

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

Pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,² the Joint Consumer Advocates³ 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 existing capacity market rules are unjust and unreasonable because they fail to mitigate market power and result in the imposition of excessive capacity charges upon consumers; and
- (3) establish just and reasonable replacement rates, as outlined below.

¹ 16 U.S.C. §§ 824e and 825e.

² 18 C.F.R. § 385.206.

³ Joint Consumer Advocates are the Illinois Attorney General's Office; Illinois Citizens Utility Board; Maryland Office of People's Counsel; New Jersey Division of Rate Counsel; Office of the Ohio Consumers' Counsel; and Office of the People's Counsel for the District of Columbia.

⁴ The Montalvo Declaration is Attachment A to this Complaint.

I. INTRODUCTION

There is a problem in PJM. Its “Reliability Pricing Model” is not producing just and reasonable prices that comport with market fundamentals. Despite the existence of adequate supply resources, Base Residual Auction (BRA) capacity prices for the 2025/2026 Delivery Year set new records. Prices hit zonal caps of \$466.35/MW-day for the Baltimore Gas and Electric zone in Maryland and \$444.26/MW-day for the Dominion zone in Virginia and North Carolina, and 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. Worse, continuing to run BRAs using the current design promises the possibility of future auction clearing prices that are even higher. Absent changes to fix the PJM capacity market’s flawed auction rules, some have predicted that the 2026/2027 BRA could clear at the new, higher offer cap (\$696/MW-day) regionwide, ballooning charges to PJM ratepayers to \$37 billion.

These clearing price outcomes do not match the market facts on the ground. Yes, load is increasing—but PJM has historically overestimated load and appears poised to do so again by exaggerating the likely additions of massive data center loads without firm power supplies. And yes, some supply resources are seeking to retire, but PJM ratepayers will pay hundreds of millions of dollars to forestall some of those retirements without receiving in return anything approaching the full reliability value that these ratepayer-funded resources can provide. Meanwhile, thousands of megawatts of additional capacity resources—non-retiring resources that will operate and support reliability during the delivery year—go unrecognized because current PJM rules allow them to keep their

capacity out of the auction. PJM's rules—not market dynamics—short the market, boosting prices artificially.

These market rule flaws (and others discussed below) are particularly problematic because hundreds of thousands of megawatts of potential *new* resources—proposed long ago when capacity auction prices were much lower and whose entry would counteract any legitimate shortage—remain stuck in an interconnection queue traffic jam waiting for PJM to process their applications. While PJM's Independent Market Monitor (IMM) says tariff changes are needed because the capacity market is plagued with market power problems, PJM's glacial interconnection study process (coupled with the currently truncated periods between the conduct of auctions and the start of the Delivery Years) compromises the ability of new resources to enter in a timely manner, thereby blunting the competition that serves as the principal means of mitigating incumbent resource market power. In short, PJM acts as if load increases, supply decreases, and slow entry of new resources are facts of nature when, in fact, PJM has or should have tools to manage all three without sending prices to the roof.

A recent and pending complaint⁵ seeks rule changes that would require Reliability Must Run (RMR) units to bid into the BRA. While the complaint should be granted, this relief is inadequate because it will not address adequately the lack of new entry to discipline incumbent generator market power or the market rule flaws that enable potential exercises of market power, including exemptions from must-offer requirements and the absence of a demand response (DR) offer price cap. PJM's rules should be structured to maximize

⁵ Complaint of Sierra Club, Natural Resources Defense Council, Public Citizen, Sustainable FERC Project and Union of Concerned Scientists (Sept. 27, 2024), Docket No. EL24-148-000, eLibrary No. 20240927-5073 (PIO Complaint).

supply participation in the auction, and to prevent physical or economic withholding, because the presence of a relatively few additional megawatts can make the difference between the exorbitant clearing prices in the 2025/2026 BRA and the far lower clearing prices in the 2024/2025 BRA.⁶

There is simply no way around it: significant aspects of the BRA design are unjust and unreasonable because they subject consumers to crushing capacity clearing prices that serve little purpose while incumbent generators reap enormous windfall revenues. As summarized by witness Montalvo:⁷

Under current market conditions, capacity prices are being driven by the barriers to entry of new supply—including constraints on the time it takes to study interconnection requests and build new transmission to interconnect new resources in the queue—which add to the market power of incumbent suppliers. High prices cannot bring new generation into the market more quickly than it can be interconnected, and, while such prices might retain existing generation, they are substantially above any just-and-reasonable measure of the net going forward costs that existing resources must cover to deliver capacity.

The stark difference in outcomes between two auctions held less than a year apart raises serious questions about the validity of auction inputs, market rules, and resulting prices:⁸

Side-by-side examination of the results of these two auctions would suggest that, in less than a year, market conditions deteriorated sufficiently that PJM went from an apparent robust surplus with little need for additional capacity to near shortage conditions across the region. While it is possible that this is true, the dramatic change raises questions regarding, at a minimum, the validity of the input assumptions—if not more broadly the structure of the

⁶ Montalvo Decl. ¶ 14.

⁷ *Id.* ¶ 10.

⁸ *Id.* ¶ 17.

market—and calls a reasonable person to question the robustness of the results.

Joint Consumer Advocates urge the Commission to fulfill its consumer protection mandate by finding the current BRA construct unjust and unreasonable and by establishing effective, just and reasonable replacement rates.

II. SUMMARY OF REQUESTED RELIEF

We demonstrate here that FERC has a more than sufficient basis to conclude that PJM's capacity market design is unjust and unreasonable and to direct the adoption of just and reasonable replacement design modifications. Witness Montalvo explains, and we review below, that the Commission should require changes to PJM's Tariff to:

- Require that all existing eligible capacity resources participate in BRAs, including those resources that previously were categorically exempt from the must-offer construct that now applies to existing thermal generation. These reforms would impact currently exempted resources, including generation operating under RMR arrangements, intermittent resources, battery storage, and DR;
- Require a longer notice period for generator deactivations and adopt standardized RMR provisions and a *pro forma* RMR Agreement that enable PJM to delay existing resource retirements for as long as the resource remains needed for reliability. Where continued service is mandated, the Tariff should provide compensation at a full cost-of-service rate including a return on investment. In exchange, RMR resources should be required to participate fully in all PJM capacity, energy, and ancillary service markets for which they are eligible, including offering capacity as a price taker in each base residual auction for a delivery period that will occur during the term of the arrangement;
- Determine the capacity value of gas-fired generators using winter capacity ratings that seasonally match the winter risks for which those resources' capacity values are discounted in PJM's Effective Load Carrying Capability (ELCC) calculations;
- Give interconnection study priority to ready-to-study projects that will be sited in Locational Deliverability Areas (LDAs) that are more likely to be constrained;
- Require DR resources that bid into the BRA to submit offers that reflect the maximum dispatchable demand reduction that the resource is making available to PJM and measure as the actual reduction delivered (metered consumption before

instruction less metered consumption after instruction) in response to a dispatch instruction during a system stress event; and

- Require the IMM to calculate and PJM to impose an offer cap on DR resources participating in the PJM capacity market when structural market power tests fail.

In addition, the Commission should direct PJM to initiate stakeholder proceedings to evaluate the longer-term issues discussed in section III.G and longer-term reforms presented in section IV.G of this Complaint and the Montalvo Declaration.

III. THE BASE RESIDUAL AUCTION MARKET DESIGN IS UNJUST AND UNREASONABLE.

The central aim of PJM’s capacity construct is to “procure the least-cost, competitively-priced combination of resources necessary to meet the region’s reliability objectives,”⁹ but the existing market design is failing in that mission. As we explain below, it is failing in various ways to protect ratepayers from potential exercises of market power and otherwise to secure the needed resources at just and reasonable prices. Because the Commission’s “first and foremost duty” under the Federal Power Act “is to protect consumers from unjust and unreasonable rates,”¹⁰ the Commission should grant this complaint and reform PJM’s capacity market rules.

⁹ *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 101 (3d Cir. 2014).

¹⁰ *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 551 (2008). See also *Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 388 (1959) (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 . . .”), *affirmed*, 425 U.S. 662 (1976).

A. The BRA is rife with market power and PJM’s market mitigation protocols are not working as intended.

The primary cause of the BRA price spike is not the interplay of supply and demand. It is the byproduct of a market power problem endemic to the PJM design that the existing mitigation protocols are unable to address.

Part B of the IMM’s analysis of the recent BRA results finds that (1) the “market design for capacity leads, almost unavoidably, to structural market power in the capacity market”; (2) the “capacity market is unlikely ever to approach a competitive market structure in the absence of a substantial and unlikely structural change that results in much greater diversity of ownership”; and (3) “[m]arket power is and will remain endemic to the structure of the PJM Capacity Market.”¹¹ The IMM goes on to explain why this is the case, observing that the¹²

capacity market is, by design, always tight in the sense that total supply is generally only slightly larger than demand.

* * *

The demand for capacity in the capacity market is almost entirely inelastic because the market rules require loads to purchase their share of the system capacity requirement. The downward sloping portion of the VRR [Variable Resource Requirement] curve¹³ is everywhere inelastic. The result is that any supplier that owns more capacity than the typically small difference between total supply and the VRR defined demand is individually pivotal and therefore has structural market power. Any supplier that, jointly with two other suppliers, owns more capacity than the difference between

¹¹ Independent Market Monitor for PJM, Analysis of the 2025/2026 RPM Base Residual Auction Part B at 3-4 (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).

¹² *Id.* at 3.

¹³ “VRR” refers to the Variable Resource Requirement curve, which is a downward sloping demand curve that relates the maximum price for a given level of capacity resource commitment relative to reliability requirements.

supply and the VRR defined demand either in aggregate or for a local market is jointly pivotal and therefore has structural market power.

Witness Montalvo similarly observes that the IMM “has found year after year with great consistency, [that] structural market power is endemic to the PJM capacity market—an observation that applies both to the PJM aggregate market structure and to the PJM local market structure.”¹⁴ He goes on to explain the “IMM uses the Three Pivotal Supplier (TPS) test to identify potential market power,” and:¹⁵

In PJM, both at the regional level and at the LDA level for at least some LDAs, in almost every BRA, the IMM has found structural market power.

These findings notwithstanding, the IMM asserts that a “competitive outcome can be assured” so long as there are “appropriate market power mitigation rules” in place:¹⁶

Detailed market power mitigation rules are included in the PJM Open Access Transmission Tariff (OATT or Tariff). Reliance on the RPM design for competitive outcomes means reliance on the market power mitigation rules. Attenuation of those rules means that market participants are not able to rely on the competitiveness of the market outcomes.

But PJM’s market power mitigation rules were not designed to be the sole bulwark against such structural market power. The Commission’s electric industry market-oriented mission is predicated on the need “to remove impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation’s

¹⁴ Montalvo Decl. ¶ 23 (referencing the IMM’s 2023 *State of the Market Report for PJM* at 10 (Mar. 14, 2024) (*2023 State of the Market Report*)). The statement, “[s]tructural market power is endemic to the capacity market,” has appeared in every *State of the Market Report for PJM* since 2018.

¹⁵ Montalvo Decl. ¶ 24 (footnotes omitted).

