

Nos. 23-1778, 23-1790, 23-1808, 23-1984, 23-2544,  
23-2559, 23-2560, 23-2612 (Consolidated)

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IN THE  
**United States Court of Appeals**  
FOR THE THIRD CIRCUIT

PJM POWER PROVIDERS GROUP, *ET AL.*,  
*Petitioners,*

v.

FEDERAL ENERGY REGULATORY COMMISSION,  
*Respondent.*

Petitions for Review of Orders of the Federal Energy Regulatory Commission

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**JOINT BRIEF OF INTERVENOR-RESPONDENTS**

**PJM INTERCONNECTION, L.L.C.; AMERICAN MUNICIPAL POWER, INC.;**  
**DELAWARE DIVISION OF THE PUBLIC ADVOCATE; DELAWARE MUNICIPAL**  
**ELECTRIC CORPORATION, INC.; DELAWARE PUBLIC SERVICE COMMISSION;**  
**MARYLAND OFFICE OF PEOPLE’S COUNSEL; MARYLAND PUBLIC SERVICE**  
**COMMISSION; THE INDEPENDENT MARKET MONITOR FOR PJM (MONITORING**  
**ANALYTICS, LLC); OLD DOMINION ELECTRIC COOPERATIVE**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit Local Appellate Rule 26.1.1, Intervenor Respondents submit the following corporate disclosure statements:

### *PJM Interconnection, L.L.C.*

Intervenor PJM Interconnection, L.L.C. (“PJM”) is a limited liability company organized and existing under the laws of the State of Delaware. PJM has no parent companies. Under Delaware law, the members of an L.L.C. have an “interest” in the L.L.C. *See* Del. Code Ann. tit. 6, § 18-701. PJM’s members—utilities and other related entities in the business of power generation and transmission—do not purchase their interests or otherwise provide capital to obtain their interests. Rather, the PJM members’ interests are determined pursuant to a formula that considers various attributes of the member, and the interests are used only for the limited purposes of: (i) determining the amount of working capital contribution for which a member may be responsible in the event financing cannot be obtained;<sup>1</sup> and (ii) dividing assets in the event of liquidation. PJM is not operated to produce a

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<sup>1</sup> Under the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., the amount of capital contributions received from all PJM members combined is capped at \$5,200,000. Because PJM has financed its working capital requirements, there have been no member contributions to date, and none are expected.

profit, has never made any distributions to members, and does not intend to do so (absent dissolution). In addition, “interest” as defined above does not enter into governance of PJM and there are no individual entities that have a 10% or greater voting interest in the conduct of any PJM affairs.

*American Municipal Power, Inc.*

American Municipal Power, Inc. (“AMP”) is a non-profit Ohio corporation, organized in 1971, with members including 132 municipal electric systems in Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland, and the Delaware Municipal Electric Corporation, Inc. AMP provides wholesale energy supply and related services to its members. AMP issues no stock, has no parent corporation, and is not owned in whole or in part by any publicly held corporation.

*Delaware Division of the Public Advocate*

The Delaware Division of the Public Advocate is an entity created by the General Assembly of the State of Delaware to, among other things, “appear on behalf of the interests of consumers in . . . federal courts and federal administrative and regulatory agencies and commissions in matters involving rates, service and practices of public utilities.” 29 *Del. C.* §8716(e)(3). The Delaware Division of the Public Advocate does not issue securities to the public and is not owned by any publicly-held company.

Delaware Municipal Electric Corporation, Inc.

Intervenor Delaware Municipal Electric Corporation, Inc. (“DEMEC”) is a non-profit joint action agency which provides wholesale electric services to its members. DEMEC’s members are eight Cities and Towns located in the State of Delaware that operate electric distribution systems to serve their retail customers. DEMEC does not issue securities to the public and is not owned by any publicly held company.

Delaware Public Service Commission

The Delaware PSC is a state utility regulatory agency responsible for ensuring safe, reliable, and reasonably priced utility services for Delaware consumers. The Delaware PSC does not issue securities to the public and is not owned by any publicly held company.

Maryland Office of People’s Counsel

The Maryland Office of People’s Counsel is a governmental entity created under the law of the State of Maryland, Maryland Public Utility Article, Annotated Code of Maryland, §§2-204 and 2-205 (2021), and is therefore not subject to the disclosure requirements of Fed. R. App. P. 26.1 and L.A.R. 26.1.1.

Maryland Public Service Commission

The Maryland Public Service Commission is a governmental agency of the State of Maryland. No L.A.R. 26.1.1(a) corporate disclosure statement is required.

Monitoring Analytics, LLC

Intervenor Monitoring Analytics, LLC, has no parent corporation. Because Monitoring Analytics, LLC does not issue stock, no corporation can own ten percent or more of its stock.

Old Dominion Electric Cooperative

Intervenor Old Dominion Electric Cooperative is a not-for-profit power supply electric cooperative to which Rule 26.1 does not apply.

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## GLOSSARY

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Maryland OPC Comments	R. 100, Motion To Intervene and Initial Comments of the Maryland Office of People’s Counsel (Jan. 20, 2023).
ODEC Comments	R. 98, Comments of Old Dominion Electric Cooperative in Support of Filing by PJM Interconnection, L.L.C. (Jan. 20, 2023).
Order	R. 141, Federal Energy Regulatory Commission Order on Proposed Tariff Revisions and Dismissing Complaint (Feb. 21, 2023), <i>reported at</i> 182 FERC ¶61,109.
PJM Answer	R. 130, Motion for Leave To Answer and Answer of PJM Interconnection, L.L.C. (Feb. 2, 2023).
PJM Manual 18	PJM Manual 18: PJM Capacity Market (effective Sept. 21, 2022, to Feb. 9, 2023), available at <a href="https://www.pjm.com/-/media/documents/manuals/archive/m18/m18v54-capacity-market-09-21-2022.ashx">https://www.pjm.com/-/media/documents/manuals/archive/m18/m18v54-capacity-market-09-21-2022.ashx</a> .
PJM Proposed Amendment Redline	Excerpt from Attachment A to the Section 205 Request, which is included in the Addendum to this brief (Add.16a-29a). This document reflects PJM’s proposed amendment as compared to the pre-existing tariff provisions.
Sierra/NRDC Answer	R. 135, Motion for Leave To Answer and Answer of Public Interest Organizations, Sierra Club and Natural Resources Defense Council (Feb. 6, 2023).

Rehearing	R. 155, Federal Energy Regulatory Commission Order Addressing Arguments Raised on Rehearing (July 27, 2023), <i>reported at</i> 184 FERC ¶61,055.
Section 205 Request	R. 1, PJM Interconnection, L.L.C. Proposed Amendment to the Locational Deliverability Area Reliability Requirement (Dec. 23, 2022).
Section 206 Compl.	R. 2, PJM Interconnection, L.L.C., Section 206 LDA Reliability Requirement Complaint (Dec. 23, 2022).
Tariff	PJM Open Access Transmission Tariff, available at <a href="https://agreements.pjm.com/oatt/">https://agreements.pjm.com/oatt/</a> . Tariff §9.2 and Tariff Attachment DD §§4.5 and 6.6 are reproduced in the Addendum to this brief at Add.1a-15a; all other relevant provisions are reproduced at Commission Brief A15-69.



## INTRODUCTION

The Federal Energy Regulatory Commission (“Commission” or “FERC”) must ensure reliable supplies of electricity at “just and reasonable” prices. 16 U.S.C. § 824d(a). To that end, it has charged PJM Interconnection, an independent regional transmission organization, with administering the Mid-Atlantic electric grid and related markets under Commission-approved tariffs.

PJM administers “capacity auctions” designed to secure sufficient electricity to meet future energy needs at efficient prices. “Capacity resources” submit offers, listing the minimum price they will accept for being available to provide electricity during a future delivery year. PJM uses a complex algorithm to compare those offers to an administratively determined demand curve that reflects estimated “reliability” needs—the capacity needed to ensure reliable service during periods of peak demand. After an iterative evaluation process, PJM determines the auction “clearing price” that will procure sufficient capacity to meet reliability needs at a just and reasonable price.

In the middle of PJM’s evaluation process for the 2024-2025 capacity auction, PJM discovered a serious problem. The estimated reliability requirement for one area had reflected special reliability risks created by certain anticipated capacity resources. Although eligible and expected to participate in the auction, those resources ultimately did *not* participate. When PJM began evaluating auc-

tion offers, it realized the reliability requirement estimate was no longer accurate: Reliability needs could be met with far less capacity. Using that inaccurate estimate to determine final results would produce an artificially inflated clearing price—perhaps *four times* that needed to meet actual reliability needs.

So PJM paused its evaluation process before determining final results. Exercising its authority to prevent severe imminent economic harm to consumers, PJM proposed, and the Commission approved, an amendment to PJM’s tariff. As amended, the tariff allowed PJM to adjust reliability requirements to reflect offers actually submitted during the auction. Applying the amendment, PJM used an updated reliability requirement to determine auction results. Those results better reflected *actual* reliability needs. And every resource clearing the auction still received *at least* the minimum price it had agreed to accept in its capacity offer.

The Commission and PJM acted exactly as they should when confronted with potentially unjust and unreasonable rates: They prospectively amended the tariff to produce rates that are just and reasonable, protecting consumers from inflated prices unmoored from actual market conditions.

Insisting that the Commission and PJM were powerless to act, petitioners call the amendment “retroactive.” But it was undeniably prospective: It addressed *future* steps PJM must take to determine *future* prices for *future* services. Petitioners assert the auction was “over” before PJM sought relief, but the actual

auction process and record amply support the Commission’s contrary finding. And petitioners’ “expectations” of a higher clearing price cannot overturn the Commission’s determinations that those supposed expectations were both unsubstantiated and vastly outweighed by the benefits of capacity prices that reflect actual reliability needs.

### **STATEMENT OF ISSUES**

1. Whether the Commission properly found PJM’s tariff amendment prospective and consistent with the filed-rate doctrine.
2. Whether the Commission permissibly found the amendment just and reasonable under Federal Power Act Section 205.

### **RELATED CASES AND PROCEEDINGS**

This case has not previously been before this Court. Intervenor-respondents are unaware of related cases or proceedings.

### **STATEMENT**

#### **I. REGULATORY FRAMEWORK**

##### **A. Regional Transmission Organizations Under the Federal Power Act**

The Federal Power Act (“FPA”) seeks to “encourage the orderly development of plentiful supplies of electricity . . . at reasonable prices.” *NAACP v. FPC*, 425 U.S. 662, 670 (1976). The FPA grants the Commission exclusive regulatory authority over “transmission” and “sale of [electric] energy at wholesale in

interstate commerce.” 16 U.S.C. § 824(a). One of its “core purposes” is ensuring “reliability”: sufficient electricity to meet needs, even during peak demand. *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 277 (2016); see 16 U.S.C. § 824a-2. To that end, the Commission has authorized independent “regional transmission organizations” (“RTOs”) to administer the electric grids in their regions and to “promot[e] efficiency and reliability.” 18 C.F.R. § 35.34(a); see *Delaware Dep’t of Nat. Res. & Env’tl. Control v. EPA*, 785 F.3d 1, 11 (D.C. Cir. 2015).

