

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER25-785-000

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), and the December 23, 2024, Combined Notice of Filings #1,¹ the Joint Consumer Advocates (JCA)² protest the second of two Federal Power Act (FPA) section 205³ 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,⁴ all of which concern proposed changes to the 2026/2027 BRA rules.⁵ That motion remains pending.

As detailed below, the instant section 205 filing makes one important and necessary change: requiring existing Intermittent Resources, Capacity Storage Resources, and Hybrid

¹ eLibrary No. 20241223-3109.

² 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.

³ 16 U.S.C. § 824d.

⁴ 16 U.S.C. § 824e.

⁵ 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).

Resources to offer their capacity in the auction, starting with the 2026/2027 BRA. However, PJM pairs that critical step with other changes that have not been shown to be just and reasonable: (i) the imposition on these resources of penalties for non-performance during a Performance Assessment Interval (PAI) for reasons that are beyond their control and that already are reflected in their lower capacity accreditation values; and (ii) a relaxing of the Market Seller Offer Caps for all resources, to allow them to price the risk of PAI penalties into their offers. PJM's independent market monitor (IMM) describes the second proposed change as a "poison pill" that would "weaken market power mitigation for all capacity resources."⁶

Also, as with its first section 205 filing addressing rules for the 2026/2027 BRA, PJM fails to take other key steps that will be crucial to ensuring (or at least maximizing the chances) that the 2026/2027 BRA can produce just and reasonable rates. These omitted steps include: (i) extending the must-offer requirement to existing demand response resources that have chosen to participate as supply in PJM markets; (ii) adopting a Market Seller Offer Cap applicable to such resources where structural tests indicate that they have market power; (iii) determining 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 (iv) redefining 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 (v) redefining Net

⁶ Comments of the Independent Market Monitor for PJM at 28, Docket No. ER25-682-000 (Jan. 6, 2025), eLibrary No. 20250106-5221 (IMM ER25-682 Comments).

CONE so that it is measured empirically, based in part on a weighted average of market clearing prices at which new entry has occurred in recent BRAs, rather than estimated based on unreliable and volatile cost and revenue forecasts.

Before PJM made either of its section 205 filings, Joint Consumer Advocates filed a complaint under FPA section 206 identifying the need for most of these rule changes.⁷ Since then, Governor Shapiro and the Commonwealth of Pennsylvania have filed an additional complaint demonstrating the need to reduce the market-wide price cap, the greater of Gross CONE or 175 percent of Net CONE, to 150 percent of Net CONE. The pending section 206 complaints provide the Commission with vehicles through which it can effect all of the changes necessary to ensure just and reasonable 2026/2027 BRA results, regardless of PJM's decisions about which changes to propose and which to omit from its section 205 filings.

If PJM's proposed extension of must-offer obligations in this docket is severable from its application of PAI penalties to the identified resources and its proposed changes to the market seller offer caps, then Joint Consumer Advocates ask that the Commission accept the first change, reject the latter two, and direct PJM to exempt the identified resources from PAI penalties. If they are not severable, then Joint Consumer Advocates urge the Commission to reject PJM's filing and instead act under FPA section 206 to extend

⁷ See Joint Consumer Advocates Complaint, Docket No. EL25-18-000 (Nov 18, 2024), eLibrary No. 20241118-5200 (JCA Complaint). The JCA Complaint demonstrates the need for: (a) changes in the treatment of Reliability Must-Run (RMR) resources, which PJM addressed in part in its first section 205 filing (and which also were the subject of an earlier complaint by public interest organizations in Docket No. EL24-148-000); (b) elimination of must-offer exemptions for all existing resources, including those addressed by the instant filing and the demand resources excluded from PJM's proposed changes in this docket; (c) offer caps for demand resources; (d) ELCC changes to apply seasonal risks to the appropriate seasonal capability rating; (e) interconnection queue changes to give priority to study-ready projects that will be sited in Locational Deliverability Areas (LDAs) that are more likely to be constrained; and (f) redefining Net CONE so that it is measured empirically instead of basing it on unreliable projections.

the must-offer requirements without subjecting those resources to such penalties and without the MSOC changes. And in either case, Joint Consumer Advocates respectfully request that the Commission grant the pending section 206 complaints and direct PJM to implement the further changes identified therein that are beyond the scope of PJM's section 205 filings.

