively unencumbered entry into the market is necessary for competitive markets." *Standardization of Generator Interconnection Agreements & Procs.,* Order No. 2003,

disciplining the market power of incumbent resources at a time when supply is tight and demand is increasing.[11] The Federal Power Act and Commission precedent make clear the Commission's obligation to impose *all* reasonable measures to compensate for the lack of new entry to discipline incumbent power and to achieve the central aim of PJM's capacity construct: to "procure the least-cost, competitively-priced combination of resources necessary to meet the region's reliability objectives."[12]

Although the instant filing and its other section 205 filings effectively admit that the current situation is unsustainable, PJM's proposed solutions only scratch the surface of the problem. To the extent the proposed changes are improvements on the status quo—e.g., recognizing the capacity contributions of Reliability Must-Run (RMR) resources and restoring the use of a Combustion Turbine (CT) Reference Resource—the Commission may accept them as just and reasonable subject to the modifications described below. However, these changes will not be enough to ensure that the 2026/2027 BRA produces just and reasonable rates. As explained below, the Commission must pair any acceptance of PJM's section 205 filing in this docket with further changes to be accepted in other dockets or directed under FPA section 206. The Commission could achieve this result

104 FERC ¶ 61,103, P 11 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007). In approving PJM's Reliability Pricing Model (RPM), FERC found that "[t]he three-year forward market [plays an essential role in market power mitigation because it] permits competitive entry in the event that existing generators are seeking to raise prices above competitive levels." *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, P 101 (2006), *granting reh'g in part*, 119 FERC ¶ 61,318, *reh'g denied*, 121 FERC ¶ 61,173 (2007).

[11] *See* Joint Consumer Advocates Complaint at 10-12, Docket No. EL25-18 (Nov 18, 2024), eLibrary No. 20241118-5200 (JCA Complaint). The JCA Complaint on this point was supported by the Declaration of Marc D. Montalvo. *See* JCA Complaint, Attach A (Montalvo Nov. Decl.) ¶ 28. A copy of Mr. Montalvo's JCA Complaint Declaration appears as an exhibit to witness Montalvo's Second Declaration, which is Attachment A to this protest.

[12] *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 101 (3d Cir. 2014).

either by granting the pending complaints or by acting under section 206 *sua sponte*.[13] In addition to the changes PJM has proposed in this docket, PJM should:

- modify its Tariff to require a longer notice period for generator deactivations and to adopt standardized RMR tariff provisions and a *pro forma* RMR Agreement that enables PJM to delay existing resource retirements for as long as the resource remains needed for reliability. Where continued service is mandated, the Tariff should provide cost-of-service rates including a return on investment. And in exchange, RMR resources should participate fully in all PJM capacity, energy, and ancillary service markets for which they are eligible, including offering capacity as a price taker in each BRA for a delivery period that will occur during the term of the arrangement;

- reform its capacity market rules to require all eligible resources to participate in the BRA for the 2026/2027 Delivery Year, including those resources that previously were categorically exempt from the must-offer requirement;

- require Demand Response (DR) resources that bid into the BRA to submit offers that reflect the maximum dispatchable demand reduction that the resource is making available to PJM, and measure performance as the actual reduction delivered (metered consumption before instruction less metered consumption after instruction) in response to a dispatch instruction during a system stress event;

- impose an offer cap upon DR resources participating in the PJM capacity market when structural market power tests fail;

- revise its interconnection queue management approach to give priority to study-ready projects that will be sited in Locational Deliverability Areas (LDAs) that are more likely to be constrained;

- determine the capacity value of gas-fired generators using winter capacity ratings that seasonally match the main risks for which those resources' capacity values are discounted in PJM's Effective Load Carrying Capacity (ELCC) calculations; and

- redefine the Variable Resource Requirement (VRR) Curve to set the market-wide price cap at 1.5 times Net Cost of New Entry (Net CONE), rather than the greater of 1.75 times Net CONE or the Reference Resource's Gross CONE, and to measure Net CONE empirically based in part on a weighted

[13] Should the Commission be disinclined to act piecemeal under both sections 205 and 206, it could reject PJM's filing but require the same rate changes as part of a full complement of necessary relief under section 206.

> average of market clearing prices at which new entry has occurred in recent BRAs.[14]

I. PJM's SECTION 205 FILINGS ARE STEPS IN THE RIGHT DIRECTION, BUT MORE IS NEEDED TO ENSURE JUST AND REASONABLE OUTCOMES FOR THE 2026/2027 BRA.

PJM's recent section 205 filings make clear that substantial reforms are needed to protect consumers against the potential exercise of market power—and consequent skyrocketing costs—in the 2026/2027 BRA. We commend PJM for acknowledging this reality and taking steps to address it. For the most part, as detailed below and as we will elaborate in response to PJM's later section 205 filing, PJM's proposals are steps in the right direction. But it is crucial to recognize that more must be done to ensure that the 2026/2027 BRA produces just and reasonable rates.

PJM and the Commission rely on the BRA to fulfill the FPA requirement that all wholesale rates and practices affecting rates must be just, reasonable, and not unduly discriminatory.[15] Daunting structural challenges make it difficult to ensure such outcomes even when (unlike now) the BRA functions as designed: as a three-year-forward auction in which new entry counterbalances retirements and checks the market power of existing resources. The BRA has struggled with serious structural market power concerns since its inception. According to PJM's independent market monitor:[16]

> The market design for capacity leads, almost unavoidably, to structural market power in the capacity market. The capacity market is unlikely ever to approach a competitive market

[14] *See generally* JCA Complaint; Pennsylvania Complaint; Attachment A to this Protest (Second Declaration of Marc D. Montalvo); and Attach. A, Ex. A (Montalvo Nov. Decl).