As the RTO for the Mid-Atlantic electric grid—spanning 13 States and the District of Columbia—PJM administers capacity auctions under Commission-approved tariffs. JA \_\_ - \_\_ (Rehearing ¶4). PJM is independent and profit-neutral; its interest is in providing reliable and efficiently priced electric service through competitive wholesale markets.

## **B. PJM’s Tariffs**

Tariffs set the terms and conditions—*i.e.*, “rates”—for the markets PJM administers. PJM’s tariffs include its Open Access Transmission Tariff, which governs the capacity markets at issue here. Like other “rates” affecting wholesale electricity, tariffs must be filed with the Commission, which must ensure they are “just and reasonable.” 16 U.S.C. §§ 824d, 824e. Filed tariffs are considered “federal regulations” with “the force of federal law.” *Old Dominion Elec. Coop. v. PJM Interconnection, L.L.C.*, 24 F.4th 271, 275 (4th Cir. 2022).

FPA Section 205 permits regulated entities to amend their tariffs upon notice to the Commission and public. 16 U.S.C. § 824d(d). “FERC must accept proposed rate changes filed under Section 205 so long as the changes are just and reasonable.” *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 113 (D.C. Cir. 2017).

“[P]rompt revision” of tariffs under Section 205 is critical “to assure that prices in RTO markets continue to be just and reasonable.” *Expedited Tariff Revisions for Reg’l Transmission Orgs. & Indep. Sys. Operators*, 111 FERC ¶61,009, 61,019 (2005). The Commission encourages RTOs to seek expedited tariff amendments when “unforeseen aspects of implementation or . . . market participant behavior” reveal flaws in “tariffs and market rules” that could produce unjust and unreasonable rates. *Id.* Accordingly, PJM is authorized to seek “prompt” amendments—forgoing certain procedures—where needed to avoid “imminent harm to system reliability or imminent severe economic harm to electric consumers.” PJM Open Access Transmission Tariff (“Tariff”) § 9.2(b).<sup>1</sup>

## II. PJM’S CAPACITY AUCTIONS

“One of PJM’s primary responsibilities” is to ensure sufficient “capacity” is available “to provide reliable electricity to its consumers during periods of peak demand.” *N.J. Board of Pub. Utils. v. FERC*, 744 F.3d 74, 82 (3d Cir. 2014).

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<sup>1</sup> Tariff § 9.2 appears in this brief’s Addendum at Add.1a-2a; Tariff Attachment DD § 4 and § 6.6 are reproduced at Add.3a-7a and Add.8a-15a. For other cited tariff provisions, see Commission Brief A15-69.

Essentially, “capacity” is the ability to provide electricity in the future, rather than electricity itself. *Id.* To fulfill its responsibilities, PJM operates a “capacity” market called the “Reliability Pricing Model.” *See id.* at 83-84; JA\_\_ (Rehearing ¶4).

PJM procures capacity by securing “capacity commitments” from “capacity resources.” Capacity resources are entities capable of providing electricity (*e.g.*, power plants) or curtailing consumption. Capacity commitments obligate those resources to provide electricity when called upon during a given delivery year. *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 659-60 (D.C. Cir. 2017).

PJM’s “capacity auctions” determine which suppliers receive capacity commitments and the price they receive. The “market rules governing . . . capacity auctions” are set primarily by PJM’s Tariff Attachment DD. JA\_\_ (Rehearing ¶28). The complex process differs significantly from traditional auctions. Part A summarizes the auction’s fundamentals; Part B details each auction stage.<sup>2</sup>

#### **A. Capacity Auction Overview**

PJM conducts capacity auctions as an independent administrator, with “no financial interest in . . . auction results.” JA\_\_ (Order ¶172); *see* 18 C.F.R. §35.34(j)(1). Unlike a traditional auctioneer, PJM takes an active role. It

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<sup>2</sup> The procedures described are for the initial “base residual auction” held for a given delivery year. *See N.J. Board*, 744 F.3d at 84.

determines the competitive “clearing price” that will procure the capacity needed for reliability. To do so, PJM goes back to Economics 101: supply and demand.

1. PJM starts with demand. In a traditional auction, “demand” is determined by buyer bids. PJM instead uses an administratively determined “demand curve” as a proxy for the market’s willingness to pay for capacity, standing in for buyer bids. *See* Tariff Attach. DD § 5.10(a); PJM Manual 18: PJM Capacity Market at 31-33, §§ 3.1-3.3 (Sept. 21, 2022), <https://www.pjm.com/-/media/documents/manuals/archive/m18/m18v54-capacity-market-09-21-2022.ashx>; *N.J. Board*, 744 F.3d at 84 n.5.

One demand-curve component is the “reliability requirement”: “the amount of capacity that must be produced to meet peak demand, including a reserve margin.” *Delaware Div. of Pub. Advoc. v. FERC*, 3 F.4th 461, 463-64 (D.C. Cir. 2021); *see* PJM Manual 18 at 28, 32-33, §§ 2.4, 3.2-3.3. PJM calculates a region-wide reliability requirement. Certain sub-regions—called “Locational Deliverability Areas” or “LDAs”—have limited ability to import capacity. Tariff Attach. DD § 5.10(a)(ii); Tariff Definitions L-M-N. PJM calculates a separate “LDA Reliability Requirement” for each LDA, estimating how much capacity that area needs for reliable service.

PJM also creates a “supply curve,” based on confidential “offers” from capacity resources. PJM Manual 18 at 53, § 4.1; Tariff Attach. DD § 4.5. Al-

though sometimes called “bids,” capacity offers are not like traditional auction bids: Traditional bids represent buyers (demand), while capacity offers represent the product being sold (supply). Capacity offers reflect the *minimum* price suppliers will accept for their capacity, akin to a traditional auction seller’s “reserve price.” *See Foley v. Wheelock*, 950 A.2d 178, 183-84 (N.H. 2008). Capacity offers thus should reflect “the seller’s cost of supplying capacity.” JA\_\_ (Order ¶176); *see* JA\_\_-\_\_ (Rehearing ¶65).

2. Once PJM has calculated final demand and supply curves, it “determine[s] the quantity of Capacity Resources that will be awarded a capacity commitment.” JA\_\_ (Section 205 Request 7). PJM accepts capacity offers, “starting with the lowest price offered,” until it procures enough capacity “to meet the area’s reliability needs as determined by P[JM].” *N.J. Board*, 744 F.3d at 83-84; *see* JA\_\_ (Section 205 Request 7).

Accepted offers “clear” the auction. The “clearing price” is generally equal to the highest-priced offer that clears. *See* JA\_\_ (Rehearing ¶58); Tariff Attach. DD §5.12(a); PJM Manual 18 at 127, §5.7.2. Every resource that clears receives the clearing price, even if it offered a lower price. JA\_\_ (Rehearing ¶5 n.12).

3. Retail customers and the entities that supply them—called “load-serving entities” (“LSEs”)—bear the cost of securing capacity, and benefit from the reliability it provides. After capacity commitments are awarded, each LSE



pays the clearing price for its share of demand. *See Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 156 (2016); JA\_\_ (ODEC Comments 7); PJM Manual 18 at 18, 31, §§ 1.2.1, 3.1. That cost is reflected in LSE customer rates.

Intervenor-respondents Old Dominion Electric Cooperative, Delaware Municipal Electric Corporation, American Municipal Power, and their members are LSEs. The Maryland Public Service Commission and Delaware Public Service Commission regulate retail electric service in the public interest, and the Maryland Office of People’s Counsel and Delaware Division of the Public Advocate represent the interests of their States’ consumers. Each has a strong interest in ensuring reliable service for retail customers at a just and reasonable price.

**B. PJM’s Auction Process**

The capacity auction follows a multistep process governed by PJM’s tariff.

1. *PJM Posts Estimated LDA Reliability Requirements and Other Information Before Auction*

Before auction, PJM computes and posts information, including LDA-specific Reliability Requirements and demand curves. *See* Tariff Attach. DD §5.11(a); p. 7, *supra*. Those calculations involve prediction and estimation.

PJM considers which capacity resources may participate in the auction. JA\_\_ (Rehearing ¶6). Those include *existing* resources, as well as *planned* resources expected to provide service by the delivery year. JA\_\_ (Rehearing ¶6 & n.17); JA\_\_ (Order ¶6). PJM also considers how resources’ characteristics—*e.g.*,

susceptibility to outages and variations in production levels—might affect capacity needs. JA\_\_ - \_\_ (Section 205 Request 13-15).

For example, if a large capacity resource clears the auction in a small LDA, the LDA will rely on that resource for a significant portion of needed capacity. But that creates reliability risk: If that resource suffers an outage, the LDA needs a correspondingly large amount of backup capacity to avoid catastrophic power shortages. The somewhat counterintuitive result is that adding a disproportionately large resource to an LDA’s expected resource pool can *increase* the area’s expected capacity needs—and thus its LDA Reliability Requirement. JA\_\_ (Section 205 Request 14).

“Intermittent resources” like solar and wind have a similar impact. Because they may be less productive during periods when an LDA experiences reliability risks—*e.g.*, solar during winter—their participation may necessitate additional backup capacity. JA\_\_ (Section 205 Request 14).

## 2. *Resources Submit Offers*

The auction begins when capacity resources submit confidential capacity offers. *See pp. 7-8, supra.* *Existing* resources generally *must* submit offers; *planned* resources are *not* required to offer. Tariff Attach. DD § 6.6.

### 3. *PJM Evaluates Offers and Runs Its Algorithm Multiple Times*

After the offer window closes, PJM “evaluate[s] the Sell Offers and other inputs” to “determine the Sell Offers that clear [the] auction.” Tariff Attach. DD § 5.12. PJM uses an “optimization algorithm” that considers capacity offers (supply) and capacity needs (demand) to produce a just-and-reasonable clearing price that “minimize[s]” cost while meeting reliability needs. *Id.* § 5.12(a); *see* JA\_\_ - \_\_ (Rehearing ¶ 58).

PJM’s evaluation process is more than “click[ing] a button.” JA\_\_ (Rehearing ¶ 58). PJM “runs” the algorithm “multiple” times. JA\_\_ (IMM Answer 2). It receives input from the Market Monitor, an independent entity that “monitor[s] PJM’s implementation of the PJM Market rules and [its] operation of the PJM Markets.” Tariff Attach. M § IV.C. The Market Monitor “runs its own auction software in parallel” and provides “results to PJM,” helping PJM spot problems. JA\_\_ (IMM Answer 2 & n.3). Any “issues” are “identified and fixed in that process.” *Id.*; *see* JA\_\_ (Rehearing ¶ 58).