¹⁶ *2023 State of the Market Report* at 44.

electricity consumers.”¹⁷ And consistent with that objective, the premise of the PJM BRA market design is that potential new resources—which previously were expected to be developed and interconnected during what was then a three-year period between the auction and the Delivery Year—would compete with existing resources and check their market power.¹⁸

As the Commission has explained, the forward-looking BRA was the product of a settlement with “design features [intended to] discourage the exercise of market power and market manipulation generally. Specific mitigation rules and increased competition from new entry are the most important design elements in this regard.”¹⁹ Thus, in approving PJM’s Reliability Pricing Model (RPM), FERC found that “[t]he three-year forward market [plays an essential role in market power mitigation because it] permits competitive entry in the event that existing generators are seeking to raise prices above competitive levels.”²⁰ Witness Montalvo similarly observes that a “central feature of the RPM’s forward-looking market format is that competition from new entry will discipline the market power of incumbent resources.”²¹

¹⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. and Transmitting Utils.*, Order No. 888, 75 FERC ¶ 61,080, P 1, *clarified*, 76 FERC ¶ 61,009 (1996), *modified*, Order No. 888-A, 78 FERC ¶ 61,220, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in part and remanded in part sub nom. Transmission Access Pol’y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁸ “Since 2007, PJM’s evolving capacity market has used the power of markets to commit enough resources to meet future reliability targets. The three-year-forward auction allows for competition between existing and new resources while attracting participation from across the PJM region. This design creates a wide scope for the market and provides transparent price signals to attract investment and induce less efficient resources to retire.” PJM Capacity Market: Promoting Future Reliability at 1, <https://www.pjm.com/-/media/about-pjm/newsroom/fact-sheets/pjm-capacity-market-promoting-future-reliability-fact-sheet.ashx>.

¹⁹ *PJM Interconnection L.L.C.*, 117 FERC ¶ 61,331, P 6 (2006), *granting reh’g in part*, 119 FERC ¶ 61,318, *reh’g denied*, 121 FERC ¶ 61,173 (2007).

²⁰ *Id.* P 101.

²¹ Montalvo Decl. ¶ 28 (citation omitted).

Reality no longer comports with that premise, however, and renders the current BRA design unjust and unreasonable. According to PJM, there was a significant decline in supply offered into the capacity market from 148,945.7 MW in the 2024/2025 BRA to 135,692.3 MW in the 2025/2026 BRA.²² As a result, two LDAs constrained in the 2025/2026 BRA and PJM as a whole failed its Three Pivotal Supplier Test—meaning that *all* existing generation capacity resources have market power.²³ And in fact, consistent with that observation, “[a]ll offered thermal, nuclear, demand response and solar capacity cleared the 2025/26 BRA.”²⁴

Meanwhile, prices soared—unchecked by new entry. Just 110 megawatts of capacity from new generation cleared the 2025/2026 BRA, which was less than a third of the new capacity that cleared the 2024/2025 BRA and thousands of megawatts less than the new capacity that cleared earlier auctions at much lower prices.²⁵ PJM nonetheless says that the 2025/2026 BRA results will encourage needed new generation,²⁶ asserting recently

²² *Id.*

²³ PJM, 2025/2026 Base Residual Auction Report at 3, tbl. 1 (July 30, 2024), <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.ashx> (PJM 2025/2026 BRA Report).

²⁴ Aurora Energy Research, PJM Capacity Market - 2025/2026 BRA results & outlook for upcoming auctions at 13 (Sept. 2024) (Aurora Report). A redacted and publicly available copy of the Aurora Report appears at Attach. B.

²⁵ PJM 2025/2026 BRA Report at 7 & Fig. 2.

²⁶ PJM’s July 30, 2024, Press Release, entitled, “PJM Capacity Auction Procures Sufficient Resources to Meet RTO Reliability Requirement Tighter Supply/Demand Balance Drives Higher Pricing Across the Region” states:

The capacity auction has been a valuable tool over time to help PJM competitively secure resources to meet reliability requirements,” said President and CEO Manu Asthana. “The significantly higher prices in this auction confirm our concerns that the supply/demand balance is tightening across the [regional transmission organization (RTO)]. The market is sending a price signal that should incent investment in resources.

that “high prices are a feature designed to incent the development of more capacity.”²⁷ But lower prices did not deter new entry in earlier auctions. And new entry did not occur in anticipation of sky high prices in the 2025/2026 BRA.²⁸ The combination of the compressed period between the conduct of the 2025/2026 auction and the start of the delivery period, the backlog of projects stuck in the interconnection queue, and the impediments to development of the relatively few resources that have cleared the queue, have dramatically reduced the potential for new entry to discipline the market power of existing resources. And the same thing is poised to happen in the 2026/2027 BRA.

PJM has acknowledged that while it “continues to execute against the [interconnection] transition plan, concerns are growing that the construction build-out from the volume of applications has not yet materialized[.]”²⁹ A recent survey of developers with PJM interconnection queue projects found that “PJM’s increasingly lengthy interconnection process is exacerbating siting and permitting challenges and leading to knock-on delays in equipment procurement and financing decisions, suggesting the timeline for new generation in this market will likely remain long for the foreseeable future.”³⁰ To that end, developers with projects in the queue are delaying taking essential

²⁷ Answer of PJM Interconnection, L.L.C. at 6, Docket No. EL24-148-000 (Oct. 18, 2024), eLibrary No. 20241018-5165 (PJM Answer).

²⁸ If there were no barriers to entry besides low clearing prices, developers would submit offers for potential new resources that they would be willing to build if prices in the associated auction were to rise high enough to cover the developer’s costs. Then, if supplies tightened in the auction and prices climbed, some of the offers would clear—producing significant new entry and moderating the price increase. That did not occur on a meaningful scale in the 2025/2026 BRA.

²⁹ Ethan Howland, *PJM says ‘concerns are growing’ after less than 2 GW added this year*, UTILITY DIVE (Sept. 26, 2024), <https://www.utilitydive.com/news/pjm-interconnection-capacity-online-construction-shortfall-vc-renewables/728145/>.

³⁰ Abraham Silverman, Dr. Zachary A. Wendling, Kavyaa Rizal, and Devan Samant, *Outlook for Pending Generation in the PJM Interconnection Queue* at 7, Columbia Center on Global Energy Policy (May 8, 2024) (Columbia Study). “Only 10 percent of developers report that any of their projects will come online within 12 months of receiving an interconnection service agreement, and most report their projects will require at

project development steps until they have an executed Interconnection Service Agreement (ISA) in hand; even then, it will still be another two years or more before their projects enter service.³¹

As witness Montalvo observes, “the delays in BRAs and the current PJM interconnection queue issues prevent new entry from performing this [disciplining] role.”³² He goes on to explain that the “lack of competition from new entry to discipline the market power of incumbent generators has . . . immediate and important consequences[.]” including that: (1) “generators can assume that their offers will clear at high prices because all or nearly all incumbent supply is likely to clear the auction”;³³ and (2) “incumbent generators who have associated demand response can bid the demand response in at any price—up to the market price cap—unconstrained by a resource offer cap in an effort to set the market clearing price[.]”³⁴ Likewise, the absence of competition from new entry enables incumbent generators to profit from a strategy of retiring some units on short notice as a means of driving up prices received by their other resources.³⁵ The lack of competition

least 24 months from the time they receive such an agreement to reach commercial operation.” *Id.* at 7-8. A copy of the Columbia Study is included as Attach. C.

³¹ *Id.* at 19.

³² Montalvo Decl. ¶ 28. *See also id.* ¶ 42 (“Any tightness in the capacity market is not because there is insufficient interest in the market or resources are not actively working to enter the market—the problem is that resources are mired in the interconnection process.”).

³³ *Id.* ¶ 28. The 2026/2027 Delivery Year begins June 1, 2026, less than two years from now. Yet, project development in PJM is stagnating, overall project schedules are increasing in length, and “projects entering the queue today have little chance of coming online before 2030.” Columbia Study at 7. Consistent with these findings, the Aurora Report identifies only one new resource (an 800 MW gas fired unit) expected to offer into the 2026/2027 BRA. Aurora Report at 26.

³⁴ Montalvo Decl. ¶ 28

³⁵ *Id.*

from new entry to discipline the market power of incumbent generators has multiple potential adverse effects:³⁶

Lack of material new entry removes market-based discipline on the exercise of extant market power by existing resources; offer mitigation performed by the IMM is weak sauce. Offer caps are not a substitute for a competitive market where new entry can compete with existing resources. The lack of new entry also increases the risk that resources seeking retirement will be required for reliability and gain RMR agreements. Alternatively, it may be the case that the windfall of super high prices will slow temporarily the pace of resource retirements. But it is cold comfort that exaggerated prices that are inconsistent with expected market conditions is the reason for delaying otherwise rational exit decisions.

B. The BRA design undercounts or allows the withholding of available supplies, which in turn fuels artificial price increases.

The situation described above is made worse by the multiple and categorical BRA participation exemptions afforded to intermittent and capacity storage resources. In analyzing the 2025/2026 BRA, the IMM identifies these resource exemptions as increasing “clearing prices above the competitive level.”³⁷ Witness Montalvo explains:³⁸

There are several aspects of PJM’s market design that undercount the resources that contribute to serving load reliably: namely, the treatment of RMR resources, the exemption of some resource categories (including storage and renewables) from must offer requirements, and PJM’s treatment of combustion turbines in its ELCC and [unforced capacity (UCAP)] calculations.

³⁶ *Id.* ¶ 45.

³⁷ Independent Market Monitor for PJM, Analysis of the 2025/2026 RPM Base Residual Auction Part A at 3 (Sept. 20, 2024), https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_A_20240920.pdf (IMM Part A Analysis).

³⁸ Montalvo Decl. ¶ 32.

The result of PJM’s choices is to “systematically understate the capacity that is available to serve load.”³⁹ And the quantities of forgone market supply are significant. According to the Aurora Report, PJM excused from participation in the 2025/2026 BRA approximately 9.8 gigawatts of installed capacity (ICAP) of existing resources, including 2.4 gigawatts of units under RMR arrangements, 1.5 gigawatts of other thermal generators that requested deactivation, 3.9 gigawatts of intermittent resources, and 1.3 gigawatts of storage resources.⁴⁰ Again, these are existing resources that will produce energy and ancillary services, respond to dispatch instructions, and contribute to system reliability.⁴¹ Their absence from the market was a choice, not an operational requirement.

To be sure, there are legitimate, cost-based business reasons to withhold exempt resources—at least under the current, strict-liability capacity performance construct.⁴² But under current circumstances it is impossible to rule out that some withholding decisions constituted an exercise of market power. Entities that control a portfolio of resources have a potentially powerful incentive to withhold some exempt resources strategically in order to boost the clearing price to benefit the balance of their (auction-participating) portfolio. As witness Montalvo observes, “[w]hen supply and demand conditions are tight, even the withholding of a small quantity of eligible supply can be a profitable strategy.”⁴³ While

³⁹ *Id.*

⁴⁰ Aurora Report at 14.

⁴¹ Intermittent resources like wind and solar have very low operating costs and can be expected to produce electricity whenever their “fuel” is available, whether they have undertaken a capacity supply obligation or not.