I. CURRENT BRA RULES DO NOT ENSURE RELIABILITY AT JUST AND REASONABLE RATES, AND PJM'S SECTION 205 CHANGES ARE INSUFFICIENT TO ACHIEVE THOSE ENDS.

As Joint Consumer Advocates observed in our protest of PJM's earlier section 205 filing,⁸ PJM and the Commission rely on the BRA to ensure resource adequacy at rates that are just, reasonable, and not unduly discriminatory.⁹ To do so, the BRA seeks to harness forces of competition to find the lowest-cost set of resources that meet system needs. But market concentration, structural seller market power, interconnection delays and other barriers to new entry, compressed auction forward periods, and poor market design are preventing the BRA from achieving those goals.

According to the IMM, PJM's capacity market design "leads, almost unavoidably, to structural market power in the capacity market," which will "remain endemic" absent "substantial and unlikely structural change that results in much greater diversity of ownership."¹⁰ In recent auctions, market power issues have become even more acute. The auction design depends on the potential for new entry to counterbalance retirements and

⁸ Protest of Joint Consumer Advocates at 5 & n.15, Docket No. ER25-682-000 (Jan. 6, 2025), eLibrary No. 20250106-5192 (JCA ER25-682 Protest).

⁹ 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.").

¹⁰ 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).

check the market power of existing resources.¹¹ But in recent years, auction delays, compressed periods between the conduct of auctions and the commencement of the associated Delivery Year, a glacial interconnection queue, and other entry barriers have prevented the possibility of new entry from serving its essential market-disciplining function.¹² According to PJM, there was a significant decline in supply offered into the capacity market from 148,945.7 MW in the 2024/2025 BRA to 135,692.3 MW in the 2025/2026 BRA.¹³ As a result, two Locational Deliverability Areas (LDAs) constrained in the 2025/2026 BRA, and PJM as a whole failed the three-pivotal-supplier test—meaning that *all* existing generation capacity resources have market power.¹⁴ And the same likely will be true for the 2026/2027 auction.¹⁵

¹¹ When it approved PJM’s Reliability Pricing Model (RPM), the Commission explained 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), *reh’g granted in part*, 119 FERC ¶ 61,318, *reh’g denied*, 121 FERC ¶ 61,173 (2007). The Commission explained that “[s]pecific mitigation rules and increased competition from new entry” were the “most important design elements” to “discourage the exercise of market power and market manipulation generally.” *Id.* P 6. 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, 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).

¹² See JCA Complaint at 3-4, 10-13.

¹³ *Id.* at 10; *Id.*, Att. A (Decl. of Marc D. Montalvo) ¶ 28. That declaration and supporting exhibits are appended to this protest as Attachment A, Exhibit B (First Montalvo Decl.).

¹⁴ PJM, 2025/2026 Base Residual Auction Report at 3, tbl.1 (July 30, 2024), <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.ashx> (PJM 2025/2026 BRA Report); PJM Interconnection, L.L.C., Extending the Capacity Must-Offer Requirement to All Generation Capacity Resources at 19 (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.).

¹⁵ Graf Must-Offer Aff. ¶ 14 (discussing market power that exists “[u]nder current conditions”); PJM Must-Offer Filing at 5-6 (“PJM expects that the 2025 load forecast will show an even larger than previously expected increase in demand for 2026 and going forward,” such that “the PJM Region could be short of capacity in two years, and the auction clearing prices for the upcoming 2026/2027 Base Residual Auction could hit the price cap for the RTO Region.”).

Worse, many of those sellers have large enough portfolios that, if allowed, they could profit handsomely by withholding some resources from the tight market either physically or economically—forgoing capacity revenue for those resources but more than making up on the difference on higher clearing prices for its remaining capacity sales.¹⁶ This concern is not open for debate. PJM’s Chief Economist testifies that more than 5,000 MW of unforced capacity (UCAP) is “held in portfolios of Capacity Market Sellers that have the incentive and ability to exercise unilateral market power and profitably withhold capacity for generation portfolio benefits as assessed at the parent company.”¹⁷

These challenges and increasing load growth threaten to overwhelm PJM’s market. PJM itself foresees “sustained price cap events”¹⁸ such ““that the capacity auctions could produce prices at or near the price cap for multiple years in a row,””¹⁹ 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.”²⁰

These circumstances make it imperative to remediate the market power of incumbent resources and take all feasible steps to maximize the supply available to PJM’s capacity market at just and reasonable prices. This includes making every effort to facilitate timely entry of new resources, closing loopholes that permit physical or economic

¹⁶ Graf Must-Offer Aff. ¶ 15.

