COMPLAINT REQUESTING FAST TRACK PROCESSING

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Joint Consumer Advocates, *Complainants*, v. PJM Interconnection, L.L.C., *Respondent.*	Docket No. EL25-____-000

COMPLAINT OF JOINT CONSUMER ADVOCATES AND REQUEST FOR FAST TRACK PROCESSING

Pursuant to sections 206 and 306 of the Federal Power Act (FPA)[1] and Rule 206 of the Federal Energy Regulatory Commission's (Commission or FERC) Rules of Practice and Procedure,[2] the Joint Consumer Advocates[3] (JCA) hereby file this complaint against PJM Interconnection, L.L.C. (PJM). For the reasons stated here and in the attached Declaration of Marc D. Montalvo,[4] the Joint Consumer Advocates request that the Commission:

> (1) establish a refund effective date pursuant to section 206 as of the date of this complaint;
>
> (2) find that PJM's Base Residual Auction (BRA) for the 2025/2026 Delivery Year produced unjust and unreasonable results reflecting the omission or withholding of existing capacity, non-price barriers to new entry, a failure to mitigate supplier market power, and the imposition upon customers of massively inflated charges without any corresponding reliability benefit; and

[1] 16 U.S.C. §§ 824e and 825e.

[2] 18 C.F.R. § 385.206.

[3] For this complaint, Joint Consumer Advocates are: the Illinois Attorney General's Office; Maryland Office of People's Counsel; and New Jersey Division of Rate Counsel.

[4] The Montalvo Declaration is Attachment A to this complaint.

(3) establish just and reasonable replacement rates, as outlined below.

Joint Consumer Advocates request that the Commission process this complaint under its fast-track procedures. Expedited action is essential to restore consumer confidence in PJM's capacity construct, avoid or minimize the collection subject to refund of unjust and unreasonable charges stemming from the 2025/2026 BRA, and provide meaningful consumer relief as soon as possible. To accomplish these objectives, the Commission should direct PJM to answer the complaint within **15** days and should grant the complaint by May 31, 2025.

Alternatively, if the Commission believes it is unable to grant the complaint based on the papers, it should set the earliest possible refund effective date, initiate evidentiary hearing procedures, afford parties full discovery rights, and direct an expedited hearing. In addition, and at the outset of any hearing process, the Commission should direct PJM to produce on a confidential basis all bid data associated with the 2025/2026 BRA.

I. INTRODUCTION

The Commission's "first and foremost duty" under the FPA is "to protect consumers from unjust and unreasonable rates."[5] To do so, the Commission currently relies as much as possible on market forces.[6] But markets are fallible and PJM's Reliability Pricing Model

[5] *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 551 (2008) (quotations and citations omitted). *See also Atl. Refin. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 388 (1959) (The FPA's sister, the Natural Gas Act, was "framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges."); *NAACP v. FPC*, 520 F.2d 432, 438 (D.C. Cir. 1975) ("Commission's primary task . . . is to guard the consumer from exploitation . . . ."), *aff'd*, 425 U.S. 662 (1976).

[6] PJM Interconnection, L.L.C., Revisions to Reliability Pricing Model, Transmittal Letter at 74, *PJM Interconnection, L.L.C.,* Docket No. ER25-682-000 (Dec. 9, 2024), eLibrary No. 20241209-5207 (PJM ER25-682 Filing) ("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

(RPM) is less a market and more an administrative construct.[7] While the RPM construct tries to harness market forces to "procure the least-cost, competitively-priced combination of resources necessary to meet the region's reliability objectives,"[8] the BRA for the 2025/2026 Delivery Year failed to meet the mark. This auction instead produced demonstrably unjust and unreasonable outcomes that the Commission must now remedy. Despite the existence of adequate supplies, 2025/2026 BRA prices shot far above previous record prices. Prices hit zonal caps of $466.35/MW-day for the Baltimore Gas and Electric (BGE) zone in Maryland and $444.26/MW-day for the Dominion (DOM) zone in Virginia and North Carolina. Prices soared to $269.92/MW-day in the rest of the PJM footprint, up from $28.92/MW-day in the immediate prior auction. From one auction to the next, the total capacity cost to consumers jumped from $2.2 billion to $14.7 billion.

This jump occurred not because the region suddenly lacked sufficient supplies. It occurred because defective market rules either ignored or allowed market participants to withhold thousands of megawatts of existing capacity, while interconnection delays, a compressed auction forward period, and other entry barriers prevented the participation of new supply capable of disciplining incumbent market power. Collectively, these failures distorted the perceived supply-demand balance across the entire region and created artificial shortages in the two constrained zones. That artificial scarcity drove prices

price is close to marginal cost, such that the seller makes only a normal return on its investment.'") (citations omitted).

[7] *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080, P 7 (2024) (Christie, Comm'r, concurring), *on reh'g,* 189 FERC ¶ 61,043 (2024).

[8] *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 101 (3d Cir. 2014) (citing *PJM Interconnection, L.L.C.*, *et al. v. PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, P 90 (2011)(subsequent history omitted)).

skyward, constrained only by an unreasonably high price cap, resulting in exorbitant auction clearing prices with no corresponding consumer benefit.

PJM's Independent Market Monitor (IMM) has confirmed our assessment, opining that the 2025/2026 BRA results "did not reflect actual supply and demand conditions."[9] Instead, the IMM found, the 2025/2026 BRA was "significantly affected by flawed market design decisions," including the omission of existing capacity operating under Reliability Must-Run (RMR) arrangements and underestimating of thermal resource capacity, "the exercise of market power through the withholding of categorically exempt resources," and "the exercise of market power through high offers from demand resources."[10] The IMM estimated that several of those defects together caused nearly $8 billion in excess costs.[11] In the 2024 State of the Market Report, the IMM again reviewed the 2025/2026 BRA and

[9] Comments of the Independent Market Monitor for PJM at 5, *PJM Interconnection*, *L.L.C.*, Docket No. ER25-682-000 (Jan. 6, 2025), eLibrary No. 20250106-5221 (IMM ER25-682 Comments); *see also* Complaint of Joint Consumer Advocates (EL25-18 Complaint), Attach. A, Decl. of Marc D. Montalvo at 17, *PJM Interconnection, L.L.C.,* Docket No. EL25-18-000 (Nov. 18, 2024), eLibrary No. 20241118-5200 (First Montalvo Decl.) ("High prices in the 2025/2026 BRA reflect market design flaws rather than fundamental supply-demand imbalance.").

[10] Monitoring Analytics, *Analysis of the 2025/2026 RPM Base Residual Auction Part D* at 7 (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).

[11] Monitoring Analytics, *Analysis of the 2025/2026 RPM Base Residual Auction Part B* at 2 (Oct. 15, 2024), https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_B_20241015.pdf (IMM Part B Analysis) ("[H]olding everything else constant, the failure to offer of some capacity that was categorically exempt from the RPM must offer requirement (Scenario 2) together with the exclusion of the RMR resources in the BGE [Locational Deliverability Area (LDA)] from the supply curve (Scenario 3), and the use of summer ratings rather than winter ratings for [combined cycle (CC)] and [combustion turbine (CT)] resources in the marginal [effective load carrying capability (ELCC)] based accreditation (Scenario 4A) resulted in a 108.1 percent increase in RPM revenues, $7,630,166,235, for the 2025/2026 RPM Base Residual Auction . . . .").

assessed its aggregate and local market structure, participant behavior, and market performance.[12] *All of them* were rated "not competitive."[13]

The sole silver lining of the disastrous 2025/2026 BRA was to demonstrate an undeniable need for significant and immediate reform. To forestall a repeat or worse in the fast-approaching next BRA, parties filed three separate complaints under section 206 of the FPA asking the Commission to modify PJM's capacity auction rules. In response, and after initial resistance, PJM submitted five separate FPA section 205 filings to implement some of the changes the complainants sought for the 2026/2027 BRA and to attempt to reduce some interconnection-related entry barriers.[14]

While PJM continues to maintain that the rules used to conduct the 2025/2026 BRA were just and reasonable, its actions—together with the various IMM reports and the records compiled in numerous proceedings before the Commission—leave no doubt that the 2025/2026 BRA results are unjust and unreasonable because they: (1) do not reflect the

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[12] Monitoring Analytics, LLC, *State of the Market Report for PJM, Volume 2: Detailed Analysis* at 280 & tbl. 5-1 (Mar. 13, 2025), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2024.shtml (2024 State of the Market Report).

[13] *Id.*

[14] In Docket No. ER25-682-000, PJM proposed to include administratively at the bottom of the supply stack capacity provided by generators operating under certain RMR arrangements. PJM also proposed (among other things) to revert to using a combustion turbine as the Reference Resource instead of a combined-cycle generator for the 2026/2027 BRA, thereby preventing an increase in the market price cap from the (already excessive) 2025/2026 BRA cap level. In Docket No. ER25-785-000, PJM (among other things) eliminated the categorical must-offer exemption for intermittent, storage, and hybrid resources (but not demand-side capacity resources). In Docket No. ER25-712-000, PJM proposed a "Reliability Resource Initiative" to accelerate the interconnection study process for some new resources, and in Docket No. ER25-778-000, PJM eliminated barriers to the effective use of Supplemental Interconnection Service. The Commission accepted each of those filings. *PJM Interconnection L.L.C.*, 190 FERC ¶ 61,088 (2025); *PJM Interconnection L.L.C.*, 190 FERC ¶ 61,117 (2025); *PJM Interconnection L.L.C.*, 190 FERC ¶ 61,084 (2025); *PJM Interconnection L.L.C.*, 190 FERC ¶ 61,083 (2025). It also granted PJM's request to delay the conduct of the 2026/2027 auction to allow implementation of needed reforms. *PJM Interconnection L.L.C.*, 189 FERC ¶ 61,105, P 1 (2024); *PJM Interconnection L.L.C.*, 190 FERC ¶ 61,088 P 99 (2025). In Docket No. ER25-1357-000, which remains pending before the Commission, PJM proposed to further reduce the market price cap for the 2026/2027 BRA while pairing that proposal with a novel (and unjustified) new market price floor.

balance of available supply and demand or the effective mitigation of incumbent market power; and (2) may be materially distorted by market manipulation. The BRA market design relies on "competition from new entry"[15] to "discourage the exercise of market power and market manipulation generally."[16] Yet in the 2025/2026 BRA, non-price barriers—including interconnection queue delays and a drastically shortened forward period—blocked new entry and undermined the effectiveness of the tariff's market power mitigation rules. The result: extravagant prices far above those that supported new entry in past auctions (those not beset by interconnection delays or shortened forward periods)[17] but unable to elicit substantial new supply in current circumstances.[18] The Commission and the courts have made clear that high prices are unjust and unreasonable if they do not

[15] *PJM Interconnection L.L.C.*, 117 FERC ¶ 61,331, P 6 (2006), *reh'g granted in part,* 119 FERC ¶ 61,318, *reh'g denied,* 121 FERC ¶ 61,173 (2007).

[16] *Id. See also id.* P 101 ("[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.").

[17] Attach. B (First Montalvo Decl.) ¶¶ 56-63. "For the 2017/2018 through 2023/2024 time period, [regional transmission organization (RTO)]-wide market prices averaged only 32 percent of RTO Net [Cost of New Entry (CONE)] values." *Id.* ¶ 62.