⁴² We explain below that the capacity performance rules should be modified to avoid penalizing intermittent resources for non-performance under circumstances they cannot control and that are already accounted for in their capacity accreditation ratings.

⁴³ Montalvo Decl. ¶ 36.

witness Montalvo does not know if parties intentionally engaged in this strategy, there is no doubt that “leaving the market exposed to such strategies is poor market design.”⁴⁴

The IMM agrees, pointing out that allowing existing resources to withhold supply from the capacity auction unbalances the market and prevents its proper functioning. He explains: “[t]he capacity market was designed on the basis of a must buy requirement for load and a corresponding must offer requirement for capacity resources,” and “[t]he capacity market can work only if both are enforced.”⁴⁵ But, under PJM’s Capacity Performance construct, only the load-side participation requirement remains in place,⁴⁶ while supply side must offer requirements have been relaxed. The IMM explains that this “will create increasingly significant market design issues and market power issue issues,” which will grow in proportion to the quantity of resources that are exempted.⁴⁷

Moreover, the IMM explains, exempting vast and growing amounts of capacity from the must-offer requirement “could also result in very significant changes in supply from auction to auction which would create price volatility and uncertainty in the capacity market and put PJM’s reliability margin at risk.”⁴⁸ Witness Montalvo points out that price volatility and uncertainty impair the usefulness of high prices as an inducement to new entry. He explains that “[c]apacity prices can be sensitive to small supply changes and administrative adjustments to the design.”⁴⁹ Prices may rise in one auction because exempt

⁴⁴ *Id.*

⁴⁵ IMM Part A Analysis at 5-6.

⁴⁶ Under PJM’s mandatory centralized auction design, load cannot opt out of the market except through the cumbersome Fixed Resource Requirement mechanism.

⁴⁷ IMM Part A Analysis at 6.

⁴⁸ *Id.* at 5.

⁴⁹ Montalvo Decl. ¶ 14.

resources choose not to participate, but a rational investor “may be skeptical of the longevity and dependability of [that] price signal” because the exempt resources could choose to participate in the next auction.⁵⁰ A rational investor would “discount the BRA price as not truly reflective of the supply-demand conditions and consequent revenues that will be available when the resource comes online.”⁵¹

Based on all this, witness Montalvo offers a sobering assessment, explaining that currently:⁵²

[C]apacity prices are being driven by the barriers to entry of new supply—including constraints on the time it takes to study interconnection requests and build new transmission to interconnect new resources in the queue—which add to the market power of incumbent suppliers. High prices cannot bring new generation into the market more quickly than it can be interconnected, and, while such prices might retain existing generation, they are substantially above any just-and-reasonable measure of the net going forward costs that existing resources must cover to deliver capacity.

In these circumstances, the Commission should find the existing market design unjust and unreasonable as it cannot adequately mitigate the potential exercise of market power. In response, the Commission should act promptly to adopt rules that address this artificial supply limitation and instead ensure that all existing resources are obligated to participate in PJM’s capacity auction, as explained further in section IV.A and IV.B below.⁵³

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* ¶ 10.

⁵³ *E.g., 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, LLC*, 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, at 61,998 (2000) (“While high prices in and of themselves do not make a rate unjust and

C. The PJM tariff does not give PJM sufficient ability to delay the retirement of needed resources and does not require RMR units to provide the value for which customers pay.

The PIO Complaint challenges PJM’s failure to require units under RMR arrangements to offer their capacity into the BRA auctions. Joint Consumer Advocates have answered in support of the PIO Complaint and reiterate that support here. But PJM’s response in that proceeding underscores a deeper problem. PJM’s tariff fails to enable PJM to ensure that adequate supply remains available to the market, and instead leaves PJM—and its ratepayers—at the mercy of resources opting to retire. As PJM put it in answering the PIO Complaint, “PJM currently has no authority to require generators to stay online past a 90-days’ notice period, no Tariff-based authority to dictate how a retained generator may operate, and no control over how the generator may be compensated.”⁵⁴

That is both unfair and untenable. The unfairness is revealed by comparing the level of control that PJM exerts over load and the entry of new supply as compared to resource retirements. Load is subject to a must-buy requirement and has little ability to opt of the market. Beyond that, PJM sets the demand curves, which go a long way toward dictating how much capacity is purchased and at what price. Meanwhile, PJM exerts extensive control over the entry of new supply and may delay such entry virtually indefinitely while it studies the reliability implications of new interconnections and the need for transmission upgrades. By comparison, the PJM tariff provisions concerning resource retirement are feckless.

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).

⁵⁴ PJM Answer at 11.

Unlike other regional transmission organizations, whose tariffs include standardized RMR terms and conditions and a pro forma RMR agreement, PJM retains such resources on an ad hoc basis, leaving PJM and ratepayers helpless in the face of a retiring resource's locational market power. According to PJM, its retirement rules "endow the deactivating generator with the rights to decide: (1) whether the resource elects to remain in operation after the deactivation date to address transmission reliability issues; (2) how the resource may operate during the retained period (in accordance with terms negotiated with PJM); and (3) the means by which the resource may be compensated."⁵⁵ Specifically, under PJM's framework, undisturbed since 2006, a generator must provide just 90 days' notice that it will retire.⁵⁶ Thereafter, if PJM determines that the generator's continued operation is needed for transmission reliability, it "asks the generator to remain in service" until the reliability issues are resolved.⁵⁷ But the generator need not do so. After the 90-day notice period has passed, the generator "is free to retire and cease operations, regardless of the impacts."⁵⁸ If the resource elects to continue operating, PJM says, its tariff is "silent on the manner in which PJM may dispatch a retained generator or require it to operate."⁵⁹

Because the PJM tariff lacks a *pro forma* RMR agreement establishing standard operating terms and conditions for RMR resources,⁶⁰ each generator negotiates its own arrangements with PJM about when and how it will operate and sets its own compensation

⁵⁵ PJM Answer at 16.

⁵⁶ *Id.* at 17.

⁵⁷ *Id.* at 17-18.

⁵⁸ *Id.* at 18.

⁵⁹ *Id.*

⁶⁰ *Id.* at 16.

to be filed with the Commission.⁶¹ But the retiring resources hold all the leverage. “Because such units are needed by PJM for reliability reasons, and the provision of the service is voluntary in PJM, owners of units that PJM needs to remain in service after the desired retirement date have significant market power in establishing the terms of this reliability service.”⁶²

Unsurprisingly, then, PJM has a history of paying full cost of service rates to retain generators that express an intent to retire while obtaining, in return, only meager performance commitments. According to the IMM, just two of eight owners have taken the deactivation avoidable cost rate approach, while the other six owners elected the full cost of service recovery rate.⁶³ But without bargaining power or standardized terms and conditions, PJM has been unable to obtain significant performance commitments in exchange for that compensation. According to PJM, as its deactivation rules currently stand, they provide “no categorical assurance that RMR resources [will] perform consistent with an obligation to provide capacity” so “PJM cannot categorically rely on such resources to meet the region’s resource adequacy needs.”⁶⁴ In fact, PJM says, RMR resources are “generally not subject to the same, or even similar, obligations as other Capacity Resources

⁶¹ *Id.* at 19.

⁶² Memorandum from IMM to Deactivation Enhancements Senior Task Force (DESTF) at 4 (Oct. 12, 2023), <https://www.pjm.com/-/media/committees-groups/task-forces/destf/2023/20231109/20231109-item-03---rmr-som-memo.ashx> (IMM Mem.); *see also* PJM Answer at 11 (expressing concern that “encumbering resources seeking to retire with additional performance obligations would act as a disincentive for such resources to accept PJM’s request and stay online”).

⁶³ IMM Mem. at 3 & Table 5-29. The IMM adds that: “Companies developing the cost of service recovery rate have ignored the tariff’s limitation to the costs of operating the unit during the Part V reliability service period and have included costs incurred prior to the decision to deactivate and costs associated with closing the unit that would have been incurred regardless of the Part V reliability service period. In some cases, the filing included costs that already had been written off, or impaired, on the company’s public books. The requested cost of service recovery rates substantially exceed the actual costs of operating to provide the reliability required by PJM.” *Id.* at 3 (footnotes omitted).

⁶⁴ PJM Answer at 8.

. . . such as a daily energy and reserve market must-offer requirement.”⁶⁵ For example, PJM observes, the RMR arrangements for the Eddystone 2, Cromby 2, and Cromby diesel units explicitly limit their operation so that PJM may dispatch them only (i) when failure to do so would lead to specific reliability impacts identified in the Deactivation Study or (ii) as a last resort, to alleviate a different Transmission Security Emergency after PJM already has dispatched all other units that may help.⁶⁶

The absence of standardized RMR terms and conditions, allowing PJM to retain units for as long as PJM determines that they are needed to maintain either transmission security or resource adequacy is unjust, unreasonable, and unduly discriminatory. It exposes PJM and ratepayers to the generators’ exercise of locational market power. The Commission has “long been aware of the locational market power issues inherent in . . . efforts to contract for RMR service” by generators that a system operator needs for reliability.⁶⁷ And it has recognized that preventing the exercise of such market power is important to ensure that wholesale rates are just and reasonable.⁶⁸ Because standardized RMR terms and *pro forma* agreements are important both to constraining the exercise of generator market power and to safeguarding PJM’s ability to retain needed resources on just and reasonable terms, the Commission has held that “having on file rates, terms and

⁶⁵ *Id.* at 10.

⁶⁶ *Id.* at 8-9.

⁶⁷ *Pub. Utils. Comm’n of State of Cal. v. FERC*, 254 F.3d 250, 257 (D.C. Cir. 2001).

⁶⁸ *N.Y. Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,076, P 158 (2016); *see also Cities of Anaheim, et al. v. Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,070, P 26 n.6 (2004) (“RMR unit owners at those times have location-specific market power and could potentially charge a high price in the absence of an RMR agreement. The RMR agreements prevent RMR unit owners from taking advantage of location-specific market power.”), *reh’g denied*, 110 FERC ¶ 61,387, *order denying reconsideration*, 111 FERC ¶ 61,218, *denying clarification*, 111 FERC ¶ 61,731 (2005), *reversing on reh’g*, 118 FERC ¶ 61,255 (2007), *reh’g denied*, 128 FERC ¶ 61,027 (2009).

conditions for RMR service is fundamental to the proper and efficient operation” of an RTO market.⁶⁹

PJM’s tariff is therefore unjust and unreasonable because it lacks standardized RMR provisions and a *pro forma* agreement. While these provisions have been missing for decades, their absence was less harmful when capacity was abundant and new entry was relatively unfettered. The decisions that put in place PJM’s existing, generator-led RMR approach do not hold up in light of the evolution of Commission precedent on this topic⁷⁰ and the facts on the ground in PJM.

PJM’s current inability to retain needed generators on reasonable terms and conditions also is unsustainable when viewed against PJM’s throttling of new entry. Both resource exit and new entry are subject to reliability reviews—and should be. But under the current rules, if reliability is threatened, PJM can block only market entry, not exit. That disconnect is unduly discriminatory because it is not based on any relevant substantive difference between the reliability issues created by entry and exit. The disparate approach to resource entry and exit also is unjust and unreasonable because it enables—if not contributes to—the very problem that PJM identifies as the major threat to its markets: existing resources retiring faster than new resources are coming online.⁷¹

⁶⁹ *New York Indep. Sys. Operator Inc.*, 150 FERC ¶ 61,116, P 9 (2015).