¹⁷ *Id.*

¹⁸ PJM Interconnection, L.L.C., Revisions to Reliability Pricing Model at 62, Docket No. ER25-682-000 (Dec. 9, 2024), eLibrary No. 20241209-5207 (PJM December 9 Filing).

¹⁹ *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.)).

²⁰ Brattle Aff. ¶ 5.

withholding of existing resources (whether to exercise market power or for other reasons),²¹ subjecting all seller offers to market power mitigation price caps, and properly accounting for the reliability contributions of resources whose output increases when ambient temperatures drop.

As discussed below, PJM's section 205 filings address these subjects only incompletely or pair needed reforms with unjust and unreasonable ones—necessitating additional Commission action under FPA section 206. In Docket No. ER25-682-000, PJM proposed to include some RMR capacity in the BRA supply stack and to revert to the use of a Combustion Turbine as the Reference Resource. Our protest in that docket explained why and how those steps fell short.²² Similarly, in this docket, PJM starts in the right direction by proposing to end the categorical exemption from BRA must-offer requirements of existing intermittent, storage, and hybrid resources, but subject to unreasonable penalty risks priced into their offers, and wrongly opts to maintain the current categorical exemption for demand resources participating as supply. PJM also fails to close a significant loophole in market power mitigation rules—imposing no Market Seller Offer Cap on demand resource offers—while loosening unnecessarily the mitigation applied to other sellers.

And neither this filing nor PJM's other section 205 filings address the other serious problems that JCA, the IMM, and others have identified, including: (i) PJM's artificial discounting of supply (by applying winter-risk-driven derates to resources' lower summer

²¹ As we recently explained, behavioral prohibitions against the exercise of market power are not a substitute for structural safeguards. Because of the BRA's single-clearing-price design, if any seller exercises market power, the effects cascade through the market—raising the clearing price paid to all sellers. Neither civil penalties nor disgorgement of unjust profits by the exerciser of market power can remedy such market-wide consumer impacts.

²² See, generally, JCA ER25-682 Protest.

capability ratings); and (ii) its use of a greater of Gross CONE or 1.75 times formula to establish a market offer cap and a VRR Curve that sets excessive maximum capacity prices at levels far higher than needed to elicit more supply in the absence of barriers to entry but that will only punish consumers forced to bear them.

Protecting consumers against exploitation is the core of the Commission's FPA duty.²³ And the stakes here are simply enormous. PJM predicts that even if its proposed changes are accepted, the upcoming 2026/2027 BRA will likely produce prices at a market offer cap of \$500/MW-day, region-wide.²⁴ This could subject ratepayers to capacity charges in the next auction of roughly \$25 billion,²⁵ a twenty-fold increase in total capacity costs from the 2024/2025 BRA held just two years ago. While the supply and demand balance may have tightened to some extent, the IMM has explained that these prices do not accurately reflect market fundamentals or a competitive market price.²⁶ And PJM says things will get worse before they may get better, stating that it foresees this situation persisting for "multiple years in a row."²⁷

In these circumstances, and for the reasons explained below, in the JCA Complaint, and in our ER25-682-000 protest, there is no question that the Commission must act under

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 PJM December 9 Filing at 40; Brattle Aff. ¶¶ 5, 10, 18.

²⁵ 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.

²⁶ IMM ER25-682 Comments at 5 ("[P]rices in the 2025/2026 BRA were significantly inflated by incorrect decisions about key market design elements and therefore did not reflect actual supply and demand conditions.").

²⁷ PJM December 9 Filing at 40; *id.* at 62 (discussing potential for "sustained price cap events"); Brattle Aff. ¶¶ 5, 10, 18.

FPA section 206 to remedy all the market design flaws left untouched (or in some cases introduced) by PJM's section 205 filings.

II. INTERMITTENT, STORAGE, AND HYBRID RESOURCES SHOULD BE SUBJECT TO MUST-OFFER RULES, BUT WITHOUT EXCESSIVE PENALTY EXPOSURE PRICED INTO THEIR OFFERS.