[15] 16 U.S.C. § 824d(a); *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 267 (2016) ("The Commission . . . undertakes to ensure 'just and reasonable' wholesale rates by enhancing competition.").

[16] Independent Market Monitor for PJM, Analysis of the 2025/2026 RPM Base Residual Auction Part D at 6 (Dec. 6, 2024), https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_D_20241206.pdf (IMM Part D Analysis).

> structure in the absence of a substantial and unlikely structural change that results in much greater diversity of ownership. Market power is and will remain endemic to the structure of the PJM Capacity Market.

In recent auctions, market power issues have become even more acute as the periods between the conduct of the auction and the commencement of the Delivery Year have been compressed and as the glacial interconnection queue and other issues have impeded new entry.[17] In the 2025/2026 BRA, *all* capacity market sellers failed the three-pivotal-supplier market power test,[18] and the same is likely to be true for the 2026/2027 auction.[19]

Worse, many of those sellers have large enough portfolios that they could profit handsomely by withholding some resources from a tight market: forgoing capacity revenue for those resources, but more than making up the difference by reaping much higher clearing prices for its remaining capacity sales.[20] There can be no dispute about this concern. Remarkably, PJM itself acknowledges that current BRA rules facilitate such conduct by exempting tens of thousands of megawatts of capacity from that requirement. As explained by PJM's Chief Economist, the exempt resources include more than 5,000 MW (UCAP) of capacity "held in portfolios of Capacity Market Sellers that have the incentive and ability to exercise unilateral market power and profitably withhold capacity

[17] Brattle Aff. ¶ 12 (discussing interconnection backlogs, siting challenges, supply chain delays, and other barriers to entry that may persist through the next several auctions).

[18] *See* PJM Interconnection, L.L.C., Extending the Capacity Must-Offer Requirement to All Generation Capacity Resources at 19, Docket No. ER25-785-000 (Dec. 20, 2024), eLibrary No. 20241220-5420 (PJM Must Offer Filing); *id.*, Attach. C, Aff. of Dr. Walter Graf on Behalf of PJM Interconnection, L.L.C. ¶ 14 (Graf Must-Offer Aff.).

[19] Graf Must-Offer Aff. ¶ 14 (discussing market power that exists "[u]nder current conditions").

[20] *Id.* ¶ 15.

for generation portfolio benefits as assessed at the parent company."[21] These problems are exacerbated by interconnection queue delays and other barriers to new entry, which blunt the primary means of responding to high clearing prices.[22] And, absent corrective action, these issues will only get worse as PJM attempts to address through the BRA the capacity procurement needs associated with rapidly accelerating, data center-induced increases in demand.

Because protecting consumers against exploitation is at the core of the Commission's FPA duty,[23] it is essential to modify the BRA rules to protect consumers from potential exercises of market power and to ensure just and reasonable rates—which will require a multi-layered, structural approach.[24] First, it will require solutions that maximize the supply available to the market, including rules to facilitate new entry and to prevent physical withholding of existing resources by removing must-offer exemptions. Second, market seller offer caps must be implemented for all capacity resources to prevent

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[21] *Id.*

[22] *See* Attach. A (Montalvo Second Decl.) ¶ 9 ("PJM's interconnection issues block new resources from responding to prices in a timely manner—as a result, many incumbent resource owners have the ability . . . to exert market power").

[23] *See Fed. Power Comm'n v. Hope Gas Co*., 320 U.S. 591, 610 (1944) ("The primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies."); *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 551 (2008) (FERC's "first and foremost duty" under the Federal Power Act "is to protect consumers from unjust and unreasonable rates."); *TransCanada Power Mktg. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015) ("It is indisputable that, under established ratemaking principles, rates that permit excessive profits are not just and reasonable.").

[24] Although Joint Consumer Advocates agree with PJM that compliance with tariff rules is not a defense to market manipulation (PJM December 9 Filing at 76-78), behavioral prohibitions are an inadequate substitute for structural safeguards. After-the-fact enforcement actions against sellers who exercise market power will not suffice. Because of the BRA's single clearing-price design, if any seller exercises such market power, the effects cascade through the market. Inflated clearing prices produce windfall profits not just for the seller that exercised market power but, rather, for all sellers with cleared capacity. And enforcement action against specific sellers, imposing civil penalties or requiring them to disgorge unjust profits, cannot remedy such market-wide effects.

economic withholding.[25] And third, it requires a reasonable market clearing price cap and VRR demand curve to set a just and reasonable rate in situations where higher prices cannot elicit sufficient supply and the market clears short.

PJM's section 205 filing in this docket is a step generally in the right direction but does not go far enough to ensure just and reasonable rates.

Treatment of RMR Resources. As we explain below, we support PJM's proposal in this docket to include certain RMR units as price takers at the bottom of the supply stack. Doing so is justified to prevent physical or economic withholding of those resources, maximize supply available to the market, enable efficient price formation reflecting current supply and demand conditions, and ensure that ratepayer-supported Capacity Interconnection Rights (CIRs) are used to their full potential. But PJM has not justified making the changes for only a time-limited period; instead, it should make them open-ended and file later to sunset them if appropriate.