⁷⁰ See section IV.B, *infra*.

⁷¹ See, e.g., PJM Answer at 12-13 (decrying the “asymmetrical pace within the energy transition, where resource retirements and load growth exceed the pace of new entry”).

D. PJM’s continued reliance on an anticipated market response in lieu of immediate rule changes to recognize existing supply is wrong.

PJM has already stated its opposition to relief concerning the necessary BRA participation of RMR resources—and, we assume, will similarly oppose relief as concerns other currently-exempt resources that involves mandating participation. PJM argues in its answer to the PIO Complaint that the current auction design, and the results of the 2025/2026 BRA are “just and reasonable”⁷² because the clearing prices reflect market realities of supply and demand⁷³ and send the correct price signal to incent the entry of new resources.⁷⁴ These claims are divorced from market realities; if reiterated here, they should be rejected. The price excursion of the 2025/2026 BRA and the anticipated high prices of the upcoming 2026/2027 BRA will not lead to new entry. New resources cannot respond to these auction prices because there is no scenario in which they can enter the market for the 2026/2027 Delivery Year. Indeed, “absent significant reforms or market innovations, most projects entering PJM’s queue today are unlikely to come online before 2030.”⁷⁵ And the roughly 160,000 MW of new development stuck in the queue demonstrates that the most recent exorbitant BRA clearing prices are not necessary to incent new entry. Developers proposed the projects pending in the queue based upon price (and other) projections made years ago when BRA prices were significantly lower.⁷⁶

⁷² *Id.* at 2.

⁷³ *Id.* at 6 (the recent auction’s “higher clearing prices are the natural result of supply and demand fundamentals.”).

⁷⁴ *Id.* (the 2025/2026 BRA’s higher prices will “incent the development of more capacity.”).

⁷⁵ Columbia Study at 9.

⁷⁶ See PJM 2025/2026 BRA Report at 4, tbl.2 (July 30, 2024) (listing BRA auction results from 2015/2016 BRA to 2025/2026 BRA).

While PJM seeks to tout its queue reforms, it cannot identify any substantial amounts of new resources that will enter commercial operation for the 2026/2027 Delivery Year. PJM asserts that “[a]s of September 2024, 448 projects, totaling over 34,000 MW (installed capacity) have graduated the queue and have executed final agreements but are not yet in service, and 111 projects are in construction, 199 in engineering/procurement, while 138 projects have elected to suspend.”⁷⁷ But PJM does not specify how many megawatts of capacity are expected to come on-line or when they will do so. The Columbia Study referenced above investigated these exact resources—*i.e.*, those that had executed an ISA or were far advanced in the queue process—and found that “[o]nly 10 percent of developers report that any of their projects will come online within 12 months of receiving an interconnection service agreement, and most report their projects will require at least 24 months from the time they receive such an agreement to reach commercial operation.”⁷⁸ Many of these projects are variable resources and under current market rules are exempt from auction participation. Aurora Energy Research issued a report identifying only one new resource (an 800 MW gas fired unit) expected to offer into the 2026/2027 BRA.⁷⁹

Importantly, these resources (and others languishing in the queue) show that high prices are not necessary to incentivize new entry. The BRA regionwide clearing price of the 2025/2026 BRA exceeded the highest clearing price of any of the ten prior BRA auctions by more than \$105 MW per day.⁸⁰ Before the 2025/2026 auction, the highest RTO-wide clearing price over the prior ten years prior was the \$164.77/MW-day clearing price

⁷⁷ PJM Answer at 14.

⁷⁸ Columbia Study at 7-8.

⁷⁹ Aurora Report at 26.

⁸⁰ See PJM 2025/2026 BRA Report at 4, tbl.2.

of the 2018/2019 BRA. Applying that price to the installed capacity that cleared in the 2025/2026 auction (135,684 MWs)⁸¹ would yield a total charge to load of \$8.16 billion, some \$6.5 billion less in total charges and roughly half the total charges to customers. The extreme prices experienced in the 2025/2026 BRA are simply not needed either to induce new entry or to retain existing resources. A recent IMM report estimates that “a doubling of market revenues [from \$28.92 MW-day to just \$58 MW-day] could reduce the quantity of resources at risk of retirement from 33,774 MW to 18,957 MW, a reduction of 14,817 MW, or 44 percent.”⁸²

The only evidence that PJM offers in support of its counterfactual contention that super-high prices are needed to encourage new entry is a Calpine Corporation press release.⁸³ But that press release (as described in a trade press report) is substance-free and can be accorded no evidentiary value. Calpine has apparently committed to “explore” the development of potential new resources in PJM or the expansion of existing generation within the region.⁸⁴ The press release says nothing about what that “exploration” involves; it identifies no concrete steps that Calpine may have undertaken (or plans to undertake) to develop new resources in PJM, and provides no information about contemplated resource

⁸¹ *Id.*

⁸² Protest of Talen Energy Corp., Affidavit of A. Joseph Cavicchi P 25, Docket No. EL24-148-000 (Oct. 21, 2024), eLibrary No. 20241021-5206 .

⁸³ PJM Answer at 6 n.14 (citing Darren Sweeney, *Calpine signals plans to ramp up generation development in PJM*, S&P Global (Aug. 26, 2024), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/calpine-signalsplans-to-ramp-up-generation-development-in-pjm-83064266>).

⁸⁴ Darren Sweeney, *Calpine signals plans to ramp up generation development in PJM*, S&P Global (Aug. 26, 2024), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/calpine-signalsplans-to-ramp-up-generation-development-in-pjm-83064266>.

sizes or estimated commercial operation dates. Calpine's response to PIOs' complaint in Docket No. EL24-148 fares little better. Calpine claims that⁸⁵

We are considering opportunities to bring to market a range of technologies that would add reliable capacity to the region, including natural gas peaker plants, natural gas combined cycle plants (potentially with carbon capture), solar and storage. We are currently in active negotiations for two different development sites, and we are in earlier stages of engagement for a number of other sites. We are also reviewing our existing fleet to determine how we can most efficiently add megawatts to our current portfolio through upgrades and expansions. We are putting real resources behind these efforts, including working closely with equipment vendors, hiring personnel to expand my team, and beginning community and economic development outreach with local partners.

Once again, critical details about the contemplated size and operation date of these resources are lacking. And even if Calpine provided a detailed plan, absent Commission action, any PJM resources Calpine were now to embark on developing would not likely enter commercial operation before 2030. In the meantime—and no matter what new generation “exploration” activities Calpine decides to pursue or what generation is developed as a result of those activities—Calpine's existing, incumbent fleet of PJM resources will reap windfall capacity prices for years to come.⁸⁶

PJM contends that “a significant portion of PJM's historical thermal generation fleet has or is in the process of retiring,” in part “in response to recent low clearing price signals.”⁸⁷ And worse, PJM says, this is happening in an environment “where resource

⁸⁵ Protest of Calpine Corporation and LS Power Development, Ex. 2 (Testimony of Suriyun Sukduang) at 6, Docket No. EL24-148-000 (Oct. 24, 2024), eLibrary No. 20241025-5031.

⁸⁶ Calpine currently operates more than 5,000 MW of generation in the PJM footprint. Calpine, *Powering America*, <https://www.calpine.com/powering-america/> (last visited Nov. 17, 2024).

⁸⁷ PJM Answer at 13.

retirements and [anticipated] load growth exceed the pace of new entry.”⁸⁸ It takes little imagination to divine PJM’s calculus: if low clearing prices are causing retirements, then high prices will keep incumbents in the market. But, as detailed above, PJM is not—or should not be—helpless in the face of these impending or threatened retirements. Rather than seeking tariff changes that would afford PJM the meaningful ability to redress the market power of unit withdrawal by means of retirement, PJM apparently believes—wrongly—that it has no option but to expose ratepayers to extortionate clearing prices. The Commission should reject this notion and direct needed relief.⁸⁹

Witness Montalvo observes that the market “goal” should be to “maximize the eligible supply available to the BRA, making it contestable as the design had intended.”⁹⁰ Had this goal been realized, the BRA results would have been vastly different. Witness Montalvo points out:⁹¹

In a preliminary review of the 2025/2026 BRA, the IMM analyzed the impact of nearly 2,000 MW of RMR resources in [Baltimore Gas & Electric (BGE)] choosing not to offer into the market. The IMM found that inclusion of these resources in the supply curve at \$0/MW-day would have reduced BRA costs by \$4.3 billion, or 29.2% of the actual \$14.7 billion cost. The IMM’s sensitivity analysis found that excluding RMR resources from capacity markets resulted in 1,441 MW less cleared UCAP, and by implication the inclusion of RMR resources would have caused the RTO clearing price to drop from about \$270/MW-day to

⁸⁸ *Id.*

⁸⁹ PJM’s RMR specific arguments are specious. PJM contends that the Talen-Sierra Club agreement is a barrier to the Brandon Shores and Wagner units participation in the BRA. But that settlement agreement would have allowed continued operation on oil. The settlement agreement did not compel Talen to abandon its planned coal-to-oil conversion; Talen chose that step on its own. And even taking the conversion cancellation as a given, the settlement agreement still poses no insuperable bar to continued operation since the agreement can be amended and Sierra Club has indicated a willingness to negotiate.

⁹⁰ Montalvo Decl. ¶ 77.

⁹¹ *Id.* ¶ 70 (footnotes omitted).

\$167/MW-day (38%) while the BGE LDA price would have dropped from \$466/MW-day to \$167/MW-day (64%).

E. PJM’s decision to tie thermal resource ELCC capacity ratings to summer performance is inconsistent with its modeling of ELCC to meet winter risks.

PJM’s market design also unreasonably suppresses available market supply by double discounting the capacity value of gas-fired generation. The IMM explains that “[m]ost of the risk recognized in the ELCC model is winter risk but the ELCC accreditation values for thermal resources are capped at the summer ratings” rather than their winter ratings.⁹² This inconsistent approach shorts supplies in the capacity market because PJM disregards that combustion resources like combined cycle generators (CCs) and combustion turbines (CTs) can produce at higher levels during cold weather. As witness Montalvo explains, PJM’s choice to use summer ratings “effectively undercounts the contribution these resources can make during the high-risk winter period.”⁹³ Discounting gas resources’ ELCC values to account for winter risks but applying that discount to already-lower summer ratings is an unjustified double whammy.

Witness Montalvo addresses the IMM’s recent assessment of PJM’s ratings choice:⁹⁴

The IMM’s estimate is that, on average, the ELCC accreditation for these resources would have been 8.8 percent higher if winter capability was used. The IMM acknowledges that deliverability, in the form of Capacity Interconnection Rights (CIRs) is currently set to summer capacity levels but suggests that these rights could be re-set to reflect winter levels. PJM’s response to the IMM acknowledges that there is likely additional winter thermal capacity, and that “it is likely that some additional winter

⁹² IMM Part A Analysis at 6.