Currently, intermittent, storage, and hybrid (ISH) resources are exempt from BRA must-offer requirements. PJM properly proposes to remove that categorical exemption. “The capacity market was designed on the basis of a must buy requirement for load and a corresponding must offer requirement for capacity resources,” and “can work only if both are enforced.”²⁸ To allow the withholding of some supply, while all load must buy, “creates an imbalance between supply and demand” that divorces prices from market fundamentals, and “creates artificial upward pressure on market prices” that is “indistinguishable from the exercise of market power.”²⁹ As JCA witness Montalvo explains, “exempting [ISH] and demand response resources from the must offer requirement exposes the market to artificial supply constraints leading to inefficient prices and the exercise of market power.”³⁰ The must-offer requirement aims to restore the balance and enable the market to set prices based on fundamentals “based on the inclusion of all demand and all supply,” supported by the possibility of competitive entry and open access to the transmission system.³¹

²⁸ Independent Market Monitor for PJM, Analysis of the 2025/2026 RPM Base Residual Auction Part A at 5-6 (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). *See also* IMM ER25-682-000 Comments at 26-27.

²⁹ IMM ER25-682-000 Comments at 26-27.

³⁰ Attach. A (Third Montalvo Decl.) ¶ 6.

³¹ IMM ER25-682-000 Comments at 26.

PJM agrees. In its view, while the current exemption was justifiable to shield ISH resources from capacity non-performance risk when there were relatively few such resources on the system, it is no longer appropriate. “Since the categorical exemption was adopted in 2015, the resource mix in the PJM region has evolved significantly.”³² A subset of ISH resources, wind- and solar-powered generators, “have seen their UCAP levels grow from about 1,300 MW UCAP” in the 2018/2019 BRA to “about 3,860 MW UCAP available to be offered into” the 2025/2026 BRA.³³ And ISH resources comprise the vast majority of new supply waiting in the interconnection queue.³⁴ When they enter service, such resources “contribute to the reliability of the PJM Region” and “should be reflected as supply” in the BRA “like all other existing Generation Capacity Resources.”³⁵ Including such resources will “more accurately reflect the actual quantity” of available supply and “safeguard against the potential exercise of market power that may be exerted by the withholding of such resources.”³⁶ It also will support more efficient use of transmission system, including upgrades to support generator Capacity Interconnection Rights (CIRs).³⁷

³² PJM Must-Offer Filing at 14.

³³ *Id.* at 15.

³⁴ *Id.*

³⁵ *Id.* at 1. JCA witness Montalvo agrees. Because intermittent resources have very low operating costs, they can be expected to run whenever an energy source is available and, thus, to support resource adequacy consistent with their accredited values. Attach. A (Third Montalvo Decl.) ¶ 8.

³⁶ PJM Must-Offer Filing at 1-2. The potential for market power exercise is real because PJM’s Chief Economist found that “nearly half of exempt generation capacity—representing over 5,000 MW UCAP—is held in portfolios . . .” that enable them to profit from withholding. *Id.* at 19 (quoting Graf Must-Offer Aff. ¶ 15). *See also* Attach. A (Third Montalvo Decl.) ¶ 9 (“When supply and demand conditions are tight, as is the case now, even the withholding of a small quantity of eligible supply can be a profitable strategy.” And “[w]hile I do not know if parties have intentionally engaged in this strategy, leaving the market exposed to such strategies is poor market design.”). In the 2025/2026 BRA, roughly 1,600 megawatts (MW) of unforced capacity (UCAP) of categorically exemption supply was not offered, including about 1,100 MW (UCAP) of wind, solar, and battery resources. Graf Must-Offer Aff. ¶ 11.

³⁷ *See* PJM Must-Offer Filing at 24 (“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’ . . . because ‘load serving entities are paying to maintain

Because it is essential to maximize the supply available to the BRA, Joint Consumer Advocates strongly support extending must-offer requirements to all existing generators.³⁸ But the way PJM proposes to have such resources participate in the auction is not just and reasonable. Part of the reason for exempting intermittent resources in 2015 was to avoid subjecting them to potential non-performance penalties if PAI intervals occurred when, for reasons they cannot control, they lacked the ability to respond.³⁹ That concern remains valid.⁴⁰ Indeed, we submit it is even more salient today because intermittent resources' very low ELCC accreditation values already account for their inherent operational limitations.⁴¹ Those low accreditation values significantly reduce the resources' capacity revenue. PJM's recent Reliability Resource Initiative filing provided ELCC Class Ratings for fixed-tilt solar, tracking solar, and onshore wind resources of 5 percent, 7 percent, and 28 percent, respectively.⁴² To further penalize them when inherent operational limitations prevent them responding during a PAI is an excessive double

the deliverability of resources that are not contributing to system resource adequacy, effectively underutilizing the very infrastructure they are funding.”) (quoting Graf Must-Offer Aff. ¶ 23). PJM adds that hoarding of unused CIRs “can obstruct competitors from building new Generation Capacity Resources by requiring additional transmission upgrades to support new CIRs, which can lead to an overbuilt transmission system.” *Id.*