PJM's filing also highlights but fails to fix a serious defect in its current tariff's treatment of RMR resources. The ad hoc, non-prescriptive nature of the current tariff RMR provisions allows retiring resources to exercise market power by demanding payment of their cost of service while offering in return only a small subset of the service that the resource can provide. We agree that it is sensible for PJM not to count on capacity from resources whose RMR arrangements do not impose capacity-like obligations. But it is unjust and unreasonable to allow that situation to persist and not to tighten the tariff's RMR requirements. Consumers should not be obligated to pay cost-of-service rates for less than

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[25] *See* PJM Must Offer Filing at 12 ("Combined with the mitigation of uneconomic withholding through the Market Seller Offer Cap, the RPM must-offer requirement protects against the potential exercise of market power.").

a full complement of services from the resources receiving those revenues. Accordingly, and as we explained in our complaint, the Commission should direct PJM to adopt rules requiring RMR generators that elect cost of service compensation to offer all the services they are capable of providing, including energy, ancillary services and capacity.

Reference Resource. Joint Consumer Advocates likewise support PJM's intent to reduce price volatility and the market-wide price cap by proposing in this docket to revert its planned change of Reference Resource from a CT to a CC generator. Reverting to a CT Reference Resource would change the shape of the VRR demand curve used to clear the market. It will lower "Point 1," which serves as a market price cap if the market clears short of the Reliability Requirement.[26] And it will raise "Point 2," the price at which the auction clears 101.5% of the Reliability Requirement.[27] The combined effect is to reduce the slope of the VRR curve. That change helpfully reduces price volatility so long as the supply curve is likely to intersect the sloped portion of the demand curve. But if the supply is likely to intersect the VRR curve at or to the left of Point 1, then the VRR curve's slope is irrelevant; the only question then is whether the market price cap at Point 1 is a just and reasonable capacity price under current conditions. Although the proposed CT-based price cap would be less excessive than (and therefore preferable to) a CC-based cap, it is still not just and reasonable.

Under current conditions, regardless of whether the Reference Resource is a CT or CC, the Point 1 market price cap is likely to set based on that resource's Gross CONE—a price level that overcompensates suppliers by ignoring the substantial energy and ancillary

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[26] PJM December 9 Filing at 39 (explaining that Point 1 sets the auction price cap); *id.* at 60 (explaining that a CT-based curve sets a lower cap).

[27] Brattle Aff. ¶ 8.

service revenue available to the hypothetical Reference Resource and nearly all actual market suppliers.[28] Such excessive compensation cannot be justified as necessary to prompt the development of additional supply. Under current conditions, including the compressed forward period of the BRA and barriers to interconnection and operation of new resources, the right end of the supply curve is nearly vertical, so even large changes in price will elicit little additional supply.[29] Nor can the use of Gross CONE be supported as necessary to avoid "curve collapse" in the 2026/2027 BRA. The decision to use a CT means the Reference Resource's Net CONE will be substantially above $0.[30] And PJM could eliminate concerns about any "EAS misestimation risk" by adopting JCA witness Montalvo's suggestion to measure Net CONE empirically based in part on a weighted average of historical clearing prices at which new resources entered the market.[31]

II. THE COMMISSION SHOULD ACCEPT THE PROPOSAL TO INCLUDE QUALIFIED RMR UNITS AS PRICE TAKERS BUT REQUIRE FURTHER CHANGES.

PJM's independent market monitor has explained that "[t]he capacity market was designed on the basis of a must buy requirement for load and a corresponding must offer

[28] Pennsylvania Complaint at 22-26. Joint Consumer Advocates will elaborate on this point in their comments on the Pennsylvania Complaint.

[29] Additionally, as Joint Consumer Advocates' witness Montalvo has explained, high prices may "signal" the need for new entry but cannot support investment in new facilities where that entry will crash the price signal that investors were chasing. Attach. A, Ex. A (Montalvo Nov. Decl.) ¶¶ 26-27.

[30] PJM December 9 Filing, Attach. D Affidavit of Walter Graf and Skyler Marzewski on Behalf of PJM Interconnection, L.L.C. ¶ 78 & ¶ 82, Table 3 (Graf/Marzewski Aff.). Based on the data in Table 3, the expected Net CONE of a CT Reference Resource is roughly $200/MW-day UCAP ($149.72 ÷ 0.75 = $199.63).

[31] Attach. A, Ex. A (Montalvo Nov. Decl.) ¶¶ 83-88.

requirement for capacity resources," and "can work only if both are enforced."[32] Yet PJM's existing BRA exempts from participation thousands of megawatts of existing capacity, including resources that are operating under RMR arrangements. The section 206 complaints filed by a set of public interest organizations in Docket No. EL24-148 and by Joint Consumer Advocates in Docket No. EL25-18 have demonstrated that failing to recognize the reliability contributions of these RMR resources is unjust and unreasonable and results in consumers needlessly paying for duplicative capacity—once for the RMR resources and again for auction-procured capacity.

PJM essentially agrees. "Upon examination," PJM has "determined that the resources which have RMR arrangements currently accepted by the Commission (i.e., the Brandon Shores and Wagner units in the [Baltimore Gas & Electric (BG&E)] zone) have maintained sufficient operational capability and their RMR agreement grants PJM authority to dispatch such resources in expectation of capacity emergencies."[33] And provided that certain conditions continue to be met, PJM agrees that it is appropriate to recognize in the BRA the capacity provided by such resources.[34] According to PJM, "RMR resources that meet the proposed criteria provide sufficient resource adequacy/reliability benefit" to justify including their capacity in the BRA supply stack.[35]

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[32] Independent Market Monitor for PJM, Analysis of the 2025/2026 RPM Base Residual Auction Part A at 3 (Sept. 20, 2024), https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_A_20240920.pdf (IMM Part A Analysis).

[33] PJM December 9 Filing at 7.