⁹³ Montalvo Decl. ¶ 39.

⁹⁴ IMM Part A Analysis at 5; Montalvo Decl. ¶ 39 (footnotes omitted).

deliverability would be available,” but notes that “there are likely limitations,” both in terms of capacity interconnection and potential increases to overall resource adequacy requirements if risk shifts from winter to summer. PJM agrees, however, that this issue should be studied.

While “[a]cknowledging that there is some uncertainty about final numbers,” witness Montalvo opines that the “potential impact to [UCAP] if the shift is made to winter ratings is in the thousands of megawatts.”⁹⁵ PJM’s approach means that “gas-fired combined cycle units with 5% forced outage rates, many of which have made incremental hardening investments, are now being discounted by over 20% for the purpose of measuring their reliability contributions.”⁹⁶ When considered in conjunction with “PJM’s exclusion of RMR resources and exempt resources, [PJM’s] choice to rate natural gas capacity based on summer performance” means that several thousand megawatts of UCAP are intentionally excluded from BRA consideration.⁹⁷

F. The BRA design fails to constrain the potential exercise of market power through DR resource offers.

The foregoing discussion highlights several ways in which the PJM BRA design either fails to recognize and account appropriately for existing supply or allows that supply to be withheld from (i.e., not offered in) the market. But the market design suffers from another, separate problem: PJM’s tariff does not constrain the potential exercise of market power by DR resources that are offered as supply and not subject to an offer cap. Witness Montalvo explains that PJM’s rules “incorrectly assume[] that DR is demand and that its natural incentive is to lower the price.”⁹⁸ However, that is not necessarily or uniformly the

⁹⁵ *Id.* ¶ 40.

⁹⁶ *Id.* ¶ 65.

⁹⁷ *Id.* ¶ 41.

⁹⁸ *Id.* ¶ 38.

case. Just like other resources, some DR resource may be parts of larger resource portfolios that “benefit from higher, not lower, prices.”⁹⁹ Yet existing PJM market rules fail to constrain the owners of such DR resources from acting on those incentives—either by withholding the resources completely (as discussed above) or by offering them at above-competitive prices to attempt to increase the market clearing price and benefit the larger portfolio.¹⁰⁰

While Joint Consumer Advocates are not privy to DR resource offers and have no knowledge of whether or to what extent resources engaged in this behavior, it is unjust and unreasonable to allow a significant source of potential market power to go unchecked. DR resources comprise a meaningful part (about 4 percent) of the total capacity participating in the market.¹⁰¹ When supplies are as (artificially) tight as they were in the 2025/2026 BRA and appear poised to be in the 2026/2027 BRA (absent relief), the physical or economic withholding of even a small amount of capacity can have a large and unjustified price impact.

The IMM explains the problem:¹⁰²

Demand resources, unlike all other capacity resources, are not subject to market seller offer caps to protect against the exercise of market power. When demand resources are pivotal, as they were for the 2025/2026 BRA, they have structural market power and can and do exercise market

⁹⁹ *Id.*

¹⁰⁰ *Id.* ¶ 28 (“[I]ncumbent generators who have associated DR can bid the demand response in at any price—up to the market price cap—unconstrained by a resource offer cap in an effort to set the market clearing price.”); *id.* ¶ 38 (“[T]he owner of a resource portfolio that includes DR can offer that DR strategically in the auction to benefit the balance of the portfolio.”).

¹⁰¹ *Id.* ¶ 38.

¹⁰² Independent Market Monitor for PJM, Analysis of the 2025/2026 RPM Base Residual Auction Part C at 5-6 (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).

power. The result is to increase the clearing prices above the competitive level. If the resources clear, it benefits the resources directly. Even if the resources do not clear, higher prices can benefit the owners of capacity portfolios that include such resources as well as resources with an RPM must offer.

After reviewing the data, the IMM concluded that the 2025/2026 BRA results were “significantly affected” by flawed market design decisions and the exercise of market power, including “the exercise of market power through high offers from demand resources.”¹⁰³

G. The BRA market design also suffers from other significant flaws.

There are other significant PJM market design flaws that the Commission should direct PJM to address. Two key issues are that PJM consistently over-forecasts peak demand (thereby causing it to procure more capacity than needed) and overestimates the Net Cost of New Entry (thereby driving prices up unnecessarily). We review each issue briefly below. Each is problematic in its own right and exacerbates the effects of the tariff flaws discussed above.

1. PJM over-forecasts demand, which increases auction prices.

Witness Montalvo asserts that “PJM’s peak demand forecast used to set the VRR curve has historically and systematically overestimated the actual capacity need leading to over procurement of capacity and inflated prices.”¹⁰⁴ While noting that this was “less of an issue” when the region enjoyed large generation surpluses,¹⁰⁵ that is no longer the case.

¹⁰³ *Id.* at 6.

¹⁰⁴ Montalvo Decl. ¶ 46.

¹⁰⁵ *Id.*

PJM’s forecast inflation is apparent upon an assessment of its demand forecasts over the past few years for accuracy and bias. Witness Montalvo finds:¹⁰⁶

PJM’s forecast has overestimated actual peak demand every year of the last seven and has overestimated the weather normalized peak in all but one year where it was under by 0.1%. Compared to the weather normalized peaks, PJM’s forecast shows a mean absolute error (accuracy) of 4.2% (range of 9.8% to 0.1%) and a bias of 4.1%. Compared to the actual peaks, PJM’s forecast shows a mean absolute error (accuracy) of 4.6% (range of 11.7% to 1.9%) and a bias of 4.6%. In both cases, the forecast systematically exceeds the actual peaks—if the forecast were unbiased, one would expect that it would produce underestimates and overestimates in a roughly comparable number of instances.

He observes that a “forecast of peak demand that is systematically biased upward results in the market repeatedly procuring more capacity than is necessary to maintain resource adequacy, at an increased cost to consumers.”¹⁰⁷

And while load growth has picked up significantly over the past year, it is important not to accept without scrutiny that all proposed or requested data center interconnections are likely to occur. As witness Montalvo observes, data center load growth is concentrated in areas like northern Virginia and Illinois.¹⁰⁸ “For these data center projects to move forward, either transmission will have been built to relieve the constraints and import capacity into these ‘data center alleys,’ or these large loads will have taken their own supply needs in hand.”¹⁰⁹ That is because “[s]ophisticated developers of new data centers are not likely to go forward with these projects if they are unsure about the availability of electric

¹⁰⁶ *Id.* ¶ 49.

¹⁰⁷ *Id.* ¶ 50.

¹⁰⁸ *Id.* ¶ 52.

¹⁰⁹ *Id.*

supply necessary to meet project needs.”¹¹⁰ Thus, to the extent that new data centers depend on siting and construction of new transmission or new regional generation currently languishing in the interconnection queue, they will be unlikely to go forward in the near term and should not be included in forecast load.¹¹¹

Witness Montalvo explains that any systematic upward bias in forecasted peak demand can inflate clearing prices significantly.¹¹² “Because of the inelasticity of capacity market demand curves around the forecasted capacity amount, small changes in demand can lead to relatively large changes in capacity market prices and therefore revenues.”¹¹³ As compared to actual weather-normalized peak load requirements over the seven years from 2017/2018 through 2023/2024, use of PJM’s higher forecasted peak loads resulted in procurement of 4 percent more capacity than necessary, at an excess cost of roughly \$2.2 billion.¹¹⁴

2. PJM’s Net Cost of New Entry is overstated, which increases auction clearing prices.

The Net Cost of New Entry (Net CONE) is intended to represent the long-run marginal cost of supply in the capacity market. Net CONE ideally approximates the annual capacity market revenues that a new resource needs to ensure viability, in addition to anticipated revenues from other sources such as the energy and ancillary services markets. Net CONE is a key parameter in shaping the VRR curve. The maximum price, inflection point, and zero crossing point are all calculated as a function of Net CONE.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* ¶ 53.

¹¹³ *Id.*

¹¹⁴ *Id.* ¶¶ 53-55.

Despite Net CONE's importance to the PJM BRA design, its computation under current rules likewise suffers from tremendous potential for estimation error and bias. The starting point for calculating Net CONE is developing an estimate of gross CONE (that is, the total cost of new entry without any netting of estimated revenues). As explained by witness Montalvo, there are several inputs needed to determine gross CONE—all of which are themselves estimates that may be inaccurate:¹¹⁵

The determination of CONE depends on all the factors that influence the costs of a new plant, such as plant location, technology, and configuration; engineering, procurement and construction costs; other development costs; and the cost of capital. The detailed approach used to develop CONE estimates belies the reality that the process suffers from false accuracy—the estimates depend on a series of choices, best guesses, and speculation.

The potential for error is unsurprising and by itself might not render the approach unjust and unreasonable if, over time, the over- and under-estimates balanced each other out and the Net CONE estimates were empirically reasonable on average. But that is not the case in PJM. Witness Montalvo explains that, “[i]n theory, if the estimates are sound, the long-term capacity market clearing price should equal the estimated Net CONE,”¹¹⁶ and “one should not expect market entry when market prices are below Net CONE.”¹¹⁷ In PJM, however, capacity prices are consistently below PJM's estimate of Net CONE.¹¹⁸ And, in eight of the last eleven auctions, thousands of megawatts of new capacity entered

¹¹⁵ *Id.* ¶ 58 (footnotes omitted).

¹¹⁶ *Id.* ¶ 60

¹¹⁷ *Id.* ¶ 62.

¹¹⁸ *Id.*

the market and cleared annually despite BRA prices well below PJM's Net CONE estimate.¹¹⁹

Witness Montalvo concludes from this that PJM's Net CONE estimates are consistently overstated and excessively costly to load. As discussed in section IV.G.1 below, witness Montalvo suggests that “the value of the Net CONE could be determined more straightforwardly and defensibly by reference to the actual cost of new entry, which is the market clearing price of the auction.”¹²⁰ Compared to an adjusted demand curve based on an empirically observed Net CONE level, PJM's use of an inflated estimate of Net CONE caused the unnecessary procurement of 2,130 megawatts of capacity and inflated customer costs \$4.0 billion.¹²¹

IV. THE COMMISSION SHOULD ADOPT JUST AND REASONABLE REPLACEMENT RATES

Under the Federal Power Act, the Commission has a statutory duty to reform unlawful rates and establish just and reasonable ones.¹²² Although “[i]t is the Commission's job—not the petitioner's—to find a just and reasonable rate,”¹²³ we here describe changes to the current market design that the Commission should direct PJM to implement.

As explained by witness Montalvo, they are intended to address “two fundamental concerns.”¹²⁴

¹¹⁹ *Id.*

¹²⁰ *Id.* ¶ 63. As discussed below, witness Montalvo recommends calculating Net CONE based on a rolling weighted average of actual market clearing prices plus one half of the range between the highest and lowest prices during the same period. *Id.*

¹²¹ *Id.* ¶ 78.

¹²² *Miss. Indus. v. FERC*, 808 F.2d 1525, 1557 (D.C. Cir. 1987) (subsequent history omitted).

¹²³ *Advanced Energy Mgmt. Alliance v. FERC*, 860 F.3d 656, 663 (D.C. Cir. 2017).

