

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER26-3380-000

**PROTEST, MOTION TO REJECT, AND ALTERNATIVE REQUEST
FOR THE IMPOSITION OF CONDITIONS OF JOINT CONSUMER
ADVOCATES**

Pursuant to Rules 211 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,¹ the Delaware Division of the Public Advocate, District of Columbia Office of People's Counsel, Illinois Citizens Utility Board, Office of the Illinois Attorney General, Maryland Office of the People's Counsel, and New Jersey Division of Rate Counsel (Joint Consumer Advocates)² protest the July 31, 2026, filing by PJM Interconnection, L.L.C. (PJM) of a proposed Reliability Backstop Procurement (RBP) framework.³ For the reasons stated here, the Commission should reject the RBP as unjust and unreasonable. If this request is denied, the Commission should condition acceptance of the proposal as described below.

SUMMARY

The PJM Filing purports to implement "just one part"⁴ of the January 16, 2026, "Statement of Principles Regarding PJM" that was signed earlier this year by federal officials on behalf of the White House National Energy Dominance Council and the

¹ 18 C.F.R. §§ 385.211, 385.212.

² Each of the Consumer Advocates has separately and timely moved for leave to intervene in this proceeding.

³ PJM Interconnection, L.L.C., Reliability Backstop Procurement to Address Resource Adequacy Concerns Stemming from New Load Adjustments (July 31, 2026), eLibrary No. 20260731-5214 (PJM Filing).

⁴ *Id.* at 1-2.

governors of all thirteen PJM states (but not the Mayor of the District of Columbia).⁵ Those principles include calling for the development of a “Reliability Backstop Auction” to “procure *new* capacity,” and provide that “PJM should allocate the cost of any *new* capacity procured through” the auction to Load Serving Entities (LSEs) “with new data centers that have not self-procured new capacity or agreed to be curtailable.”⁶ Along the same line, the White House issued its Ratepayer Protection Pledge on March 4, 2026, which states:⁷

Companies will build, bring, or buy the new generation resources and electricity needed to satisfy their new energy demands, paying the full cost of those resources whether by building, or buying from, new or otherwise additive power plants. Where possible, these companies will also add more capacity that serves the broader public by increasing supply.

* * *

Companies will pay for all new power delivery infrastructure upgrades required to service their data centers, including adequate network upgrade costs to ensure that these expenses are not passed on to the ordinary household.

PJM’s proposed tariff language does not require that large load customers “pay[] the full cost of” resources “needed to satisfy their new energy demands.” RBP would instead allocate new capacity costs to “each Electric Distributor’s zone/area using that zone/area’s pro-rata share of the difference between the forecasted Load Adjustments for the 2026/2027 Delivery Year and the 2028/2029 Delivery Year.”⁸ The subsequent

⁵ *Statement of Principles Regarding PJM*, National Energy Dominance Council (Jan. 16, 2026), <https://energy.gov/documents/statement-principles-regarding-pjm> (<https://perma.cc/35HJ-W56E>) (Statement of Principles).

⁶ *Id.* at 1-2 (emphasis added).

⁷ Press Release, The White House, Ratepayer Protection Pledge (Mar. 4, 2026), <https://www.whitehouse.gov/releases/2026/03/ratepayer-protection-pledge/>. PJM reports that on July 23, 2026, “the signatories to the Ratepayer Protection Pledge expanded to include more than 200 utilities, data center developers, and cooperatives, and state governors, including the governors of PJM states Tennessee, West Virginia, Ohio, and Indiana.” PJM Filing, Transmittal at 18.

⁸ PJM Filing, Attach. B (Proposed Tariff), Attach. DD § 18.3(a).

allocation of those costs among retail customers—i.e., the assignment of those costs to large loads or others—is dependent on actions at the state/retail level. As PJM states succinctly in the filing’s Transmittal Letter, the “success of the RBP requires state participation.”⁹

The machinery through which a state will act is described in the filing. PJM proposes that “cost allocation to LSEs within an Electric Distributor’s zone/area be based on ‘the state and/or [Relevant Electric Retail Regulatory Authority (RERRA)]-determined allocation of cleared RBP [Unforced Capacity (UCAP)] megawatts [(MW)] to LSEs within each Electric Distributor’s zone/area, as reported by each Electric Distributor to PJM.”¹⁰ PJM affiant Danielle Croop explains that the “Electric Distributor designated to coordinate with the states and/or RERRAs” will report, “where available,” to PJM the “MW for the LSEs in an Electric Distributor’s zone/area.”¹¹ In other words, the Electric Distributor¹² will tell PJM how its RERRA and/or state commission plan to allocate the RBP costs to Load Serving Entities in the state commission’s zone/area. Ms. Croop also states that besides the LSE, the RERRA or state commission may also allocate “RBP UCAP MW to specific . . . end-use customers.”¹³

⁹ PJM Filing, Transmittal at 10.

¹⁰ *Id.* at 97-98 (quoting Proposed Tariff, Attach. DD § 18.3(b)(iii)).

¹¹ PJM Filing, Attach. C, Affidavit of Ms. Danielle Croop ¶ 51 (Croop Aff.).

¹² Section 1, Definitions E - F of the PJM Operating Agreement defines “Electric Distributor” as a “Member that: 1) owns or leases with rights equivalent to ownership electric distribution facilities that are used to provide electric distribution service to electric load within the PJM Region; or 2) is a generation and transmission cooperative or a joint municipal agency that has a member that owns electric distribution facilities used to provide electric distribution service to electric load within the PJM Region.” Ms. Croop does not elaborate on how (or by whom) an Electric Distributor would be “designated.”

¹³ Croop Aff. ¶ 41.

An example (using actual companies instead of acronyms) may help in understanding how PJM’s proposal is intended to work. In Illinois (a state represented by the Joint Consumer Advocates), PJM’s process would apparently be as follows: Commonwealth Edison Company (ComEd), the Electric Distributor for the PJM ComEd zone, will report to PJM how the Illinois Commerce Commission (ICC), a RERRA in the ComEd zone, plans to assign RBP costs to LSEs, which include ComEd, the default supplier, as well as the alternative retail energy suppliers that serve ComEd customers (because Illinois is a restructured state). We assume that the ICC will need to engage in some process to identify large load customers or LSEs with large load customers. From that list, the ICC will then have to identify the specific LSE linked to each large load customer—though the ICC questions whether it will have access to the data necessary to make these identifications.¹⁴ Finally, the ICC would have to identify a means by which to “allocate” those charges to the LSE or specific large load customers—a process that may well take more time than feasible, given the proposed RBP schedule. This allocation to be developed by state commission or RERRA is given a name by PJM, the “RBP Obligation” (RBO).¹⁵

In the “unexpected event”¹⁶ that “RBOs are ultimately not reported to PJM,” PJM proposes that the costs for up to 15 years of capacity payments to zones/areas to which RBP cost responsibility is assigned will simply default to a “back-up cost allocation methodology to determine allocation to LSEs.” In other words, where a state does not act—or acts late—zonal RBP charges are allocated onto the general ratepayer body within the

¹⁴ Illinois Commerce Commission Comments at 6 (Aug. 19, 2026), eLibrary No. 20260819-5134.

¹⁵ PJM Filing, Transmittal at 98.

¹⁶ *Id.*

relevant zone.¹⁷ Where costs are assigned to a specific PJM zone, and large load customers in that zone fail to materialize in the Delivery Year, other customers in the affected zone will be assigned the RBP costs, barring a binding agreement for the large load to cover its stranded costs. In other words, even where a state is able to navigate PJM's process in a timely manner, the proposed tariff provisions can result (e.g., where the forecasted large load customer does not materialize) in allocating the costs in a manner directly contrary to the outcome sought in the Statement of Principles and the commitments made in the Ratepayer Protection Pledge.¹⁸

These concerns aside, RBP falls well short of the just and reasonable standard. The proposal effectively defeats itself, as it is awash in fundamental contradictions:

- PJM asserts that ensuring regional reliability demands the immediate procurement of 6.8 gigawatts (GW) of new supply, but proposes various RBP opt-outs¹⁹ that could shrink that number substantially—calling into question the extent of any claimed reliability need.
- Although RBP permits a reduction in the procurement target to reflect opt-outs and large load self-supply, there is no comparable provision to reduce the target to reflect demand reductions that have occurred since the establishment of the Base Residual Auction (BRA) reliability requirement for the 2028/2029 Delivery Year or which may occur before October 21, 2026 (the deadline for the submission of opt-out and offsetting self-supply requests²⁰) if data centers are delayed, cancelled, or otherwise not expected to be in-service by the 2028/2029 Delivery Year.