[18] There was no shortage of resources seeking market entry prior to the 2025/2026 BRA. According to a Lawrence Livermore National Laboratory report, some 3300 projects were awaiting interconnection in 2023, before the April 2024 auction resulted in the 2025/2026 BRA price spike. Lawrence Berkeley National Laboratory, Queued Up: 2024 Edition at 9 (Apr. 2024), https://emp.lbl.gov/sites/default/files/2024-04/Queued%20Up%202024%20Edition_1.pdf (Queued Up). JCA witness Montalvo explained in his initial declaration in Docket No. EL25-18 that "[a]s of October 16, 2024, the PJM interconnection queue contained 159,900 MW in active capacity interconnection requests." Attach. B (First Montalvo Decl.) ¶ 42 (citing PJM, *Planning Serial Service Request Status* (2024), https://pjm.com/planning/servicerequests/serial-service-requests-status.) None of these projects could proceed through the queue to commercial operation because PJM with FERC's approval imposed a moratorium in 2022 through 2026. Queued Up at 7. A Columbia study of those projects that had obtained interconnection service agreements but not yet entered commercial operation showed that these projects were typically delayed by the knock-on effects of the lengthy PJM queue process. Abraham Silverman, et al., *Outlook for Pending Generation in the PJM Interconnection Queue* at 26-29, Columbia Center on Global Energy Policy (May 8, 2024) (Columbia Study) https://www.energypolicy.columbia.edu/publications/outlook-for-pending-generation-in-the-pjm-interconnection-queue/. Had only a fraction of these projects been able to bid into the auction the 2025/2026 BRA would undoubtedly have cleared lower on the steeply sloped Variable Resource Requirement (VRR) curve at a much lower price.

reflect market fundamentals[19] or cannot induce a market response.[20] The 2025/2026 BRA results fall short on both grounds.

Because the prices for 2025/2026 Delivery Year capacity are unjust and unreasonable, the Commission must modify them. FERC is required to remedy unjust and unreasonable rates.[21] At minimum, the broadly acknowledged need to fix market rule defects going forward (to ensure just and reasonable outcomes in the 2026/2027 BRA) obligates the Commission to examine whether those defects "similarly infected" the 2025/2026 BRA results.[22]

While it is the Commission's responsibility to develop a just and reasonable replacement rate,[23] the IMM reports, 2026/2027 BRA-related pleadings, and FERC's own orders suggest two potentially appropriate approaches. As explained in the Montalvo

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[19] *Cal. Indep. Sys. Operator Corp*., 171 FERC ¶ 61,220, PP 17-18 (2020) (rejecting, as not just and reasonable, tariff changes that "create an artificial constraint which raises prices for load and generation"); *Investigation of Terms & Conditions of Pub. Util. Mkt.-Based Rate Authorizations*, 105 FERC ¶ 61,218, PP 37-38 (2003) (actions creating artificial shortages are not consistent with just-and-reasonable rates), *clarified on denial of reh'g*, 107 FERC ¶ 61,175 (2004); *PJM Interconnection*, *L.L.C.*, 186 FERC ¶ 61,080, P 266 (2024) (noting importance of "aligning the LDA Reliability Requirement with actual reliability needs"), *set aside in part,* 189 FERC ¶ 61,043 (2024); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs*., 93 FERC ¶ 61,294, 61,998 (2000) ("While high prices in and of themselves do not make a rate unjust and unreasonable (because, for instance, underlying production prices may be high), if over time rates do not behave as expected in a competitive market, the Commission must step in to correct the situation.") (subsequent history omitted).

[20] *Citadel FNGE Ltd. v. FERC*, 77 F.4th 842, 856 (D.C. Cir. 2023) ("Citadel does not, and cannot, argue that an increase in rates without any commensurate benefit is in the public's interest, let alone just or reasonable."); *id*. at 855 ("[I]ncreased prices on one side of the balance without any value on the other side of the scale—all pain and no gain—[are] unjust and unreasonable.").

[21] *E.g., FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 277 (2016) ("FERC has the authority—and, indeed, the duty—to ensure that rules or practices 'affecting' wholesale rates are just and reasonable."); *Miss. Indus. v. FERC*, 808 F.2d 1525, 1557 (D.C. Cir. 1987) (subsequent history omitted) ("Under the FPA, the Commission has a statutory duty to reform unlawful rates and establish just and reasonable ones.").

[22] *Pub. Citizen v. FERC*, 7 F.4th 1177, 1196 (D.C. Cir. 2021) (*Public Citizen)* ("[T]he Commission failed to explain adequately its conclusion that the results of the 2015 Auction for Zone 4 were just and reasonable[,]" because it "failed to reconcile its prospective holding that the tariff could no longer protect against anticompetitive behavior with its conclusion that the conspicuously uneven 2015 results—obtained under the same flawed tariff terms—were not similarly infected.").

[23] *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 663 (D.C. Cir. 2017).

Declaration, the Commission should set new prices for 2025/2026 Delivery Year capacity by directing PJM to:

(1) Re-clear the 2025/2026 auction including the (a) previously excluded Wagner and Brandon Shores capacity and (b) generating resources that did not participate because they had must-offer exemptions (unless such resources can justify a unit-specific exemption, e.g., by showing that they have sold the capacity bilaterally); or, alternatively,

(2) Re-clear the 2025/2026 auction adding back the RMR capacity.[24]

As we explain below, the filed rate doctrine poses no impediment to granting this complaint and reforming capacity prices for the 2025/2026 Delivery Year. This complaint does not seek changes to rates for services already provided; it seeks changes to rates for capacity that has not yet been paid for or delivered. That is a textbook example of what section 206 is for: changing unjust and unreasonable rates that are currently on file before they are applied to future service. Section 206 also expressly authorizes the Commission to direct refunds of any unjust and unreasonable amounts collected between the refund effective date—which here should be the date of this complaint—and the date of the Commission order changing rates prospectively.

II. THE 2025/2026 BASE RESIDUAL AUCTION PRODUCED UNJUST AND UNREASONABLE RESULTS.

To function successfully, PJM's capacity construct depends on several pillars. These include full participation of all available supply, a realistic opportunity for new entry at the scale needed to offset retirements and discipline incumbent market power, and the

[24] We recognize that some equitable adjustments to the revised results may be appropriate under the circumstances. For example, we expect that the relief requested here would produce substantially lower clearing prices, which means that some resources that cleared the auction with higher offers no longer will clear when additional, lower-cost supplies are available. If such resources can demonstrate that they have incurred costs to enable them to provide capacity starting June 1, 2025, it may be appropriate for ratepayers to reimburse those costs or for the resource to retain its capacity obligation and to recover via an uplift charge the difference between its offer and the new clearing price.

application of effective seller market power mitigation rules without major loopholes. None of these conditions was present in the 2025/2026 BRA, resulting in unjust and unreasonable clearing prices.

A. 2025/2026 BRA prices reflected artificial shortages, not market fundamentals.

Openness to new entry and full participation by existing resources are essential to producing rates based on market fundamentals. As the IMM has explained, the PJM capacity construct is a "must buy and must sell design."[25] The symmetrical requirement is indispensable to setting prices based on "actual supply and demand fundamentals."[26] The 2025/2026 BRA prices were the product of a contrary approach, in which some eligible capacity suppliers were exempted from selling. The result was "an imbalance between supply and demand" and an "artificial upward pressure on market prices" that is "indistinguishable from the exercise of market power."[27] Here, the IMM's analyses, the records compiled in Docket Nos. ER25-682-000 and ER25-785-000, and the Commission decisions in those proceedings render it indisputable that the 2025/2026 BRA wrongly omitted (or allowed withholding of) thousands of megawatts of existing capacity, which distorted the auction results and propelled prices to unjust and unreasonable heights.

1. PJM wrongly ignored nearly 1,600 megawatts of unforced RMR capacity in the BGE LDA.

While aimed at changing the rules for the 2026/2027 auction, the complaints filed in Docket Nos. EL24-148 and EL25-18, along with PJM's testimony and the Commission decision in Docket No. ER25-682-000, all establish irrefutably that the 2025/2026 BRA

[25] IMM ER25-682 Comments at 26.

[26] *Id.*

[27] *Id.* at 26-27.

results were unjust and unreasonable because they failed to reflect the capacity functionally provided by the Brandon Shores and Wagner generation stations pursuant to RMR arrangements with PJM.[28] In response to the complaint proceedings, PJM filed proposed market rule changes to include these RMR units as price takers in the 2026/2027 BRA.[29] Because PJM filed the changes under FPA section 205, it did not need to show that the previous rules produced unjust and unreasonable results. But PJM's support for the changes—and the Commission's reasoning in accepting them—lead unavoidably to that conclusion.

PJM's Chief Economist and Lead Market Design Specialist testified in support of the change, explaining that "[s]ound electricity market design" seeks an "efficient allocation of resources in order to minimize system costs while maintaining reliability."[30] This, in turn, requires that "all available resources be utilized optimally, reflecting their actual contribution to meeting system needs."[31] Because RMR generators "do contribute to resource adequacy" so long as they meet certain criteria, Messrs. Graf and Marzewski

[28] *E.g.,* Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM at 2, *Sierra Club v. PJM Interconnection*, *L.L.C.*, Docket No. EL24-148-000 (Oct. 31, 2024), eLibrary No. 20241031-5338 (IMM October Answer) ("[T]he current treatment of resources providing service under Part V of the OATT ('Part V Service') is unjust and unreasonable.").

[29] PJM's filing was conditional with respect to Brandon Shores based upon since-resolved concerns as to its availability as a capacity resource. "Sierra Club's amendment to its agreement with Talen removes [PJM's] concern [as to the availability of Brandon Shore's as a capacity resource] altogether by making clear that Brandon Shores may operate without running afoul of the agreement, including through burning coal, under the terms of an RMR agreement on file at the Commission." Motion to Lodge PJM Briefing in Support of its Proposed "Stop Gap" RMR Reforms and Second Declaration of Justin Vickers at 2, *Sierra Club, et al. v. PJM Interconnection, L.L.C.*, Docket No. EL24-148 (Jan. 31, 2025), eLibrary No. 20250131-5330.

[30] PJM Interconnection, L.L.C., Revisions to Reliability Pricing Model, Attach. D., Aff. of Walter Graf and Skyler Marzewski on Behalf of PJM Interconnection, L.L.C. ¶ 21, *PJM Interconnection*, *L.L.C.*, Docket No. ER25-682-000 (Dec. 9, 2024), eLibrary No. 20241209-5207 (Graf/Marzewski Aff.).

[31] *Id.*

testified that "[t]he economically efficient approach . . . is to acknowledge and fully recognize this contribution in the capacity market clearing process."[32]

In contrast, they explained, the exclusion of RMR resources (as occurred in the 2025/2026 auction) "may deviate from this core principle by permitting a disconnect between the physical reality of available capacity and the capacity recognized by the capacity market."[33] This deviation leads to "inefficiencies that ultimately harm consumers."[34] It "artificially inflates the need for capacity" and forces consumers to pay twice: "once through the RMR agreement for the unit's availability that includes providing capacity, and again in the capacity market for the redundant capacity procured to replace the very capacity already provided by the RMR resource."[35]

These "distorted capacity market prices" also interfere with efficient investment signals.[36] While future conditions are important for long-term planning, Messrs. Graf and Marzewski explained that "capacity market prices should primarily reflect current (delivery-year) resource availability."[37] Otherwise, artificially inflated prices can cause flexible resources, such as certain types of demand response, "to be committed in years where they are not economically justified."[38] And that is not only economically inefficient;

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[32] *Id.* ¶ 23. PJM's filing established certain criteria to identify RMR resources that can be reasonably expected to perform similarly to capacity resources. *See PJM Interconnection*, *L.L.C.*, 190 FERC ¶ 61,088, P 22 (2025) (summarizing criteria). When such criteria are satisfied, the Commission explained, their contractual obligations as RMR resources make them "a reasonable substitute for a capacity resource in terms of its ability to contribute to resource adequacy during emergencies," even if the resources do not have exactly the "same incentives and requirements as capacity resources." *Id.* P 49.

[33] Graf/Marzewski Aff. ¶ 22.

[34] *Id.*

[35] *Id.* ¶ 26.

[36] *Id.* ¶ 27.