PJM thus takes numerous steps after the offer window closes and before determining final results. *See* JA\_\_ - \_\_ (Rehearing ¶ 58 & nn.184-186). For example, “prior to the . . . final determination of clearing prices,” PJM tests for seller market power, applies price caps to offending offers, and “recompute[s] the optimization algorithm to clear the auction with the [caps] in place.” Tariff Attach. DD § 6.2.

The LDA Reliability Requirement is also subject to adjustment. Such an adjustment is necessary, for example, when a “first-pass auction solution” indicates that certain energy-efficiency measures have been “double count[ed].” PJM Manual 18 at 29-30, 72, §§2.4.5, 4.4; Tariff Attach. DD §5.6.1(a). That requires PJM to examine preliminary results, adjust the LDA Reliability Requirement, and re-run the algorithm—“repeat[ing]” as necessary. PJM Manual 18 at 29-30, §2.4.5.

#### 4. *Results and Capacity Commitment Awards*

Following that iterative process, PJM determines the final clearing price and identifies which capacity offers “clear.” Then—but only then—the auction is completed and PJM “will post [auction] results.” Tariff Attach. DD §5.11(e). Even after posting, auction results are not set in stone: “If PJM discovers a potential error in the initial posting of auction results,” it may post “modified results.” Tariff Attach. DD §5.11(e). Resources that “clear” are awarded capacity commitments at the clearing price. *Hughes*, 578 U.S. at 156; JA\_\_ (Rehearing ¶5 n.12).

### **III. FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. PJM Discovers an Anomaly in DPL-South’s LDA Reliability Requirement**

The capacity auction process for the 2024-2025 delivery year began in 2022. Before the auction, PJM calculated and posted required information, including the initial reliability-requirement figures. JA\_\_-\_\_ (Order ¶4). The auction began December 7, 2022, with resources submitting confidential offers. JA\_\_-\_\_

(Rehearing ¶10). After the offer window closed, PJM began its evaluation. But PJM did not complete that process—let alone determine final results—because it detected an anomaly in preliminary data. JA\_\_ - \_\_, (Section 205 Request 2-3).

PJM discovered that the pre-auction LDA Reliability Requirement figure for one LDA—Delmarva Power & Light South (“DPL-South”)—did not accurately reflect reliability needs in light of submitted offers. DPL-South is a small LDA covering most of Delaware and the Eastern Shores of Maryland and Virginia. JA\_\_ (Section 205 Request 11); JA\_\_ (Maryland OPC Comments 3 & n.1). Its geography makes importing capacity difficult, and its electricity needs generally peak in winter. JA\_\_ (Section 205 Request 14).

DPL-South’s pre-auction LDA Reliability Requirement for 2024-2025 was 12% higher than the year before. JA\_\_ - \_\_ (Section 205 Request 11-12). The increase reflected anticipated auction participation by a large planned resource and planned intermittent resources. *Id.* Had those resources participated, the 12% increase would have accurately represented the capacity needed to address the reliability risks they posed. JA\_\_ (Section 205 Request 16); *see pp. 9-10, supra.*

But many of those planned resources did *not* offer into the auction. JA\_\_ (Section 205 Request 16). Consequently, the associated increase in DPL-South’s LDA Reliability Requirement stopped making sense. The LDA would not need *extra* backup capacity to counter reliability risks of resources that never offered

into the auction. JA \_\_, JA \_\_ (Section 205 Request 11, 16). Using a “materially inaccurate” LDA Reliability Requirement to determine final results could produce “unjust and unreasonable” capacity rates: The demand curve would “artificially reflect[] a higher demand for capacity than appropriate” and produce “an artificially inflated clearing price.” JA \_\_, JA \_\_ (Section 205 Request 4, 16).

PJM’s preliminary analysis indicated that, absent correction, the clearing price could be “more than four times” that necessary to meet DPL-South’s actual needs. JA \_\_ - \_\_ (Section 205 Request 16-17). The resulting price spike would have a severe impact on LSEs and consumers—potentially \$100 million in unnecessary charges. JA \_\_ (Section 206 Compl. 34); JA \_\_ (ODEC Comments 6); JA \_\_ (Maryland OPC Comments 3 & n.1); JA \_\_ - \_\_ (Sierra/NRDC Answer 3-8).

**B. PJM Pauses the Auction and Seeks a Prospective Tariff Amendment**

1. PJM’s tariff authorizes it to seek expedited amendments when needed to avert “imminent severe economic harm to electric consumers.” Tariff §9.2(b). Given the imminent threat of wildly inflated capacity prices, PJM suspended the auction and made an emergency Section 205 filing to “giv[e] the Commission an opportunity to decide how the 2024/2025 [capacity auction] should be completed.” JA \_\_ (PJM Answer 6); *see* JA \_\_ - \_\_, JA \_\_ - \_\_ (Section 205 Request 9-10, 31-32); JA \_\_ (Rehearing ¶121).

PJM proposed a tariff amendment adding an additional step to the auction process. The amendment requires adjustment of an LDA’s Reliability Requirement where (1) inclusion of planned resources changed the estimated LDA Reliability Requirement by at least 1% compared to the prior auction, but (2) those same resources ultimately did not submit capacity offers. JA \_\_, JA \_\_, JA \_\_ (Section 205 Request 3, 10, 21). The amendment thus authorizes an additional adjustment to LDA Reliability Requirements based on activity during the auction. *See pp. 11-12, supra.*

PJM did not propose “modifications to activities or deadlines associated with the 2024/2025 [capacity auction] that ha[d] already occurred or passed.” JA \_\_ (Section 205 Request 4). The amendment only “prospectively include[d] an additional factor to be considered . . . when evaluating the Sell Offers and other inputs,” “*before* the results are determined and capacity awards are made.” *Id.*

2. In the alternative, PJM filed a complaint under FPA Section 206. JA \_\_ - \_\_ (Section 206 Compl. 3-6). Section 206 allows the Commission to find an existing rate unjust and unreasonable, and “determine the just and reasonable rate . . . to be thereafter observed and in force.” 16 U.S.C. § 824e(a). PJM’s complaint requested that, if the Commission did not adopt PJM’s amendment under Section 205, it declare PJM’s existing tariff terms unjust and unreasonable and adopt suita-

ble replacement terms before PJM determined the 2024-2025 capacity auction results. JA\_\_ - \_\_ (Section 206 Compl. 4-5).

### **C. The Commission Finds the Amendment Just and Reasonable**

The Commission approved PJM’s Section 205 amendment, dismissed the Section 206 complaint as moot, JA\_\_ - \_\_ (Order ¶¶1-149), and denied rehearing, JA\_\_ - \_\_ (Rehearing ¶¶1-125).

1. The Commission rejected petitioners’ arguments that the amendment was impermissibly retroactive. JA\_\_ - \_\_ (Rehearing ¶¶58-124); JA\_\_ - \_\_ (Order ¶¶167-172). While agreeing the filed “rate” includes auction “market rules,” the Commission found the amendment did not retroactively change any rule. JA\_\_ (Rehearing ¶28). A “change to the [auction] procedures,” it explained, “is not retroactive” where (as here) the auction “was still ongoing” and “capacity supply obligations ha[d] not yet been awarded.” JA\_\_, JA\_\_ - \_\_, JA\_\_ (Rehearing ¶55 n.163, ¶¶69-70, 73). Although PJM posted a pre-auction LDA Reliability Requirement, that did “not preclude PJM from prospectively updating the manner in which the LDA Reliability Requirement is incorporated into a *later* phase of the auction process.’” JA\_\_ (Rehearing ¶55) (emphasis added).

The Commission rejected petitioners’ view that the auction was completed when PJM first ran its algorithm and discovered the DPL-South anomaly. JA\_\_ - \_\_ (Rehearing ¶58). Running the algorithm is “one step in the auction process” and



“does not determine when the auction was completed.” JA\_\_ (Rehearing ¶58).

“[T]he Tariff expressly contemplates various actions by PJM prior to finalizing and posting the results”—which PJM had not done when it proposed the amendment.

JA\_\_ - \_\_ (Rehearing ¶58).

2. The Commission found the amendment just and reasonable. It would “result in rates that accurately reflect reliability needs,” and would not unduly disrupt settled expectations. JA\_\_, JA\_\_ - \_\_ (Rehearing ¶¶25, 112).

The Commission “recognize[d] the importance of regulatory stability and settled expectations.” JA\_\_ (Rehearing ¶88); *see* JA\_\_, JA\_\_ - \_\_, JA\_\_ - \_\_, JA\_\_ - \_\_ (Rehearing ¶¶24, 80-81, 87, 112). But it was “not persuaded” petitioners had shown legitimate reliance. JA\_\_ - \_\_ (Order ¶¶176-177); JA\_\_ - \_\_, JA\_\_ - \_\_, JA\_\_ - \_\_ (Rehearing ¶65 & n.220, ¶¶87, 112). Even assuming reliance, the Commission found any such interest was “outweigh[ed]” by “the benefits of permitting PJM to update LDA Reliability Requirements to reflect actual reliability needs” and “prevent[ing] customers from being charged unnecessarily high capacity prices.” JA\_\_, JA\_\_ - \_\_ (Rehearing ¶¶24, 87-88).

### **SUMMARY OF ARGUMENT**

**I.A-B.** There was no violation of the filed-rate doctrine or rule against retro-active ratemaking. In conducting the auction, PJM followed the then-current tariff at all times. And the tariff amendment operated prospectively: It added a future

step to a not-yet-complete auction, for providing capacity in the future. When PJM sought the amendment, no clearing price had been determined and no capacity commitments had been awarded. The amendment added a future step to ensure the yet-to-be-determined price would accurately reflect reliability needs by permitting changes to the LDA Reliability Requirement based on actual auction offers. Retroactivity involves altering the past legal consequences of past actions, such as when a party attempts to change the price for already-rendered services or reclassify past violations as lawful. That never happened here.

The amendment fulfilled the tariff's direction that PJM should seek expedited amendments to prevent imminent consumer harm and ensure just and reasonable rates. Absent amendment, DPL-South customers would have been forced to purchase more capacity than needed—at an inflated price that did not reflect actual reliability needs.

C. The amendment did not retroactively alter the pre-auction LDA Reliability Requirement or petitioners' capacity offers. It did not change the past legal effect of either, and petitioners were not entitled to a clearing price calculated with the pre-auction figure. Their analogy to traditional auctions fails: PJM's capacity auction differs in both structure and purpose. Even in traditional auctions, nothing is final until the "hammer falls," which had not happened when PJM sought relief.

**D.** Petitioners' contention that the auction was already completed cannot overcome the Commission's contrary finding. The auction process involves *multiple* algorithm runs and adjustments, which had not been completed.