¹⁷ *Id.* at 99 (“[I]f no allocation is reported by the relevant Electric Distributors with allocated RBP UCAP MW, PJM will allocate RBP Charges based on the Peak Load Contribution submitted to PJM for the LSEs in the relevant zone/area.”).

¹⁸ PJM explains: “[a]t bottom, ‘*exclusive jurisdiction*’ rests with the states to ensure that the appropriate retail customers, i.e., new large loads, including data centers—and not residential customers or small industrial customers—are suballocated costs associated with the wholesale costs of RBP Resources procured through the RBP.” *Id.* at 16 (footnote omitted).

¹⁹ *Id.* at 31-33; Proposed Tariff, Attach. DD § 18.1(d).

²⁰ PJM Staff & Charles River Associates, *Reliability Backstop Procurement Execution: Post CIFP Workshop* at 5 (Aug. 10, 2026) <https://www.pjm.com/-/media/DotCom/committees-groups/cifp-rbp/2026/20260810/20260810-pjm-and-cra-reliability-backstop-procurement-presentation.pdf> (requested opt-outs and offsets to be reported by October 21, 2026).

- RBP seeks to alleviate a one-time, near-term capacity shortfall, yet truncates the universe of possible suppliers through extended commitment requirements. New capacity available as of the beginning the 2028/2029 Delivery Year is eligible to bid only if the resource can be offered for a “fixed 15-Delivery Year term.”²¹
- PJM proposes that selected resources must be paid for as long as fifteen years, but at the same time explains that the reliability shortfall can be met through bilateral agreements of only “five years [because these] will address the reliability shortfall.”²²
- Unlike the BRA, PJM proposes no market mitigation protocol for the RBP, even as it admits that the RBP’s pay-as-bid design is subject to market power concerns, including that “sellers are more likely to offer the expected clearing price” rather than their marginal cost.²³
- PJM posits mitigation measures are not needed in part because an abundant supply of competitors will discipline bidders.²⁴ But the supporting data offered by PJM shows the opposite, and the assertion is contradicted by PJM’s acknowledgement that sellers will bid the expected clearing price—not their marginal cost.²⁵
- PJM proposes using the price at which resources would have cleared in the 2027/2028 BRA but for the imposition of a price collar (\$555/MW-day) to set the weighted average RBP ceiling price.²⁶ The BRA cap price is set using the Cost of New Entry for a combustion turbine reference unit and constitutes scarcity rent for a one-year capacity commitment. A cap set on that basis is irrelevant to the determination of what should be paid to a set of heterogeneous RBP-selected resources earning these rents for up to fifteen years. And PJM admits that a fifteen-year price lock “creates revenue certainty” and “may improve financing opportunities” but fails to discount the RBP cap to reflect this reality.²⁷

²¹ PJM Filing, Transmittal at 48; Proposed Tariff, Attach. DD § 18.4.

²² PJM Filing, Transmittal at 39.

²³ *Id.* at 71 (quoting Croop Aff. ¶ 33).

²⁴ *Id.* at 68-69. If substantial amounts of new generation are in fact in the offing, then that would be an indication that the BRA and related initiatives are working—which would counsel against adopting a massively expensive (and, as we will demonstrate, ill-conceived) supplemental generation procurement program.

²⁵ *Id.* at 71.

²⁶ *Id.* at 61-62.

²⁷ *Id.* at 63-64.

- RBP includes no locational procurement signal, as PJM asserts that it does not have the information needed to determine locational parameters for a 15-year period. That assertion cannot be reconciled with PJM's intention to allocate RBP costs to zones based on their large load forecasts. PJM understands the locations of the shortfall, but RBP fails to target new capacity procurements that are tied to those zones.²⁸ This risks burdening ratepayers with additional new transmission and energy costs that could be avoided or ameliorated through the use of a locational procurement signal.
- The RBP payments are structured as contracts for differences with RBP resources bidding into the BRA as price takers.²⁹ This means that the total payment to an RBP-selected resource will remain unchanged—even as PJM's other initiatives incent the development of new generation and its proposed Interim Resource Adequacy Service (IRAS) removes new data center load from the BRA.³⁰ The result is that, as the region's generation supply catches up with demand, and BRA prices moderate, the RBP payments will remain as excessive and unjustified as ever.

In short, this is not a situation in which PJM has filed a more or less reasonable proposal that the Commission is duty-bound to accept even though there may be a more reasonable alternative. As shown above and detailed below, PJM's own filing explains why the RBP is a flawed, unjust, and unreasonable proposal. While it may be the case that there is some level of capacity shortfall that needs to be addressed near-term to ensure reliability, PJM has failed to show that the proposed RBP is the way to procure it. As was made clear during the stakeholder process, there are more efficient, cost-effective, and just and reasonable ways to accomplish this goal, including potentially through PJM's recently-filed IRAS proposal.

²⁸ See Croop Aff. ¶ 46 (listing chart of zonal allocations and stating "[t]he initial allocation of RBP UCAP MW to each Electric Distributor zone/area will be based on Load Adjustments, as set forth in PJM Table B9b from the 2026 PJM Load Forecast, and each zone/area's share of the Initial RBP Target of 6,831.3 MW").

²⁹ PJM Filing, Transmittal at 79-81; Proposed Tariff, Attach. DD §§ 18.5(g), 18.6.

³⁰ Proposal of PJM Interconnection, L.L.C. to Establish Interim Resource Adequacy Service and a Large Load Registry to Address System Reliability, Transmittal Letter at 109, Docket No. ER26-3515 (Aug. 13, 2026), eLibrary No. 20260813-5118 (PJM IRAS Filing).

The Commission should reject the proposed RBP because it will needlessly inflate costs—no matter who is ultimately called upon to pay them.³¹ Instead, we urge the Commission to adopt a subscription-based model. Alternatively, the Commission could consider accepting and making the IRAS proposal, under which new large load that does not self-supply will be subject to curtailment and excluded from the BRA beginning in the 2029/2030 Delivery Year, immediately effective. The Commission could consider advancing IRAS such that beginning with the 2028/2029 Delivery Year large load customers will have the option of either bringing their own generation sufficient to meet their needs or have that amount of load subject to curtailment if and as necessary.³²

Alternatively, if the Commission declines to reject RBP, then Joint Consumer Advocates propose a set of conditions that should be imposed as part of any approval of the proposal. The conditions are designed to limit needless and excessive RBP cost exposure while continuing to meet the claimed objectives of RBP.

³¹ The large load data centers that are at the heart of PJM’s claimed need for new capacity have made statements that go both ways on the question of whether they acknowledge the obligation to fund the new generation needed to address the shortfall (and beyond). On July 23, 2026, the “Data Center Coalition” (DCC) issued a press release concerning the Ratepayer Protection Pledge, in which it asserted: “The data center industry remains committed to being responsible partners where we operate, which includes paying our full energy costs and investing in local jobs and workforce development.” Press Release, DCC, Statement from the Data Center Coalition on the White House Ratepayer Protection Pledge (July 23, 2026), <https://www.datacentercoalition.org/cpages/dcc-statement-on-ratepayer-protection-pledge-20/6a62879e96385f05ff0782c6>. Two months earlier, on May 18, 2026, the DCC issued a press release announcing that it had commissioned a “new independent report” by a consulting firm that “finds no historical evidence that data centers are driving increases in residential electricity costs under existing rate structures.” The release also notes that the report found that, “[i]n the PJM market (13 states and Washington, D.C.), data center load growth accounted for approximately half of the recent increase in capacity prices, with the remainder attributable to market design changes, supply constraints, and power plant retirements.” Press Release, DCC, New Report Finds No Evidence Data Centers are Driving Higher Residential Electricity Costs (May 18, 2026), <https://www.datacentercoalition.org/cpages/e3-energy-white-paper>.

³² PJM IRAS Filing at 49, 109.