[37] *Id.*

[38] *Id.*

it also helps to create opportunities for the exercise of market power by demand-based capacity resources that (uniquely among all sellers) are not subject to market seller offer caps. As discussed further below,[39] the IMM has concluded that the 2025/2026 BRA results were "significantly affected" by "the exercise of market power through high offers from demand resources."[40]

In accepting PJM's proposed treatment of the RMR units in the 2026/2027 auction, the Commission made clear that it shared PJM's (and the complainants') view that RMR capacity should be included to "reflect the actual availability of resources in the PJM Region" and "avoid the risk that load will pay twice for the same capacity."[41] Consequently, the Commission followed its precedent[42] and accepted PJM's proposal to include the units in the supply stack as price takers to ensure that the resources clear in the 2026/2027 BRA and that "consumers are protected against excessive capacity costs."[43]

There is no reason to reach a different conclusion with respect to the 2025/2026 auction. PJM and the Commission have acknowledged that the Wagner and Brandon Shores generating stations—totaling about 1,600 MW unforced capacity (UCAP) of

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[39] *See* section II.B.3, *infra.*

[40] Monitoring Analytics, *Analysis of the 2025/2026 RPM Base Residual Auction Part C* at 6 (Nov. 6, 2024), https://www.monitoringanalytics.com/reports/reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_C_20241106.pdf. (IMM Part C Analysis).

[41] *PJM Interconnection*, *L.L.C.*, 190 FERC ¶ 61,088, P 47.

[42] *See* Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. at 15-16 n.52, *PJM Interconnection*, *L.L.C.*, Docket No. ER25-682-000 (Jan. 24, 2025), eLibrary No. 20250124-5169 (citing *N.Y. Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,076, P 82 (2016)); *ISO New Eng., Inc.*, 185 FERC ¶ 61,095, P 76 (2023), *set aside in part,* 187 FERC ¶ 61,017 (2024).

[43] *PJM Interconnection*, *L.L.C.*, 190 FERC ¶ 61,088, P 50. To ensure full protection for the consumers that fund the RMR arrangement, PJM's filing also proposed a "targeted adjustment to cost allocation to prevent double payment by loads supporting RMR resources." Graf/Marzewski Aff. ¶ 10. Those loads pay all of the costs under the RMR arrangement but, without the adjustment, the economic value of including the RMR capacity in the auction would be spread over all loads. PJM's adjustment addresses this by crediting to the loads that pay the RMR costs the full economic value of the RMR capacity (the new clearing price times the cleared quantity of RMR capacity). *Id.* ¶¶ 31-39.

capacity[44]—both satisfy the criteria PJM established to identify RMR resources that can be relied on to perform during a capacity emergency.[45] Based on the terms of the RMR arrangements and a recent amendment to an agreement between Sierra Club and Talen Energy concerning the Brandon Shores facility, PJM may rely on both the Wagner and Brandon Shores facilities to perform similarly to a capacity resource throughout the 2025/2026 Delivery Year.[46]

Nevertheless, because Talen Energy opted not to bid the units into the capacity market and PJM's tariff did not require participation, the 2025/2026 BRA ignored those facilities' ratepayer-funded reliability contributions—with devastating consequences. The omission of RMR capacity meant that "the auction results did not properly reflect the fundamentals of supply and demand" and "prices were elevated significantly above efficient and competitive levels."[47] As JCA witness Montalvo observes, the BGE zone fell short of clearing sufficient capacity by just 303 MW.[48] The omission of 1,600 MW (UCAP) of RMR capacity therefore made an enormous difference to the 2025/2026 auction results, in that zone and the rest of PJM. According to the IMM, that single omission unjustly increased 2025/2026 BRA costs by nearly **$4.3 billion**, or 41.2 percent, compared to what prices would have been if the resources had been included in the supply curve at $0/MW-

[44] *See* Attach. B (First Montalvo Decl.) ¶ 41 tbl. 1.

[45] *See PJM Interconnection*, *L.L.C.,* 190 FERC ¶ 61,088, P 48.

[46] *Id.* P 53 n.136.

[47] IMM October Answer at 3.

[48] Attach. A (Montalvo Decl.) ¶ 8.

day.[49] Witness Montalvo reaches a similar conclusion: the omission of RMR units by itself increased the 2025/2026 BRA consumer cost burden by $3.9 billion.[50]

2. Exempt generators withheld another 1,600 MW (UCAP) of capacity.

Despite the RPM's "must buy and must sell" design,[51] PJM's rules for the 2025/2026 auction exempted from other applicable must-offer requirements more than 10,000 of megawatts of existing capacity.[52] Of that total, suppliers withheld roughly 1,600 MW (UCAP) from the 2025/2026 BRA, including 1,100 MW (UCAP) of wind, solar, and battery resources,[53] artificially suppressing the capacity available to satisfy resource adequacy demand modeled in PJM's auction. That omission (along with the RMR capacity discussed above) materially affected the 2025/2026 BRA results. The artificial capacity shortages in the BGE and DOM zones were just 303 and 532 MW (UCAP) respectively—far less than the exempt resources and RMR capacity that opted not to participate.[54] Furthermore, the 2025/2026 auction cleared on the steepest part of the Variable Resource Requirement (VRR) demand curve.[55] Consequently, the omission of even a relatively small amount of infra-marginal supply almost certainly increased prices dramatically.

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[49] Monitoring Analytics, *Analysis of the 2025/2026 RPM Base Residual Auction Part A* at 2 (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).

[50] Attach. A (Montalvo Decl.) ¶ 28.

[51] IMM ER25-682 Comments at 26.

[52] PJM Interconnection, L.L.C., Extending the Capacity Must-Offer Requirement to All Generation Capacity Resources (PJM ER25-785 Filing), Attach. C, Aff. of Dr. Walter Graf on Behalf of PJM Interconnection, L.L.C. ¶ 12 & tbl. 1.B (Graf ER25-785 Aff.), *PJM Interconnection*, *L.L.C.*, Docket No. ER25-785-000 (Dec. 20, 2024), eLibrary No. 20241220-5420. The exempt amounts included more than 1,800 MW (UCAP) of solar capacity, 2,000 MW (UCAP) of wind resources, and 6,900 MW of hydro facilities. *Id.*

[53] *Id.* ¶ 11.

[54] Attach. A (Montalvo Decl.) ¶ 8.

[55] *Id.*¶ 22.

PJM acknowledges the concern. It proposed for the 2026/2027 auction to end the must-offer exemption for intermittent, storage, and hybrid (ISH) resources, while retaining the exemption for demand-side capacity resources.[56] As with the treatment of RMR resources, the reasons to end the exemption of ISH resources for 2026/2027 apply equally to the 2025/2026 BRA. PJM offered three rationales for eliminating the ISH exemption: (1) to produce "RPM Auction outcomes that more accurately reflect the actual quantity of Existing Generation Capacity Resources";[57] (2) to ensure that ratepayers receive the value of the investments they make to support such resources' Capacity Interconnection Rights;[58] and (3) to mitigate the potential exercise of supplier market power through physical withholding of capacity.[59] The undeniable implication is that the 2025/2026 auction, from which the resources were withheld, failed to accomplish those objectives. We discuss market power mitigation below.

As to price formation, PJM explained that it was eliminating the ISH exemption so that the 2026/2027 auction would "better reflect the PJM Region's existing supply and demand fundamentals,"[60] implying that the 2025/2026 auction failed to do so. The IMM has said so explicitly. "The result of the failure to offer [exempt capacity] was a significant increase in the market price of capacity above the competitive level in the 2025/2026 BRA."[61] Specifically, the IMM estimated that the non-participation of exempt resources

[56] PJM ER25-785 Filing at 1-2.

[57] *PJM Interconnection*, *L.L.C.*, 190 FERC ¶ 61,117, P 6 (2025) (paraphrasing PJM ER25-785 Filing).

[58] PJM ER25-785 Filing at 7.

[59] *Id.* at 28.

[60] *Id.* at 2.

[61] 2024 State of the Market Report at 293; *see also* Comments of the Independent Market Monitor for PJM at 6, *PJM Interconnection*, *L.L.C.*, Docket No. ER25-785-000 (Jan. 10, 2025), eLibrary No. 20250110-5407 (IMM ER25-785 Comments) ("The results of the 2025/2026 RPM Base Residual Auction are demonstrative

increased 2025/2026 BRA prices by about **$4.1 billion** or roughly 39%, as compared to a counterfactual in which all such resources participated.[62] As FERC noted in approving the change for 2026/2027, the IMM's analysis of the 2025/2026 results was "not disputed in the record."[63]

While not strictly additive, the combined effect of omitting both RMR resources and exempt non-RMR capacity produced an even larger unjust and unreasonable price spike. According to the IMM, holding everything else constant, the omission of both sets of resources together caused more than $5.1 billion in excess costs, inflating total 2025/2026 BRA costs by roughly 54 percent.[64]

3. PJM understated by thousands of megawatts the resource adequacy contribution of thermal resources.

PJM also has understated the capacity that thermal generators can provide and should have been able to offer in the 2025/2026 auction. As the IMM has explained, PJM introduced a significantly modified ELCC method in the 2025/2026 BRA.[65] Before the 2025/2026 auction, PJM used an average ELCC capacity accreditation method and applied it only to certain (mainly ISH) resources.[66] PJM calculated the UCAP of other resources based on the probability that the resource would experience a forced outage.[67] Starting with the 2025/2026 BRA, PJM employed a marginal ELCC approach for all resources. The

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of the adverse outcomes, generally, resulting from the failure to extend the must offer requirement uniformly to all capacity resources.").

[62] IMM ER25-785 Comments at 6-7. This assessment is independent of the IMM's estimate of the rate impact of the failure of Brandon Shores and Wagner to offer their capacity in the auction.

[63] *PJM Interconnection*, *L.L.C.*, 190 FERC ¶ 61,117, P 50 n.145.

[64] IMM October Answer, *supra* n. 28, Attach. B at 1-2.

[65] 2024 State of the Market Report at 279.

[66] *PJM Interconnection*, *L.L.C.*, 186 FERC ¶ 61,080, P 7, *set aside in part,* 189 FERC ¶ 61,043 (2024).

[67] *Id.* P 6.

method uses a Monte Carlo simulation to assess each resource's contribution to reducing unserved energy expectations.[68] That approach produces an ELCC rating—a percentage reflecting the resource's reliability contribution compared to that of a hypothetical perfect resource.[69] PJM then applies the ELCC percentage to the resource's capacity rating to determine the amount of capacity the resource may offer and sell in the BRA.[70]

As the IMM and Joint Consumer Advocates have explained, however, there is a mismatch for thermal resources between the way ELCC percentages are developed and the capacity ratings to which they are applied. "Most of the risk recognized in the ELCC model is winter risk but the ELCC accreditation values for thermal resources are capped at [their] summer ratings."[71] The mismatch "unnecessarily limits supply."[72] Combustion turbines and combined-cycle generators can produce at higher levels during colder weather.[73] So, PJM's choice to use summer ratings "effectively undercounts the contribution these resources can make during the high-risk winter period."[74] According to the IMM, thermal resource capacity accreditation in the 2025/2026 BRA was 8.8% lower than it would have been if ELCC ratings were applied to winter capability.[75] The difference amounts to thousands of megawatts of overlooked resource adequacy contribution. In Docket No.

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[68] *See generally id.* ¶¶ 26-40; PJM Manual 20: PJM Resource Adequacy Analysis, Rev. 15 at 37 (June 27, 2024), https://pjm.com/-/media/DotCom/documents/manuals/m20.ashx.

[69] *See* Capacity Market Reforms to Accommodate the Energy Transition While Maintaining Resource Adequacy, Att. D, Aff. of Dr. Walter Graf on Behalf of PJM Interconnection, L.L.C. ¶ 23, *PJM Interconnection, L.L.C.*, Docket No. ER24-99-000 (Oct. 13, 2023), eLibrary No. 20231013-5157.