**II.** The Commission properly found the amendment just and reasonable. The amendment avoided an inaccurate and harmful price spike. The Commission reasonably addressed petitioners' contrary arguments, including their claims of reliance, and approved the amendment under Section 205. This Court cannot rebalance the Commission's assessment anew.

### **STANDARD OF REVIEW**

Intervenor-respondents adopt the Commission's standard-of-review discussion. Comm'n.Br.22-24.

### **ARGUMENT**

The Commission properly approved PJM's tariff amendment. The amendment was not merely just and reasonable: It was necessary to avoid distorted capacity prices and prevent severe, imminent, consumer harm. The amendment was wholly consistent with filed-rate and retroactivity principles. It was directed toward *future* steps of PJM's *not-yet-completed* capacity auction to determine *not-yet-awarded* capacity commitments for a *future* delivery year. Petitioners' contrary arguments misapprehend the auction process and improperly elevate unsub-

stantiated “expectations” of higher prices over the Commission’s and PJM’s duty to ensure just and reasonable rates that reflect actual reliability needs.

## **I. THE COMMISSION PROPERLY APPROVED THE PROSPECTIVE TARIFF REVISION**

The filed-rate doctrine protects the Commission’s “primary jurisdiction over reasonableness of rates” by forbidding regulated entities from deviating from rates filed with the Commission. *Borough of Ellwood City v. FERC*, 583 F.2d 642, 648 (3d Cir. 1978). The bar on retroactive ratemaking prevents even the Commission from changing rates for already-provided services. *Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co.*, 284 U.S. 370, 384 (1932). Those rules reflect the principle that “the only lawful rate is that reflected in the tariff on file [with the Commission] when the service is performed.” *Town of Norwood v. FERC*, 202 F.3d 392, 400 (1st Cir. 2000). But neither rule prevents regulated entities from seeking—or the Commission from approving—*prospective* tariff amendments directed toward *future* actions resulting in *future* commitments for *future* services. *Arizona Grocery*, 284 U.S. at 384.

### **A. PJM Complied with the Filed-Rate Doctrine**

Whether the relevant “rate” is capacity prices for the 2024-2025 delivery year, or capacity auction “market rules,” JA\_\_ (Rehearing ¶28), PJM at all times adhered to the rate then on file with the Commission.

1. PJM began the auction process by posting pre-auction parameters, opening the offer window, and evaluating submitted offers as the tariff demands. Upon evaluating offers, PJM discovered the anomaly in DPL-South’s LDA Reliability Requirement. That figure had reflected specific reliability risks from large and intermittent planned resources that were expected to participate. But when those resources did *not* offer into the auction, the pre-auction figure no longer reflected actual reliability needs. Using that figure to determine final results could produce an artificially inflated clearing price—perhaps *four times* the efficient price that would meet actual needs. *See pp. 13-14, supra.*

Mindful of filed-rate concerns, PJM did not unilaterally update the LDA Reliability Requirement to reflect real-world conditions. Instead, exercising its authority under the tariff to prevent “imminent severe economic harm to electric consumers,” Tariff §9.2(b), PJM paused the auction and sought relief from the Commission. *After* the Commission approved PJM’s tariff amendment—allowing adjustment of the LDA Reliability Requirement based on actual reliability needs—PJM finalized the auction consistent with the *new*, Commission-approved tariff terms. JA\_\_ - \_\_ (Rehearing ¶75 & n.272). PJM always followed the rates “on file during the relevant time period.” *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1227 (D.C. Cir. 2018). The filed-rate doctrine demands no more.

2. Petitioners do not seriously dispute that PJM complied with then-existing tariff terms at each step. The Commission rejected petitioners' argument that PJM violated the tariff's requirement that it post results "as soon . . . as possible" after completing the auction. See JA\_\_-\_\_ (Rehearing ¶75). Petitioners do "not explain why the [Commission's] legal reasoning was incorrect," "waiving any challenge" to that ruling. *Smalls v. Riviera Towers Corp.*, 782 F. App'x 201, 205 (3d Cir. 2019); see *Wilson v. USI Ins. Serv. LLC*, 57 F.4th 131, 146 n.10 (3d Cir. 2023).

Regardless, the Commission was correct. The requirement to *post* results does not apply until PJM *determines* results, which had not happened when PJM paused the auction to seek relief. JA\_\_-\_\_ (Order ¶172); see pp. 34-37, *infra*. The tariff imposes no specific deadline for finalizing or posting results, JA\_\_-\_\_ (Rehearing ¶75)—much less one that overrides PJM's authority to seek prompt relief to avert "imminent severe economic harm," Tariff §9.2(b).

### **B. The Commission Properly Found the Amendment Prospective**

The amendment complied with the rule against retroactive ratemaking. An amendment is "'retroactive'" only where it "'alter[s] the *past* legal consequences of past actions.'" *Board of County Commissioners of Weld County v. EPA*, 72 F.4th 284, 292-93 (D.C. Cir. 2023) (emphasis added). The Commission thus cannot allow collection of "additional rates 'for a service that has already been

rendered,’” *Cogentrix Energy Power Mgmt., LLC v. FERC*, 24 F.4th 677, 684 (D.C. Cir. 2022), or declare past tariff violations lawful, *see TransCameron Pipeline, LLC*, 180 FERC ¶61,011, at P5 (2022). But the rule does *not* prevent the Commission from “substitut[ing] a new rule of conduct” that “affect[s] *future* action.” *Arizona Grocery*, 284 U.S. at 389 (emphasis added).

That remains so even if “the rule ‘upsets expectations based in prior law.’” *Weld County*, 72 F.4th at 293. While petitioners invoke putative reliance interests, such interests are irrelevant to whether the amendment is *retroactive*. Reliance is an interest for the Commission to balance when deciding whether prospective relief is *just and reasonable*—as it did here. JA\_\_-\_\_ (Rehearing ¶66); *see* pp. 38-40, *infra*.

1. *The Amendment Governed Future Steps To Determine Future Prices for Future Services*

The Commission properly found the amendment operates prospectively. JA\_\_-\_\_, JA\_\_-\_\_ (Rehearing ¶¶28-31, 52-75). It does not purport to change tariff rules applicable to any past period. It concerns “future action,” *Arizona Grocery*, 284 U.S. at 389—steps PJM must take going forward to complete the process of determining capacity rates for a future delivery year.

The amendment addresses the price of *future services*: capacity for the 2024-2025 delivery year. It thus does not alter compensation “‘for a service that has already been rendered’”—the primary concern with retroactive ratemaking.

*Cogentrix*, 24 F.4th at 684; *see Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 578 & n.8 (1981).

The amendment also addresses *future commitments*. Capacity commitments are awarded only once the auction is complete and final results are posted. *See pp.* 8, 12, *supra*. That had not happened when PJM sought relief. JA\_\_-\_\_ (Order ¶167); JA\_\_-\_\_, JA\_\_-\_\_, JA\_\_ (Rehearing ¶¶54, 69-70, 75 n.272). An amendment directed to future rates for future services under yet-to-be-awarded capacity commitments is paradigmatically prospective.

Nor does the amendment retroactively change the tariff's capacity auction "market rules." JA\_\_ (Rehearing ¶28); *see* JA\_\_-\_\_ (Order ¶165 & n.447). The amendment concerned "future action" in the auction process. *Arizona Grocery*, 284 U.S. at 389. PJM paused the auction *before* determining final results. The Commission then approved a further step in the evaluation process so PJM could update the LDA Reliability Requirement based on information obtained during the auction. After approval, PJM took that additional step, using an updated figure to calculate the final demand curve and clearing price.

That forward-looking amendment bears no resemblance to the backward-looking changes that constitute retroactive ratemaking. The Commission has held, for example, that waivers of already-passed tariff deadlines are "retroactive." *TransCameron*, 180 FERC ¶61,011, at P5. If conduct violated tariff terms then in



effect, later orders declaring that violation lawful would “alter the past legal consequences of past actions.’” *Weld County*, 72 F.4th at 292-93. PJM’s amendment, by contrast, neither waived past deadlines nor declared *lawful* conduct that was *unlawful* when it occurred (or vice versa). JA\_\_ - \_\_ (Rehearing ¶70). It simply “alter[ed] one aspect of a multistep . . . process” for awarding capacity commitments, while that process was ongoing. *Cox v. Kijakazi*, 77 F.4th 983, 994 (D.C. Cir. 2023).

Petitioners nowhere deny the Commission’s observation that courts and agencies have found retroactive ratemaking *only* where a rate change would alter terms for already-consummated transactions, or otherwise alter the past legal effect of past actions. JA\_\_ - \_\_ (Rehearing ¶¶70-72); JA\_\_ (Order ¶166). Their cases finding retroactive ratemaking all involved such efforts—for example, to alter compensation for past services, *Old Dominion*, 892 F.3d at 1230; *Consolidated Edison Co. of N.Y., Inc. v. FERC*, 347 F.3d 964, 968-69 (D.C. Cir. 2003), or lift an already-expired billing deadline, *Oklahoma Gas & Electric Co. v. FERC*, 11 F.4th 821, 829-30 (D.C. Cir. 2021).

Nothing like that happened here. While petitioners assert the rule against retroactive ratemaking *should* extend beyond those contexts, Pet.Br.46, that would be an unprecedented *expansion* of the rule.

2. *PJM and the Commission Appropriately Pursued Swift, Prospective Relief To Prevent Imminent Harm*

Petitioners’ proposed expansion is unjustifiable. PJM did what RTOs are supposed to do when “unforeseen aspects of implementation” reveal “flaw[s]” in their “tariffs and market rules”: It sought “prompt revision” of the tariff “to assure that prices in RTO markets continue to be just and reasonable.” *Expedited Tariff Revisions for Reg’l Transmission Orgs. & Indep. Sys. Operators*, 111 FERC ¶61,009, 61,019 (2005). PJM’s tariff expressly authorizes it to seek “prompt” amendments to prevent “imminent severe economic harm to electric consumers.” Tariff §9.2(b). As the Commission found, that was precisely the situation here. JA\_\_ (Rehearing ¶121). PJM sought, and the Commission approved, an amendment that allows capacity auction results to reflect an area’s actual reliability needs. They did so *before* the auction was completed and *before* transactions were consummated—*before* “imminent” harm materialized.

Petitioners’ view that the filed-rate doctrine and rule against retroactive ratemaking forbid PJM and the Commission from averting such future harm is untenable. Those rules derive from, and must be applied consistent with, the FPA’s “explicit statutory language,” *Borough of Ellwood City*, 583 F.2d at 648-49—including its mandate that “[a]ll rates” be “just and reasonable,” 16 U.S.C. § 824d(a). Where “circumstances change” and threaten unjust and unreasonable rates, parties and the Commission “*should* take action at the outset, such as by

seeking to amend the tariff” *before* harm materializes. *Oklahoma Gas*, 11 F.4th at 833 (emphasis added).