I. PROTEST

PJM says that reliability demands that nearly 7 gigawatts of new supply be procured in the near-term, yet permits an untold number of megawatts (or possibly gigawatts) to opt-out of the auction with no evident reliability consequence. RBP will saddle ratepayers with fifteen years of payments, even as PJM admits that the proposed commitment period is as much as a decade longer than the five-year bilateral procurements that will meet PJM's reliability needs. The design constrains, if not prohibits, the participation of short-term resources that are most likely to align with the immediate-term need. The proposed price cap is unjustified, as it bears no meaningful relationship to the costs of the resources to be procured, is excessive, and was lifted from a design in which it is used in setting clearing prices for a one-year commitment, not a period as long as fifteen years. Extended price certainty should mean lower, not higher, prices. PJM admits that its RBP's pay-as-bid design is subject to market power concerns because sellers are more likely to offer the expected clearing price rather than their marginal cost, yet its proposal contains no market mitigation protocols. A competitive procurement rife with obvious market power problems that includes no meaningful mitigation measures is per se unjust and unreasonable.

A. RBP's design is contrary to PJM's assertion that the proposal is needed to address a reliability risk associated with a 6.8 GW capacity shortfall.

PJM says that the RBP is necessary to address the BRA's second consecutive failure to clear sufficient capacity to meet the region's reliability requirement. As explained in the Transmittal Letter:³³

PJM's BRA for the 2028/2029 Delivery Year, which ran from June 30, 2026, to July 7, 2026, cleared 6,831.3 MW (in

³³ PJM Filing, Transmittal at 7.

Unforced Capacity (“UCAP”)) short of PJM’s Regional Transmission Organization (“RTO”)-wide reliability requirement at the market price cap of \$325/MW-day.

The mechanics of the RBP proposal call the extent of the claimed reliability risk into question. Public power entities (municipally-owned and cooperative utilities) are afforded substantial opt-out rights from the requirement to secure RBP capacity. PJM explains:³⁴

the region-wide Initial RBP Target will be further reduced by Opt-Out UCAP MW to the extent that an Electric Distributor, whose rates are not regulated by the state (e.g., cooperatives or municipal utilities), that is unable to allocate costs associated with capacity bid submission in the RBP to large loads, submits a request to PJM to opt-out from the RBP within the bid submission window and provides relevant information and written support.

In addition, utilities who are required to participate in state-enacted peak shaving programs are also authorized to opt-out to the extent of such participation. Proposed Tariff Attachment DD, section 18.1(d) provides in part:³⁵

The Initial RBP Target shall be further decremented, if requested by an Electric Distributor, by up to the associated MW quantity of load that participates in a peak shaving adjustment program where such Electric Distributor’s zone/area addresses their capacity needs through peak shaving adjustment programs that are codified in state law and that also meet the requirements of Tariff, Attachment DD-2.

If exercised, these opt-outs would reduce the amount to be procured, perhaps significantly. For example, three Virginia-based cooperatives (co-ops) appear to be in line for initial allocations of RBP UCAP MWs (in the aggregate) of 1,940.9 MW, or more than

³⁴ *Id.* at 32-33.

³⁵ Proposed Tariff, Attach. DD § 18.1(d).

1.9 GW.³⁶ Were the three Virginia coops to exercise opt outs for these megawatts, that action could reduce the amount of capacity procured in the RBP, perhaps by as much as 28%. The potential scope of the megawatts that would be “decremented” if the peak shaving plan opt-out is exercised is not specified but is evidently unconstrained and could well be substantial.

The ability to opt-out—and thereby lower the amount of the shortfall substantially—calls into question the urgency and scope of the claimed need. The assertion that reliability imperatives demand taking on a multi-year and multi-billion-dollar commitment to procure 6,831 megawatts of new capacity does not accord with a design that permits ignoring substantial megawatts of the claimed need with no apparent reliability consequence.³⁷

In addition, the shortfall is premised on large load development forecasts that are suspect at best, and could be materially incorrect by October 21, 2026—the date on which opt-outs and qualifying supply must be reported to PJM in order for the final RBP procurement target to be set. While the shortfall is fueled by the anticipated arrival of substantial new data center load, how much of this new demand will appear (let alone do so in accord with scheduled arrival dates) is fraught with uncertainty. The facts on the ground are changing rapidly. In May, a “JP Morgan analysis found that more than 60% of data-center capacity planned for completion in 2027 isn’t yet under construction, and

³⁶ Croop Aff. ¶¶ 46-47 (associated tables showing initial RBP UCAP MW allocations for NOVEC (Northern Virginia Electric Cooperative), ODEC (Old Dominion Electric Cooperative) and Rappahannock Electric Cooperative (REC), and an example of qualifying self-supply decrements submitted by ODEC and REC (Qualifying RBP Offset UCAP MW)).

³⁷ To be clear, the answer to this concern is not to eliminate the opt-out provisions. Our point is simply that the presence of substantial opt-out eligibility reveals that the supposed reliability need for these resources is unproven and, as we develop below, could be met more efficiently by other means. Those include accelerating the date when new large loads that do not self-supply become subject to IRAS.

another 7% is delayed.”³⁸ Even more recently, Exelon Corporation announced a 7-GW reduction (to 11 GW) in its “high probability” data center load within PJM following a review that resulted in culling out speculative projects.³⁹

In like regard, RBP has been developed against a backdrop of ever-diminishing large load forecasts. On April 17 of this year, PJM identified an anticipated RBP procurement target of 14.8 GW.⁴⁰ In a little over three months, that forecast has fallen by more than half, to 6.8 GW, a rate of 2.3 GW per month.⁴¹ Notwithstanding this trend line, the RBP contains no measures to reduce the final RBP procurement target to reflect additional data center load that is delayed or cancelled (and thus not expected to be in-service by the 2028/2029 Delivery Year) before October 21, 2026, when the requests for opt-outs and/or qualifying self-supply offsets are due. In the same way that PJM proposes to reduce the RBP procurement amount to reflect new self-supply, that amount should also be adjusted to reflect known reductions in large load demand (and require reporting of same).⁴²

³⁸ Katherine Blunt, *America’s Data-Center Build-Out Is Falling Way Behind Schedule*, Wall Street Journal (June 3, 2026), https://www.wsj.com/tech/ai/americas-data-center-build-out-is-falling-way-behind-schedule-c408a9a8?mod=hp_lead_pos1.

³⁹ Ethan Howland, *Exelon ‘High Probability’ Data Center Load Falls 40%*, Utility Dive (July 31, 2026) <https://www.utilitydive.com/news/exelon-data-center-load-new-jersey-battery-earnings/826686/>.

⁴⁰ PJM Staff, *Reliability Backstop Procurement Design: Reliability Backstop CIFP* at 11 (Apr. 16-17, 2026), <https://www.pjm.com/-/media/DotCom/committees-groups/cifp-rbp/2026/20260416/20260416-item-05---pjm-reliability-backstop-procurement-design---pjm-presentation.pdf>.

⁴¹ Croop Aff. ¶ 4.

⁴² Note that the failure to credit this reduction is significant. The delay or cancellation of just one large data center that is not reflected in the RBP procurement target could result in the acquisition of 1,000 MW of knowingly unneeded capacity. Charging an average price of \$555/MW-day for 15 years translates into more than \$3 billion in gross capacity costs to ratepayers to serve an unproven shortfall (1,000 MW x \$555/MW-day x 365 x 15 = \$3,038,625,000). By any measure that is unjust and unreasonable.

B. PJM fails to demonstrate that 15-year resource commitments are needed to meet the capacity shortfall.

PJM repeatedly characterizes the RBP as a “one-time, supplementary mechanism” and an “interim step” to address a “near-term” shortfall.⁴³ The RBP identifies its object as a discrete, near-term reliability gap rather than a durable long-term deficiency. The Initial RBP Target is the 6,831.3 MW UCAP shortfall observed in the July 2026 BRA for the 2028/2029 Delivery Year.⁴⁴ No additional RBP procurements are proposed.

The design of the selection process reinforces the near-term orientation. To pass Stage 1 gating, a resource must demonstrate a firm in-service date no later than June 1, 2032.⁴⁵ In Stage 2, PJM does not select on price alone: offers are ranked first by earliest commercial operation date (COD) and only then, within that ordering, by least levelized cost of capacity, up to the target.⁴⁶ The RBP thus places a premium on speed—on the capacity that can be delivered fastest against a near-term gap.

Notwithstanding its near-term orientation, the RBP limits supply options in ways that are contrary to its stated purpose. First, RBP purchases only one product: a “fixed 15-Delivery Year term” running from the 2028/2029 Delivery Year through the 2042/2043 Delivery Year.⁴⁷ The 2042/2043 endpoint is set; resources with later CODs will be subject

⁴³ PJM Filing, Transmittal at 6-7, 21-22.

⁴⁴ *Id.* at 31; Proposed Tariff, Attach. DD § 18.1(a).