[70] *Id.*, Transmittal Letter at 50-51.

[71] IMM Part A Analysis at 6.

[72] *Id.*

[73] EL25-18 Complaint at 27; Attach. B (First Montalvo Decl.) ¶ 29.

[74] EL25-18 Complaint at 27 (quoting Attach. B (First Montalvo Decl.) ¶ 39).

[75] IMM Part A Analysis at 10.

EL25-18-000, we explained that the accreditation mismatch "undercounts the available capacity of these resources by as much as 5,400 MW (UCAP)."[76] By itself, the IMM estimates, that undercount increased 2025/2026 BRA costs by more than **$2.7 billion** or 22.7 percent.[77] And cumulatively, this issue together with the omission of RMR and exempt non-RMR capacity increased 2025/2026 BRA costs by more than **$7.6 billion**.[78]

Notably, PJM has not disputed this critique. It has sought to deflect discussion of these issues into an ongoing stakeholder process to assess changes to ELCC generally. Without denigrating the importance of such discussions, neither they nor any filing they may produce will do anything to remedy the 2025/2026 BRA's multi-billion overcharges. The Commission should do so by granting this complaint.

B. The 2025/2026 BRA was rife with unmitigated seller market power.

Our showing (above) that the 2025/2026 BRA results reflect severe distortions of the supply-demand balance—mainly by including all the ratepayer demand but ignoring or omitting thousands of megawatts of existing supply, particularly when new resources could not enter the market—demonstrates that the clearing prices were unjust and unreasonable. The IMM has calculated that the respective failures of the ISH resources and the Brandon Shores and Wagner RMR units to offer into the 2025/2026 BRA together resulted in over

[76] *See* Second Motion for Leave to Answer and Answer of Joint Consumer Advocates at 9, *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Docket No. EL25-18-000 (Mar. 11, 2025), eLibrary No. 20250311-5212.

[77] IMM Part A Analysis at 10-11. That may understate the impact. According to the IMM, using higher winter ratings for thermal resources also would affect the ELCC values of other resource types and the peak loads that could be served. *Id.* at 10. In particular, using these resources' higher winter ratings would reduce the installed reserve margin (IRM) and reliability requirements. *Id.* Accounting for these effects as well, the IMM estimated that using thermal resources' lower summer ratings increased 2025/2026 BRA costs by $6.5 to $8 billion. *Id.* at 11.

[78] IMM Part B Analysis at 10-11 (discussing scenario 7).

$5 billion in excess capacity charges.[79] Joint Consumer Advocates have demonstrated what may prove to be—absent Commission relief—the largest ratepayer injuries in the history of the BRA auction process.[80] No more is needed from an FPA section 206 complainant. While we need not also show that auction participants engaged in exercises of market power or market manipulation, that possibility cannot be dismissed because numerous entities possessed insufficiently mitigated market power, withheld capacity (either physically or economically), and benefited from the resulting price increase.

1. The structurally uncompetitive PJM capacity market depends on effective market power mitigation, which failed in the 2025/2026 BRA.

According to the IMM, "[s]tructural market power is endemic" to the PJM capacity market,[81] because demand is "almost entirely inelastic," while supply is "generally only slightly larger than demand."[82] Consequently, any supplier that owns more capacity than the "typically small difference between total supply and the VRR defined demand," either by itself or together with two other suppliers, is pivotal and has structural market power.[83] In nearly every auction from 2007 to the present, each locational deliverability area (LDA) and the PJM market as a whole has failed the three-pivotal-supplier test for seller market power.[84] And the same was true in the 2025/2026 BRA. In that auction, "all participants in

[79] *See supra* II.A.3

[80] As Joint Consumer Advocates have shown in the Docket No. EL25-18 and EL25-46 complaint proceedings, and in their protest to PJM's FPA section 205 price collar filing in Docket No. ER25-1357, the 2026/2027 and 2027/2028 BRA auctions could result in even greater ratepayer injuries absent Commission relief.

[81] 2024 State of the Market Report at 280.

[82] IMM Part A Analysis at 2-3. "While the market may be long at times, that is not the equilibrium state," because excess capacity may retire if it does not clear and it does not expect to earn adequate revenues from the full set of PJM markets. *Id.*

[83] *Id.* at 3.

[84] 2024 State of the Market Report at 280.

the total PJM market as well as the LDA RPM markets failed the three pivotal supplier (TPS) test."[85] And consistent with that assessment, in fact, "[a]ll offered thermal, nuclear, demand response and solar capacity cleared the 2025/26 BRA."[86]

Despite the existence of such market power, the IMM says that PJM's capacity construct still can produce just and reasonable outcomes (similar to those of a competitive market)—*if* effective market power mitigation is in place.[87] To constrain seller market power, PJM and the Commission rely on three market power mitigation mechanisms: a must-offer requirement, offer caps, and competition from potential entry.[88]

But in the 2025/2026 BRA, flaws in all three mechanisms combined to restrict—if not eliminate—their ability to constrain supplier market power and ensure just and reasonable rates. Must-offer exemptions allowed the physical withholding of a significant amount of capacity, driving clearing prices above competitive levels.[89] Demand-side capacity resources were "not subject to market seller offer caps to protect against the exercise of market power,"[90] so they could (and, the IMM says, did) engage in economic withholding by offering some of their capacity at sky-high prices. And those strategies were unusually likely to succeed because misspecified ELCC rules limited otherwise available

[85] *Id.* at 281; *see also* IMM Part A Analysis at 4; Graf ER25-785 Aff. ¶ 14.

[86] EL25-18 Complaint at 10 (quoting Attach. B, Aurora Energy Research, PJM Capacity Market - 2025/2026 BRA results & outlook for upcoming auctions at 13 (Sept. 2024) (Aurora Report)).

[87] IMM Part A Analysis at 3.

[88] *See* PJM ER25-682 Filing at 75 ("To mitigate against the potential exercise of seller side market power, PJM's capacity market includes two main rules: the Market Seller Offer Cap and the capacity must-offer requirement."); *PJM Interconnection L.L.C.*, 117 FERC ¶ 61,331, P 6 (describing mitigation rules and "competition from new entry" as the "most important design elements" discouraging "the exercise of market power and market manipulation generally").

[89] IMM Part A Analysis at 3.

[90] 2024 State of the Market Report at 293; IMM Part A Analysis at 4.

capacity and non-price entry barriers effectively foreclosed competition from potential new entrants.

2. Must-offer exemptions enabled physical withholding by entities that could profit from it.

As PJM acknowledges, it is "well established" that physical withholding of resources can be a profitable strategy for exercising market power.[91] Sellers that control a portfolio of resources may have powerful incentives to withhold some of them to boost the clearing price and benefit the balance of their remaining (auction-participating) portfolio.[92] And when sellers have such incentives, it is reasonable to expect that they will act on them if they can.[93] While the must-offer requirement aims to prevent them from doing so,[94] exemptions present in the 2025/2026 BRA frustrated that purpose and enabled withholding.

a) During the 2025/2026 BRA, thousands of megawatts of existing ISH capacity resources had the incentive and ability to exercise market power profitably.

PJM's post hoc analysis, filed to support eliminating (most of the) must-offer exemptions for the next auction, revealed widespread potential for profitable withholding in the 2025/2026 BRA.[95] PJM Chief Economist Walter Graf examined the ownership of certain resources exempt from must-offer requirements in the 2025/2026 BRA and sought

[91] Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. at 7, *PJM Interconnection*, *L.L.C.*, Docket No. ER25-785-000 (Jan. 31, 2025), eLibrary No. 20250131-5491 (PJM ER25-785 Answer).

[92] *See* EL25-18 Complaint at 14; Attach. B (First Montalvo Decl.) ¶ 36.

[93] PJM ER25-785 Answer at 7 (quoting IMM) (cleaned up) ("If some sellers have the option to withhold supply, they will withhold so when it is in their interests to do so.").

[94] *PJM Interconnection*, *L.L.C.*, 168 FERC ¶ 61,155, P 41 (2019) ("The underlying purpose of the must-offer requirement is to ensure that sellers do not withhold capacity resources from RPM auctions and potentially exert market power.").

[95] *See* Graf ER25-785 Aff. ¶ 7 (finding "potential for profitable capacity withholding related to unilateral market power for a significant amount of currently exempt generation capacity").

to identify those held in portfolios large enough to make withholding strategies profitable.[96] Affiant Graf observed that withholding generally incurs a cost—namely, forgone capacity revenue for the withheld resource.[97] For each exempt resource, he estimated those costs as well as the potential gains: the product of increased capacity clearing prices and the amount of cleared capacity remaining in the seller's portfolio.[98] Comparing estimated withholding costs and gains, he found that "nearly half" of the exempt generation capacity in the 2025/2026 BRA, "over 5,000 MW UCAP," was held in portfolios large enough to make withholding profitable at the parent company level—that is, large enough to give the parent companies "the incentive and ability to exercise unilateral market power" by withholding resources from the market.[99] And in fact, as discussed in section IIA.2 above, suppliers chose not to offer thousands of megawatts of exempt capacity resources—and thereby increased total revenues in the 2025/2026 BRA by more than $4 billion.

Dr. Graf appears to have focused his analysis on exempt intermittent, storage, and hybrid resources. But other resources—namely, exempt RMR generators and demand-side capacity resources—possessed the same incentives and ability to exercise market power through profitable withholding.

[96] *Id.* ¶¶ 15-21.

[97] *Id.* ¶¶ 17-19.

[98] *Id.*

[99] *Id.* ¶¶ 15, 21; *see also* PJM ER25-785 Answer at 7-8 (describing Dr. Graf's "significant concern" that market power could be exercised).

b) Because exempt RMR resources did not participate, their owner received much higher prices paid to thousands of megawatts of other capacity in its portfolio.

Talen Energy, one of PJM's largest capacity suppliers,[100] owns two RMR generators, Wagner and Brandon Shores. On June 17, 2024, the Commission accepted RMR arrangements under which Wagner and Brandon Shores would provide service beginning June 1, 2025, the start of the 2025/2026 Delivery Year.[101] The bidding window for the 2025/2026 BRA opened a month later, on July 17, 2024.[102] Talen, like virtually all RMR generators,[103] opted not to offer its RMR capacity in the auction. That decision cost Talen nothing, as the RMR arrangements fix the units' rates contractually. And Talen stood to gain nothing from bidding the units into the BRA, because if they cleared Talen would have had to credit ratepayers with the resulting capacity market revenues. To put it in Dr. Graf's terms, the RMR arrangements insulated Talen from any cost to withhold the units.

Talen profited handsomely by exercising its option not to bid the RMRs into the capacity auction. According to a Talen press release, it cleared "a total of 6,820 megawatts of capacity at a clearing price of $269.92/MW-day across the MAAC, PPL, and PSEG Locational Deliverability Areas, equating to approximately $670 million in capacity revenues for the 2025/2026 planning year."[104] Had the Wagner and Brandon Shores

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[100] As of December 31, 2024, Talen was PJM's fifth largest capacity supplier, controlling more than 10,169 MW installed capacity (ICAP) of capacity or 7.0 percent of Total ICAP in PJM. 2024 State of the Market Report at 295 tbl. 5-4.

[101] *H.A. Wagner LLC*, 187 FERC ¶ 61,176 (2024).

[102] PJM Capacity Auction for 2025/2026 Delivery Year Opens, PJM Inside Lines (July 17, 2024), https://insidelines.pjm.com/pjm-capacity-auction-for-2025-2026-delivery-year-opens/ - :~:text=PJM Interconnection opened the bidding,at the PJM Learning Center.

[103] Graf/Marzewski Aff. ¶ 22.