### C. Petitioners’ Contrary Arguments Fail

#### 1. *The Amendment Does Not Retroactively Alter the LDA Reliability Requirement*

Petitioners focus on the tariff requirement that PJM publish an estimated LDA Reliability Requirement before the auction. Because the amendment allows PJM to *later adjust* that figure, petitioners posit that the amendment *retroactively* alters the LDA Reliability Requirement. Pet.Br.35-38. But nothing about the amendment “‘alter[s] the past legal consequences’” of the pre-auction LDA Reliability Requirement. *Weld County*, 72 F.4th at 293. PJM’s calculation and publication of the pre-auction estimate complied with then-current tariff provisions. Pet.Br.21; JA\_\_-\_\_ (Rehearing ¶55). The amendment does not purport to change that.

Indeed, the amendment says nothing about the pre-auction figure. It *does not change* how the pre-auction LDA Reliability Requirement figure is calculated—even *for future auctions*. The amendment instead allows adjustment to the LDA Reliability Requirement “during the auction process” when certain planned resources “do[] not participate in the . . . Auction.” JA\_\_-\_\_ (PJM Proposed Amendment Redline) (reproduced at Add.20a-21a). That adjustment is based on *what happens during the auction*. It has no effect on the *pre-auction* figure, which

is calculated the same way post-amendment as it was pre-amendment. The amendment does not retroactively alter anything.

Petitioners cannot manufacture retroactivity by pointing to the tariff’s statement that auction “parameters” (including the LDA Reliability Requirement) will be “established prior to” an auction and then “used for” that auction. Tariff, Attach DD § 5.10(a)(vi)(A); *see* Pet.Br.17, 37. PJM “established” an LDA Reliability Requirement figure “prior to” auction in accordance with tariff terms then (and still) in effect. The amendment allows adjustment of the LDA Reliability Requirement before it is “used” to complete the auction—and that “use” came *after* the amendment was approved. PJM thus “established” the LDA Reliability Requirement before the auction in accordance with the tariff on file at the time, and “used” the LDA Reliability Requirement during the auction in accordance with the tariff terms on file at *that* time. There is no retroactivity.

Petitioners wrongly suggest the pre-auction LDA Reliability Requirement must be “used” *unchanged*. Pet.Br.38. Even before amendment, the tariff called for adjusting the LDA Reliability Requirement after submission of offers and before determination of final results. JA\_\_ - \_\_ (Rehearing ¶ 58 & nn.184-185); pp. 11-12, *supra*. The LDA Reliability Requirement “used” to conduct the auction has never been the pre-auction figure *per se*, but rather the LDA Reliability Require-

ment *as adjusted at later stages*. The amendment here simply authorized another adjustment at a not-yet-completed stage.

It is irrelevant whether the *pre-existing* tariff authorized the specific adjustment here. The “*expressio unius*” canon, Pet.Br.55, counsels against *interpreting* text with enumerated exceptions as allowing *unenumerated* exceptions. It does not prohibit *amending* a tariff to allow additional *enumerated* adjustments. It certainly does not forbid an amendment allowing a future adjustment, in a not-yet-completed auction process, to figures already subject to adjustment based on later events.

Even when auctions are completed and results posted, PJM can still identify and remedy “error[s]” in those results. Tariff Attach. DD § 5.11(e). That includes “error” caused by using an inaccurate LDA Reliability Requirement that fails to produce an “overall clearing result [that] minimize[s] the cost of satisfying . . . reliability requirements.” JA\_\_ (Section 205 Request 31) (quoting Tariff Attach. DD § 5.12(a)). Given PJM’s authority to correct such errors *after posting* results, an amendment allowing it to *prevent* error *earlier* cannot be deemed to reach backward in time.

Precedent refutes petitioners’ position. In *Administrators of the Tulane Educational Fund v. Shalala*, 987 F.2d 790, 792 (D.C. Cir. 1993), an agency was required to “determine, for fiscal year 1984,” certain hospital costs and then “use this 1984 base period figure to calculate the hospital’s . . . reimbursements for all

subsequent years.” The agency later issued regulations “permitting it to reexamine and reaudit previously approved, but possibly erroneous or unreasonable, 1984 . . . costs,” and use the adjusted figure to calculate future reimbursements. *Id.* The court held that “the readjustment of the 1984 figures did not constitute impermissible retroactive rulemaking.” *Id.* Despite the original 1984 “figures ha[ving] previously been found reasonable,” the later adjustment was purely prospective: The agency was not “altering [past] 1984 reimbursements,” but instead using the adjusted figures “only to calculate *future* reimbursements.” *Id.* at 792, 798 (emphasis added).

Like the agency in *Tulane*, the Commission here approved a regulation (the tariff amendment) that allows adjustment of a previously determined figure (the pre-auction LDA Reliability Requirement) based on improved information (actual LDA reliability needs), for use in calculating future compensation (capacity prices for the 2024-2025 delivery year). Because neither the amendment nor the adjustment it prescribes alters compensation for past services—or changes past legal consequences of past actions—it “is not an exercise in retroactive rulemaking at all.” *Tulane*, 987 F.2d at 798.

## 2. *The Amendment Does Not Retroactively Alter Offers*

Nor can petitioners conjure retroactive ratemaking by pointing to their own capacity offers. *See* Pet.Br.31, 36, 49. “[C]apacity market offers are not ‘rates,’”

but rather “inputs into determining the market-clearing price.” *Vistra Corp. v. FERC*, 80 F.4th 302, 320 (D.C. Cir. 2023). And the amendment does not “alter the past legal consequences” of those offers. *Weld County*, 72 F.4th at 292-93. It does not, for example, deem previously tariff-compliant offers to be unlawful.

Nor does the amendment “impair[] [any] vested rights” or “impose[]” new liabilities for past conduct. *Cox*, 77 F.4th at 991. Submitting an offer in PJM’s capacity auction does not guarantee any particular clearing price, or that the offer will clear. JA\_\_ - \_\_ (Rehearing ¶61). Petitioners had no vested rights in a “particular auction outcome” when PJM sought relief. *Id.*

A capacity offer, like seller reserve prices in traditional auctions, reflects the minimum price the seller will accept. *See pp. 7-8, supra.* Making a capacity offer thus—at most—entitles the seller to receive at least that minimum price, *if* the offer clears the auction. The amendment did not change that: Post-amendment, any seller whose offer cleared *still* received at least the minimum price it previously agreed to accept for its capacity. JA\_\_ (Rehearing ¶5 n.12).

When petitioners submitted their offers, they may have *anticipated* a higher clearing price. But such anticipation would have been guesswork. *See pp. 39-40, infra.* And “anticipation alone does not create a vested right” for retroactivity purposes. *Cox*, 77 F.4th at 992. When a party has “an expectation of receiving” a particular result, “not a right to it,” upsetting that expectation is not a “retroactive”

effect. *Pinho v. INS*, 249 F.3d 183, 189 (3d Cir. 2001). Petitioners likewise had no vested right in the “process” that “would be applied” to evaluate offers—particularly given PJM’s and the Commission’s “right to make necessary changes” to the tariff. *Cox*, 77 F.4th at 992; *see pp.* 11-12, 14, *supra*. Even where an amendment “impair[s] the future value of past bargains,” it is not *retroactive* where (as here) it does not “render[] past actions illegal or otherwise sanctionable,” *Nat’l Cable & Telecomms. Ass’n v. FCC*, 567 F.3d 659, 670 (D.C. Cir. 2009), or alter compensation for already-provided services, *Cogentrix*, 24 F.4th at 684.

The public constantly “undertake[s] . . . course[s] of conduct based on the current law.” *Chemical Waste Mgmt., Inc. v. EPA*, 869 F.2d 1526, 1536 (D.C. Cir. 1989). Declaring “retroactive” every legal change that “frustrate[s]” putative expectations would make practically *every* regulation impermissibly retroactive. *Id.* It would thwart the Commission’s duty to ensure rates for future services are “just and reasonable,” 16 U.S.C. §§ 824d(a), 824e(a), and PJM’s ability to prevent “imminent severe economic harm,” Tariff § 9.2(b).

Reliance and expectations are relevant—just not to *retroactivity*. The Commission was required to, and did, consider putative reliance interests when finding the amendment was *just and reasonable*. JA\_\_-\_\_ (Order ¶167 & n.453); JA\_\_-\_\_ (Rehearing ¶66); *see pp.* 38-40, *infra*. Such interests are not, as petitioners would have it, a categorical bar on relief.



### 3. *Petitioners' Private-Auction Analogy Fails*

Petitioners' analogy to a private auction in which the auctioneer “determine[s] the highest bidder” and then “change[s] the rules to yield a different winner,” Pet.Br.40, misapprehends PJM’s capacity auction. PJM had *not* determined auction results when it sought relief. *See* pp. 34-37, *infra*. And the capacity auction is no private affair. It is a federally regulated process for securing capacity needed to meet reliability needs, overseen by a Commission authorized (indeed, obligated) to approve changes to that process to ensure it produces just and reasonable rates. What a private “auction house” (or even PJM) could do *of its own accord*, Pet.Br.40, has no bearing on what *the Commission could authorize* PJM to do here.

Nor are petitioners analogous to bidders in traditional auctions. Petitioners are *sellers*, and their offers are effectively reserve prices—the minimum prices they will accept. Instead of declaring “the highest” offer the “winner,” Pet.Br.40, the capacity auction sets the price at the *lowest* amount that will satisfy capacity needs. Insofar as the capacity auction has something resembling a traditional “bidder” (*i.e.*, buyer), it is the demand curve that PJM calculates and may adjust after offers come in. *See* pp. 7-8, *supra*. Once those differences are accounted for, petitioners’ analogy falls apart.

Insofar as traditional auction principles are relevant, they confirm the amendment was permissible. Sales in traditional auctions are not “complete” until “the auctioneer so announces by the fall of the hammer.” U.C.C. §2-328(2); *Biltmore Forest Broad. FM, Inc. v. United States*, 555 F.3d 1375, 1381 (Fed. Cir. 2009). Until then, a prospective buyer “may retract his bid” and the auctioneer “may in his discretion reopen the bidding” to buyers. U.C.C. §2-328(2)-(3). Here, PJM’s hammer had not fallen. PJM never determined, much less announced, the results before the Commission authorized it to “reopen the bidding” to the capacity auction’s equivalent of buyers: a revised demand curve that accurately reflected reliability needs.

**D. Petitioners Cannot Overcome the Commission’s Finding That the Auction Was Ongoing**

The Commission properly rejected petitioners’ arguments that the auction was “over” before PJM sought relief. Pet.Br.36, 52. The Commission found the auction was “ongoing”—*not* “over”—when PJM made its Section 205 filing. JA \_\_, JA \_\_ (Rehearing ¶54 n.163, ¶73). It rejected petitioners’ simplistic view “that PJM simply clicks a button to generate the final, immutable auction results,” explaining that “applying the algorithm is one step in the auction process, which does not determine when the auction was completed.” JA \_\_ - \_\_ (Rehearing ¶58).