[34] *Id.* at 14. Specifically, PJM "proposes to recognize those RMR resources that meet the following objective criteria designed to demonstrate the resource's capacity capability: (1) ability to meet deliverability requirements and have sufficient Capacity Interconnection Rights; (2) not cleared in the capacity market and have an accepted cost recovery agreement; (3) reasonably expected to be able to operate for the entire Delivery Year; and (4) required by its RMR agreement to be available for PJM dispatch in expectation of all PJM emergencies." *Id.* PJM will make a final determination as to which resources meet these criteria when it posts the planning parameters for upcoming auctions. *Id.* at 24.

[35] *Id.* at 23.

Conversely, PJM's Chief Economist and Lead Market Design Specialist say, "excluding [such] RMR resources from the capacity market . . . creates distorted capacity market prices by restricting supply, leading to prices that are higher than what they would be under efficient market clearing."[36] As they elaborate, RMR resources "represent existing generating capacity physically present on the system and do contribute to resource adequacy when meeting PJM's proposed criteria."[37] As such, "[t]he economically efficient approach . . . is to acknowledge and fully recognize this contribution in the capacity market clearing process."[38] To do so, PJM proposes to include qualifying RMR capacity in the BRA supply stack as price takers.[39]

PJM's observations are much in line with the points raised in the JCA and Public Interest Organizations (PIO) Complaints. We welcome PJM's agreement that recognizing RMR unit capacity by treating it as a price taker in the BRA supply stack is a just and reasonable approach. For the reasons PJM explains, doing so will improve capacity market price formation while avoiding compelling consumers to pay unreasonably for duplicative resources. It also will eliminate RMR unit owners' incentives and ability to withhold that capacity for the benefit of the remainder of their portfolios. And it will help to ensure that consumers receive the full value of the facilities for which they are paying, including but not limited to the RMR generator. As PJM observes in its later section 205 filing, ratepayers pay to maintain the transmission system that ensures deliverability in accordance with a

[36] Graf/Marzewski Aff. ¶ 9.

[37] *Id.* ¶ 23.

[38] *Id.*

[39] PJM December 9 Filing at 30-31.

generator's CIRs.[40] And "when load pays to maintain the transmission system from resources with CIRs that *do not offer* to provide capacity, load is harmed by having to pay" for transmission investments to maintain CIRs "that may not actually be used."[41]

For all these reasons, Joint Consumer Advocates support including RMR unit capacity as price takers in the BRA supply stack.[42] As Mr. Montalvo explains, "this proposal is an improvement over the current situation, in which these resources are not recognized for capacity auction purposes at all."[43] But PJM's proposal on this issue must be modified or supplemented in several respects.[44] First, PJM proposes to make this change only for the next two BRAs,[45] yet has not shown that this automatic sunsetting is just and reasonable. The mere passage of time will not change any of the considerations discussed above. It will not prevent the withholding of RMR capacity, the consequent purchasing of duplicative capacity, the resulting distortion of capacity market prices, or inefficient use of ratepayer-funded facilities. PJM signals that transmission upgrades into the BG&E zone may address concerns about the Brandon Shores and Wagner RMR facilities, and

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[40] PJM Must Offer Filing at 23.

[41] *Id; see also id.* at 24 (quoting Graf Must-Offer Aff. ¶ 23 ("Requiring load to pay for upgrades to support CIRs for resources that do not offer into the capacity markets 'creates a significant disconnect between these transmission investments and the actual provision of capacity.'"); *id.* ("Put another way, as the Market Monitor recently observed, '. . . If a resource has CIRs but fails to use them by not offering in the capacity market, the resource is withholding.'"). In fact, as PJM explains, "Existing Generation Capacity Resources with CIRs that are not offered in the capacity market can obstruct competitors from building new Generation Capacity Resources by requiring additional transmission upgrades to support new CIRs." *Id.*

[42] Joint Consumer Advocates also support PJM's proposal to "credit the capacity market revenues associated with an RMR resource's capacity contribution back to the loads covering the costs of operating the resource." PJM December 9 Filing at 37.

[43] Attach. A (Second Montalvo Decl.) ¶ 10.

[44] *Id.* ¶ 12 ("PJM's proposal partially addresses the disconnect between the physical capability of RMR resources connected to the system, planning assumptions, and supply recognized in the capacity auction. However, PJM's proposal does not fully address the identified market design deficiency and consequently will not reflect the true supply and will overcharge load.").

[45] PJM December 9 Filing at 16 (proposing changes "only for the 2026/2027 and 2027/2028 Delivery Years," as a "stop-gap" and "time-bound" measure).

highlights that it plans to develop through the stakeholder process a "more comprehensive" and "more longstanding" approach to RMR resource retention.[46] But to state the obvious, neither event has occurred or is guaranteed to occur, and other RMR arrangements may be developed that will not be resolved by whatever transmission upgrades into the BG&E zone are in fact completed. Rather than hard-wire a sunsetting of the proposed RMR treatment based on speculation about future events, the Commission should direct PJM to adopt the proposed changes on an open-ended basis. If future events warrant, PJM will be free to file later to modify or supersede these provisions to a just and reasonable alternative.

Second, PJM has limited its proposed BRA recognition of RMR capacity to resources that meet criteria aimed at ensuring that they provide capacity-like reliability value. The criteria are not themselves unreasonable, but the need for them points to a different problem with the PJM tariff and another way in which it is unjust and unreasonable. As detailed in the Joint Consumer Advocates' complaint, the tariff's existing RMR provisions are outdated[47] and create an ad hoc, generator-driven process that enables retiring resources to exercise market power—demanding cost of service compensation while offering only limited service in return.[48] PJM observes that, because those resources do not contribute to reliability in a manner similar to a committed Capacity Resource,

[46] *Id.* at 15-16.