[104] Talen Energy, Talen Reports PJM Auction Results for 2025/2026 Planning Year (July 30, 2024), https://ir.talenenergy.com/news-releases/news-release-details/talen-reports-pjm-auction-results-20252026-planning-year#:~:text=Talen%20cleared%20a%20total%20of,the%202025%2F2026%20planning%20year.

capacity been included in the auction, JCA witness Montalvo estimates that the clearing prices in those LDAs would have been $177/MW-day (assuming no other changes).[105] Roughly speaking, then, the decision not to offer Wagner and Brandon Shores capacity enabled Talen to realize an additional $231 million in capacity portfolio revenue (with no forgone revenue for Wagner and Brandon Shores under their RMR arrangements).[106]

When a resource seeks to deactivate, the IMM evaluates whether the deactivation decision is an exercise of market power. But the IMM does not evaluate whether an RMR generator's subsequent decision to offer or refrain from offering capacity in a BRA is an exercise of market power.[107] So far as we are aware, PJM has likewise not evaluated Talen's decision to forego bidding the RMR units into the BRA. In the extant circumstances, it seems obvious that Talen's decision should also be scrutinized. As PJM has explained, "being excused from being *required* to offer into the capacity market is no defense to exercising market power by *electing* not to offer."[108]

c) Demand-side capacity resources are also held in portfolios that enable profitable withholding strategies.

Similar scrutiny should apply to decisions not to offer demand-side capacity resources. Although PJM proposed to maintain the must-offer exemption for such resources, it has not refuted our observation that during both the 2025/2026 and upcoming 2026/2027 auctions many of these resources are owned by or affiliated with companies that

[105] Attach. A (Montalvo Decl.) ¶ 27.

[106] ($269.92-$177.00)/MW-day * 6,820 MW * 365 days = $231,305,756.

[107] *See* Complaint of Sierra Club, Natural Resources Defense Council, Public Citizen, Sustainable FERC Project and Union of Concerned Scientists at 46 & n.189, *Sierra Club v. PJM Interconnection*, *L.L.C.*, Docket No. EL24-148-000 (Sept. 27, 2024), eLibrary No. 20240927-5073 (EL24-148 Complaint).

[108] PJM ER25-682 Filing at 3.

own thousands of megawatts of generation capacity.[109] For example, CPower, "the largest provider of [Demand Response (DR)] and [Distributed Energy Resources (DER)] services in the U.S.,"[110] is affiliated with LS Power,[111] which, as of December 31, 2024, was PJM's second-largest capacity supplier with more than 12,600 MW (ICAP).[112] In this way, and like the RMR units, the affiliation of exempt demand response resources with large portfolios of auction-participating generation capacity means that their owners benefit from higher capacity prices and have the same incentives as other sellers to exercise seller market power by withholding some resources to increase prices for the remainder of the portfolio.

The 2025/2026 BRA cleared 2,000 MW less demand-based capacity than the 2024/2025 BRA.[113] And since all offers for such capacity cleared in 2025/2026,[114] that means at least 2,000 MW less was offered. Complainants do not have access to data that might reveal the reason for the reduction. We do not know how much demand-based capacity any provider offered or how much more they could have offered, although a review of the BRA bid data, that PJM maintains as confidential, could reveal this information.[115] But the undeniably strong incentives and ability to raise prices by

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[109] *See* EL25-18 Complaint at 28-29; Attach. B (First Montalvo Decl.) ¶¶ 28, 38; Motion for Leave to Answer and Answer of Joint Consumer Advocates at 23-26, *Joint Consumer Advocates v. PJM Interconnection, L.L.C.,* Docket No. EL25-18-000 (Feb. 7, 2025), eLibrary No. 20250207-5160 (EL25-18 JCA Answer).

[110] (doc-less) Motion to Intervene of Enerwise Global Technologies, LLC dba CPower under EL25-18-000 (Nov. 20, 2024), eLibrary No. 20241120-5150.

[111] *See* Protest of Enerwise Global Technologies, LLC D/B/A CPower at 25, *Joint Consumer Advocates v. PJM Interconnection, L.L.C.,* Docket No. EL25-18-000 (Jan. 23, 2025), eLibrary No. 20250123-5120.

[112] 2024 State of the Market Report at 295 tbl. 5-4.

[113] *Id.* at 306 tbl. 5-12.

[114] EL25-18 Complaint at 10; Aurora Report.

[115] By comparison, Midcontinent Independent System Operator, Inc. (MISO) releases masked bid data after every annual capacity market *See, e.g.,* PRA Detailed Report Plan Year 2024-25 (May 20, 2025), https://www.misoenergy.org/planning/resource-adequacy2/resource-adequacy/#nt=/planningdoctype:PRA%20Document/planningyear:PY%2024-25.

withholding, the drop in offered supply, and the resulting clearing price spike all make it imperative that the Commission investigate what occurred and why.

3. Because demand-based capacity was not subject to an offer cap, it could withhold economically.

Sellers with market power can raise prices not only by physically withholding part of their portfolio. They also can raise prices via economic withholding: offering needed supplies at supra-competitive prices. To address this concern, PJM imposes market seller offer caps on generation- and storage-based capacity resources that fail market power screens.[116] But PJM does not currently impose a cap on offers from demand-based capacity resources.[117] The IMM has observed that this is an "important gap[]" in PJM's market power mitigation rules.[118]

Despite the recent drop in offers, demand-based capacity still constitutes about 4 to 5 percent of the total capacity participating in PJM's capacity market—a significant fraction, especially under tight market conditions.[119] The quantity of cleared demand-based capacity (more than 6,000 MW (UCAP)) far exceeded the entire amount of excess capacity in the 2025/2026 auction (871 MW).[120] Moreover, ownership of those demand-based capacity resources is highly concentrated.[121] As a result, demand-based capacity owners

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[116] *See PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117, P 3.

[117] 2024 State of the Market Report at 287. Market power offer caps did apply to demand resources bidding into capacity auctions prior to November 1, 2009. *Id.* at 281-82.

[118] *Id.* at 288.

[119] *See* Attach. B (First Montalvo Decl.) ¶ 38; EL25-18 JCA Answer at 22 (citing Ian Will, PJM's 2025/2026 BRA results: demand response pricing soars to record highs, Enel (Aug. 16, 2024), https://www.enelnorthamerica.com/insights/blogs/pjm-2025-2026-BRA-results (noting that in the 2025/2026 BRA demand response comprised 5% of the resource mix and cleared around 6,000 MW of capacity at "staggering" prices)).

[120] 2024 State of the Market Report at 287.

[121] EL25-18 JCA Answer at 22 (citing Monitoring Analytics, LLC, *2023 State of the Market Report for PJM, Volume 2: Detailed Analysis* at 353,

could be reasonably sure that any offer submitted would have a reasonable chance of clearing. Accordingly, it would have been a rational profit-maximizing strategy for the owner of a portfolio of demand-based capacity (or a portfolio of capacity resources that includes such capacity) to offer it in tranches at increasing price levels, to set the highest possible clearing price for all resources in the portfolio.

While we do not have bid data to demonstrate that any participant pursued this approach, its potential appeal is obvious. In a recent presentation, NRG noted the tightening PJM capacity market[122] and resulting volatility of PJM capacity prices.[123] It observed that PJM was a "very highly managed" market "except for certain resources."[124] NRG explained that most resources are subject to must-offer requirements and an offer price cap, which "typically has resulted in auction outcomes where the clearing price is a function of that mitigation."[125] But "a couple of resources" including demand-based capacity "are unmitigated," and "[w]hen these unmitigated resources are on the margin, prices can quickly escalate."[126]

Unlike stakeholders such as the JCA, the IMM has access to 2025/2026 offer data. After reviewing these data, the IMM concluded that the 2025/2026 BRA results were

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https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2023.shtml (2023 State of the Market Report)); *id.* at 23 (citing 2023 State of the Market Report at 363 tbl. 6-2).

[122] Travis Kavulla, Vice President of Regulatory Affairs, NRG, Resource Adequacy & Natural Gas-Electric Coordination slide 5 (Oct. 22, 2024) , https://nrg.com/assets/documents/energy-policy/resource_adequacy_and_gas_electric_coordination_oct_22_2024.pdf ("Capacity Pricing: A Signal that PJM is (nearly) 'Resource Inadequate'").

[123] *Id*., slide 12 ("The demand curve is administratively defined, and its slope based on RTO's guess of appropriate proxy unit (e.g., CT vs CCCT). In current design, it only takes ~3,700 MWs to go from a $0/MW-day to ~$700/MW-day price.").

[124] *Id.* (cleaned up).

[125] *Id.*

[126] *Id.*

"significantly affected" by flawed market design and the exercise of market power, including "the exercise of market power through high offers from demand resources."[127] At a minimum, the Commission should investigate this allegation before closing the books on the 2025/2026 BRA results, and imposing very substantial costs on PJM ratepayers.[128]

4. Suppliers could exploit gaps in PJM's market power mitigation because the market was tight and new entry nearly impossible.

PJM's market power mitigation rules were not designed to be the sole protection against the exercise of seller market power. Instead, they were expected to work in concert with "competition from new entry" to constrain incumbent market power.[129] But in the 2025/2026 BRA, severe non-price entry barriers—mainly, the stalled interconnection queue and truncated auction forward period—foreclosed new entry and eliminated that crucial check on incumbent market power.

As Commissioners Rosner and Phillips recently observed, "PJM's legacy interconnection process is overwhelmed by the volume of requests to connect new generation and storage, causing the typical wait time in PJM's queue to exceed five years."[130] As of a couple months ago, there were "roughly *290 [gigawatts (GW)]* of new generation and storage waiting to connect in PJM,"[131] which entered the queue years ago

[127] IMM Part C Analysis at 6.

[128] There are 67 million people who live within the PJM footprint. A $14.7 billion charge for capacity means that, on average, every person living in the footprint will need to pay roughly $219 to cover the 2025/2026 BRA results. Given the extant facts presented here, the Commission should not find such charges permissible absent a thorough investigation.

[129] *PJM Interconnection L.L.C.*, 117 FERC ¶ 61,331, P 6 (describing mitigation rules and "competition from new entry" as the "most important design elements" discouraging "the exercise of market power and market manipulation generally").

[130] *PJM Interconnection*, *L.L.C.*, 190 FERC ¶ 61,084, P 2 (2025) (Rosner and Phillips, Comm'rs, concurring).

[131] *Id.* P 4 (Rosner and Phillips, Comm'rs, concurring) (emphasis added) (footnote omitted).

and in response to much lower capacity prices.[132] Because of the overwhelming quantity of pending interconnection study requests, in 2022, and with FERC's approval, PJM paused its queue processing while it sought to implement a new and faster process.[133] That pause "remains in place today, more than two years after the Commission accepted PJM's queue reforms,"[134] and is expected to continue until late 2026.[135]

As a result, "developers' ability to respond to market signals by constructing new resources is severely limited."[136] No matter what price signal is sent, there is no likelihood that any developer of any new resource in PJM going through the queue process could get it built in any reasonable near-term time frame. And while PJM is working to accelerate the interconnection of new facilities, none of those reforms were in place to make potential new entry feasible in the 2025/2026 BRA. Thus, PJM's problem is not that prices are too low to justify investment; PJM's problem is that those who wish to invest in new facilities are unable to get them built and interconnected in a timely way.

Worse, entry in the 2025/2026 auction was further blocked by its drastically shortened forward period. The BRA design is meant to include a three-year forward period—a period lengthy enough that potential new resources can offer capacity in the BRA and, if selected, build and interconnect the new facility before the delivery year starts three years later. This design is intended to "permit competitive entry in the event that existing generators are seeking to raise prices above competitive levels" and, thus, to "limit

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[132] 290 GW is enough generating capacity to power 29-30 million homes a year.

[133] *PJM Interconnection*, *L.L.C.*, 190 FERC ¶ 61,084, P 2 (Rosner and Phillips, Comm'rs, concurring).