³⁸ As explained below, this includes not only the intermittent, storage, and hybrid resources to which PJM would extend the requirement but, also, demand resources that PJM has continued to exempt.

³⁹ Graf Must-Offer Aff. ¶ 9 (“The rationale for the original exemption, as detailed in PJM’s Capacity Performance Filing of December 12, 2014, was twofold. First, it recognized the inherent intermittency of certain resources and the potential for substantial performance penalties that could introduce uneconomic risk.”); Attach. A (Third Montalvo Decl.) ¶ 16.

⁴⁰ Attach. A (Third Montalvo Decl.) ¶ 17 (“[I]ntermittent resources still cannot control their fuel supply and output and should not be subject to performance penalties.”)

⁴¹ *Id.* (“PJM’s ELCC calculation appropriately reflects an intermittent resource’s anticipated contribution to reliability. Effectively, the ELCC already pre-adjusts for expected nonperformance by discounting the capacity accreditation.”).

⁴² PJM Interconnection, L.L.C., Tariff Revisions for Reliability Resource Initiative at 60-61, Docket No. ER25-712-000 (Dec. 13, 2024), eLibrary No. 20241213-5271.

penalty and not just and reasonable.⁴³ Therefore, while intermittent, storage, and hybrid resources should be subject to must-offer requirements, they also should be exempt from non-performance penalties that result from their inherent operational limits.⁴⁴ Notably, PJM has proposed to exempt RMR resources from non-performance penalties along with other capacity resource obligations.⁴⁵

Protecting resources from unjustly applied penalties also would eliminate the purported need to let them price such penalty risks into their offers.⁴⁶ PJM proposes to extend that flexibility not only to intermittent, storage, and hybrid resources but to all market sellers.⁴⁷ But PJM's proposal is not just and reasonable. Non-performance penalties are intended to spur capacity resource owners to take the steps needed to maximize their ability to perform. The threat of loss is the spur to action. PJM's proposal removes the sting from its penalty regimen by allowing all sellers to price (difficult-to-verify) performance risks into their offers. Other things equal, this will boost clearing prices or make it more

⁴³ See Attach. A (Third Montalvo Decl.) ¶ 19; see also IMM Part D Analysis at 10 (“The inclusion of a must offer obligation for categorically exempt intermittent and capacity storage resources should be coupled with the removal of PAI penalty liability for such resources when it is not physically possible to perform.”).

⁴⁴ See Attach. A (Third Montalvo Decl.) ¶ 19 (“I continue to recommend that intermittent and battery storage resources be excused from PAI penalties if they are operating at maximum *possible* output during the PAI event. The output of intermittent resources such as wind, solar, and hydro (as well as shorter duration battery storage) resources is largely determined by nature, and these resources are almost all but guaranteed to operate when the relevant *fuel* source is available. Conversely, they cannot operate without such fuel, regardless of penalties. Importantly, the ELCC calculations already account for these limitations . . . ”); IMM Part D Analysis at 6 (“The MMU also recommends that performance penalties not be applied to solar and wind resources when they are not capable of performing based on ambient conditions.”) Ambient conditions, such as time of day or prevailing winds, provide one means of identifying instances of non-performance outside a resource's control. Another indicator is correlation. When all wind or solar resources in an area have reduced output, that suggests the cause is the absence of wind or sunlight instead of a more unique factor affecting a particular resource. If, for administrative convenience or other reasons, ISH resources are exempted from all capacity non-performance penalties, then they also should be ineligible for over-performance bonuses.

⁴⁵ PJM December 9 Filing at 26.

⁴⁶ Attach. A (Montalvo Third Decl.) ¶ 17.

⁴⁷ PJM Must-Offer Filing at 10, 47.

likely that they will hit the cap. Indeed, for most resources, the increased capacity revenue likely would more than offset the expected value of any non-performance penalties.⁴⁸ Simply put, if non-performance penalties are to affect resource behavior as intended, they should come out of investor, not ratepayer, pockets.