⁴⁵ Proposed Tariff, Attach. DD § 18.5(f)(i)(1).

⁴⁶ *Id.* § 18.5(f)(ii); *see also* PJM, Supplemental Filing, Attach. A, Supplemental Affidavit of Ms. Danielle Croop (Aug. 14, 2026), eLibrary No. 20260814-5244 (explaining Delivery Year prioritization of RBP resource selection).

⁴⁷ PJM Filing, Transmittal at 48; Proposed Tariff § 18.4 (“The Reliability Backstop Procurement shall offer commitments for RBP UCAP MW for a fixed period of fifteen (15) Delivery Years, starting with the 2028/2029 Delivery Year.”).

to shorter payout periods, but the terminal delivery year remains unchanged.⁴⁸ The limitation that resources cannot offer a commitment term ending before 2042/2043 excludes those that can energize quickly and in time for the 2028/2029 Delivery Year but are unwilling or unable to be bound through 2042/2043 Delivery Year. The design defeats itself by requiring the purchase of longer-term resources while constraining the participation of shorter-term resources that could better align with the identified need.

This limitation notwithstanding, PJM does not defend the 15-year commitment term as necessary to cure the reliability shortfall. PJM instead supports this facet of the proposal by pointing to the Statement of Principles, referencing the document's call to "[p]rovide 15-year price certainty for new capacity resources."⁴⁹ PJM offers no analysis comparing the ratepayer cost of a 15-year term against shorter alternatives. And the Charles River Associates (CRA) Request for Information (RFI) survey information PJM relies upon shows that there are resources willing to agree to shorter terms. Roughly 1/5 (21%) of the supply-side response projects would agree to terms of 10 years or less, and another 13% of respondents were "flexible" as to term.⁵⁰

And the proposed RBP design includes provisions that undercut the notion that fifteen years of payments are needed to address the shortfall.⁵¹ The proposal is express that

⁴⁸ Proposed Tariff § 18.4 ("Resources with a commercial operation date later than the 2028/2029 Delivery Year shall be committed for the remainder of the fifteen-year term of the Reliability Backstop Procurement commitment period, i.e. through the end of the 2042/2043 Delivery Year.").

⁴⁹ PJM Filing, Transmittal at 48 (quoting Statement of Principles at 1).

⁵⁰ Charles River Associates, *PJM Reliability Backstop RFI Summary* at 5 (May 27, 2026) (CRA RFI Summary), <https://www.pjm.com/-/media/DotCom/committees-groups/cifp-rbp/2026/20260527/20260527-informational-only---reliability-backstop-rfi-summary---charles-river-associates.pdf>.

⁵¹ Note that Ms. Croop nowhere explains why the procurement period must be fifteen years. Every reference treats "15 years" as a fixed input and deploys it to justify some other feature, without ever defending the length itself. For example, Ms. Croop states the RBP term and its endpoints—"a fixed, 15-year period . . . from the 2028/2029 Delivery Year to the 2042/2043 Delivery Year"—and explains that individual

LSEs can fulfill their share of the RBP capacity obligation outside of the auction by entering into five-year bilateral contracts. Proposed Tariff, Attachment DD, section 18.2(c) explains that “Evidence of Qualifying RBP Offset UCAP MW” can include “[s]igned bilateral contracts . . . for at least five Delivery Years with a commercial operation date prior to the start of the 2032/2033 Delivery Year.” In its Transmittal Letter, PJM calls a five-year term “balanced,”⁵² explaining:⁵³

Capacity with a bilateral contract of at least five years is capacity that will address the reliability shortfall and is not transitory. Furthermore, a five-year term is not so lengthy as to undermine the flexibility needed for commercial contracting or to pose a significant barrier to eligibility for Qualifying RBP Offset UCAP MW, in recognition of the fact that bilateral agreements may not need to be longer than five years to develop new capacity.

The proposed tariff amendments provide no limit on the amount of self-supply or opt-out offset megawatts.⁵⁴ “The final RTO-wide procurement target, as proposed, is determined by subtracting both verified Qualifying RBP Offset UCAP MW and the unforced capacity obligation value of load with opt-outs.”⁵⁵ In other words, there is no minimum amount of RBP capacity necessary to ensure reliability—meaning that the amount of RBP-procured capacity could be zero.

commitments vary by commercial operation date; that is a description of the term’s mechanics, not a rationale for choosing fifteen years. Croop Aff. ¶ 5.

⁵² PJM Filing, Transmittal at 39.

⁵³ *Id.* at 39-40.

⁵⁴ Proposed Tariff, Attach. DD § 18.1(b) (“The Final RBP Target shall be a PJM region-wide value equal to the Initial RBP Target minus the total PJM region-wide Qualifying RBP Offset UCAP MW and the unforced capacity obligation value of load that have successfully requested and obtained an opt-out pursuant to Tariff, Attachment DD, section 18.1(d).”).

⁵⁵ PJM Filing, Transmittal at 31-32.

And PJM does not allege, nor could it reasonably do so, that the proposed 15-year procurements provide some residual/additional reliability benefit. The purpose of the RBP is to remediate a one-time, short-term shortfall. Moreover, PJM's IRAS proposal may remediate the new large load issue going forward. New large loads will either self-supply or their associated load will be subject to curtailment. And all new large loads will be excluded from the BRA beginning with the 2029/2030 Delivery Year.⁵⁶ Nor does PJM contend that the RBP procurement serves any economic purpose. As shown below, PJM has made no showing that the RBP's procurement of capacity at an average price of \$555/MW-day bears any meaningful relationship to the project costs of the resources that will be procured.

It is unjust and unreasonable to charge ratepayers for the acquisition of ten years of capacity that is not needed to "address the reliability shortfall" and serves no cost-efficiency or other economic purpose. In *Citadel FNGE Ltd. v. FERC*, the D.C. Circuit explained that the "application of [a PJM auction rule] was unjust and unreasonable not just because of how much it increased the wholesale rate, but because it caused that increase for no justifiable purpose" and "without any commensurate [consumer] benefit."⁵⁷ That "comfortably fits the definition of unjust and unreasonable."⁵⁸ Where a price increase "serv[es] no good purpose," the absence of a reasoned justification for it makes it "unjust and unreasonable in its own right."⁵⁹

⁵⁶ PJM IRAS Filing at 49, 109.

⁵⁷ *Citadel FNGE Ltd. v. FERC*, 77 F.4th 842, 856 (D.C. Cir. 2023).

⁵⁸ *Id.*

⁵⁹ *Id.* at 857.

Although the foregoing demonstrates that the fifteen-year period is unjust and unreasonable, we note that it is also unduly discriminatory to require some ratepayers to pay for fifteen-year procurements when other ratepayers are insulated from RBP charges due to exemptions or bilateral/self-supply arrangements of only five-years.⁶⁰ PJM's assertion that a five-year contract is sufficient to satisfy the RBP's short-term reliability need cannot be squared with a proposal requiring 15-year commitments to meet the same need.

C. The RBP fosters the exercise of seller-side market power and is unlikely to secure the least-cost combination of resources.

PJM proposes to run the RBP “procurement mechanism as a pay-as-bid, capacity-only structure, with a MW-weighted average levelized procurement cost maximum willingness to pay equal to \$555/MW-day UCAP across all Delivery Years.”⁶¹ PJM affiant Croop explains that unlike the BRA, the RBP “is designed as a pay-as-bid procurement in which each selected resource is compensated based on its individual offer rather than a market-clearing price established by the marginal resource.”⁶² Tellingly, PJM concedes that no seller in the RBP is incented to bid its marginal cost. As Ms. Croop explains, “[i]n a pay-as-bid approach, unlike a uniform clearing price construct where sellers are expected to offer a marginal cost, sellers are more likely to offer the expected clearing price.”⁶³

⁶⁰ To be clear, Joint Consumer Advocates are *not* arguing for an extension of the terms of qualifying bilateral self-supply arrangements. If IRAS is implemented as proposed, then the reliability problems associated with the projected data centers will be remediated. If the Commission does not reject the RBP, the correct solution is to limit RBP procurement terms to five years, the same as qualifying self-supply.

⁶¹ Croop Aff. ¶ 6.

⁶² *Id.* ¶ 32.

⁶³ PJM Filing, Transmittal at 71 (quoting Croop Aff. ¶ 33).