[47] PJM adopted the tariff's current RMR provisions many years ago, when the current capacity market structure did not exist and when PJM expected RMR arrangements to be rare. Graf/Marzewski Aff. ¶ 15. Those expectations did not hold up. According to the Union of Concerned Scientists, summarizing a presentation by PJM planning staff, "historically half of all generator deactivations have triggered reliability concerns." Intervention and Comments of Union of Concerned Scientists at 4-5 (Dec. 26, 2024), eLibrary No. 20241226-5226 (citing Perry Ng, 2023 DESTF Additional Education Historical Statistics related to Deactivation, PJM (Nov. 9, 2023), https://www.pjm.com/-/media/committees-groups/task-forces/destf/2023/20231109/20231109-item-04---historical-stats-deactivation.ashx).

[48] *See* JCA Complaint at 18-21.

omitting them from the BRA does not involve consumers "paying twice" for capacity.[49] No; the problem is worse. Consumers still pay twice, but do not even receive twice the capacity. The tariff is unjust and unreasonable in allowing for RMR arrangements under which ratepayers cover a generator's costs but do not receive all the value that resource can offer.[50] While PJM's filing in this docket confirms the problem,[51] it does not attempt to fix it. Instead, PJM punts the problem down the road, stating that it intends to work with stakeholders on a more fulsome proposal for addressing RMR issues, including potential development of a pro forma RMR agreement, to be applicable starting with the 2028/2029 Delivery Year.[52] A promised stakeholder discussion is insufficient to address a serious and existing flaw in the PJM Tariff. The Commission should grant the JCA Complaint, find the Tariff to be unjust and unreasonable, and direct PJM to adopt RMR provisions that require resources electing cost of service compensation to offer all the services they are technically capable of providing.[53]

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[49] PJM December 9 Filing at 23.

[50] *See* Attach. A (Second Montalvo Decl.) ¶ 13 ("PJM's decision to limit the scope of the rule change in this way will require load customers to continue to pay the cost of service to certain retained generators, even as they only have access to a subset of those generators' services.").

[51] PJM December 9 Filing at 6 (noting that "today's sui generis resource-specific and non-uniform nature of each RMR agreement" leaves PJM unable to count on all RMR resources to support resource adequacy); *id.* at 26 ("[B]ecause the Tariff lacks a pro forma RMR agreement and standardized terms and conditions for RMR and vests the retained generator with the authority to propose and justify the terms, conditions, and cost of retention before the Commission, the terms and conditions under which each retained resource agrees to operate are resource-specific, though the operating terms are negotiated with PJM. Given the lack of standardized operating terms and conditions, PJM cannot assume that each RMR resource would be required to operate to meet the region's capacity needs.").

[52] *Id.* at 9.

[53] *See* Attach. A (Second Montalvo Decl.) ¶ 14; Attach. A, Ex. A (Montalvo Nov. Decl.) ¶ 33; JCA Complaint at 42-43. Witness Montalvo also emphasizes that PJM "should consider reforms beyond those associated with resource retirements . . . that better align RTEP competitive windows and/or allow transmission projects that reduce local resource adequacy needs to bid and compete against other resources through the BRA." Attach. A (Second Montalvo Decl.) ¶ 15 (quoting Attach. A, Ex. A (Montalvo Nov. Decl.) ¶ 93). Witness Montalvo says this could be accomplished "by allowing transmission developers to bid reductions in reserve requirements resulting from transmission projects into the BRA." *Id.*

Finally, we observe that PJM's filing in this docket addresses only a few of the myriad issues plaguing its capacity market design. As Joint Consumer Advocates explained in their complaint, and as PJM acknowledged in part in its subsequent section 205 filing in Docket No. ER25-785-000, far greater changes are needed to ensure that the 2026/2027 BRA produces just and reasonable rates.[54] The Commission should couple any acceptance of PJM's RMR proposal with action to accept or direct additional changes needed to ensure that *all* existing resources participate in the auction and make available to the region and its ratepayers the full extent of the resources' potential reliability contributions. This is important at all times but especially now, when new resources cannot enter the market in meaningful degree and the PJM region faces significant, data center-induced load growth. Given this new reality, ensuring that all available resources participate in the capacity auctions is essential.

III. BY ITSELF, REPLACING THE REFERENCE RESOURCE WILL MAKE CAPACITY PRICES *LESS EXCESSIVE* BUT NOT JUST AND REASONABLE.

PJM historically has used a CT as the Reference Resource in developing the VRR curve but recently switched to a CC generator. In this filing, it proposes to switch back to a CT.

The reversion is a marginal improvement insofar as it may keep 2026/2027 BRA prices less excessive than they would be using a CC as the Reference Resource. But reverting to a CT is a half measure that lacks principled foundation and cannot ensure that 2026/2027 BRA prices are just and reasonable.[55] While the Commission can accept the

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[54] *See* Attach. A (Second Montalvo Decl.) ¶¶ 16-17.

[55] *Id.* ¶¶ 22-23 (PJM and its experts correctly recognize that a CC-based VRR curve's "extraordinarily high maximum price" and "steep drop to a zero price as the reserve requirement is met" pose a "potentially significant problem for the PJM capacity market. However, they do not address the fundamental problem:

reversion as a limited improvement on the status quo, it should also find under section 206 that the VRR curve shape and defining parameters are unjust and unreasonable under current circumstances.[56] And as a remedy, the Commission should direct PJM to define Point 1 of the VRR curve as 1.5 times Net CONE (not the greater of 1.75 times Net CONE or the Reference Resource's Gross CONE)[57] and determine Net CONE empirically based on past auction clearing prices that have supported new entry.[58]

PJM's filing on this issue starts from some appropriate premises but fails to draw the logical conclusions. PJM notes, correctly, that when conditions are tight the capacity market should set prices high enough to incent new entry but "without being unnecessarily high."[59] PJM sets the VRR curve in a way that seeks to achieve these rules under modeled conditions. But the corollary is that the market may not function as designed in other circumstances. As PJM admits, "when market conditions diverge from all tested design

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the method of calculating CONE based on a hypothetical resource's costs and projected revenues is inherently arbitrary and flawed. As a result, their proposed fix—retaining the CT as the Reference Resource—is arbitrary and at best a band-aid.").