Equally important, allowing resources to price non-performance risk into their offers weakens market power mitigation against economic withholding. As the IMM put it recently, PJM’s proposal is a “poison pill” that would “weaken market power mitigation for all capacity resources.”⁴⁹ Risk of future non-performance is not an out-of-pocket cost that can be measured and verified; it is a prediction. In fact, it is the product of multiple predictions: about the number and timing of future PAI intervals, a resource’s ability to respond during those intervals, and the levels of any penalties that will be imposed. Given the inherent uncertainties, Joint Consumer Advocates believe there is not a sufficiently concrete basis for the quantification and inclusion of such risks in seller offers. We fear that it will be easy for sellers to cloak economic withholding in pessimistic predictions of non-performance risk that PJM and the IMM cannot conclusively rebut.

III. PJM WRONGLY EXCLUDES DEMAND RESOURCES FROM ITS EXTENSION OF MUST-OFFER RULES.

Although PJM emphasizes the need to reflect in the BRA supply stack all existing resources that contribute to reliability, it wrongly excludes Demand Resources (DR) from must-offer requirements.⁵⁰ The omission is significant, as DR constitutes a significant portion of available supply. According to PJM, “[t]he total DR offered into the [2025/2026]

⁴⁸ That is a consequence of the auction’s single-clearing-price design, where the prices paid to all sellers are set by the cost structure (including, under PJM’s proposal, non-performance risk) of the marginal resource.

⁴⁹ IMM ER25-682 Comments at 28.

⁵⁰ PJM Must-Offer Filing at 29.

auction significantly declined from 9321.1 MW ICAP [in the 2024/2025 auction] to 8009.7 MW ICAP,” a 14% decrease.⁵¹ As a percentage of total offered supply, DR participation declined from 6.1 percent in the 2024/2025 BRA to 4.7 percent in the 2025/2026 BRA.⁵²

While the resources at issue are “Demand Resources,” they have elected to participate in PJM markets as supply. As such, if BRA prices are to be based on market fundamentals, these resources should be included as among existing capacity supply resources.⁵³ Moreover, like other supply resources, Demand Resources can be held in portfolios with other supply resources. Thus, Demand Resources can be withheld physically or economically for the benefit of an owner or affiliate’s remaining portfolio. The IMM has explained that “[w]hen demand resources are pivotal, as they were for the 2025/2026 BRA, they have structural market power and can and do exercise market power,” which can “increase the clearing prices above the competitive level” and “benefit the owners of capacity portfolios that include such resources.”⁵⁴ Concerns about potential market power and the need for prices to reflect all available supply relate just as strongly to Demand Resources that elect to participate as supply as they do to other supply resources.

PJM’s attempt to preserve a continued must-offer exemption for Demand Resources falls flat. PJM posits that Demand Resources are “fundamentally unlike Generation Capacity Resources” in that they provide capacity “through a reduction in

⁵¹ PJM 2025/26 Base Residual Auction Report at 8.

⁵² *Id.* The 2024/2025 calculation is: $9,321.1 \text{ MW DR} \div (171,324.2 \text{ MW} - 17,262 \text{ MW}) * 100 = 6.05\%$.

⁵³ See PJM Must-Offer Filing at 1 (explaining that intermittent, storage, and hybrid resources “contribute to the reliability of the PJM Region” and “should be reflected as supply” in the BRA “like all other existing Generation Capacity Resources”).

⁵⁴ IMM Part D Analysis at 6.

energy consumption, as opposed to injection of energy into the transmission system.”⁵⁵ But, even if true,⁵⁶ it is not clear why it would matter. Load-side interests can also own generation and be long on capacity, or be hedged against price increases, so that they stand to make more money than they lose if capacity prices increase. And Curtailment Service Providers or owners or other Demand Resources can be owned by or affiliated with companies with large generation portfolios. PJM simply asserts that “Demand Resources do not present the same level of concern with respect to physical withholding as do Generation Capacity Resources,”⁵⁷ but offers no support for that claim.