That finding is amply supported—and thus “determinative.” *N.J. Board*, 744 F.3d at 94; *see North Penn Gas Co. v. FERC*, 707 F.2d 763, 766 (3d Cir.

1983). PJM explained it was “still in the process of conducting the auction clearing” and that the “auction process remain[ed] ongoing.” JA \_\_, JA \_\_-\_\_ (Section 205 Request 8, 22-23). While it had obtained “preliminary auction data” suggesting what DPL-South’s “clearing price may be” *if* the auction were completed, PJM was unequivocal that it had “not completed the conduct of the 2024/2025 [capacity auction].” JA \_\_, JA \_\_ (Section 205 Request 2, 9); JA \_\_ (PJM Answer 7). Instead, upon discovering the DPL-South anomaly, PJM “suspended the auction” and sought relief. JA \_\_ (PJM Answer 8). PJM’s Market Monitor agreed, explaining that PJM “runs” the software “multiple” times to ensure issues are resolved before completing the auction and that the auction was not completed upon PJM’s initial run of its algorithm. JA \_\_ (IMM Answer 2 & n.3).

The Commission reasonably credited those submissions. JA \_\_, JA \_\_ (Rehearing ¶¶22, 58 n.186). As the entity that runs the auction, PJM is uniquely qualified to explain auction status. The Market Monitor likewise has insight into the auction’s operation through its role in “monitor[ing] PJM’s implementation of the PJM Market rules,” Tariff Attach. M §IV.C, and “run[ning] its own auction software in parallel and provid[ing] those results to PJM,” JA \_\_ (IMM Answer 2 n.3). PJM’s tariff and manuals confirm PJM often *must* make adjustments after receiving preliminary data, and then re-run the algorithm. JA \_\_-\_\_ (Rehearing

¶58 & nn.184-185); pp. 11-12, *supra*. That amply supported the Commission’s finding that the auction was ongoing.

Petitioners point to the requirement that PJM “post the results” after “conducting” the auction, and to PJM’s description of posting as a “ministerial act” once results are “determined.” Pet.Br.20-21, 52-53 (emphasis omitted). That says nothing about *when* PJM is done conducting the auction and determining results—and certainly does not mean the auction is complete upon the algorithm’s first run. Petitioners identify no tariff language that supports their “auction was complete” argument; there is none.

PJM’s capacity auctions are an integral part of providing reliable electricity service for 65 million people; determining the price for that capacity is complex. As the RTO responsible for reliability in its region, PJM plainly has the ability—if not the duty—to ensure “compliance with the tariff and market logic” before completing the auction and awarding hundreds of millions of dollars in capacity commitments. JA\_\_ (IMM Answer 2 & n.3).

The tariff authorizes PJM to seek prompt Section 205 relief where, as here, existing tariff provisions threaten “imminent severe economic harm to electric consumers.” Tariff §9.2(b). The Commission found—in a finding petitioners nowhere challenge—such imminent harm here. JA\_\_ (Rehearing ¶121). PJM’s authority to stave off “imminent” harm would make little sense if PJM could not

evaluate preliminary data and seek relief *before* results become final and severe harm materializes.

## **II. THE COMMISSION PERMISSIBLY FOUND THE AMENDMENT JUST AND REASONABLE**

The Commission’s finding that the tariff amendment is just and reasonable is “entitled to broad deference”: “[S]o long as FERC examined the relevant data and articulated a rational connection between the facts found and the choice made,” its conclusion must be upheld. *N.J. Board*, 744 F.3d at 94. That is the case here.

### **A. The Commission Reasonably Considered the Evidence and Exercised Its Broad Interest-Balancing Discretion**

1. The Commission had ample evidence to conclude the amendment would produce just and reasonable rates that accurately reflected reliability needs. It also had ample evidence the amendment would avoid consumer harm—namely, the crushing and inflated prices that applying the unadjusted LDA Reliability Requirement would have produced in DPL-South, including many low-wage communities. JA\_\_ (Order ¶178 n.473); JA\_\_ (Sierra/NRDC Answer 4).

As the Commission explained, and no one now disputes, the original LDA Reliability Requirement for DPL-South drastically overestimated how much capacity the area needed. JA\_\_ - \_\_, JA\_\_ (Order ¶¶6-10, 178); JA\_\_ (Rehearing ¶8); *see pp. 13-14, supra*. Using the original figure to determine the clearing price

would have forced customers to purchase significantly more capacity than needed—at a price that did “not reflect reality.” JA\_\_ (Rehearing ¶108).

The Commission found the amendment solved that problem by producing “rates that accurately reflect reliability needs and supply and demand fundamentals.” JA\_\_ - \_\_ (Rehearing ¶108); *see* JA\_\_ (Order ¶153). A clearing price unmoored from market fundamentals, by contrast, would lead to drastic “excess” costs. JA\_\_ - \_\_ (Rehearing ¶109). The Commission credited (and petitioners’ brief nowhere disputes) that “customers would be required to pay four times more for capacity,” amounting to “over \$100 million in excess of what is necessary” to meet actual reliability needs. JA\_\_ (Order ¶178).

The Commission did not adopt the facile view that “lower[] prices” are always better. Pet.Br.65. It sought *accurate* prices that reflect “actual reliability needs.” JA\_\_ (Order ¶150); JA\_\_ - \_\_ (Rehearing ¶¶108-109). A fair market price cannot be determined using an “artificially inflated” demand curve. JA\_\_ - \_\_ (Rehearing ¶110); *see* JA\_\_ - \_\_ (Rehearing ¶¶89-90). Implementing a prospective amendment to prevent artificial price changes is part of the Commission’s core mission. *See Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990).

2. The Commission fully considered petitioners’ objections. It explained why their invocation of “settled expectations” in making offers was unpersuasive. JA\_\_ - \_\_ (Order ¶173). “No party in the record . . . demonstrated” that re-

sources actually relied on the original LDA Reliability Requirement in formulating offers. JA\_\_ (Order ¶176). Nor should they have. Capacity “offers should be dictated by capacity resource *costs* and not by expectations of *demand*,” so “changes to the LDA Reliability Requirement” and resulting “demand curves” should not affect seller offers. JA\_\_ (Order ¶158) (emphasis added); *see* JA\_\_ (IMM Answer 3).

To be sure, the demand curve affects the profit suppliers make *over* costs of production. If suppliers offer based on cost, and the clearing price is higher, the difference is profit. But “resources offering competitively . . . would not have taken [that] into account in formulating their capacity offers.” JA\_\_-\_\_ (Order ¶176). The Commission “agree[d] with PJM, the Market Monitor, and commenters” that suppliers should not engage in strategic offering to drive up the clearing price. JA\_\_-\_\_ (Rehearing ¶112 & n.423). And suppliers cannot complain when they are paid rates that are at or above their offered prices.

The Commission reasonably rejected petitioners’ theory that the amendment unduly undermined bilateral-contracting or hedging decisions *outside* the auction. JA\_\_-\_\_, JA\_\_-\_\_, JA\_\_-\_\_ (Rehearing ¶¶80-81, 87, 112); JA\_\_-\_\_ (Order ¶¶176-177); *see* Pet.Br.60-61. As the Commission explained, it would be “speculat[ion]” to try calculating “auction results based on the [pre-auction] LDA Reliability Requirement.” JA\_\_-\_\_ (Rehearing ¶112). The LDA Reliability Require-

ment and demand curve were always subject to change. *See* pp. 11-12, 28-29, *supra*. And offers are confidential, so sellers cannot know what the *supply* curve will look like. Tariff Attach. DD §4.5. With the final demand and supply curves unknown, sellers cannot “know the price they ultimately would receive for any potential capacity obligation.” JA\_\_ (Rehearing ¶28).

There is always risk in entering into contracts based on speculation about future events. Petitioners offer no reason they could not have contracted around the risk that the clearing price would be lower than they hoped. If some petitioners chose to take risks based on speculation, the Commission was not obligated to elevate that choice over the broader benefits of capacity prices that accurately reflect reliability needs.

3. Even if some entities relied on the pre-auction LDA Reliability Requirement in some way, the Commission reasonably found such reliance did not outweigh the benefits of an LDA Reliability Requirement that matches actual reliability needs. JA\_\_ (Order ¶173); JA\_\_, JA\_\_ - \_\_ (Rehearing ¶¶24, 87-88). The Commission also recognized that auction processes should rarely be amended while auctions are in progress. JA\_\_ - \_\_ (Order ¶¶174-175). It simply concluded that the competing interests here “heavily” favored the amendment. JA\_\_ (Order ¶177).

Petitioners assert that “the record reflected substantial evidence” supporting their view. Pet.Br.59. “The question,” however, “is *not* whether record evi-



dence supports [*petitioners*'] version of events, but whether it supports *FERC's*.” *N.J. Board*, 744 F.3d at 94 (emphasis added). The Commission reasonably found that any reliance was “heavily” outweighed by the harm from a clearing price that did not reflect marketplace realities. JA\_\_ (Order ¶177). It is not for petitioners or this Court to strike that balance anew.

**B. The Commission Properly Approved the Amendment Under Section 205**

Intervenor-petitioners *agree* the rates petitioners demand would have been unjust and unreasonable and *agree* the Commission should remedy that problem. Int.-Pet.Br.7-8, 10-12. Intervenor-petitioners take issue with the Commission’s remedying the problem under Section 205 rather than Section 206. But that issue is not properly before this Court. Comm’n.Br.54.

Intervenor-petitioners’ position is otherwise opaque. Their cryptic brief never explains what remedies they think would be appropriate under Section 206. If they believe the Commission could prevent “excessive costs to consumers,” “including in DPL-South,” for the 2024-2025 delivery year, Int.-Pet.Br.8, that contradicts petitioners’ position that any change affecting that year’s capacity prices (the relevant cost to consumers) would be impermissibly retroactive. As intervenor-petitioners recognize (Int.-Pet.Br.12), the filed-rate doctrine and rule against retroactivity apply under both Sections. *See Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1211 (D.C. Cir. 2009). Thus, if intervenor-petitioners agree “FERC could

... have adopted ... the replacement rate proposed by PJM” under Section 206, Int.-Pet.Br.1, they offer no reason it could *not* do so under Section 205.

Perhaps intervenor-petitioners want the Commission to adopt, under Section 206, a different solution than PJM proposed under Section 205. But the Commission was entitled to adopt PJM’s amendment upon finding the amendment lawful, just, and reasonable. *N.J. Board*, 744 F.3d at 110. It did not need to find the amendment was the “best solution”—just “a reasonable one.” *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007). It was not required to impose its own solution under Section 206.<sup>3</sup>

Insofar as intervenor-petitioners argue that Section 206 would *not* allow the Commission to prevent an artificial spike in 2024-2025 capacity prices—allowing changes only for *later* auctions—the point is moot. The Commission permissibly approved PJM’s tariff amendment under Section 205 upon finding that the amendment was just, reasonable, and consistent with filed-rate principles. No more was required.