[56] *See* Pennsylvania Complaint at 22-26.

[57] A complaint recently filed by the state of Pennsylvania asks the Commission to direct PJM to eliminate the use of Gross CONE as a potential basis for the Point 1 market-price cap. Pennsylvania Complaint at 22-28. Pennsylvania's expert witness, Mr, Kris Aksomitis, explains that PJM's continued use of the Gross CONE formula will result in PJM incumbent generators realizing windfall profits should the upcoming auction clear at the market cap:

> My primary finding is that the market signal for new capacity is not creating an investment response due to delays in the interconnection queue exacerbated by the currently compressed auction timelines. This gives rise to uncompetitive outcomes that result in a transfer of wealth from load customers to capacity sellers, without any realistic expectation of improved reliability from elevated price levels.

Pennsylvania Complaint, Aksomitis Decl. ¶ 8. Joint Consumer Advocates will elaborate on this issue in response to the Pennsylvania Complaint.

[58] *See* JCA Complaint at 50-51 and Attach. A, Ex. A (Montalvo Nov. Decl.) ¶¶ 83-88.

[59] PJM December 9 Filing at 50 (citation omitted).

parameters, this can impair the ability of the VRR curve to send accurate price signals and meet the required reliability standards."[60]

PJM concedes that current market conditions have diverged significantly from the assumptions modeled in establishing the current curve. "Since the 2022 Quadrennial Filing adopted a CC-based VRR Curve, significant changes in market conditions and regulatory outlook" have occurred.[61] According to PJM and its consultants, the most recent 2026 load forecast is 4.5 GW higher than the 2023 forecast for that year.[62] Meanwhile, unanticipated risk-modeling changes have increased the target installed reserve margin (e.g., from 14.7% in the 2024/2025 BRA to 17.8% in the 2025/2026 BRA).[63] Retirements and capacity accreditation changes have reduced the apparent supply available to meet these needs.[64] As a result, "PJM's traditionally long capacity market suddenly became much tighter."[65] Together, these changes produce 11.5 GW of net load growth compared to the figures used in 2022 Quadrennial Review and a 15.5 GW decrease of excess capacity (in 2024/2025 UCAP terms) from the 20245/2025 BRA to the 2025/2026 BRA.[66] Further, these changes coincide with slowed entry due to interconnection backlogs, siting challenges, supply chain delays, and other issues.[67] These entry barriers, combined with the upcoming auctions'

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[60] *Id.*(citation omitted).

[61] *Id.* at 44.

[62] *Id.* at 47.

[63] *Id.* at 48.

[64] *Id.* ("[S]ince the 2022 Quadrennial Review, revisions to the ELCC framework have reduced the accreditation of several resource classes, as well as other risk modeling changes, have resulted in a 'recent 7 GW tightening.'"); *id.* at 49 ("At the same time, supply further decreased by an additional 5,696 MW UCAP ahead of the 2025/2026 Base Residual Auction as a result of additional retirements.").

[65] *Id.* at 50.

[66] *Id.* at 45.

[67] *Id.* at 49.

compressed forward periods, produce unusually steep supply curves that are nearly vertical at the right edge of the curve.[68]

In PJM's words, these circumstances constitute a significant "shock to the capacity market" that goes "well beyond the range tested for the [VRR] curve" in the 2022 Quadrennial Review.[69] Such changes "beyond design conditions" may produce prices that are "misaligned with design objectives" and that yield compensation "higher and more concentrated than is ultimately needed to attract supply."[70] Indeed, given the entry barriers and compressed forward periods in upcoming auctions, there is a serious risk that the VRR Curve may produce "sustained and partly inactionable high prices" that will not elicit new supply and are "misaligned with design objectives."[71] Nor is any relief in sight. PJM expects recent supply and demand trends "to continue for the foreseeable future"[72] and predicts a significant likelihood that "capacity auctions could produce prices at or near the price cap for multiple years in a row."[73]

PJM's proposed response—reverting to a CT as the Reference Resource—is not up to the task of ensuring just and reasonable rates under these circumstances. To begin, the CT-based VRR Curve suffers the same flaw that PJM identifies in the CC-based curve. *Neither* was modeled under conditions even approaching the current circumstances. Put differently, a CT-based VRR Curve falls just as far outside "design conditions" as the CC-based curve. Likewise, both curves suffer from the "false accuracy" flaw that witness

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[68] *See* Brattle Aff. ¶ 15 & Fig. 2.

[69] PJM December 9 Filing at 45, 50-51.

[70] *Id.* at 51.

[71] Brattle Aff. ¶ 15.

[72] PJM December 9 Filing at 5.

[73] *Id.* at 40.

Montalvo identifies: both a CT-based or CC-based curve depend on inherently unreliable choices, best guesses, and speculation that may depart significantly from real-world conditions.[74] In fact, the choice between a CT or CC "ignores the reality . . . that the majority of new capacity resources in the queue are renewables and battery storage," so "[n]either the CT nor the CC [is] the most likely next increment of capacity in PJM."[75]

That a CT-based curve is likely to be more gently sloped between Points 1 and 2 than a CC-based curve could be beneficial if it were likely that the (nearly vertical) supply curve would intersect the sloped portion of the demand curve. In that case, the gentler slope could help to reduce price volatility. But in circumstances where PJM predicts the potential for region-wide capacity shortages driving prices to the cap over multiple auctions, a more relevant question is simply whether the cap represents a just and reasonable price for capacity under existing conditions.[76]

The answer is no. According to PJM, the market-wide price cap would be set using Gross CONE (rather than 1.75 times Net CONE) for either a CT or a CC Reference Resource.[77] Using Gross CONE, the price cap would be roughly $700/MW-day (UCAP)

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[74] Attach. A (Second Montalvo Decl.) ¶ 25.