As proposed, PJM's RBP violates basic tenets governing the use of competitive acquisitions to set just and reasonable rates under the Federal Power Act (FPA). The Supreme Court has held that "the Commission lacks the authority to place exclusive reliance on market prices,"⁶⁴ explaining that the "prevailing price in the marketplace cannot be the final measure of 'just and reasonable' rates mandated by the [FPA]."⁶⁵ Accordingly, and as the D.C. Circuit has explained, it is only "when there is a competitive market [that] [the Commission] may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result."⁶⁶ In other words: ⁶⁷

In a competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable, and specifically to infer that the price is close to marginal cost, such that the seller makes only a normal return on its investment.

The proposed RBP is not a just and reasonable competitive procurement because—as PJM admits—no seller is incented to bid their marginal cost. Moreover, PJM offers no supporting evidence that the resulting procurement price will be the result of true price competition, or that the outcome will reflect the marginal cost of the resources to be procured.

⁶⁴ *FPC v. Texaco Inc.*, 417 U.S. 380, 400 (1974).

⁶⁵ *Id.* at 397.

⁶⁶ *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993).

⁶⁷ *Id.* (quoting *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990)). See also PJM, Revisions to Reliability Pricing Model, Transmittal Letter at 74, *PJM Interconnection, L.L.C.*, Docket No. ER25-682 (Dec. 9, 2024), eLibrary No. 20241209-5207 ("The Commission uses a market-based approach to wholesale electric regulation, reasoning that, in a 'competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable, and specifically to infer that price is close to marginal cost, such that the seller makes only a normal return on its investment.'" (quoting *Tejas Power Corp.*, 908 F.2d at 1004)).

The proposed RBP is unlike PJM's standard auction capacity procurement mechanism, the BRA. In contrast to the RBP, "the objective of [the BRA is] to procure the least-cost, competitively-priced combination of resources necessary to meet the region's reliability objectives."⁶⁸ The Commission has found the BRA design to be just and reasonable because it is intended to ensure competition and mitigate seller-side market power by myriad means.⁶⁹ The BRA includes must-offer resource obligations, market seller resource offer caps, a market price cap, and oversight of bids/bidding by the Independent Market Monitor; and competitive new entry disciplines incumbent market power.⁷⁰ A central premise of the design is that capacity sellers are expected to bid their own marginal costs. In accepting the BRA construct and its single clearing price model, the Commission found that "under this model, the generator has the proper incentive to bid the lowest price that covers its marginal cost."⁷¹

By contrast, the RBP includes none of the BRA's approved mitigation measures. PJM concedes that "[n]o direct market power screens or mitigation are being proposed for

⁶⁸ *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 101 (3d Cir. 2014).

⁶⁹ *PJM Interconnection L.L.C.*, 117 FERC ¶ 61,331 (2006) (RPM Order), *reh'g granted in part*, 119 FERC ¶ 61,318, *reh'g denied*, 121 FERC ¶ 61,173 (2007), *pet. for review denied sub nom.*, *Pub. Serv. Elec. & Gas Co. v. FERC*, 324 Fed. Appx. 1 (2009).

⁷⁰ The forward-looking BRA was the product of a settlement with "design features [intended to] discourage the exercise of market power and market manipulation generally. Specific mitigation rules and increased competition from new entry are the most important design elements in this regard." *Id.* P 6. It must be emphasized that Joint Consumer Advocates do not concede that the Reliability Pricing Model (RPM) is at present competitive or just and reasonable. As a subset of the Joint Consumer Advocates have shown in their pending complaint in FERC Docket No. EL25-18-000, there is inadequate new entry to mitigate the market power of incumbent resources and inadequate measures to mitigate that market power. Among other things, demand-side resources should be subject to a must-offer obligation to avoid the exercise of physical and economic withholding. RBP fails to provide even the less-than-acceptable protections in the current RPM/BRA structure.

⁷¹ RPM Order, P 141 n.101 (quoting *Commonwealth Edison Co.*, 113 FERC ¶ 61,278, P 43 (2005)); *see also* Croop Aff. ¶ 33 (in a "uniform clearing price construct" such as the BRA "sellers are expected to offer [at their] marginal cost").

the RBP,”⁷² and acknowledges that “[i]n the context of a pay-as-bid structure with a maximum willingness to pay set at \$555/MW-day UCAP, the effectiveness of direct market screens or mitigation is limited.”⁷³ By its own admission, the proposal is fatally flawed because PJM concedes that RBP sellers are not incented to bid their own production costs but are instead “more likely to offer the expected clearing price.”⁷⁴ A seller’s ability to bid unconstrained by its competitors’ cost of production is a paradigmatic example of the exercise of seller-side market power.⁷⁵ Here, every resource eligible to offer into the RBP can bid to raise prices to the \$555/MW-day average price cap regardless of its marginal cost or that of its competitors. Resources bidding into the RBP will be engaged in a gaming strategy rather than price competition.

The ability of offering resources to exercise market power and thereby set RBP rates is not an unanticipated consequence—it is baked into the procurement’s design. PJM admits that RBP’s design leaves it powerless to protect against the exercise of seller-side market power. “Given offers will likely have less variation and information underlying offers it can be difficult and ineffective to determine offers exhorting market power.”⁷⁶ But this is no defense where the “difficult[y]” PJM faces is a consequence of its having proposed an inherently anti-competitive procurement structure.

⁷² PJM Filing, Transmittal at 66.

⁷³ *Id.*

⁷⁴ *Id.* at 71 (quoting Croop Aff. ¶ 33).

⁷⁵ A “resource[] [that can] increase prices in a specific area . . . [has] the ability to exercise market power.” FERC Office of Energy Policy and Innovation, *Energy Primer A Handbook for Energy Market Basics* at 72 (2023).

⁷⁶ PJM Filing, Transmittal at 71 (quoting Croop Aff. ¶ 33).

PJM proffers a series of unconvincing arguments purporting to show that the RBP construct “minimize[s] the potential for [the] exercise of market power.”⁷⁷

First, PJM asserts that unlike the single-clearing price BRA structure, the RBP design protects against economic/physical withholding for portfolio benefits and against the ability to collect inframarginal rents.⁷⁸ While this may be true, the inapplicability of one market power strategy does not show that the design is immune from other forms of seller-side market power. To the contrary, PJM and its witness, Ms. Croop, admit that market power concerns remain, acknowledging that bidders are “most likely to offer the expected price” and not their own marginal cost of production.⁷⁹

Second, PJM asserts that “[t]he existence of a reasonable maximum willingness to pay further discipline[s] costs” because an offer may not clear “due to more economical offers and/or the costs exceeding the set maximum willingness to pay.”⁸⁰ But PJM explains that the pay-as-bid design incentivizes resources to offer at prices close to what they expect the “clearing” price to be, so there is no reason to expect meaningful quantities of significantly more “economical” offers. And the \$555/MW-day “maximum willingness to pay” benchmark is not self-evidently just and reasonable. What PJM must show is that there is a meaningful relationship between its proposed \$555/MW-day average price cap and the actual costs of the resources that will be procured. “[T]he prevailing price in the market cannot be the final measure of ‘just and reasonable’ rates mandated by the [FPA].”⁸¹

⁷⁷ *Id.* at 66.

⁷⁸ *Id.* at 67-68.

⁷⁹ *Id.* at 71 (quoting Croop Aff. ¶ 33).

⁸⁰ *Id.* at 67.

⁸¹ *FPC v. Texaco*, 417 U.S. at 397.

It cannot reasonably be inferred that the RBP as proposed will create meaningful cost-based price competition between and among offering resources.⁸² PJM itself admits that this is unlikely, as it is in the economic self-interest of bidders to offer somewhere around the expected clearing price.⁸³

Third, based upon data provided in response to an RFI and compiled by CRA, PJM contends that there is a sufficient number of potential suppliers to cause “suppliers to submit competitive offers” and thereby discipline market power concerns.⁸⁴ This statement is contrary to a statement two pages later that bidders are “more likely to offer the expected clearing price.”⁸⁵

In fact, Ms. Croop’s affidavit does not support the assertion that the RFI data show that the RBP will function as a competitive solicitation. Ms. Croop says that the RFI’s identification of a “large set of potential supply to participate in the RBP . . . allows the RBP to function *more like* a competitive solicitation.”⁸⁶ The phrase “more like” is an implicit concession that the RBP will *not* be a price-competitive solicitation. And the RFI data make that clear. The RBP will secure resources by order of delivery year (and then cost) with priority beginning in the 2028/2029 Delivery Year.⁸⁷ Only about 80 of the 397 projects identified by CRA claim an ability to achieve commercial operation by this date and only 3% of all projects are under construction.⁸⁸ And it is not clear that all of these

⁸² See *Elizabethtown Gas Co. v. FERC*, 10 F.3d at 870.