[134] *Id.*

[135] *PJM Interconnection L.L.C.*, 181 FERC ¶ 61,162, PP 59, 69 (2022), *order on reh'g*, 184 FERC 61,006 (2023), *appeal dismissed sub. nom. Hecate Energy L.L.C. v. FERC*, 126 F.4th 660 (D.C. Cir. Jan. 21, 2025).

[136] *Id.*

the potential for the exercise of market power."[137] But the timing of the 2025/2026 BRA—held in July 2024 for a delivery year beginning June 1, 2025—undercut this "central pillar of the PJM capacity market construct."[138] Because project developers could not expect to plan, build, and interconnect new facilities in less than a year, the 2025/2026 BRA could not realistically rely on new entry to discipline incumbent market power.[139] In the words of PJM's consultant, "[s]horter forward periods allow less time for supply to respond to information that can be revealed in the auction, and are expressed in the auction as steeper supply curves, meaning less supply that can proceed contingent on auction clearing prices."[140] Graphically, the result is stark (even with PJM's caveat):

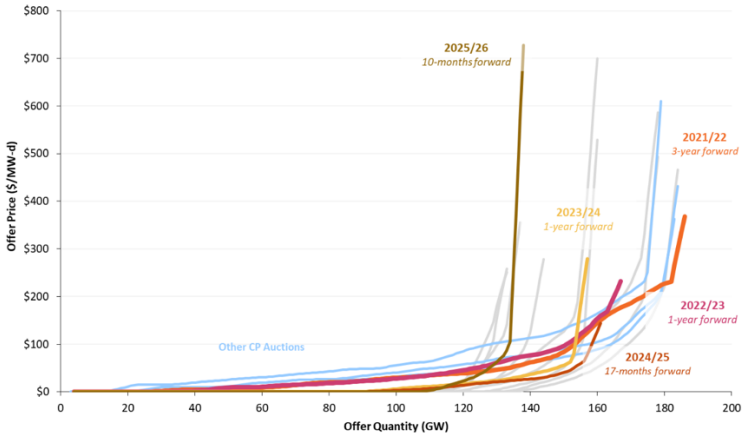
[137] *PJM Interconnection*, *L.L.C.*, 117 FERC ¶ 61,331, P 101. *See also* PJM Capacity Market: Promoting Future Reliability at 1 (Jan. 29, 2025), https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/fact-sheets/pjm-capacity-market-promoting-future-reliability-fact-sheet.pdf ("The three-year-forward auction allows for competition between existing and new resources while attracting participation from across the PJM region.").

[138] *PJM Interconnection*, *L.L.C.*, 183 FERC ¶ 61,172, P 21 (2023) (summarizing Maryland OPC comments).

[139] Attach. B (First Montalvo Decl.) ¶ 29. Nor do the results of the 2025/2026 BRA "properly reflect the forward price information the market was expected to provide." *Id.* ¶ 10.

[140] PJM ER25-682 Filing, Attach. C, Aff. of Samuel A. Newell on Behalf of PJM Interconnection, L.L.C. ¶ 13 & Fig. 2.

FIGURE 2: STEEPER SUPPLY CURVES IN NON-FORWARD AUCTIONS



Source/Notes: Curves shown are smoothed and based on data provided by PJM staff.

[13] The 2025/26 curve shown in the chart also incorporates PJM's changes to accreditation that compresses the curve (and the reliability requirement in terms of accredited MW) and make the steepness appear to increase more than it would if all the curves showed common units on the x-axis.

In the 2025/2026 BRA, these non-price entry barriers proved essentially insurmountable. Just 110 megawatts of capacity from new generation cleared in the 2025/2026 BRA, which was less than third of the new capacity that cleared the (also compressed) previous auction[141] and thousands of megawatts less than the new capacity than cleared earlier auctions at much lower prices.[142]

The consequences stemming from this confluence of circumstances were especially severe because the absence of competition from new entry allowed incumbents to exercise

[141] PJM received bids for the 2024/2025 BRA in December 2022, roughly a year and a half before the associated delivery year was to begin. PJM Capacity Auction for 2024/2025 Delivery Year Opens, PJM Inside Lines (Dec. 7, 2022), https://insidelines.pjm.com/pjm-capacity-auction-for-2024-2025-delivery-year-opens/.

[142] EL25-18 Complaint at 10 (citing PJM, 2025/2026 Base Residual Auction Report at 7 & Fig. 2 (July 30, 2024), https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.ashx). *See also* Complaint of Governor Josh Shapiro and the Commonwealth of Pennsylvania, Attach. A Declaration of Kris Aksimotis ¶ 8, *Governor Josh Shapiro & Commonwealth of Pa. v. PJM Interconnection, L.L.C.,* Docket No. EL25-46-000 (Dec. 30, 2024), eLibrary No. 20241230-5225 ("My primary finding is that the market signal for new capacity is not creating an investment response due to delays in the interconnection queue exacerbated by the currently compressed auction timelines. This gives rise to uncompetitive outcomes that result in a transfer of wealth from load customers to capacity sellers, without any realistic expectation of improved reliability from elevated price levels.").

market power and exploit the gaps in PJM's market power mitigation rules. As JCA witness Montalvo observed, "the lack of competition from new entry to discipline the market power of incumbent generators has . . . immediate and important consequences[,]" including that incumbents "can assume that their offers will clear at high prices because all or nearly all incumbent supply is likely to clear the auction."[143] Consequently, incumbents in the 2025/2026 BRA could withhold exempt capacity physically or economically, to drive up prices, without fear that new entrants would undercut those prices and cause the incumbents to lose sales.

C. Market rule defects and endemic market power prevented the 2025/2026 BRA from producing just and reasonable rates.

The combination of market rule defects (some of which PJM has acknowledged and corrected going forward, and others of which remain unaddressed), severe and long-lasting barriers to new entry, and the ability to withhold existing capacity supplies together caused the 2025/2026 BRA to produce demonstrably unjust and unreasonable results. Total auction revenues surged from $2.2 billion in 2024/2025 to $14.7 billion in 2025/2026. In the BGE LDA, prices skyrocketed from $73/MW-day in the 2024/2025 BRA to $466.35/MW-day in the 2025/2026 BRA.[144] The BGE LDA clearing price thus exceeded ten times the Net Cost of New Entry for that zone,[145] despite the existence of adequate supplies including the RMR units. In the DOM LDA, the clearing price increase was even

[143] Attach. B (First Montalvo Decl.) ¶ 28 (footnote omitted).

[144] *See* 2024 State of the Market Report at 316 tbl. 5-19.

[145] In the 2025/2026 BRA, because of substantial expected energy and ancillary service revenue, the Net CONE in the BGE LDA was $45.34/MW-day. *See* PJM, 2025/2026 RPM Base Residual Auction Planning Period Parameters at 6 tbl. 3, https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-planning-period-parameters-for-base-residual-auction-pdf.pdf.

greater: from $28.92/MW-day in 2024/2025 to $444.26/MW-day in 2025/2026.[146] And clearing prices in the "rest of RTO" went from $28.92/MW-day to $269.92/MW-day.[147] Overall, the weighted average RPM price went from $45.57/MW-day in 2024/2025 to $296.56/MW-day in 2025/2026—nearly double the previous record high.[148]

We acknowledge that "high prices in and of themselves do not make a rate unjust and unreasonable" because, for example, "underlying production prices may be high."[149] But where prices are high due to rules that enable the exercise of market power or otherwise cause artificial supply constraints or shortages—that is, where "rates do not behave as expected in a competitive market"—they are unjust and unreasonable and "the Commission must step in to correct the situation."[150] This is unquestionably the case here.

III. THE COMMISSION MUST ADOPT JUST AND REASONBLE REPLACEMENT RATES

Under the Federal Power Act, the Commission's "first and foremost duty" is "to protect consumers from unjust and unreasonable rates."[151] Accordingly, the Commission has a statutory responsibility to reform unlawful rates and establish just and reasonable

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[146] 2024 State of the Market Report at 316 tbl. 5-19.

[147] *Id.*

[148] *Id.* at 317 tbl. 5-22.

[149] *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 93 FERC ¶ 61,294, 61,998.

[150] *Id.*; *see also Cal. Indep. Sys. Operator Corp.,* 171 FERC ¶ 61,220, PP 17-18 (2020) (rejecting, as not just and reasonable, tariff changes that "create an artificial constraint which raises prices for load and generation"); *Investigation of Terms & Conditions of Pub. Util. Mkt.-Based Rate Authorizations*, 105 FERC ¶ 61,218, PP 37-38 (actions creating artificial shortages are not consistent with just-and-reasonable rates).

[151] *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 551 (2008). *See also Atl. Refin. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 388 (1959) (FPA's sister, the Natural Gas Act, was "framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges."); *NAACP v. FP*C, 520 F.2d 432, 438 (D.C. Cir. 1975) ("Commission's primary task . . . is to guard the consumer from exploitation . . . ."), *aff'd*, 425 U.S. 662 (1976).

ones.[152] FERC "must rectify" any unjust and unreasonable rate.[153] And (as we discuss further below) this remains true even when the rates at issue were established by an auction conducted pursuant to a FERC-filed tariff.[154]

Although "[i]t is the Commission's job—not the petitioner's—to find a just and reasonable rate,"[155] we nonetheless suggest two alternative approaches to determining replacement rates that are just and reasonable under the circumstances. One approach, most faithful to the underlying market design, would be to reprice capacity for the 2025/2026 delivery year by replicating a competitive market outcome as nearly as possible under the circumstances. To do so, the Commission could direct PJM to: (i) require previously exempt ISH resources to submit offers to provide capacity during the 2025/2026 delivery year or request unit-specific exemptions; (ii) amend the 2025/2026 BRA results using those offers and including RMR unit capacity at the bottom of the supply stack (i.e., as a price taker); and (iii) implement for the 2025/2026 delivery year the RMR-related cost allocation change that PJM proposed and the Commission accepted in Docket No. ER25-682-000.[156]

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[152] *Miss. Indus. v. FERC*, 808 F.2d 1525, 1557 (D.C. Cir. 1987) (subsequent history omitted); 16 U.S.C. § 824e(a) ("Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any [jurisdictional] rate" or practice affecting such a rate is unjust and unreasonable, "the Commission shall determine the just and reasonable rate . . . [or] practice . . . to be thereafter observed and in force, and shall fix the same by order.").

[153] *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 266 (2016).

[154] *Public Citizen*, 7 F.4th at 1184–85 ("Even though market-based tariffs do not identify a specific price for electricity, the Commission is still statutorily bound to ensure that the resulting rates are just and reasonable."); *id.* at 1196 (directing the Commission to consider whether the "the results of the [MISO] 2015 Auction for Zone 4 were just and reasonable" and to "reconcile its prospective holding that the tariff could no longer protect against anticompetitive behavior with its conclusion that the conspicuously uneven 2015 results—obtained under the same flawed tariff terms—were not similarly infected").

[155] *Advanced Energy Mgmt. Alliance v. FERC*, 860 F.3d 656, 663 (D.C. Cir. 2017) (quoting *Md. Pub. Serv. Comm'n v. FERC,* 632 F.3d 1283, at 1285 n.1 (2011).

[156] Specifically, the Commission accepted PJM's proposal to credit to the loads that pay the RMR costs the product of the new clearing price times the RMR capacity quantity. *PJM Interconnection*, *L.L.C.*, 190 FERC ¶ 61,088, P 47.