[75] *Id.*

[76] As PJM witness Newell frames the issue:

> The most appropriate price cap under these conditions must balance two conflicting goals: (1) the price cap should be high enough to send strong signals to attract supply both in the near term and the long term (i.e., a cap that is sufficiently above Net CONE); while still (2) low enough to manage and mitigate customers' exposure to the potential for high prices that remain above Net CONE for a sustained period that persists not because of supply-demand fundamentals, but rather due to the unique combination of market barriers, a compressed forward period, and unexpected tightness in market conditions that can only be addressed over time.

Brattle Aff. ¶ 15.

[77] PJM December 9 Filing at 59; Graf/Marzewski Aff. ¶¶ 83-84; Brattle Aff. ¶ 8.

with a CC as the Reference Resource and roughly $500/MW-day (UCAP) using a CT.[78] Even the lower price translates to eye-popping sums. At that price level, the total cost of capacity to PJM ratepayers could be $25 billion.[79] But PJM has not shown that $500/MW-day is a just and reasonable price to pay for capacity, potentially across multiple auctions, in circumstances where such high prices are neither needed nor likely to be useful in eliciting additional supply.

Simply put, PJM has not shown that $500/MW-day is either necessary in the absence of entry barriers or sufficient in the presence of them to induce entry. Historically, absent the non-price entry barriers that are projected to continue for several years,[80] new entry has occurred at far lower market clearing prices.[81] And in the presence of such barriers, $500/MW-day will not be sufficient. PJM witness Newell explains that it will likely be "multiple years" before "barriers to entry can be addressed by a combination of interconnection reform and supply chain development."[82] Yet until then, not even the $700/MW-day, CC-based prices would be able to "fully activate response."[83] If that is so, then there is little chance that $500/MW-day CT-based prices will do so.[84] Instead, it will

[78] Brattle Aff. ¶ 8.

[79] Answer of Joint Consumer Advocates in Opposition to Motion for Dismissal at 4 n.16, Docket No. EL25-18-000 (Dec. 5, 2024), eLibrary No. 20241205-5153.

[80] Brattle Aff. ¶ 12 ("These barriers cannot be addressed overnight by the marketplace or by policy solutions and may persist through the next several auctions…"); *id.* ¶ 18.

[81] JCA Complaint at 32-34; Attach. A (Second Montalvo Decl. ¶ 26); Attach. A, Ex. A (Montalvo Nov. Decl.) ¶¶ 58-62.

[82] Brattle Aff. ¶ 18.

[83] *Id.*

[84] Witness Newell cites "interviews with developers" that, he says, "point to the possibility of thousands of MW of uprates to existing gas-fired units." *Id.* ¶ 12. But he does not identify the developers or provide any details about the projects or the hurdles they would need to surmount to achieve commercial operation. While he speculates that some uprates could be come online "as early as next year" (*id.*), he provides no basis whatsoever for that assertion. *See* Attach. A (Second Montalvo Decl.) ¶¶ 29-30. We submit that such vague and conclusory assertions about possible future entry cannot support the imposition on consumers in the meantime of tens of billions of dollars of extra capacity costs. It is noteworthy that despite witness Newell's

simply produce windfall profits for existing resources and needlessly higher costs—"all pain and no gain"[85]—for consumers.[86]

To price capacity at the Gross CONE of a dual-fuel CT also is wrong as a matter of theory. As the IMM has explained,[87] Point 1 of the VRR Curve originally was based on Net CONE and that approach

> was based on the logic of the capacity market, to ensure that between the energy and capacity markets the cost of entry was covered. . . . Net CONE was the equilibrating factor between the capacity market and energy market. The use of Gross CONE is inconsistent with that basic capacity market logic.

Capacity market compensation is intended mainly to provide "the missing money" that suppliers do not earn in other markets (primarily, the PJM energy and ancillary service [EAS] markets).[88] Net CONE—Gross CONE minus energy and ancillary service revenue—approximates that missing money. In theory, prices should exceed Net CONE when supplies are tight and fall short of it when supply is plentiful but, either way, the correct benchmark is Net CONE.

In contrast, setting the market price cap based on the Gross CONE of the Reference Resource guarantees over-recovery because it ignores the substantial amount of EAS revenue available to most market sellers. In the 2022 Quadrennial Review, PJM estimated

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discussion of possible new uprate and demand resources, nowhere in PJM's instant filing, nor in its filings in Docket Nos. ER25-785 (must-offer exemptions), ER25-712 (RRI), and ER25-778 (Supplemental Interconnection Service) does PJM depart from its prediction of repeated price cap events.

[85] *Citadel FNGE Ltd. v. FERC*, 77 F.4th 842, 855 (D.C. Cir. 2023), *reh'g denied en banc,* No. 22-1090 (D.C. Cir. 2023 Sept. 12, 2023).

[86] *See* Pennsylvania Complaint, Aksomitis Decl. ¶ 8.

[87] IMM Part D Analysis at 8.