PJM witness Graf muses that requiring Demand Resources to offer into the capacity market raises “philosophical and practical concerns about the appropriate role of the market operator in dictating consumer behavior,” alleging that it would “essentially force consumers to commit to reducing their consumption, even if market conditions or their individual preferences change.”⁵⁸ But no one has forced the loads at issue to participate in the PJM markets as supply, instead of just reducing their energy, capacity, and other costs by reducing their consumption. It is a voluntary choice for load to participate as supply, or for end users to sign up with a Curtailment Service Provider. That such choices come with future responsibilities does not distinguish them from Generation Capacity Resources. As JCA witness Montalvo explains:⁵⁹

⁵⁵ PJM Must-Offer Filing at 29.

⁵⁶ Reducing energy consumption and injecting energy into the transmission system are not the only possibilities. In many cases, energy is injected into the distribution system or at the site of customer load by operating behind-the-meter generation.

⁵⁷ PJM Must-Offer Filing at 30.

⁵⁸ Graf Must-Offer Aff. ¶ 31.

⁵⁹ Attach. A (Third Montalvo Decl.) ¶ 11.

DR participants qualify voluntarily to serve as capacity, as with every other resource, and, once qualified, like all other resources, they should be required to offer their qualified capacity. This treatment is especially important in circumstances of extremely tight margins, when small changes in supply can result in large changes in prices, and when concerns about market power and strategic bidding are acute.

PJM Witness Graf also suggests that a must-offer requirement on Demand Resources could be difficult to enforce.⁶⁰ While PJM could require Demand Resources to offer all “‘accredited’ capacity (that is, the capacity in their DR Sell Offer Plan),” he says, Demand Resources that wished to withhold could evade that requirement by reducing their DR Sell Offer plan.⁶¹ Even if that is true (and we are not sure it is), that situation would be no worse than today when there is no must-offer requirement to evade.

Regardless of whether market participants might find a way around it, PJM should not have carved out Demand Resources from its extension of must-offer requirements. That a market power mitigation rule may be less than airtight is not a good reason to forgo the protection entirely. Because existing Demand Resources have elected to participate as supply, they should be subject to the same must-offer requirements as other existing capacity supply.

IV. PJM WRONGLY FAILS TO APPLY A MARKET SELLER OFFER CAP TO DEMAND RESOURCES PARTICIPATING AS SUPPLY.

For similar reasons, PJM errs in not subjecting Demand Resources to a Market Seller Offer Cap. As noted above, under current conditions, *all* Capacity Market Sellers fail the three-pivotal-supplier test and have structural market power.⁶² This includes

⁶⁰ Graf Must-Offer Aff. ¶ 33.

⁶¹ *Id.*

⁶² PJM Must-Offer Filing at 31.

Demand Resources participating as Capacity Market Sellers. As the IMM observed, Demand Resources “have structural market power and can and do exercise market power.”⁶³ To protect against the exercise of market power, PJM imposes (or proposes to impose) on other existing capacity resources both a must-offer requirement (to guard against physical withholding) and a Market Seller Offer Cap (to guard against economic withholding).⁶⁴ But PJM imposes no such cap on offers by Demand Resources.⁶⁵

It should do so. “The MMU recommends that demand resources have defined and enforced market seller offer caps, like all other capacity resources.”⁶⁶ To do otherwise affords a single class of capacity resource the ability to manipulate and increase prices auction wide by means of its unconstrained bid offers. JCA witness Montalvo agrees with the Independent Market Monitor’s proposal,⁶⁷ and offers a further recommendation. Today, he explains, Demand Resource performance is measured by comparing its consumption during a PAI event to the resource’s claimed maximum consumption—regardless of whether the resource otherwise would have consumed at that level.⁶⁸ This approach may credit Demand Resources with “performing” even when it continues consuming at the same level during a PAI interval as it was before that event.⁶⁹ Instead, witness Montalvo

⁶³ IMM Part D Analysis at 6.

⁶⁴ See PJM Must-Offer Filing at 12, 31 & n.86 (citing *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,151, P 52 (2016) (“Market power mitigation in the [PJM] capacity market entails limiting the capacity offers of all existing capacity resources to either the default or unit-specific value to prevent economic withholding that could otherwise result in market clearing capacity prices exceeding a competitive level.”)).

⁶⁵ *Id.* at 32 (“[E]very Sell Offer for an *Existing Generation Capacity Resource* is capped by the Market Seller Offer Cap.”) (emphasis added); Third Montalvo Decl. ¶ 10.

⁶⁶ IMM Part D Analysis at 6.

⁶⁷ Attach. A (Third Montalvo Decl.) ¶ 19.