### **CONCLUSION**

The petitions for review should be denied.

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<sup>3</sup> If the Court were to overturn the Commission’s Section 205 decision (and it should not), the remedy would be to reinstate PJM’s Section 206 complaint, which the Commission dismissed as moot. JA\_\_ (Rehearing ¶125). That would ensure any relief could run from the complaint’s filing. 16 U.S.C. § 824e(b).

November 20, 2023

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation set out in this Court's order of September 7, 2023 (Dkt. No. 51), because this brief contains 8889 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief further complies with the typeface and the type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

**CERTIFICATE OF SERVICE**

I certify that today, November 20, 2023, I electronically filed the foregoing Joint Brief of Intervenor-Respondents with the Clerk of the Court for the U.S. Court of Appeals for the Third Circuit using the appellate CM/ECF system. All other participants in the case are registered CM/ECF users and will be served by the CM/ECF system in accordance with Third Circuit Local Appellate Rule 113.4.

In compliance with this Court's order of September 7, 2023 (Dkt. No. 51) and Third Circuit Local Appellate Rule 31.1(a), one copy of this proof brief has been mailed on this date to the Clerk's Office.

**CERTIFICATE OF BAR MEMBERSHIP**

I certify, pursuant to Third Circuit Local Appellate Rule 28.3(d), that I am a member of the Bar of this Court.

**CERTIFICATION OF VIRUS SCAN**

I certify, pursuant to Third Circuit Local Appellate Rule 31.1(c), that a virus detection program has been run on this file and that no virus was detected. The virus detection program utilized was SentinelOne Agent, version 23.2.3.358.

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**CERTIFICATION OF CONSENT**

I certify, pursuant to Third Circuit Local Appellate Rule 113.9(c), that each party signing this document has consented to its contents.

November 20, 2023

/s/ Jeffrey A. Lamken

Jeffrey A. Lamken

**ADDENDUM**

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PJM Interconnection, L.L.C., Intra-PJM Tariffs  
 Filing Category: Amendment  
 FERC Docket: ER18-01905-001  
 FERC Order: Delegated Letter Order  
 Effective Date: 09/17/2010  
 9.2, OATT 9.2 Rights of the Transmission Provider: (1.1.0)

Filing Date: 07/06/2018  
 FERC Action: Accept  
 Order Date: 08/30/2018  
 Status: Effective

## 9.2 Rights of the Transmission Provider:

(a) PJM shall have the exclusive and unilateral right to file pursuant to Section 205 of the Federal Power Act and the FERC's rules and regulations thereunder to make changes in or relating to the terms and conditions of the PJM Tariff (including but not limited to provisions relating to creditworthiness, billing, and defaults) as well as all charges for recovery of PJM costs. PJM shall not have any Section 205 filing rights with respect to the subject matters described in the first sentence of Section 9.1(a) of this Tariff. PJM shall not have any Section 205 filing rights with respect to the provisions of the PJM Tariff listed in Section 9.1(d) and (e). Notwithstanding the foregoing, PJM shall have Section 205 filing rights to make changes in the PJM Tariff in order to address the Behind The Meter Generation netting rules in accordance with the settlement in FERC Docket No EL05-127-000 approved by the FERC on December 16, 2005, 113 FERC ¶ 61,279.

(b) PJM shall consult with the Transmission Owners and the PJM Members Committee beginning no less than seven (7) days in advance of any Section 205 filing under Section 9.2(a), but neither the Transmission Owners, except as provided for in Section 9.3, nor the PJM Members Committee shall have any right to veto or delay any such Section 205 filing. PJM may file with less than a full 7 day advance consultation in circumstances where imminent harm to system reliability or imminent severe economic harm to electric consumers requires a prompt Section 205 filing; provided that PJM shall provide as much advance notice and consultation with the Transmission Owners and the PJM Members Committee as is practicable in such circumstances, and no such emergency filing shall be made with less than 24 hours advance notice.

(c) Nothing herein is intended to limit the rights of any Party or other person to oppose such a Section 205 filing pursuant to Section 206 or any other applicable provision of the Federal Power Act or to limit the right of any Party or other person to make filings under Section 206 of the Federal Power Act.

(d) To the extent that PJM desires to add a provision to this Tariff, or to change an existing provision hereof, in accordance with its rights under Section 9.2(a), the Transmission Owners shall have unilateral and exclusive rights to make Section 205 filings with respect to any matters covered by such new or changed provisions relating to the establishment and recovery of the Transmission Owners' transmission revenue requirements, transmission rate design under the PJM Tariff, or any provisions governing the recovery of transmission-related costs incurred by the Transmission Owners. Prior to making any Section 205 filing covered by Section 9.2(a) that also relates to or affects the establishment and recovery of the Transmission Owners' transmission revenue requirements, the transmission rate design under the PJM Tariff, or any provisions governing the recovery of transmission-related costs incurred by the Transmission Owners, PJM shall provide no less than 45 days notice to the Transmission Owners of the

intended filing in sufficient detail to provide them a reasonable opportunity to include appropriate provisions in the PJM Tariff governing these subjects, either through a Section 205 filing by the Transmission Owners pursuant to Section 9.1(a) or approval by the Transmission Owners of the PJM proposal pursuant to Section 8.5.1 of the Consolidated Transmission Owners Agreement.

(e) PJM shall be required to maintain in effect at all times provisions relating to the creditworthiness of all customers under this Tariff that are designed to provide reasonable assurances to the Transmission Owners, consistent with FERC orders and policies applicable to open access transmission services, that such customers will be able to pay for transmission services purchased hereunder. If at any time PJM intends to make a Section 205 filing to change the creditworthiness provisions of this Tariff, it shall provide no less than 30 days advance notice to, and consult with, the Transmission Owners and the PJM Members Committee. In the case of an emergency requiring immediate action, PJM shall not be required to provide 30 days advance notice but shall provide as much advance notice as is practicable in the circumstances, and in no circumstances may PJM make an emergency Section 205 filing without providing at least 24 hours advance notice to the Transmission Owners. PJM shall further maintain at all times in the tariffs under which it recovers its costs comparable provisions, if any, for sharing among PJM members and/or transmission customers any shortfalls in the recovery of its own and the Transmission Owners' costs due to defaults.

PJM Interconnection, L.L.C., Intra-PJM Tariffs			
Filing Category:	Amendment	Filing Date:	04/27/2023
FERC Docket:	ER23-01265-001	FERC Action:	Accept
FERC Order:	Delegated Letter Order	Order Date:	06/06/2023
Effective Date:	05/08/2023	Status:	Effective

ATTACHMENT DD.4, OATT ATTACHMENT DD.4. GENERAL PROVISIONS (7.1.0)

## **4. GENERAL PROVISIONS**

### **4.1 Capacity Market Sellers**

Only Capacity Market Sellers shall be eligible to submit Sell Offers into the Base Residual Auction and Incremental Auctions. Capacity Market Sellers shall comply with the terms and conditions of all Sell Offers, as established by the Office of the Interconnection in accordance with this Attachment DD, Tariff, Attachment M, Tariff, Attachment M - Appendix and the Operating Agreement.

### **4.2 Capacity Market Buyers**

Only Capacity Market Buyers shall be eligible to submit Buy Bids into an Incremental Auction. Capacity Market Buyers shall comply with the terms and conditions of all Buy Bids, as established by the Office of the Interconnection in accordance with this Attachment DD, Tariff, Attachment M, Tariff, Attachment M - Appendix and the Operating Agreement.

### **4.3 Agents**

A Capacity Market Seller may participate in a Base Residual Auction or Incremental Auction through an Agent, provided that the Capacity Market Seller informs the Office of the Interconnection in advance in writing of the appointment and authority of such Agent. A Capacity Market Buyer may participate in an Incremental Auction through an Agent, provided that the Capacity Market Buyer informs the Office of the Interconnection in advance in writing of the appointment and authority of such Agent. A Capacity Market Buyer or Capacity Market Seller participating in such an auction through an Agent shall be bound by all of the acts or representations of such Agent with respect to transactions in such auction. Any written instrument establishing the authority of such Agent shall provide that any such Agent shall comply with the requirements of this Attachment DD and the Operating Agreement.

### **4.4 General Obligations of Capacity Market Buyers and Capacity Market Sellers**

Each Capacity Market Buyer and Capacity Market Seller shall comply with all laws and regulations applicable to the operation of the Base Residual and Incremental Auctions and the use of these auctions shall comply with all applicable provisions of this Attachment DD, Tariff, Attachment M, Tariff, Attachment M - Appendix, Tariff, Attachment Q, the Operating Agreement, and the Reliability Assurance Agreement, Tariff, Attachment K-Appendix, section 1.4 and the parallel provisions of Operating Agreement, Schedule 1, section 1.4, and all procedures and requirements for the conduct of the Base Residual and Incremental Auctions and the PJM Region established by the Office of the Interconnection in accordance with the foregoing.

#### **4.5 Confidentiality**

The following information submitted to the Office of the Interconnection in connection with any Base Residual Auction, Incremental Auction, Reliability Backstop Auction, or Capacity Performance Transition Incremental Auction shall be deemed confidential information for purposes of Operating Agreement, section 18.17, Tariff, Attachment M and Tariff, Attachment M - Appendix: (i) the terms and conditions of the Sell Offers and Buy Bids; and (ii) the terms and conditions of any bilateral transactions for Capacity Resources.

#### **4.6 Bilateral Capacity Transactions**

(a) Unit-Specific Internal Capacity Bilateral Transaction Transferring All Rights and Obligations (“Section 4.6(a) Bilateral”).

(i) Market Participants may enter into unit-specific internal bilateral capacity contracts for the purchase and sale of title and rights to a specified amount of installed capacity from a specific generating unit or units. Such bilateral capacity contracts shall be for the transfer of rights to capacity to and from a Market Participant and shall be reported to the Office of the Interconnection in accordance with this Attachment DD and the Office of the Interconnection’s rules related to its “capacity exchange” tool.

(ii) For purposes of clarity, with respect to all Section 4.6(a) Bilateral transactions, the rights to, and obligations regarding, the capacity that is the subject of the transaction shall pass to the buyer under the contract at the location of the unit and further transactions and rights and obligations associated with such capacity shall be the responsibility of the buyer under the contract. Such obligations include any charges, including penalty charges, relating to the capacity under this Attachment DD. In no event shall the purchase and sale of the rights to capacity pursuant to a Section 4.6(a) Bilateral constitute a transaction with the Office of the Interconnection or PJMSettlement or a transaction in any auction under this Attachment DD.