[88] We take no position here on PJM's contention in Docket No. ER25-785-000 that sellers also need to be able to price into their offers the incremental (avoidable) risks and costs that may attend capacity market participation.

the net EAS revenue for the hypothetical CC reference resources to be $209/MW-day UCAP.[89] More recently, PJM calculated it to be $698/MW-day UCAP.[90] For CT resources that run less frequently, the net EAS revenue values are smaller but still substantial. PJM's current estimate of the EAS Offset for a dual-fuel CT is approximately $300/MW-day UCAP.[91]

Ignoring such substantial amounts of EAS revenue when pricing capacity produces unjust windfalls for sellers and substantial harm to consumers. The IMM and the Commonwealth of Pennsylvania independently estimate the incremental cost of using Gross CONE to set maximum capacity prices, above 150% of Net CONE, at multiple billions of dollars per year.[92]

PJM argues against setting the market price cap based on Net CONE for two reasons, neither of which withstands scrutiny. First, PJM points to the size of the EAS revenue offset, as a result of which the Net CONE of a CC-based resource can fall to zero, leading to "curve collapse."[93] But the switch to a CT-based Reference Resource eliminates that risk. The Net CONE of the CT Reference Resource is nearly $200/MW-day UCAP.[94] So a price cap of 150% of that level would be $300/MW-day UCAP (and 175% would be $350/MW-day). To be clear, $300/MW-day is more than ten times the RTO clearing price

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[89] Graf/Marzewski Aff. ¶ 70.

[90] *Id.*

[91] *Id.* ¶ 112.

[92] *See* IMM Part D Analysis at 4; Pennsylvania Complaint at 2.

[93] *E.g.,* PJM December 9 Filing at 60.

[94] *Id.* at 59.

in the 2024/2025 auction.[95] PJM provides no reason to think that a price cap at that level would be too low to achieve the capacity market's design objectives.

PJM also contends that using Gross CONE is appropriate because Net CONE can be volatile and difficult to estimate, largely due to the uncertainty of EAS revenue and the risk of "misestimation."[96] But that problem is better solved another way: by measuring Net CONE empirically based on a weighted average of market clearing prices at which new entry has occurred in the past.[97] Such an approach avoids the projection and estimation error about which PJM complains. It would result in both "a lower price cap than that currently proposed"[98] and "greater price cap stability from year to year."[99] And it is inherently conservative in that entry will occur only when the market clearing price exceeds a new resource's offer price, which should reflect its expected unit-specific Net CONE. So, a generic estimate of Net CONE based on market clearing prices that have supported new entry (potentially plus an adder or times a multiplier) will necessarily exceed the actual Net CONE of the resources that actually have entered the market.

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[95] Attach. A, Ex. A (Montalvo Nov. Decl.) ¶ 8.

[96] PJM December 9 Filing at 53-54; Brattle Aff. ¶ 20 ("Some stakeholders may propose lowering the price cap further than PJM proposes, for example, by arguing to set that cap based on a small multiple of Net CONE. However, that would lose the protections that a gross CONE-based cap was intended to provide against Net CONE underestimation error collapsing the curve.").

[97] *See* Attach. A (Second Montalvo Decl.) ¶¶ 26-27; Attach. A, Ex. A (Montalvo Nov. Decl.) ¶¶ 84-88.

[98] Attach. A (Second Montalvo Decl.) ¶ 27. As witness Montalvo has demonstrated, PJM's current approach to calculating Net CONE overstates the cost of new capacity. Attach. A, Ex. A (Montalvo Nov. Decl.) ¶¶ 57, 60-62. "In eight of the last eleven auctions, thousands of megawatts of new capacity cleared the PJM capacity market annually despite BRA auction prices well below Net CONE." *Id.*¶ 62.

[99] Attach. A (Second Montalvo Decl.) ¶ 27. Moreover, measuring Net CONE as witness Montalvo suggests also would reduce the risk of "curve . . . collapse" that PJM uses to defend setting the market price cap based on Gross CONE. *Id.* ¶ 28 (quotation marks omitted).

IV. CONCLUSIONS

As we have explained, PJM's capacity market design is unjust and unreasonable and (absent significant changes) will lead to billions of dollars of excessive ratepayer charges. PJM's section 205 filing in this docket proposes two changes that will help, but not nearly enough. As to RMR resources, the Commission should accept the proposed inclusion of qualified RMR capacity as a price taker in the BRA supply stack (but not the hard-wired sunsetting of that treatment). In addition, the Commission should act under section 206 to require PJM to adopt standard RMR provisions that will allow PJM to rely on future RMR resources to contribute to resource adequacy (among other reliability needs).

As for the proposed reversion to a CT Reference Resource, we do not object to the change if choosing a Reference Resource remains relevant. But our preference is for much more thorough reform that would eliminate the need to select a Reference Resource. As explained here and in the pending complaint in Docket No. EL25-18, the Commission should direct PJM to calculate Net CONE in the manner we have proposed (based on historical clearing prices at which entry has occurred) and should set the market price cap at 1.5 times that newly-calculated Net CONE. If the Commission does not do that, then it should accept the selection of a CT Reference Resource here and should grant Pennsylvania's section 206 complaint to set the market price cap at 1.5 times the Net CONE (traditionally determined) of the CT Reference Resource.

Finally, and regardless of the Commission's disposition of the changes proposed by PJM in this docket, we urge that the Commission recognize that it action in this proceeding cannot be its final word on changes to the BRA design. The Commission must also act under FPA section 205 (in Docket No. ER25-785-000) and section 206 (in Docket Nos.

EL24-148-000, EL25-18-000, and EL25-46-000) to make other needed changes as described above and as we have explained or will explain in those dockets.

Respectfully submitted,

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January 6, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing protest to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 6th day of January, 2025.

/s/ Jeffrey A. Schwarz
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