⁸³ PJM Filing, Transmittal at 71 (quoting Croop Aff. ¶ 33).

⁸⁴ *Id.* at 69.

⁸⁵ *Id.* at 71.

⁸⁶ Croop Aff. ¶ 35 (emphasis added).

⁸⁷ PJM Filing, Transmittal at 75.

⁸⁸ CRA RFI Summary at 6.

projects will be eligible to bid into RBP.⁸⁹ Given that there are relatively few resources that can fill the immediate need, those with marginal costs less than \$555/MW-day will have every incentive to bid somewhere around the expected clearing price as opposed to their marginal costs. As opposed to newly constructed power plants, the pool of resources most likely to enter commercial operation within two-years may well consist of unit reactivations, unit uprates, or demand response, and may well have marginal costs far lower than \$555/MW-day.

Fourth, PJM's reliance upon the Commission's 2015 acceptance of the California Independent System Operator's (CAISO) "Capacity Procurement Mechanism" (CPM) as support for approval of the RBP fails.⁹⁰ CPM was intended to "procure an individual resource to respond to unexpected, unplanned-for system conditions or meet unique reliability needs."⁹¹ CPM procurements were limited from one-month to one-year, and the program's soft offer cap represented the high end of the range of then current resource adequacy prices, with CPM subject to stakeholder review every four years to ensure the just and reasonableness of the acquisition cost.⁹² Significantly, the Commission had rejected prior versions of CPM because "the continuation of a fixed going-forward cost ha[d] not been shown to be just and reasonable because of the likelihood that market conditions, which can affect the price of capacity, will fluctuate over time."⁹³ The design,

⁸⁹ The eligibility of those projects to bid into the RBP is unknown, as is the accuracy of the information provided to CRA.

⁹⁰ PJM Filing, Transmittal at 64 (citing *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,001, P 29 (2015) (CAISO CPM Order), *clarified*, 154 FERC ¶ 61,034 (2016)).

⁹¹ *Id.* at 70 n.179 (quoting CAISO, Tariff Amendment and Offer of Settlement Regarding Capacity Procurement Mechanism Revisions and Request for Waiver of Notice Requirement, Transmittal Letter at 15, *Cal. Indep. Sys. Operator Corp.*, Docket No. ER15-1783 (May 26, 2015), eLibrary No. 20150526-5272).

⁹² CAISO CPM Order, PP 6, 29.

⁹³ *Id.* P 4 (quoting *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211, P 58 (2011)).

scope, length, and pricing of PJM's RBP is likewise nothing like the CPM. Even setting aside the RBP's more expansive scope (seeking to procure 6.8 GWs), 15-year term, and absence of any tether to underlying unit resource costs, the Commission did not identify any aspect of CPM that would permit the unmitigated exercise of seller-side market power.

Fifth, and finally, PJM's reliance on the tariff's treatment of Planned Generation Capacity Resources as a cure for RBP's market power concerns is misguided. Planned Generation Capacity Resources' sell offers "may be rejected if [they] exceed[] 140% of an average price established around the [Variable Resource Requirement (VRR)] Curve."⁹⁴ There is no VRR Curve applicable to the RBP. As further discussed below, the RBP's \$555/MW-day figure derives from what would have been the Point 1 market cap for the 2027/2028 Delivery Year but for the replacement price collar, and is tied to the Cost of New Entry for a new combustion turbine. There is no reference unit applicable to the RBP. The BRA is intended to meet one-years' worth of capacity needs based upon the least-cost procurement of capacity resources. PJM nowhere claims, nor could it show, that the RBP is designed to secure a least-cost combination of resources. PJM simply plans to funnel dollars to resources at prices divorced from their marginal costs in an auction that PJM admits will not be based on resource price competition.

In summary, RBP leaves consumers at the mercy of suppliers who, unconstrained by resource price competition or any other meaningful mitigation measures, have every incentive and opportunity to bid as close to the price cap as possible. And bidders will be operating in an admittedly supply-constrained environment, subject only to a wholly arbitrary "willingness to pay" provision at an average (and potentially higher) \$555/MW-

⁹⁴ PJM Filing, Transmittal at 70 n.182 (citing PJM Tariff, Attach. DD § 6.5(a)(ii)(C)).

day capacity price untethered to any selected resource's actual cost minus its energy and ancillary services revenues. This is transparently unjust and unreasonable, an invitation for the abuse of seller market power, and a burdening of ratepayers with billions in unjustified capacity charges.

D. The proposed \$555/MW-Day cap price is excessive.

PJM contends the \$555/MW-day average price cap is just and reasonable because it corresponds to the “uncollared price cap based on Point 1 of the VRR curve for the 2028/2029 Delivery Year BRA.”⁹⁵ PJM’s reliance on what would have been the hard market cap for the 2028/2029 Delivery Year (but for the collar) is unsound for multiple reasons.

PJM concedes that the “willingness to pay for a 15-year commitment should not exceed the amount that load would be willing to pay for a single-year commitment under the RPM framework.”⁹⁶ But in fact, the willingness to pay for a 15-year commitment—and the price that resources should be willing to accept, if guaranteed for 15 years—should be substantially less than the corresponding amounts for a one-year commitment. That is true as a general matter, as 15-year price certainty reduces supplier risk and eases financing. But it is particularly true where the reliability need is concentrated in the early part of the period, when the one-year commitment would occur. In that context, the one-year commitment reflects a scarcity price that simply should not be expected to apply across the full 15-year term.

⁹⁵ *Id.* at 62.

⁹⁶ *Id.* at 64.

Additionally, as it is used in the BRA structure, Point 1 of the VRR curve for the 2028/2029 Delivery Year is a hard cap. Load would never under any outcome pay more than the \$555/MW-day fixed price cap. But as used in the RBP, the \$555/MW-day price is a soft price cap, meaning that ratepayers are subject to paying a selected resource's "as bid" offer price—and are not protected by a fixed, \$555/MW-day cap. It is plausible that ratepayers may pay more than \$555/MW-day for RBP-acquired capacity and there is nothing to protect against it. This is because the RBP's actual \$/MW-day average price cap will increase to the extent any resource or combination of resources that bid less than \$555/MW-day fail to enter commercial operation or cease operation prior to the end of their RBP commitment term.

The possibility that ratepayers may pay more than an average acquisition price of \$555/MW-day is a matter of simple mathematics and can be shown through the following example. Assume, for simplification purposes, that the RBP procures a total of 5,000 MW (due to offsets) at an average price of \$555/MW-day. Assume further that 1,000 MW of load has bid in at a price of \$400/MW-day: a price higher than the 2028/2029 Delivery Year \$325/MW-day price collar but sufficiently below the \$555/MW-day average price to facilitate being selected. Assume further that the selected low-price load does not enter commercial operation. The loss of this load would cause the actual RBP average price to increase to \$593.75/MW-day.⁹⁷ This outcome is not implausible; PJM recognizes that RBP committed resources may fail to achieve commercial operation for sundry legitimate

⁹⁷ An RBP acquisition of \$555/MW-day multiplied by 5,000 MW equals \$2,775,000 per day in capacity charges. Removing 1,000 MW of committed resources at \$400/day results in \$2,375,000 per day in capacity charges (\$2,775,000 minus \$400,000) now spread over 4,000 MW of resources. This results in a \$593.75/MW-day average price: an increase of \$38.75/MW-day over the soft cap of \$555/MW-day.

reasons including the lack of necessary Network Upgrades.⁹⁸ Over the 15-year RBP commitment term, the price increase in this example results in roughly \$850 million in gross costs beyond what “load would be willing to pay” as measured against PJM’s own standard.⁹⁹

PJM’s borrowing of Point 1 of the VRR curve is likewise inapposite because it is a reference cost grounded in the estimated Cost of New Entry for a combustion turbine, and is the market price cap in a BRA auction where bidders are expected to offer at their marginal cost of production.¹⁰⁰ By comparison, the RBP has no reference resource or VRR curve, nor is it anticipated that bidders will bid their cost of production.¹⁰¹ And, again unlike the BRA, PJM concedes that the RBP is designed to procure a set of sufficiently heterogenous resources such that it cannot objectively establish a uniform clearing price:¹⁰²

[T]he proposed procurement is not acquiring a uniform commodity. Although the RBP will seek a fixed, 15-year period of time for procurement and cost allocation of RBP Resources, those resources may differ based on contract duration (dependent on the projected in-service date of selected resources), commercial operation dates, and other factors such as differences in [Effective Load Carrying

⁹⁸ PJM Filing, Attach. D, Affidavit of Ms. Gwen Kelly ¶¶ 10-11 (Due to a variety of RBP project development risks, “PJM concluded that resources seeking RBP commitments present risks that a committed resource may fail to achieve commercial operation or experience delays in reaching commercial operation.”); *see also* PJM Filing, Transmittal at 60 (excusing from RBP shortfall charges RBP resources that fail to meet their commercial operation dates solely because of Network Upgrade issues).