¹²⁴ Montalvo Decl. ¶ 13.

First, PJM has expressed concern that the region is becoming capacity-tight. Yet, the current queue delays and the scope of required transmission upgrades are preventing timely new entry in significant amounts. In addition, the market rules allow thousands of MWs of otherwise qualified resources that do plan to operate and support reliability not to bid into the capacity market. At a minimum, then, the tightening capacity supply condition and the market power of incumbent generators might be mitigated in part through a rule change.

To address these concerns, the Commission should act immediately and before the upcoming auction to “maximize supply participation in the auction,” which will “further competition in the BRA and improve pricing performance.”¹²⁵ The steps to maximize supply participation include: (a) revoking categorical exemptions from must-offer requirements for existing resources; (b) adopting standardized RMR provisions and a *pro forma* agreement that will enable PJM to retain resources needed for reliability and that require retained resources to participate fully in PJM markets; (c) correcting the understatement of capacity values resulting from the use of combustion resources’ summer ratings in ELCC accreditation; (d) improving management of PJM’s interconnection queue to prioritize processing of ready-to-study projects in LDAs that are more likely to be constrained; and (e) applying offer price caps to DR resources to prevent economic withholding.

As explained below, the Commission should grant this complaint and direct PJM to make these changes before it conducts the 2026/2027 BRA. In addition, the Commission should direct PJM to convene stakeholder discussions to address the potential future changes identified by witness Montalvo, including revisions to reduce the effect of

¹²⁵ *Id.* ¶ 14.

systematic load forecast inflation on BRA results and changes to the method of determining Net CONE.

A. PJM should be directed to revise its rules so that all existing eligible capacity resources that contribute to resource adequacy must participate in the capacity auction.

We have demonstrated that the 2025/2026 BRA results do not reflect current conditions accurately because (among other reasons) there is substantial capacity online in PJM that supports reliability but is exempt from BRA participation. The Commission should direct PJM to change the current exemption structure. Revisions aimed at increasing market supplies are inherently pro-competitive. Whatever the propriety of permitting resource exemptions when the market was long, that resource picture has changed significantly. Given current and anticipated market conditions, requiring the auction participation of eligible but exempt resources is necessary to compensate in part for the lost competition of new entry and to mitigate the market power of incumbent resources through withholding.

The IMM sees the current must-offer exemptions as an “important gap[] in the market power rules for the PJM capacity Market,”¹²⁶ the closing of which is pro-competitive and necessary to make the market work.¹²⁷

There is no reason to exempt intermittent and capacity storage resources, including hydro, from the RPM must offer requirement. The same rules should apply to all capacity resources. The purpose of the RPM must offer rule, which has been in place since the beginning of the capacity market in 1999, is to ensure that the capacity market works based on the inclusion of all demand and all supply, and to prevent the exercise of market power via withholding of supply.

¹²⁶ IMM Part A Analysis at 3.

¹²⁷ *Id.* at 5.

In response to these concerns, the IMM “recommends that all capacity resources have a must offer obligation.”¹²⁸ And witness Montalvo agrees, pointing out that “[n]on-participation in capacity markets by exempt resources means that thousands of MWs of capacity that is actually serving load and contributing to reliability is not competing with other incumbent generation in the BRA.”¹²⁹ The amount of supply at issue is significant. In addition to the now exempt RMR resources,¹³⁰

PJM’s treatment of other “exempt” resources, namely intermittent resources, battery storage, and DR, likewise undercounts these resources’ actual availability to serve load in PJM. PJM reports that in the 2025/2026 BRA, excluded RMR resources, unoffered UCAP MWs from battery, diesel-landfill, hydro, solar, and wind resources, total 1,596 MW.

In these circumstances, witness Montalvo recommends that PJM be directed to:¹³¹

adopt revisions to its tariff to require that all existing eligible capacity resources that contribute to resource adequacy in the operating timeframe must participate in the capacity auction under the existing must-offer construct that applies to thermal generation. These reforms would impact currently exempted resources, including RMR, intermittent resources, battery storage, and DR.

This recommendation is supported by the Governors of five states within the PJM footprint, who have recently written to PJM urging that it implement this reform and several others.¹³² The Organization of PJM States, Inc. (OPSI) has likewise expressed support,

¹²⁸ *Id.* at 3.

¹²⁹ Montalvo Decl. ¶ 68.

¹³⁰ *Id.* ¶ 37.

¹³¹ *Id.* ¶ 68.

¹³² Letter from the Governors in the states of Delaware, Illinois, Maryland, New Jersey, and Pennsylvania to Mr. Mark Takahashi Chair, PJM Board of Managers, and Mr. Manu Asthana President & CEO at 1-2 (Oct. 25, 2024), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/2024/20241025-governors-letter-regarding-capacity-auctions.ashx> (Governors Letter), which calls upon the PJM Board to “direct PJM staff to . . . [e]nsure that capacity from Reliability Must Run units is included in the next Base

stating that it “agrees” with the IMM “that all capacity resources must participate in PJM’s capacity construct to prevent resource owners from not offering some portions of their portfolio to benefit other portions of their portfolio.”¹³³ In support of this position, OPSI observes:¹³⁴

Exceptions to the must offer requirement for generation resources undermine a key component of the capacity market where consumers must buy capacity no matter how high the price. It is important that PJM consider having all resources that are expected to be online and producing power offer into PJM’s capacity auctions. This includes all intermittent and storage resources with capacity interconnection rights, which make up the vast majority of resources waiting to interconnect to PJM’s system. OPSI has long been in alignment with these concerns.

Witness Montalvo recommends pairing these changes with revisions to the rules governing capacity nonperformance penalties:¹³⁵

Requiring RMR, intermittent, and other currently exempt resources to offer into the PJM markets may pose problems without other rule changes because these resources will be fully exposed to [Performance Assessment Interval (PAI)] penalties even though some of them may have no practical way of managing that exposure. RMR and intermittent resources are arguably differently situated from thermal resources and each other as regards the impact of the PAI as a real performance incentive. The performance requirements that apply to an RMR resource should be built into the terms and conditions of the RMR arrangement; the expected performance of an intermittent resource is built into its ELCC value.

Residual Auction [;]” and “[e]liminate the must-offer exemption for intermittent generation resources, while protecting them from performance penalties that discourage participation[.]”

¹³³ Letter from Organization of PJM States, Inc. to Mr. Mark Takahashi, PJM Board of Managers, and Mr. Manu Asthana, PJM President and CEO at 3 (Sept. 27, 2024), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/2024/20240927-opsi-letter-re-results-of-the-2025-2026-bra.ashx> (OPSI Letter).

¹³⁴ *Id.* at 2-3.

¹³⁵ Montalvo Decl. ¶ 65.

He recommends that intermittent resources subject to a must offer requirement be treated differently to address their unique circumstances.¹³⁶

I propose that intermittent and battery storage resources be excused from PAI penalties if they are operating at maximum *possible* output during the PAI event. The output of intermittent resources such as wind, solar, and hydro (as well as shorter duration battery storage) resources is largely determined by nature, and these resources are almost all but guaranteed to operate when the relevant “fuel” source is available[.]

* * *

Logically, a solar facility cannot produce energy at night and is not expected to do so under the reliability model, so applying a penalty for the failure to perform at night, for example, provides no incremental incentive and cannot improve performance.

The IMM agrees, stating in his Part A analysis that the “inclusion of a must offer obligation for intermittent and capacity storage resources should be coupled with the removal of PAI penalty liability for such resources when it is not physically possible to perform.”¹³⁷

B. The Commission should require PJM to adopt standardized RMR provisions that enable PJM to retain needed resources and should grant the pending complaint concerning the capacity auction participation of RMR resources.

We explained earlier that there is currently a Federal Power Act section 206 complaint pending before the Commission asking that it find that PJM’s capacity market rules are unjust and unreasonable because they fail to require a consistent accounting of the resource adequacy contributions of power plants operating under RMR arrangements and lead to excessive costs for consumers, and order appropriate relief.¹³⁸ The IMM has

¹³⁶ *Id.* ¶ 73.

¹³⁷ IMM Part A Analysis at 6.

¹³⁸ PIO Complaint at 1.

filed comments in support of the complaint, asserting that the Commission should “order PJM to reform its capacity market rules to consistently account for RMR units’ resource adequacy contributions.”¹³⁹ Joint Consumer Advocates have likewise urged that the complaint be granted,¹⁴⁰ as have the Governors of five states in the PJM footprint.¹⁴¹

The requested relief is justified. Witness Montalvo explains that under the current PJM rules, while a resource is in RMR status:¹⁴²

[it] must be made available to operate and respond to PJM dispatch instructions per the terms of their RMR agreements to support reliable operations but are exempt from required participation in the capacity market. (If the RMR resource nonetheless chooses to participate in the capacity market, then it is subject to the same performance obligations imposed upon all PJM resources that clear a capacity auction). Given the structure of many RMR contracts that limit operations to emergencies, there is likely a high correlation between RMR unit dispatch and system conditions that might lead to a PAI event. The RMR resource may recover its net going forward costs (default rate) or request a cost of service-based (COS) rate. RMR resources generally request COS treatment, the total cost of which is most often substantially above the prevailing market cost of capacity.

Witness Montalvo similarly observes that¹⁴³

PJM models the reliability contributions and the impacts on power flows of RMR resources when calculating reserve requirements, irrespective of whether the resource participates in the capacity auction and takes on the performance obligations imposed on cleared resources. PJM includes RMR resources in the set of Internal UCAP resources used to calculate the Capacity Emergency Transfer

¹³⁹ Comments of the Independent Market Monitor for PJM Interconnection, Docket No. EL24-148-000 (Oct. 10, 2024), eLibrary No. 20241010-5217.

¹⁴⁰ Comments and Answer of Consumer Advocates, Docket No. EL24-148-000 (Oct. 17, 2024), eLibrary No. 20241017-5154.

¹⁴¹ In addition, OPSI has supported this relief. *See also* Governors Letter at 2.

¹⁴² Montalvo Decl. ¶ 34.

¹⁴³ *Id.* ¶ 35.

Objective (CETO) and set the LDA reliability requirement and as part of the system modeled to calculate the Capacity Emergency Transfer Limit (CETL). The LDA binds (meaning that the LDA must rely on internal resources) and there is price separation if the CETO is greater than the CETL. As the modeled treatment of a resource is the same after the RMR as it was before (I have no evidence to suggest that PJM modifies the RMR resource's expected contribution to meeting load during modeled emergency conditions), the reliability requirement is not impacted by a resource's new RMR status. However, the RMR resource is not included as supply for purposes of clearing the capacity market auction. This creates a disconnect between assumed supply for purposes of setting LDA resource requirements and the actual supply—per the IMM, approximately 1,984 MW of nameplate capacity supported through RMR agreements, amounting to 1,440 MW of potential UCAP in the 2025/2026 auction.