⁶⁸ *Id.*

⁶⁹ *Id.*

urges that Demand Resource performance be measured based on the actual reduction delivered—metered consumption before the instruction less metered consumption after it.⁷⁰

V. PJM FAILS TO ADDRESS OTHER SERIOUS BRA FLAWS.

Although we support extending must-offer requirements to ISH resources, other aspects of PJM’s filing are not just and reasonable. And PJM’s section 205 filings here and in other dockets together fall far short of the full complement of changes that will be needed to produce just and reasonable outcomes in the 2026/2027 BRA. It bears repeating that PJM believes that even with the imposition of all its recent section 205 proposals there is a significantly high probability of repeated instances of the capacity auction clearing at the market offer cap region wide. Thus, and as Joint Consumer Advocates explained in their protest in Docket No. ER25-682-000, the Commission must couple any action on PJM’s section 205 filings with additional section 206 relief to ensure just and reasonable rates. Without limiting the relief requested in the JCA Complaint or elsewhere, we highlight here one of the most serious flaws.

While PJM has acted to recognize the reliability contributions of RMR resources (in Docket No. ER25-682-000) and ISH resources (in this docket), it has not proposed crucial reforms needed to recognize combustion resources’ contributions to resource adequacy. As explained in the JCA Complaint:⁷¹

PJM’s market design also unreasonably suppresses available market supply by double discounting the capacity value of gas-fired generation. The IMM explains that “[m]ost of the risk recognized in the ELCC model is winter risk but the ELCC accreditation values for thermal resources are capped

⁷⁰ *Id.* ¶ 13.

⁷¹ JCA Complaint at 27 (quoting IMM Part A Analysis at 6) (footnote omitted).

at the summer ratings” rather than their winter ratings. This inconsistent approach shorts supplies in the capacity market because PJM disregards that combustion resources like combined cycle generators (CCs) and combustion turbines (CTs) can produce at higher levels during cold weather.

Discounting gas resources’ ELCC values to reflect winter risk but applying that discount to already-lower summer ratings is an unjustified double whammy that understates the resources’ actual reliability contributions. On average, the IMM has estimated, this approach reduced CT and CC capacity accreditations by nearly 9 percent.⁷² JCA witness Montalvo explains that the understatement translates to thousands of megawatts of actual capacity value going unrecognized and functionally excluded from the BRA, artificially limiting supply and raising prices.⁷³ PJM should remedy this by accrediting combustion resources using winter capacity ratings that correspond seasonally to the winter risks driving those resources’ ELCC values.⁷⁴

VI. 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. While PJM’s section 205 filing in this docket proposes one change that will help—extending must-offer requirements to intermittent, storage, and hybrid resources—it has paired that proposal with other, unjust and unreasonable ones (subjecting such resources to excessive penalties and enabling them to price the manufactured risks into their offers). To

⁷² *Id.* (quoting First Montalvo Decl. ¶ 39 (appended to this protest as Attach. A, Ex. B (First Montalvo Decl.)); citing IMM Part A Analysis at 5).

⁷³ *Id.* at 28 (quoting First Montalvo Decl. ¶ 40 (appended to this protest as Attach. A, Ex. B (First Montalvo Decl.)); *see also* Attach. A (Third Montalvo Decl.) ¶ 14.

⁷⁴ Attach. A (Third Montalvo Decl.) ¶ 14.

the extent the proposals are severable, Joint Consumer Advocates ask the Commission to accept the first change, reject the other two, and direct PJM to exempt ISH resources from PAI penalties as described above. If the proposals are not severable, then we ask the Commission to reject PJM's filing and act under section 206 to extend the must-offer requirement to ISH resources without the objectionable penalty exposure and offer-cap changes.

And regardless of the disposition of PJM's filing in this proceeding, further action under FPA section 206 will be required. As we have explained elsewhere, PJM has failed to propose, in this docket or its other section 205 filings, a raft of additional changes that need to be made to ensure that 2026/2027 BRA outcomes will be just and reasonable. As such, Commission rulings on PJM's section 205 filings cannot be its final word on changes to the BRA design. The Commission must also grant the section 206 complaints in Docket Nos. EL24-148-000, EL25-18-000, and EL25-46-000 to make other needed changes as we have explained or will explain in those dockets.

Respectfully submitted,

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January 10, 2025

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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 10th day of January, 2025.

/s/ Jeffrey A. Schwarz

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