⁹⁹ While in some circumstances there may be charges imposed on resources that fail to achieve commercial operation, those charges are limited, and such shortfall charge amounts are unlikely to overcome the cost increase described here.

¹⁰⁰ “PJM states that the choice of a [combustion turbine] plant as the Reference Resource is consistent with criteria that PJM has used in previous Periodic Reviews, including: (1) feasibility to build; (2) whether the resource is an economic source of incremental capacity; and (3) whether the resource’s Net [Cost of New Entry] can be accurately estimated. [The Commission] find[s] that PJM reasonably supports its conclusion that a [combustion turbine] plant meets these criteria because it is feasible to build and offers an economically viable source of incremental capacity.” *PJM Interconnection, L.L.C.*, 194 FERC ¶ 61,049, P 16 (footnote omitted), *on reh’g*, 196 FERC ¶ 61,007 (2026).

¹⁰¹ PJM Filing, Transmittal at 71 (quoting Croop Aff. ¶ 33).

¹⁰² Croop Aff. ¶ 25.

Capability (ELCC)] accreditation and varying UCAP across the full term of the commitment. These differences create distinct products rather than a single homogeneous offering. Establishing a uniform clearing price across such varied products would require PJM to normalize offers through potentially complex and subjective assumptions.

Nor will PJM undertake to ascertain whether any offer reflects the resource's cost of production.¹⁰³ A review of PJM's proposed gating criteria confirms that PJM's offer review will be limited to a "demonstrat[ion] that the proposed resource will be successfully completed and able to provide capacity."¹⁰⁴

In short, PJM has simply plucked a figure from the RPM construct and suggested it fits with the RBP design. This maneuver fails where PJM does not show any rational connection between its proposed price cap and the RBP, including that its proposed \$555/MW-day average RBP price is either just and reasonable or bears any meaningful relationship to the marginal costs of production of the resources to be acquired.

E. The absence of locational criteria for RBP resource procurements poses unjustified cost risks for ratepayers.

Affiant Croop explains that while PJM "recognizes there are locational considerations at large for resource adequacy, and these constraints are modeled in the Reliability Pricing Model[,]"¹⁰⁵ RBP includes no locational procurement signal. She states, "PJM does not propose to match specific supply to specific demand or to apply locational constraints in the central procurement."¹⁰⁶ PJM does not take the position, however, that locational information is irrelevant; it asserts instead that it simply "does not have the

¹⁰³ PJM Filing, Transmittal at 66 ("No direct market power screens or mitigation are being proposed for the RBP.").

¹⁰⁴ *Id.* at 71.

¹⁰⁵ Croop Aff. ¶ 8.

¹⁰⁶ *Id.* ¶ 7.

information needed to determine such locational parameters for 15-year term capacity commitments.”¹⁰⁷

That assertion cannot be reconciled with PJM’s intention to allocate RBP costs to zones based on their large load forecasts.¹⁰⁸ As proposed, the RBP structure is unjust and unreasonable because it risks burdening ratepayers with additional new transmission and energy costs (if the large load’s arrival on the grid creates congestion) that could be avoided or ameliorated through the use of a locational procurement signal.

II. REQUEST FOR ISSUANCE OF DIRECTIVE TO PJM TO IMPLEMENT ONE OF TWO JUST AND REASONABLE ALTERNATIVES

As shown above, the proposed RBP is unjust and unreasonable, and the Commission should reject it. The identified deficiencies are fundamental, broad ranging in scope and impact, and contrary to the Commission’s “first and foremost duty” under the FPA to “protect consumers from unjust and unreasonable rates.”¹⁰⁹

PJM says that reliability demands that nearly 7 GW of new supply be procured in the near-term, yet permits an untold number of megawatts (or possibly gigawatts) to opt-out of the auction with no evident concern that doing so will adversely impact system reliability. PJM proposes no counterpart provision to adjust the target forecast for known reductions in projected new large loads even as those forecasts have been rapidly and continuously plummeting.

¹⁰⁷ *Id.* ¶ 8.

¹⁰⁸ “The initial allocation of RBP UCAP MW to each Electric Distributor zone/area will be based on Load Adjustments, as set forth in PJM Table B9b from the 2026 PJM Load Forecast, and each zone/area’s share of the Initial RBP Target of 6,831.3 MW.” *Id.* ¶ 46 (with chart of zonal allocations).

¹⁰⁹ *Morgan Stanley Cap. Grp. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 551 (2008). *See also Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 388 (1959) (The FPA’s sister Act, the Natural Gas Act, was “framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.”).

RBP will saddle ratepayers with fifteen years of payments,¹¹⁰ even as PJM admits that the proposed commitment period is as much as a decade longer than the five-year bilateral procurements that will meet PJM's reliability needs. The design constrains, if not prohibits, the participation of short-term resources, even though those are the megawatts most likely to align with the immediate-term need.

The proposed price cap is unjustified. It bears no meaningful relationship to the costs of the resources to be procured and was simply lifted from a design in which it is used in setting clearing prices for a one-year commitment, not a period as long as fifteen years. And, the cap is excessive given the extended period of rate certainty, which should mean lower, not higher, prices.

Finally, PJM admits that its RBP's pay-as-bid design is subject to market power concerns because sellers are more likely to offer the expected clearing price rather than their marginal cost, yet its proposal contains no market mitigation protocols. A competitive procurement rife with obvious market power problems that includes no meaningful mitigation measures is per se unjust and unreasonable.

Instead of RBP, the Commission should exercise its FPA section 206 authority and direct PJM to implement one of the following two just and reasonable alternatives.¹¹¹

Option One: Direct PJM to Propose a "Subscription-Based" Procurement

Framework. PJM should be directed to refile the RBP as a "subscription" model, in which

¹¹⁰ The amount of RBP charges for a procurement total of 6,831 MWs at a rate of \$555/MW-day x 365 days x 15 years would be \$20,756,847,375.

¹¹¹ The Commission has already found in the recently-initiated show cause order proceeding (Docket No. EL26-67-000) that "PJM's existing Open Access Transmission Tariff (Tariff) appears to be unjust, unreasonable, or unduly discriminatory or preferential," *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,211, P 3 (2026), and we show here that RBP is as well. Joint Consumer Advocates assert that the Commission can use its authority under FPA section 206, 16 U.S.C. § 824e, to rectify certain of the issues highlighted in the Show Cause Order proceeding by implementing one of the two options presented below.

LSEs, as the entities legally or contractually obligated to supply a large load's capacity and energy needs, would be responsible for determining both the procurement target for the large loads that they serve and bearing the associated financial and credit obligations associated with those loads. LSEs wishing to participate in a centralized procurement would indicate to PJM the megawatt quantity that should be procured on their behalf through the RBP. With a subscription-based model, there is no need for opt-outs because the procurement target is based on requests from LSEs to buy, and not forecasts, which in this environment are uncertain at best.

A proposal along these lines was presented and debated during the stakeholder process and received greater than the two-thirds sector-weighted member support required for adoption. The PJM Board of Directors nonetheless rejected the subscription model, stating in a July 27, 2026 "Decisional Letter" that it had "concluded that a voluntary subscription framework would not provide sufficient assurance that capacity equal to the identified near-term shortfall would actually be procured."¹¹² We are unsure why that is necessarily the case. LSEs presumably work with the loads they serve to determine how best to satisfy capacity obligations, including making resource build, demand response, and bilateral contracting decisions. Moreover, a general concern about failing to procure sufficient capacity rings hollow when considered against the proposed RBP, which includes opt-out rights that could reduce substantially the amount of capacity to be procured.

¹¹² Letter from Paula Conboy, Chair, PJM Board of Managers, to Stakeholders at 1 (July 27, 2026), <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2026/20260727-board-decisional-letter-on-cifp-reliability-backstop-procurement-and-connect-and-manage.pdf>.