The IMM has also noted the “disconnect,” explaining in his Part A analysis that “PJM currently includes RMR units in the reliability analysis for RPM auctions but does not include the RMR units in the supply curve.”¹⁴⁴

Thus, while RMR resources are compensated to provide system reliability and can be called on by PJM to do so, they participate in the BRA only if the resource owner chooses to do so. The result is that customers are forced to pay twice to satisfy the same

¹⁴⁴ IMM Part A Analysis at 6. OPSI has likewise stated its support for a directive that PJM reform its capacity market treatment of RMR resources:

The PJM Board should direct PJM to consider mandating that capacity of generating units that are under RMR contracts and expected to be operational during the relevant Delivery Year be included as available capacity. Under current auction rules, generating units that are under RMR contracts are not required to offer into PJM's capacity auctions, nor are they included in the bid stack, even if they are contracted to remain online to preserve reliability. While RMR units are included in calculations for local reliability requirements, they are not included in the supply curve. PJM must examine this inconsistency and how the reliability value of RMR units is included in the capacity market and whether adjustments are appropriate. If these units will be available for dispatch during the relevant Delivery Year, the reliability value of these units should be duly reflected when settling the capacity market.

OPSI Letter at 2 (footnotes omitted).

capacity need—i.e., once to compensate the RMR unit, and then again to secure a like amount of replacement capacity in the BRA. While PJM says that’s not so—it contends that most RMR units agree to performance requirements far short of what a capacity resource provides—that does not make the situation any more reasonable. In the absence of tariff provisions imposing performance requirements, RMR units in PJM exercise their locational market power to extract full cost of service compensation from ratepayers while providing only meager service in return. Ratepayers still pay twice but get little value in return for the second payment.

The Commission should direct PJM to adopt standardized RMR terms and conditions and a *pro forma* RMR agreement. Doing so will help to ensure that PJM has the tools it needs to maintain reliable system operations while protecting ratepayers from the exercise of market power by resources needed for reliability. The new provisions should allow PJM to delay existing resource retirements for as long as the resource remains needed for reliability. While the Commission at one time may have thought that it lacked authority to approve system operator tariffs with mandatory RMR provisions, that view is outdated.¹⁴⁵ And in today’s circumstances, given the massive changes occurring in the region’s generation fleet, it is essential that PJM have at least as much ability to delay retirements for reliability reasons as it may delay the interconnection of new resources.

Where continued service is mandated, the tariff should provide for compensation at a full cost-of-service rate.¹⁴⁶ In exchange for such guaranteed cost recovery including a

¹⁴⁵ See *N.Y. Indep. Sys. Operator Inc.*, 150 FERC ¶ 61,116, P 17 (2015) (requiring New York Independent System Operator, Inc. (NYISO) to adopt standardized RMR terms and conditions, which could include either a voluntary or mandatory RMR regime), *on reh’g*, 161 FERC ¶ 61,189 (2017), *on reh’g*, 163 FERC ¶ 61,047 (2018).

¹⁴⁶ *Id.*

return on investment, RMR generators should be required to provide ratepayers all the economic value they are capable of producing. The FPA requires no less; if ratepayers cover all of a generator's costs, they should receive all of the corresponding value.¹⁴⁷

Among other things, that means that RMR generators on cost-of-service rates should be required to offer their capacity as price takers for any delivery years that will be completed during the term of the agreement. (And the terms of the agreement should be timed to coincide with capacity delivery years). The Commission has made clear that doing so is economically efficient and failing to do so is unjust and unreasonable. In New York, FERC rejected a complaint seeking to require RMR generators to bid above zero. FERC agreed with NYISO's external market monitor that the retained resources¹⁴⁸

are economic from the perspective of satisfying the NYISO's reliability requirements. . . . If the reliability needs satisfied by these units were reflected in the capacity market, the units would both clear.

The Commission therefore found that it is economically efficient that the resources clear, and "[any] provisions . . . that would cause them not to clear would be unreasonable."¹⁴⁹

The Commission affirmed this view in response to a NYISO filing of generic RMR provisions. NYISO proposed to allow RMR generators to participate in capacity auctions as price takers except (i) when the generators were being retained for resource adequacy (as opposed to transmission security, for example) or (ii) when the retained generator is not

¹⁴⁷ *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.").

¹⁴⁸ *Indep. Power Producers of N.Y. v. N.Y. Indep. Sys. Operator*, 150 FERC ¶ 61,214, P 66 (2015) (quotation omitted), *reh'g granted in part*, 170 FERC ¶ 61,118 (2020).

¹⁴⁹ *Id.*; *see also id.* P 68 ("Where RMR agreements are necessary, those resources also satisfy the reliability needs of the broader [New York Control Area (NYCA)] footprint, and it would be inefficient to procure other capacity elsewhere in the NYCA footprint to satisfy the NYCA capacity needs met by the RMR capacity.").

the least-cost solution to the identified reliability need. FERC rejected the exceptions, reiterating that it's efficient for retained resources to clear in the capacity market; otherwise, ratepayers would pay twice to meet the same reliability need.¹⁵⁰

FERC followed this precedent in New England, when it accepted ISO-New England, Inc.'s (ISO-NE) proposal to enter fuel security resources into the Forward Capacity Market (FCM) as price-takers:¹⁵¹

If resources needed for fuel security are not entered into the [Forward Capacity Auction (FCA)] as price-takers, they risk not clearing in the FCA and their resource adequacy contributions to the system would not be counted. As the Commission stated in the 2017 NYISO Order, such an outcome would result in a higher clearing price and a higher procurement quantity, which would create an inefficient and unreasonable market outcome. Even putting aside the price impact, this would result in consumers “pay[ing] twice” for capacity—“once for the cost of the RMR agreement, and again for the generator that otherwise would not have cleared the market.” We agree with Potomac Economics that, as long as resources are retained for fuel security purposes, including such resources in the FCA as price takers prevents an artificial and inefficient increase in FCA prices.

And Appellate courts have deferred to this reasoning in related contexts.¹⁵²

The Commission should follow the same course here and bring PJM's tariff into conformance with those of the two other system operators that administer mandatory

¹⁵⁰ *N.Y. Indep. Sys. Operator Inc.*, 155 FERC ¶ 61,076, P 85 (2016).

¹⁵¹ *ISO New Eng., Inc.*, 165 FERC ¶ 61,202, PP 82-88 (2018), *on reh'g*, 173 FERC ¶ 61,204 (2020), (footnotes omitted). FERC also noted that allowing participation as a price taker “accurately reflects [an RMR resource's] low going-forward costs,” after accounting for the RMR revenues the generators would receive. *Id.* P 88.

¹⁵² *NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 20 (D.C. Cir. 2018) (affirming FERC's acceptance of a minimum offer price rule (MOPR) exemption for some renewable resources because, FERC reasoned, the resources would be developed anyway in response to state policies and it would be inefficient to fail to account for them and to instead buy redundant capacity).

capacity markets.¹⁵³ Doing so will help to ensure that PJM has the tools it needs to maintain reliable system operations while protecting ratepayers from the exercise of market power by resources needed for reliability.

C. PJM should be required to accredit combustion resources using winter capacity ratings that seasonally match the winter risks driving those resources' ELCC values.

As explained above, PJM's current ELCC accreditation method inappropriately discounts the capacity value of combustion resources by heavily weighting the winter risks faced by such units while using lower summer capacity ratings that "understate[] the reliability value these resources provide in the winter."¹⁵⁴ To fix this problem, the Commission should require PJM to accredit combustion resources using their winter capacity ratings which correspond seasonally to the winter risks driving those resources' ELCC values.¹⁵⁵ As witness Montalvo explains, the change should be given high priority. "[T]here is potentially a significant amount of unrecognized capacity at stake," perhaps as much as 5,400 megawatts (UCAP value), and "clearing prices that ignore 'real' capacity do not properly represent the available supply and will be artificially inflated, particularly in the foreseeable circumstances where substantial new entry cannot enter the market."¹⁵⁶

¹⁵³ In its answer to the PIO complaint, PJM contends that it is not an "outlier" among RTOs with capacity markets because the Midcontinent Independent System Operator, Inc. (MISO), like PJM, does not mandate capacity auction participation by RMR resources. *See* PJM Answer at 40. But MISO is not a good comparison because its capacity market, unlike PJM's, NYISO's, and ISO-NE's, is voluntary for both generation and load. *See Midcontinent Indep. Sys. Operator, Inc.*, 183 FERC ¶ 61,112 (2023) (Comm'r Christie, concurring).

¹⁵⁴ Montalvo Decl. ¶ 78.

¹⁵⁵ *Id.* ¶¶ 78, 95.

¹⁵⁶ *Id.* ¶ 78.

D. PJM should be directed to undertake changes to the management of its interconnection queue.

As of October 16, 2024, the PJM interconnection queue contained 159,900 MW in active capacity interconnection requests.¹⁵⁷ Witness Montalvo explains that the evident “tightness” in the capacity market is not due to lack interest, effort, or low capacity prices. The problem instead is, as explained above, that existing resources are undercounted and new resources “are mired in the interconnection process.”¹⁵⁸ Indeed, the interconnection process has become so dysfunctional that PJM and market participants have begun “addressing their needs in other ways,”¹⁵⁹ such as planning transmission to import power from central and western PJM in place of “generation projects that were put in the queue some years ago to deliver energy close to the now burgeoning load.”¹⁶⁰

Because of how the interconnection bottleneck adversely affects the competitiveness and functioning of PJM’s capacity market, the Commission should (in addition to the other relief requested herein) direct PJM to modify its interconnection study procedures. As recommended by witness Montalvo, PJM should “give study priority to study-ready projects in the interconnection queue that are siting in (likely to be) constrained LDAs.”¹⁶¹ Given the scarcity of study resources,¹⁶² this change would give priority to

¹⁵⁷ PJM, Serial Service Request status, <https://www.pjm.com/planning/service-requests/serial-service-request-status> (last visited Nov. 17, 2024).

¹⁵⁸ Montalvo Decl. ¶ 42.

¹⁵⁹ *Id.* ¶ 44.

¹⁶⁰ *Id.* Similarly, witness Montalvo notes that “several companies building large new datacenters, the major driver of load growth in PJM over the next five years, are looking to co-locate with existing generation, bypassing the dysfunctional capacity market and the interconnection morass, in an attempt secure reliable low-cost power.” *Id.* (footnotes omitted).

¹⁶¹ *Id.* ¶ 76.

¹⁶² *Id.* (“This rule change would provide a logical means of offering priority to certain queue projects, rather than forcing them to wait to go through the cluster process.”).

resources that are likely to offer consumers the greatest near-term benefit. Accelerating the interconnection studies for such resources is a necessary step to enable such resources to begin participating in PJM capacity auctions as quickly as possible.

E. PJM should be directed to modify the rules concerning provisions relating to demand response resource participation in the auction.

As noted above, demand resources in PJM constitute a meaningful percentage of the total capacity participating in the market but do not have an RPM must-offer requirement and are not subject to market seller offer caps to protect against the exercise of market power. This is problematic because DR resources participate as supply and may be parts of larger portfolios that benefit from higher prices. The IMM confirms that, “[w]hen demand resources are pivotal, as they were for the 2025/2026 BRA, they have structural market power and can and do exercise market power” through submission of offers at prices above competitive levels.¹⁶³

In response, witness Montalvo and the IMM recommend that demand resources have defined and enforced market seller offer caps.¹⁶⁴ To that end, witness Montalvo suggests two changes to the treatment of demand response resource offers. First, he recommends that DR “be required to submit BRA offers that reflect the maximum dispatchable demand reduction that the resource is making available to PJM.”¹⁶⁵ He explains:¹⁶⁶

The performance of DR would then be measured as the actual reduction delivered (metered consumption before instruction less metered consumption after instruction) in

¹⁶³ IMM Part C Analysis at 5-6.