To eliminate any doubt about whether such replacement rates would be just and reasonable, we have limited this request for relief to changes that the Commission already has accepted as just and reasonable in response to PJM's section 205 filings in Docket Nos. ER25-682-000 and ER25-785-000.[157]

According to witness Montalvo's estimation, implementing these changes would reset the clearing price for 2025/2026 delivery year capacity in most of PJM to about $143/MW-day.[158] One reason for this result is that inclusion of the RMR capacity would resolve the artificial shortage in the BGE LDA, allowing this zone to clear at the rest-of-RTO price.[159] The same may be true for the DOM LDA, but that is less clear.[160] The new, lower capacity prices would eliminate the windfall profits resulting from artificial scarcity but still would produce adequate, just and reasonable compensation—at a level well above most incumbents' supply offer prices. And to the extent that any supplier cleared the 2025/2026 BRA with a higher offer, the Commission could direct PJM either to release that supplier from its capacity obligation or to pay the difference through an uplift charge. In this way, no supplier whose capacity cleared previously would be harmed by the clearing price adjustment to a just and reasonable level.

Joint Consumer Advocates recognize that it would take some time for PJM to administer a process to receive supply offers or unit-specific exemption requests for

[157] To replicate a competitive market outcome more completely, it would be necessary to implement further changes, including: (a) adjusting thermal generator capacity accreditation to correct the mismatch of applying winter-driven ELCC discounts to summer capability ratings; and (b) imposing must-offer requirements and market seller offer caps on demand-based capacity resources. To facilitate prompt changes to the rates for 2025/2026 capacity and because the Commission has not yet ruled on those issues in response to the EL25-18 complaint, we do not seek that relief here.

[158] Attach. A (Montalvo Decl.) ¶ 24.

[159] *Id.* ¶ 25.

[160] *Id.*

previously exempt ISH resources—and we fully expect to hear objections along this line. The Commission should not credit any such concerns. The process we propose should not be overly time consuming as PJM, the ISH operators, and the IMM already should be preparing to take such steps in connection with the upcoming 2026/2027 BRA. And even if the process takes longer than anticipated, that is not a reason to reject necessary relief. If suppliers were to end up providing capacity for part of the delivery year at the unjust and unreasonable current rates, before new, just and reasonable prices could be established, then they would be on notice that the higher prices were subject to refund.

If the Commission were to determine that resetting the clearing prices through this process would be too time-consuming or disruptive, then, as an alternative, it could require PJM to calculate new capacity prices for the 2025/2026 delivery year by simply including the RMR capacity and allocating the associated capacity revenue as PJM proposed and the Commission agreed in Docket No. ER25-682-000. The resulting relief for consumers would be incomplete but still substantial. According to witness Montalvo,[161] the new RTO price (including the BGE LDA) would be $177/MW-day—a significant reduction from the previous $269/MW-day RTO price and $466/MW-day BGE price. As with the first option, this reduction would eliminate some of the windfall resulting from the 2025/2026 BRA's artificial scarcity, protect ratepayers in the BGE zone from paying twice to meet their capacity needs, and, again, would not require any supplier to provide capacity at below-cost rates. As above, to the extent needed, the Commission could direct PJM to pay an uplift charge to any supplier who cleared the 2025/2026 BRA with an offer higher than the

[161] *Id.* ¶ 27.

new, just and reasonable price for 2025/2026 delivery year capacity or to release that supplier from its capacity obligation.

* * *

What is at stake is an enormous and unlawful transfer of wealth from customers to owners of capacity resources: at least $4–5 billion in excess charges resulting from the subset of artificial supply constraints that PJM has acted to correct going forward. Given the implementation of these tariff changes and the extensive and ongoing litigation related to the 2026/2027 BRA, investors are on notice that the existing 2025/2026 BRA auction results do not reflect market realities and should not serve as a meaningful price signal going forward. There is every reason for the Commission to grant the requested relief and no good reason to not do so.

IV. THERE IS NO FILED RATE BAR TO SECTION 206 RELIEF.

We anticipate that some parties will oppose this complaint on the specious grounds that the filed rate doctrine, or the related rule against retroactive ratemaking, prohibits changes—even prospective ones—to prices produced by an auction conducted in accordance with PJM's tariff. We therefore will explain now why any such arguments are wrong and should be rejected.

Section 206 expressly authorizes the Commission to do what complainants ask here: to set the earliest permissible refund effective date; to find that existing rates for delivery of capacity to PJM from June 1, 2025, through May 31, 2026, are unjust and unreasonable; and to fix the just and reasonable replacement rate to take effect

prospectively from the date of the Commission's order on this complaint.[162] It does not matter that the rates to be changed were set initially by a FERC-approved method, for the same could be said about changes to any rate on file with the Commission. Nor does it matter that the current rates, if left undisturbed, would apply to future capacity deliveries. Every change that the Commission orders pursuant to section 206 alters a rate already on file with the Commission that otherwise would govern future performance.

Under the FPA, "any" rate or charge that is not just and reasonable is "unlawful."[163] From that it follows that the Commission's obligation to remedy unjust and unreasonable rates is ongoing. It applies when a rate is filed initially and persists as long as the rate is in effect.[164] As the Supreme Court has said, "all rates" are subject to modification under section 206.[165] The Commission's section 206 authority to change unjust and unreasonable rates is "undoubted"[166] and "paramount,"[167] even though the Commission previously accepted the rate at issue.[168]

The PJM forward capacity auctions are tariff-based processes akin to forward contracting. Through the auctions, PJM chooses the resources on which it will rely for resource adequacy and promises to pay those resources the auction-set prices in exchange

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[162] 16 U.S.C. § 824e(a), (b).

[163] 16 U.S.C. § 824d(a); *see also FPC v. Texaco, Inc.*, 417 U.S. 380, 399 (1974).

[164] *United Gas Co. v. Mobile Gas Corp*., 350 U.S. 332, 341 (1956) (*Mobile*) (Natural Gas Act sections 4 and 5, the counterparts to FPA sections 205 and 206 together constitute a "single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by the Commission upon a finding that they are unlawful.").

[165] *Id.*

[166] *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348, 353 (1956) (*Sierra*).

[167] *Mobile*, 350 U.S. at 344.

[168] In *Sierra*, the contract at issue was filed with the Commission in or around 1948. *Sierra,* 350 U.S. at 352. Notwithstanding the contract's 15-year term, FPA section 206(a) empowered the Commission, upon proper findings, to "prescribe . . . the rate to be in effect prospectively from the date of the [Commission's] order, June 17, 1954." *Id.* at 353.

for them providing capacity during the delivery year. Like a forward contract, the rates produced by PJM's forward auctions are executory; they are intended to govern future performance.[169] Where certain conditions are met, the Commission may presume that such rates are just and reasonable unless the public interest would be seriously harmed. But such prices are neither *per se* just and reasonable nor immune from challenge.[170] The Commission has previously entertained—or has been directed to entertain—requests to modify forward capacity auction prices before performance occurs.[171]

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[169] *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 522 n.6 (1984) (internal quotation marks omitted). Once the auction results are posted and commitments are awarded, material obligations remain on both sides. The winning bidders must have the ability to perform, and must deliver energy when called on, throughout the Delivery Year, which is typically three years after the completion of the auction. As explained by PJM: PJM's capacity market, called the Reliability Pricing Model, ensures long-term grid reliability by procuring the appropriate amount of power supply resources needed to meet predicted energy demand three years in the future. Under the "pay-for-performance" model, resources must deliver on demand during system emergencies or owe a significant payment for non-performance. PJM, Capacity Market (last visited Apr. 10, 2025), https://learn.pjm.com/three-priorities/buying-and-selling-energy/capacity-markets.aspx. PJM has an ongoing obligation to pay for its procurement of capacity from Market Sellers. "PJM manages all aspects of the electric grid and the wholesale market, including the purchase and sale of energy, transmission services and ancillary services. PJM provides weekly and monthly invoices for each market participant." PJM, Billing, Settlements & Credit (last visited Apr. 10, 2025), https://www.pjm.com/markets-and-operations/billing-settlements-and-credit.aspx. PJM also has the material obligation of ensuring grid reliability throughout the Delivery Year and calling on Market Seller capacity when needed, assessing Seller performance, and imposing capacity performance penalties or bonuses as appropriate. *See, e.g., PJM Interconnection L.L.C.*, 185 FERC ¶ 61,204 (2023).

[170] In *Devon Power LLC*, 134 FERC ¶ 61,208, P 19, *reh'g denied,* 137 FERC ¶ 61,073 (2011), the Commission determined that auction-set rates are not contract rates to which it must apply a *Mobile-Sierra* presumption. Nevertheless, it held that it could choose to apply a *Mobile-Sierra*-style presumption to auction-set prices as a matter of discretion because, typically, auctions "share with freely-negotiated contracts certain market-based features that tend to assure just and reasonable rates." *Id.* P 32 (footnote omitted). That premise fails here, for the reasons discussed in the text above. Where the considerations underlying *Devon Power* are not present, the Commission has declined to apply a *Mobile-Sierra* presumption. *E.g., High Island Offshore Sys. LLC*, 135 FERC ¶ 61,105, P 24 (2011). Yet even if a presumption applied, it would be rebutted in this case and the Commission would still be obligated to provide the requested relief. Applying *Mobile- Sierra* "does not mean that the Commission is unable to review the rate." *Devon Power*, 134 FERC ¶ 61,208, P 25.

[171] *Pub. Citizen Inc. v. FERC*, 839 F.3d 1165, 1168 (D.C. Cir. 2016) (describing challenges that were denied by operation of law due to deadlock of sitting Commissioners); *ISO New Eng., Inc.*, 151 FERC ¶ 61,226 (2015); *ISO New Eng., Inc.*, 155 FERC ¶ 61,273, *reh'g denied*, 157 FERC ¶ 61,060 (2016), *pet. for review dismissed sub nom. Util. Workers Union of Am. Local 464 v. FERC*, 896 F.3d 573 (D.C. Cir. 2018). *Cf. ISO New Eng., Inc.*, 161 FERC ¶ 61,061, P 17 (2017) ("[A]fter the next [Forward Capacity Auction (FCA)] is conducted . . . the results . . . will be filed with the Commission under section 205, and parties may raise objections regarding the justness and reasonableness of those auction results at that time.").

In a case remarkably like this one, the D.C. Circuit vacated a Commission decision not to revisit seemingly tainted auction results.[172] In *Public Citizen*, a 2015 MISO capacity auction produced an anomalous, ninefold price increase for capacity in Illinois.[173] The price spike increased the anticipated capacity charges in that zone by $102 million,[174] less than one fiftieth of the PJM-wide increase at issue here. When parties complained, FERC opened an investigation that identified flaws in the existing auction rules, which the Commission changed prospectively to prevent unjust and unreasonable price spikes in future auctions.[175] The flawed rules included the methods to calculate local reliability requirements and resource reference levels used in MISO's market power mitigation scheme.[176] Because the Commission concluded that the rules "no longer protected against sellers obtaining disproportionate prices through exercises of market power or market manipulation," it held that they were "no longer just and reasonable for prospective application."[177] Yet the Commission did not consider how the market rule flaws affected the 2015 auction or whether they had permitted market manipulation via economic withholding.[178]

The D.C. Circuit rebuked the Commission for its lapse. First, the court rejected the Commission's claim that, because the auction had been conducted in accord with MISO's

[172] *Public Citizen* (remanding for FERC to consider challenges to 2015 MISO auction results).

[173] *Id*. at 1182.

[174] *Id*. at 1188.

[175] *Id.* at 1182.

[176] *Id.* at 1196.

[177] *Id.*

[178] *Id.* at 1197, 1198-99.

previously accepted tariff, the auction results were "necessarily just and reasonable."[179] Having found that the tariff could no longer produce just and reasonable results going forward, based on grounds that "applied just as much to the 2015 Auction as to future auctions," the Commission "could not rely reactively on compliance with a hobbled tariff as the lodestar of competitiveness."[180] To the contrary, the Commission was obligated to assess whether the flaws it found and fixed going forward had "similarly infected" the 2015 auction results and rendered them unjust and unreasonable.[181]

The D.C. Circuit also remanded for the Commission to reassess whether market manipulation (enabled by the flawed market rules) had led to unjust and unreasonable rates in the earlier auction.[182] Notably, the alleged market manipulation there was economic withholding.[183] The court had no trouble treating such alleged withholding as a form of potential market manipulation. Quoting the Commission's ENERGY PRIMER, the court explained that withholding supply from the market "is one of the oldest forms of commodities manipulation,"[184] and fits comfortably within the regulatory definition of market manipulation as any scheme "for the purpose of impairing, obstructing, or defeating a well-functioning market."[185] The court suggested that Public Citizen had carried its burden of proof—or at least made a prima facie case justifying further investigation—by

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[179] *Id.* at 1197, 1200.