The likely success of a subscription model should also be assessed in the context of PJM's IRAS proposal. New large loads that want firm service should be highly incented to self-supply rather than face the prospect of interruptible service.

Option Two: Advance the Effective Date of the Recently-Filed IRAS Proposal.

PJM explains that while the instant filing is “focused on the RBP framework, PJM intends to quickly follow this filing with another FPA section 205 filing to propose an interim resource adequacy service (“IRAS”).”¹¹³ That filing has now been made, and is pending before the Commission in Docket No. ER 26-3515-000.¹¹⁴ As proposed, IRAS will provide large load customers with a choice: they can either bring their own new generation to meet their emerging and substantial generation needs or avoid that obligation and be treated as involuntary demand response; effectively, non-firm load. The Board's July 27 letter explains (at 2) that under IRAS:

Electric Distributors will be required to implement an Interim Resource Adequacy Service for new Large Loads that, as of **June 1, 2027**, do not bring sufficient capacity to serve their resource adequacy needs and cannot otherwise be served at the 1-in-10 reliability standard. Load reductions under this service will occur prior to the deployment of Pre-Emergency Load Management.

Joint Consumer Advocates will have more to say about the IRAS proposal once we have had a chance to complete our review. In the meantime, it seems clear that a proposal developed along the lines of IRAS will help to meet reliability concerns and address the data center load capacity problem—without burdening states with the obligation to develop approaches to allocate incremental RBP costs to large load customers, or for consumers to

¹¹³ PJM Filing, Transmittal at 4.

¹¹⁴ See PJM IRAS Filing.

bear the burden of incremental costs that are (for whatever reason) not assigned to the large loads. Based on our preliminary review, the IRAS structure meets PJM's reliability needs, provides new large loads a way to come on the system, enables PJM's BRA to return over time to a competitive balance between supply and demand, protects ratepayers from further increases in BRA prices by removing the load from the BRA, and protects ratepayers from stranded costs.

For these reasons, and assuming the IRAS proposal is found to be just and reasonable, the Commission should, in lieu of approving the RBP, advance the effective date of IRAS such that, beginning with the 2028/2029 Delivery Year, large load customers should be given the option of bringing their own new resources online or having the amount of their new large load treated as "first-off" to ensure system reliability in emergency circumstances.¹¹⁵

III. IF THE COMMISSION DECLINES TO REJECT RBP, IT SHOULD CONDITION ACCEPTANCE TO ADDRESS EVIDENT AND SUBSTANTIAL CONCERNS.

If the Commission is not inclined to reject the RBP or adopt either of the options described above, then at a minimum any approval of RBP should be conditioned. PJM states a willingness to accept "the Commission's exercise of authority to modify and/or sever any element of the proposed Tariff and [Reliability Assurance Agreement] language" to the extent consistent with law and "where such modification and/or severance is consistent with PJM's overarching objectives in this filing."¹¹⁶ We assert that there are

¹¹⁵ To the extent that there are large load customers who can demonstrate that they have taken steps to interconnect based on the promise of capacity-backed service through the BRA, those loads should (in some fashion) be grandfathered.

¹¹⁶ PJM Filing, Transmittal at 3. To the extent necessary, the Commission could impose these conditions by means of its FPA section 206 authority.

several conditions that could be imposed that would be both on solid legal grounds and fully consistent with the purposes PJM seeks to achieve.

These include:

1. *Limit the acquisition period.* The Commission should limit the RBP procurement period to five years, consistent with PJM's assertions that new bilateral arrangements with a five-year term (from 2028 through 2032) will address PJM's identified reliability need and are "balanced" and sufficient to incent new generation. PJM's assertions demonstrate that it is unjust and unreasonable to require ratepayers to bear procurement costs over a fifteen-year period. As noted earlier, PJM does not attempt to defend the fifteen-year payout period, stating only that it has been included in the proposal to implement the Statement of Principles, which includes the extended payout period. Respectfully, absent more, that agreement is insufficient to justify the imposition of enormous and unnecessary costs on ratepayers. At minimum, if the Commission declines to require a shorter commitment period, it should require the inclusion of a Tariff provision authorizing the Commission to change prices and performance terms if it finds, upon complaint or its own motion, that they have become unjust and unreasonable.

2. *Provide for procurement target adjustment to reflect additional known forecast reductions.* The RBP should be modified to permit a reduction in the procurement target to reflect demand reductions that have occurred since the large load forecast used for the 2028/2029 BRA or that will occur before October 21, 2026, the deadline for the submission of opt-out and offsetting self-supply requests, to reflect data centers that are not expected

to be in-service by the 2028/2029 Delivery Year and require utilities to provide this information to PJM.¹¹⁷

The RBP proposal provides for a possible reduction in the Initial RBP Target resulting from certain off-setting new capacity.¹¹⁸ The Commission should direct that PJM include a similar off-set option to address anticipated data center projects that have been or will be substantially delayed or cancelled, to better ensure the accuracy of the final RBP target. Utilities should be required, prior to the October 21, 2026 deadline, to update the procurement target and exclude any cancelled or delayed data center load that is included in PJM's current large load forecast for the RBP.¹¹⁹ Absent such relief, ratepayers could be forced to bear RBP procurement costs to satisfy illusory reliability needs.

3. Opt-Out Rights for LSEs with No Large Load Customers. The opt-out afforded to municipal and cooperative utilities should be expanded to be available to any LSE in a zone that is allocated RBP costs that has no large load customers. In both cases, absent relief those incremental RBP costs will simply be passed to customers who will have no other option but to bear them.

4. Deferral where a state is intending to act but has not completed its action. There may be situations in which retail ratepayers are charged RBP costs because a state plans to act but that action is delayed. In that instance, the Commission could condition approval of

¹¹⁷ As explained above, between now and January 16, 2026, when the Statement of Principles were released, PJM's reliability needs associated with projected new large loads have changed markedly. Data centers within PJM continue to be delayed or cancelled at a rapid pace, and the Commission has endorsed the use of flexible transmission to maintain system reliability while permitting the interconnection of new large loads to the grid. *Sw. Power Pool*, 195 FERC ¶ 61,196, P 1 (2026) (approving the Southwest Power Pool's implementation of a new type of non-firm transmission service called Conditional High Impact Large Load Service).

¹¹⁸ PJM Filing, Transmittal at 35-37.

¹¹⁹ See *Croop Aff.* ¶ 42.

the RBP on the inclusion of a true-up mechanism that would hold those customers harmless. Alternatively, where a state intends to act but has not yet done so, the RBP could require that a zone's charges be held in abeyance for a period of time to accommodate the intended—but not yet completed—state action.

5. *Mechanisms to ensure just and reasonable prices.* As explained above, it is unjust and unreasonable for 15-year RBP prices to be set by a mechanism likely to produce prices centered on the “willingness to pay” cap based on the uncollared BRA price cap. That proposal spreads and extends the BRA price cap's one-year scarcity price, unnecessarily and unreasonably, for as long as 15 years. And, as also shown above, that willingness to pay threshold is applied on an average basis across all RBP resources, which means that some resources may demand and receive prices far above those levels. Neither aspect has been shown to be just and reasonable. Accordingly, the Commission should substantially reduce the willingness to pay average price cap. Additionally, the Commission should consider allowing PJM to use RBP to identify the resources with which it seeks to contract but require the sellers to file cost-based rates, with appropriate cost justifications, for review by this Commission.

6. *Incorporation of locational price signals.* PJM knows the zones in which new large loads are projected to interconnect; that is what drives part of its cost allocation proposal. PJM should prefer to select resources that propose to be located in the zones where the new large loads are located. Doing so will help to prevent the incorporation of new large loads from driving up transmission costs to deliver energy from far-flung new capacity resources to the places where the load is located. And it will mitigate RBP's

tendency to mute the BRA's price signals by displacing locationally-selected BRA resources with non-locationally-selected RBP resources.

CONCLUSION

PJM's RBP proposal should be rejected. It is self-contradictory, deeply flawed, and likely to result in significant and excessive costs to ratepayers that are "all pain and no gain." As the stakeholder process made clear, the purported capacity shortfall and whatever reliability concerns it engenders can be addressed through far less costly and more efficient means. We urge the Commission to move toward those options, rather than risk burdening PJM consumers with enormous and unnecessary costs.

/s/ Susan L. Satter

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August 21, 2026

CERTIFICATE OF SERVICE

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

Dated on this 21st day of August, 2026.

/s/ Lauren L. Springett

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