¹⁶⁴ Montalvo Decl. ¶ 95; IMM Part C Analysis at 5-6.

¹⁶⁵ Montalvo Decl. ¶ 75.

¹⁶⁶ *Id.*

response to a dispatch instruction during a PAI event. The current treatment compares consumption during a PAI event to the resource's claimed maximum consumption. The DR is credited for this difference, even if during the event DR delivers no reduction in consumption (it would have been consuming at the current level irrespective of system conditions), thus having no impact on the load that must be served.

Adopting this change would “facilitate” witness Montalvo’s second recommendation, which is that “the IMM evaluate the opportunity cost of demand reductions and use this to calculate mitigated DR offer prices (offer caps) that PJM would then impose when structural market power tests fail.”¹⁶⁷

F. The need for prompt action is apparent.

The need for prompt action is indisputable. If the 2026/2027 BRA is conducted using the existing, flawed market rules, there is a substantial risk that it will produce even more extreme and unreasonable results than the 2025/2026 BRA. OPSI wrote PJM in September, warning that auction design “flaws [identified by the PJM IMM] could lead to the upcoming auction clearing at the maximum capacity price which would assign a total cost to customers of over \$30 billion for the 2026/2027 Delivery Year.”¹⁶⁸ Consistent with this warning, one expert energy market consultant has analyzed PJM market supply and demand fundamentals and the auction rules for the 2026/2027 BRA and projected “highly uncertain” outcomes including a “high case” scenario of the entire PJM region clearing at

¹⁶⁷ *Id.*

¹⁶⁸ OPSI Letter at 2.

the new offer cap of “\$696/MW-day.”¹⁶⁹ This high case scenario would result in total capacity charges to PJM customers in the range of \$37 billion.¹⁷⁰

In these circumstances, where demand is growing, new entry is blocked, and auction supply is artificially constrained, the need for prompt action—on this complaint, the complaint pending in Docket No. EL24-148, and (perhaps) the upcoming PJM section 205 filing—is beyond dispute. Indeed, PJM has responded to the recent auction results by informing the Commission that it is working on a set of changes to the auction process that it plans to file (likely in December 2024) under section 205, and the Commission has granted PJM’s request to delay the auction while the details of that filing are being worked out.¹⁷¹ But PJM’s upcoming section 205 filing may fall short of addressing the region’s capacity auction difficulties. To ensure that PJM’s 2026/2027 BRA produces just and reasonable rates, the Commission should grant this complaint promptly and direct PJM to make the changes identified above before it conducts the upcoming auction.

G. The Commission should direct PJM to convene a stakeholder process to consider longer-term capacity market changes.

Additionally, the Commission should direct PJM to convene a stakeholder process to address the other, longer-term capacity market problems that witness Montalvo identifies and to consider his recommended solutions.

¹⁶⁹ Aurora Report at 26.

¹⁷⁰ The new PJM BRA offer cap price of \$695.8 x 365 days x the 147,264 MW reliability requirement for the 2026-2027 BRA Delivery Year equals total charges to load of \$37,400,196,288. The actual figure would depend on the amount of capacity that clears at the offer cap region wide.

¹⁷¹ *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,105, P 5 (2024).

1. PJM should be directed to revise its methodology for calculating Net CONE.

We explained earlier that PJM’s CONE calculation systematically overstates the cost of new entry. Witness Montalvo recommends a change, observing that a “better approach would utilize the actual cost of new entry as revealed by the capacity market itself.”¹⁷² More specifically, he suggests an example of how this objective could be achieved, proposing that Net CONE be calculated as the sum of two components: (1) a moving weighted average of clearing prices for a rolling 5-year historical reference period (weighted on total new unit capacity clearing in the auction); and (2) one half of the range between the minimum and the maximum clearing price from the same 5-year period.¹⁷³ Moving to this methodology would be reasonable because the “first component captures the central tendency of recent auction prices that lead to actual new entry, while the second component conservatively accounts for historical spread in setting VRR curve parameters.”¹⁷⁴ Because the proposed approach is “purely mechanical” and would “operate as a formula,” it would “replace false precision with an empirical calculation,” and avoid “making judgement calls about inputs that produce a number that impacts the wallets of both generators and loads.”¹⁷⁵

Witness Montalvo then offers an example of how his methodology would work, explaining the outcome that would have been obtained had his proposed Net CONE calculation been in place during the 2025/2026 BRA:¹⁷⁶

¹⁷² *Id.* ¶ 83.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* ¶ 84.

¹⁷⁶ *Id.* ¶¶ 85-86.

I compared the market results of the VRR curve PJM used for the 2025/2026 auction with the modeled results of an adjusted demand curve based on a Net CONE calculated [using my proposed methodology]. I reduce the value of Net CONE to \$146.60/MW-day for the RTO-wide and Dominion LDA and *increase* the value of Net CONE for the BGE LDA to \$224.24/MW-day as an estimate of the *proper* Net CONE.

* * *

For the actual 2025/2026 PJM BRA, the equilibrium quantity was 135,684 UCAP MW and the price was \$269.92/MW-day, with total capacity market revenues of about \$14.7 billion. Using the adjusted demand curve based on a proper net CONE level, rather than the overestimated net CONE, would have decreased quantity cleared by 2,130 MW and total BRA cost to load would have decreased \$4.0 billion from \$14.7 billion to \$10.7 billion.

Witness Montalvo concludes:¹⁷⁷

Rather than use arbitrary multiples of CONE values that we know will not match actual new entry and would serve in the interim only to extract rents from load, the empirical net CONE provision could be adjusted by a simple scaling percentage, e.g., a 25% adder, if capacity margins are tightening and no resources are in the interconnection queue that would add supply in a timely way.

2. PJM should be directed to address the systematic inflation of its load forecasts by considering a shift to a prompt or staggered capacity auction design.

We explained above that there is a pattern of PJM load forecast inflation. Joint Consumer Advocates recommend that PJM be directed to consider design changes that reduce forecasting error, which should increase accuracy and reduce bias. Witness Montalvo proposes consideration be given to moving to a prompt auction design, which

¹⁷⁷ *Id.* ¶ 88.

would involve “reducing the forecast period by adjusting the time between the conduct of the auction and delivery year.”¹⁷⁸ He explains:¹⁷⁹

Empirically, the improved forecast accuracy observed over the past couple of BRAs suggests that reducing the forecast period may be beneficial.

As an alternative, witness Montalvo suggests that the BRA be used to procure a portion of the regional reliability requirement, with the remainder obtained through an incremental auction, which could be used “to top off if short or shed if long.”¹⁸⁰ He explains:¹⁸¹

The idea here is to recognize that the forecast tends to be wrong and biased high, and so to purchase a fraction, say 95% of the capacity that the forecast suggests is required through the BRA, and then to purchase additional capacity through the incremental auctions if it looks like the actual loads are consistent with the forecasted load.

V. RULE 206 REQUIREMENTS

To the extent not already provided above, Consumer Advocates provide the following additional information required by Rule 206 of the Commission’s Rules of Practice and Procedure.¹⁸²

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

Absent a Commission order granting the relief sought here, it has been reported that the upcoming BRA (scheduled to be held in early December, though since delayed by six months) may clear at the new offer cap of \$696/MW-day for the entire PJM region. If that

¹⁷⁸ *Id.* ¶ 81.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* ¶ 82.

¹⁸¹ *Id.*

¹⁸² 18 C.F.R. § 385.206.

occurs, capacity charges to PJM ratepayers in the 2026/2027 BRA could increase to \$37 billion.

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

Joint Consumer Advocates believe that the impacts of PJM's unjust and unreasonable auction rules are primarily financial.

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

The Joint Consumer Advocates are aware of the following pending proceeding identifying one tariff change to prevent a recurrence in the 2026/2027 BRA Delivery Year of excessive auction clearing prices:

- *Sierra Club, et. al., v. PJM Interconnection, L.L.C.*, FERC Docket No. EL24-148-000

However, Joint Consumer Advocates' complaint both identifies additional changes that should be made before conducting the BRA for the 2026/2027 delivery year and seeks broader reform.

Certain of the Joint Consumer Advocates are also involved in stakeholder processes in PJM that could result in reforms to the current BRA rules. At the present time, however, we have no reason to believe that the process will be resolved in a manner that moots the matters at issue here, let alone within a time frame sufficient to address the next and upcoming PJM capacity auctions.

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 workpapers

and resume are included as exhibits to Attachment A. The Declaration also lists the materials relied upon by witness Montalvo.

The Aurora Report and Columbia Study are included as Attachments B and C to this complaint, respectively.

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

On August 30, 2024, Joint Consumer Advocates and others wrote the PJM Board, requesting that PJM take immediate action to protect ratepayers throughout the PJM region from unjust and unreasonable capacity market prices. The letter urged PJM to institute a Critical Issue Fast Path process to develop rules requiring the capacity value of RMR units to be considered in the capacity market, effects for the 2026/2027 BRA, and delay the auction, as necessary. On September 19, 2024, the PJM Board responded that it would be counterproductive to try to change the market rules for RMR units prior to the 2026/2027 BRA. In these circumstances, Joint Consumer Advocates have not used the Commission's Enforcement Hotline or Dispute Resolution Services and do not believe at this time that alternative dispute resolution would resolve the issues underlying this Complaint.

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

Assuming PJM makes the section 205 filing it has stated will soon be submitted to address BRA market rules (and potentially other related matters), Joint Consumer Advocates ask that this Complaint be addressed contemporaneously.

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; Illinois Citizens Utility Board; Maryland Office of People's Counsel; New Jersey Division of Rate Counsel; Office of the Ohio Consumers' Counsel; and Office of the People's Counsel for the District of Columbia.

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:¹⁸³

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¹⁸³ 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

The 2026/2027 BRA cannot lawfully go forward under the current market rules. The combination of limited new entry capable of entering service prior to the commencement of the 2026/2027 Delivery Year, anticipated load growth, the artificial exemption of eligible resources from offering into the BRA, and the risk of market manipulation from resources with market power (including, the withholding and/or submission of artificially high demand response offers by fleet operators) portends—if not guarantees—excessive and artificially high capacity prices in the upcoming 2026/2027 BRA. The Commission should find the existing BRA market design unjust and unreasonable, and should implement the reforms identified here.

Respectfully submitted,

/s/ Eric DeBellis

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November 18, 2024

**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

(November 18, 2024)

Take notice that on November 18, 2024 pursuant to sections 206 and 306 of the Federal Power Act, [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 existing capacity market rules are unjust and unreasonable because they fail to mitigate market power and result in the imposition of excessive capacity charges upon consumers.

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 [December 9, 2024].

Dated: [November 18, 2024].

CERTIFICATE OF SERVICE

Pursuant to Commission Rules of Practice and Procedure Nos. 206(c) and 2010, I hereby certify that I have this 18th day of November, 2024 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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