[180] *Id.* at 1200; *see also id.* at 1196 (faulting FERC for failing to "reconcile its prospective holding that the tariff could no longer protect against anticompetitive behavior with its conclusion that the conspicuously uneven 2015 results—obtained under the same flawed tariff terms—were not similarly infected").

[181] *Id.* at 1196, 1197, 1200.

[182] *Id.* at 1196.

[183] *Id.* at 1198.

[184] *Id.* (quoting FERC, ENERGY PRIMER: A HANDBOOK FOR ENERGY MARKET BASICS 134 (Apr. 2020), https://www.ferc.gov/sites/default/files/2020-06/energy-primer-2020_0.pdf).

[185] *Id.* at 1199 (quoting *Prohibition of Energy Mkt. Manipulation*, 114 FERC ¶ 61,047, P 38-39 (2006)).

pointing to anomalous bidding behavior and the dramatic resulting spike in clearing prices.[186]

As demonstrated above, the same is true here. PJM changed its tariff to start counting RMR capacity in the BRA supply stack because omitting that capacity distorts the supply-demand balance, produces artificial scarcity, and unreasonably requires customers to pay twice for capacity.[187] It eliminated the must-offer exemption for ISH resources because it too left important sources of capacity out of the auction supply stack and no longer protected adequately against potential physical withholding.[188] Significantly, PJM based that conclusion on the analysis of the 2025/2026 BRA by its own Chief Economist, as well as his conclusion that more than 5,000 MW (UCAP) of ISH resources were held in portfolios controlled by entities with both the incentive and ability to raise prices through physical withholding.[189] Similarly, the IMM has concluded that the 2025/2026 BRA was "significantly affected by flawed market design decisions," including the omission of existing capacity operating under RMR arrangements and underestimating of thermal resource capacity, "the exercise of market power through the withholding of categorically exempt resources," such as ISH resources, and "the exercise of market power through high offers from demand resources."[190] Accordingly, and for the reasons explained in *Public Citizen*, the Commission must investigate and should determine that the results of the 2025/2026 BRA were unjust and unreasonable.

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[186] *Id.* at 1198, 1200.

[187] *See supra* sections II.A.1 and II.B.2.b.

[188] *See supra* sections II.A.2 and II.B.2.a.

[189] Graf ER25-785 Aff. ¶ 15.

[190] IMM Part D Analysis at 7.

Public Citizen also demonstrates that there is no filed rate bar to section 206 relief in these circumstances. As here, the complaint in that case was filed after the auction was completed and before the associated delivery year began. Had the filed rate doctrine or rule against retroactive ratemaking prevented the Commission from changing auction rates in response to the complaint, there would have been no redressable injury in fact to support Public Citizen's standing before the D.C. Circuit.[191] Instead, all parties—including the Commission—appeared to accept that the Commission had the power to provide relief if it granted the complaint. And that assumption was consistent with the plain text of section 206 and longstanding Supreme Court precedent discussed above.

The Third Circuit's decision in *PJM Power Providers Grp. v. FERC*[192] and the Commission's subsequent rejection of a complaint challenging the 2024/2025 BRA results for the DPL-South LDA[193] are not to the contrary. In *PJM Power Providers Group*, the court considered whether PJM could change its capacity auction procedures mid-stream, after the relevant auction had begun.[194] It decided that such a change was impermissibly retroactive because it "attaches new legal consequences to events completed before its enactment," specifically PJM's posting of the LDA Reliability Requirement to be used in

[191] Like all petitioners seeking review by the D.C. Circuit, Public Citizen was required to include a section in its brief addressing its standing to petition for relief. It based its standing on the fact that it had "members in Midcontinent Zone 4 who pay electric rates that increased because of the wholesale capacity rate increase at issue." Final Opening Br. for Petitioner Public Citizen, Inc. at 42, *Public Citizen*, *Inc. v. FERC*, No. 20-1156 (D.C. Cir. Mar. 26, 2021). If FERC could not disallow any of the "wholesale capacity rate increase" resulting from the auction, Public Citizen's injury would not have been redressable—a necessary component of standing. *Id.*

[192] *PJM Power Providers Grp. v. FERC*, 96 F.4th 390 (3d Cir. 2024).

[193] *PJM Load Parties v. PJM Interconnection*, *L.LC.*, 188 FERC ¶ 61,020, *reh'g denied*, 189 FERC ¶ 61,199 (2024), *pet. for review pending sub nom. Md. Off. of People's Couns. v. FERC*, No. 24-1353 (D.C. Cir. 2024).

[194] *PJM Power Providers Grp. v. FERC*, 96 F.4th at 394 (identifying the rate at issue as the PJM tariff provisions setting forth the capacity auction procedures).

that auction.[195] At most, the Third Circuit decision required PJM to complete the auction using the rules that were in place when it began. But the decision says nothing about the Commission's section 206 power, in a case akin to *Public Citizen*, to change prospectively any unjust and unreasonable prices produced by a defective auction. To the contrary, the court expressly declined to consider whether PJM's rule change was retroactive because it "allowed PJM to disregard the Auction results."[196]

The Commission nonetheless denied the subsequent complaint on grounds that granting it would be "inconsistent with *PJM Power Providers Group* because it would lead to the same result as the rule change" that the Third Circuit said was impermissibly retroactive.[197] But the Commission's rehearing order made clear that its decision was a fact-bound one based on the "particular conflict presented between Petitioners' complaint and the Third Circuit's decision."[198] Thus, the Commission explained, its "authority to otherwise modify auction-set rates, in other contexts," such as here, "is not at issue."[199]

* * *

Because "all" rates must be just and reasonable, 16 U.S.C. § 824d(a), the Commission is both empowered and obligated to modify going forward *any* rate it finds to be unjust and unreasonable. Auction-set rates are no different. That they were intended to govern 2025/2026 capacity delivery (unless found unjust and unreasonable and changed) does not distinguish them from any contract or tariff rate expected to govern future

[195] *Id.* at 398 (quoting *Landgraf v. USI Film Prods*., 511 U.S. 244, 269-70 (1994)).

[196] *Id.* at 401 n.8.

[197] *PJM Load Parties v. PJM Interconnection*, *L.L.C.*, 189 FERC ¶ 61,199, P 10.

[198] *Id.* P 17. The Commission's orders denying the PJM Load Parties' complaint in Docket No. EL24-104 are pending before the D.C. Circuit in Case No. 24-1353.

[199] *Id.*

performance. As the existing 2025/2026 BRA prices were distorted by defective market rules that blocked new entry, artificially omitted thousands of megawatts of existing capacity, and allowed potential exercises of market power, the Commission must set new, just and reasonable prices going forward.

V. RULE 206 REQUIREMENTS

To the extent not already provided above, Joint Consumer Advocates provide the following additional information required by Rule 206 of the Commission's Rules of Practice and Procedure.[200]

A. Good faith estimate of financial impact or harm (Rule 206(b)(4))

Based on analyses conducted by the IMM and JCA witness Montalvo, complainants estimate that as much as half of the $14.7 billion price tag for the 2025/2026 BRA was unjust and unreasonable. Mr. Montalvo estimates that the specific relief he proposes—taking offers for previously exempt ISH resources and including RMR capacity as price takers—would reduce consumer costs by roughly $5 billion. His alternative proposal of recalculating the rate by including the RMR capacity as price takers would reduce charges to ratepayers by some $4 billion.

B. Practical, operational, or nonfinancial impacts (Rule 206(b)(5))

Preventing multi-billion-dollar overcharges is necessary to rebuild consumer and political confidence that the PJM auction is capable of securing reliability at just and reasonable rates. Affording the relief requested will not deprive suppliers of needed revenue, as each would receive a clearing price equal to or greater than its offer price or

[200] 18 C.F.R. § 385.206.

would be paid the additional increment as uplift. In addition, the requested relief would provide a price signal more consistent with the realities of market supply and demand.

C. Whether the matters are pending in any other FERC proceeding or other forum (Rule 206(b)(6))

Related matters pertaining to the 2026/2027 BRA are pending in Docket Nos. EL24-148-000, EL25-18-000, EL25-46-000, and ER25-1357-000. No related matters pertaining to the 2025/2026 BRA are pending in any FERC proceeding or in any other forum.

D. Specific Relief or Remedy Requested (Rule 206(b)(7))

The Complaint sets forth in detail the specific relief requested.

E. Documents supporting the complaint (Rule 206(b)(8))

The Declaration of Mark D. Montalvo, supporting the Joint Consumer Advocates' complaint, is included as Attachment A to this complaint. Witness Montalvo's initial declaration in Docket No. EL25-18 and accompanying workpapers and resume are included as Attachment B.

F. Use of alternative dispute resolution (Rule 206(b)(9))

Complainants do not believe that the issues raised here are amenable to alternative dispute resolution.

G. Request for Fast Track Processing (Rule 206(b)(11))

Complainants request fast track processing of the complaint so as to enable the Commission to grant the complaint and provide relief before the June 1, 2025, start of the 2025/2026 delivery year or as shortly thereafter as possible.

H. Notice (Rule 206(b)(10))

Joint Consumer Advocates have appended a form of notice of this filing for publication in the Federal Register in accordance with the specifications in section 385.203(d) of the Commission's rules.

VI. PARTIES AND COMMUNICATIONS

I. Complainants

The complainants are the Illinois Attorney General's Office; Maryland Office of People's Counsel; and New Jersey Division of Rate Counsel.

J. Respondent

The respondent is PJM Interconnection, L.L.C.

K. Communications

All correspondence and communications to the Complainants in this docket should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary in connection with these proceedings:[201]

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[201] The Complainants request a waiver of Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to allow the inclusion of more than two persons on the official service list on the grounds that the Complainants comprise separate parties, each represented by their own counsel.

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VII. SERVICE AND NOTICE

In accordance with Rule 206(c), the Complainants have served a copy of this Complaint upon PJM, as Respondent, simultaneously with the filing of the Complaint.

VIII. CONCLUSION

For the foregoing reasons, the Commission should grant the complaint and provide expeditiously the relief requested herein.

Respectfully submitted,

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April 14, 2025

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Joint Consumer Advocates, *Complainants*, v. PJM Interconnection, L.L.C., *Respondent.*	Docket No. EL25-____-000

NOTICE OF COMPLAINT

(April 14, 2025)

Take notice that on April 14, 2025 pursuant to sections 206 and 306 of the Federal Power Act (FPA), 16 U.S.C. 824e and 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Joint Consumer Advocates (Complainants) filed a formal complaint against PJM Interconnection, L.L.C. (PJM or Respondent) alleging that PJM's Base Residual Auction for the 2025/2026 Delivery Year produced unjust and unreasonable results, which the Commission must modify under FPA section 206.

Joint Consumer Advocates certify that copies of the complaint were served on the contacts for PJM as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For

assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 29, 2025.

Dated: April 14, 2025.

CERTIFICATE OF SERVICE

Pursuant to Commission Rules of Practice and Procedure Nos. 206(c) and 2010, I hereby certify that I have this 14th day of April, 2025 caused the foregoing document to be served upon the Corporate Officials of Respondent PJM Interconnection, L.L.C. that are identified on the Commission's list maintained pursuant to 18 C.F.R. § 385.2010(k).

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