(iii) All payments and related charges associated with a Section 4.6(a) Bilateral shall be arranged between the parties to the transaction and shall not be billed or settled by the Office of the Interconnection or PJMSettlement. The Office of the Interconnection, PJMSettlement, and the Members will not assume financial responsibility for the failure of a party to perform obligations owed to the other party under a Section 4.6(a) Bilateral reported to the Office of the Interconnection under this Attachment DD.

(iv) With respect to capacity that is the subject of a Section 4.6(a) Bilateral that has cleared an auction under this Attachment DD prior to a transfer, the buyer of the cleared capacity shall be considered in the Delivery Year the party to a transaction with PJMSettlement as Counterparty for the cleared capacity at the Capacity Resource Clearing Price published for the applicable auction.

(v) A buyer under a Section 4.6(a) Bilateral contract shall pay any penalties or charges associated with the capacity transferred under the contract. To the extent the capacity

that is the subject of a Section 4.6(a) Bilateral contract has cleared an auction under this Attachment DD prior to a transfer, then the seller under the contract also shall guarantee and indemnify the Office of the Interconnection, PJMSettlement, and the Members for the buyer's obligation to pay any penalties or charges associated with the capacity and for which payment is not made to PJMSettlement by the buyer as determined by the Office of the Interconnection. All claims regarding a default of a buyer to a seller under a Section 4.6(a) Bilateral contract shall be resolved solely between the buyer and the seller.

(vi) To the extent the capacity that is the subject of the Section 4.6(a) Bilateral transaction already has cleared an auction under this Attachment DD, such bilateral capacity transactions shall be subject to the prior consent of the Office of the Interconnection and its determination that sufficient credit is in place for the buyer with respect to the credit exposure associated with such obligations.

(b) Bilateral Capacity Transaction Transferring Title to Capacity But Not Transferring Performance Obligations ("Section 4.6(b) Bilateral").

(i) Market Participants may enter into bilateral capacity transactions for the purchase and sale of a specified megawatt quantity of capacity that has cleared an auction pursuant to this Attachment DD. The parties to a Section 4.6(b) Bilateral transaction shall identify (1) each unit from which the transferred megawatts are being sold, and (2) the auction in which the transferred megawatts cleared. Such bilateral capacity transactions shall transfer title and all rights with respect to capacity and shall be reported to the Office of the Interconnection on an annual basis prior to each Delivery Year in accordance with this Attachment DD and pursuant to the Office of the Interconnection's rules related to its "capacity exchange" tool. Reported transactions with respect to a unit will be accepted by the Office of the Interconnection only to the extent that the total of all bilateral sales from the reported unit (including Section 4.6(a) Bilaterals, Section 4.6(b) Bilaterals, and Locational UCAP bilaterals) do not exceed the unit's cleared unforced capacity.

(ii) For purposes of clarity, with respect to all Section 4.6(b) Bilateral transactions, the rights to the capacity shall pass to the buyer at the location of the unit(s) specified in the reported transaction. In no event shall the purchase and sale of the rights to capacity pursuant to a Section 4.6(b) Bilateral constitute a transaction with PJMSettlement or the Office of the Interconnection or a transaction in any auction under this Attachment DD.

(iii) With respect to a Section 4.6(b) Bilateral, the buyer of the cleared capacity shall be considered in the Delivery Year the party to a transaction with PJMSettlement as Counterparty for the cleared capacity at the Capacity Resource Clearing Price published for the applicable auction; provided, however, with respect to all Section 4.6(b) Bilateral transactions, such transactions do not effect a novation of the seller's obligations to make RPM capacity available to PJM pursuant to the terms and conditions originally agreed to by the seller; provided further, however, the buyer shall indemnify PJMSettlement, the LLC, and the Members for any failure by a seller under a Section 4.6(b) Bilateral to meet any resulting obligations, including the obligation to pay deficiency penalties and charges owed to PJMSettlement, associated with the capacity.

(iv) All payments and related charges associated with a Section 4.6(b) Bilateral shall be arranged between the parties to the contract and shall not be billed or settled by the Office of the Interconnection or PJMSettlement. The Office of the Interconnection, PJMSettlement, and the Members will not assume financial responsibility for the failure of a party to perform obligations owed to the other party under a Section 4.6(b) Bilateral capacity contract reported to the Office of the Interconnection under this Attachment DD.

(v) All claims regarding a default of a buyer to a seller under a Section 4.6(b) Bilateral shall be resolved solely between the buyer and the seller.

(c) Locational UCAP Bilateral Transactions Between Capacity Sellers.

(i) Market Participants may enter into Locational UCAP bilateral transactions which shall be reported to the Office of the Interconnection in accordance with this Attachment DD and the LLC's rules related to its "capacity exchange" tool.

(ii) For purposes of clarity, with respect to all Locational UCAP bilateral transactions, the rights to the Locational UCAP that are the subject of the Locational UCAP bilateral transaction shall pass to the buyer under the Locational UCAP bilateral contract subject to the provisions of Tariff, Attachment DD, section 5.3A. In no event, shall the purchase and sale of Locational UCAP pursuant to a Locational UCAP bilateral transaction constitute a transaction with the Office of the Interconnection or PJMSettlement, or a transaction in any auction under this Attachment DD.

(iii) A Locational UCAP Seller shall have the obligation to make the capacity available to PJM in the same manner as capacity that has cleared an auction under this Attachment DD and the Locational UCAP Seller shall have all obligations for charges and penalties associated with the capacity that is the subject of the Locational UCAP bilateral contract; provided, however, the buyer shall indemnify PJMSettlement, the LLC, and the Members for any failure by a seller to meet any resulting obligations, including the obligation to pay deficiency penalties and charges owed to PJMSettlement, associated with the capacity. All claims regarding a default of a buyer to a seller under a Locational UCAP bilateral contract shall be resolved solely between the buyer and the seller.

(iv) All payments and related charges for the Locational UCAP associated with a Locational UCAP bilateral contract shall be arranged between the parties to such bilateral contract and shall not be billed or settled by the Office of the Interconnection or PJMSettlement. The LLC, PJMSettlement, and the Members will not assume financial responsibility for the failure of a party to perform obligations owed to the other party under a Locational UCAP bilateral contract reported to the Office of the Interconnection under this Attachment DD.

(d) The bilateral transactions provided for in this section 4.6 shall be for the physical transfer of capacity to or from a Market Participant and shall be reported to and coordinated with the Office of the Interconnection in accordance with this Attachment DD and pursuant to the Office of the Interconnection's rules relating to its "capacity exchange" tool. Bilateral

transactions that do not contemplate the physical transfer of capacity to and from a Market Participant are not subject to this Attachment DD and shall not be reported to and coordinated with the Office of the Interconnection.

(e) Effective with the 2022/2023 Delivery Year, any bilateral transaction provided for in this section 4.6 for replacement capacity shall be given no effect in satisfying the buyer's obligations under this Attachment DD to the extent that the resource that is the subject of the transaction is a Capacity Resource with State Subsidy for which the Capacity Market Seller has not elected to forego receipt of any State Subsidy for the relevant Delivery Year and does not qualify for one of the categorical exemptions described in Tariff, Attachment DD, sections 5.14(h-1)(5) through 5.14(h-1)(8) and the purchased capacity is then used to replace capacity from a Capacity Resource that (1) is not a Capacity Resource with State Subsidy or (2) is a Capacity Resource with State Subsidy for which the Capacity Market Seller elected the competitive exemption pursuant Tariff, Attachment DD, section 5.14(h-1)(4) or reported that it will forego receipt of any State Subsidy for the relevant Delivery Year, all as in accordance with the PJM Manuals.

PJM Interconnection, L.L.C., Intra-PJM Tariffs			
Filing Category:	Normal	Filing Date:	08/28/2023
FERC Docket:	ER23-02714-000	FERC Action:	Accept
FERC Order:	Delegated Letter Order	Order Date:	10/19/2023
Effective Date:	10/28/2023	Status:	Effective
OATT ATT DD.6.6, OATT ATTACHMENT DD.6.6 Offer Requirement for Capacity Resources (1.0.0)			

## 6.6 Offer Requirement for Capacity Resources

(a) To avoid application of subsection (h) below, all of the installed capacity of all Existing Generation Capacity Resources located in the PJM Region shall be offered by the Capacity Market Seller that owns or controls all or part of such resource (which may include submission as Self-Supply) in all RPM Auctions for each Delivery Year, less any amount determined by the Office of the Interconnection to be eligible for an exception to this RPM must-offer requirement, where installed capacity is determined as of the date on which bidding commences for each RPM Auction pursuant to Tariff, Attachment DD, section 5.6.6. The Unforced Capacity of such resources is determined using the EFORD value that is submitted by the Capacity Market Seller in its Sell Offer, which shall not exceed the maximum EFORD for that resource as defined in section 6.6(b). If a resource should be included on the list of Existing Generation Capacity Resources subject to the RPM must-offer requirement that is maintained by the Market Monitoring Unit pursuant to Tariff, Attachment M-Appendix, section II.C.1, but is omitted therefrom whether by mistake of the Market Monitoring Unit or failure of the Capacity Market Seller that owns or controls all or part of such resource to provide information about the resource to the Market Monitoring Unit, this shall not excuse such resource from the RPM must-offer requirement.

(b) For each Existing Generation Capacity Resource, a potential Capacity Market Seller must timely provide to the Market Monitoring Unit and the Office of the Interconnection all data and documentation required under this section 6.6 to establish the maximum EFORD applicable to each resource in accordance with standards and procedures specified in the PJM Manuals. The maximum EFORD that may be used in a Sell Offer for RPM Auctions held prior to the date on which the final EFORDs used for a Delivery Year are posted, is the greater of (i) the average EFORD for the five consecutive years ending on the September 30 that last precedes the Base Residual Auction, or (ii) the EFORD for the 12 months ending on the September 30 that last precedes the Base Residual Auction.

Notwithstanding the foregoing, a Capacity Market Seller may request an alternate maximum EFORD for Sell Offers submitted in such auctions if it has a documented, known reason that would result in an increase in its EFORD, by submitting a written request to the Market Monitoring Unit and Office of the Interconnection, along with data and documentation required to support the request for an alternate maximum EFORD, by no later one hundred twenty (120) days prior to the commencement of the offer period for the Base Residual Auction for the applicable Delivery Year. The Capacity Market Seller must address any concerns identified by the Market Monitoring Unit and/or the Office of the Interconnection regarding the data and documentation provided and attempt to reach agreement with the Market Monitoring Unit on the level of the alternate maximum EFORD by no later than ninety (90) days prior to the commencement of the offer period for the Base Residual Auction for the applicable Delivery Year. As further described in Tariff, Attachment M-Appendix, section II.C, the Market



Monitoring Unit shall notify the Capacity Market Seller and the Office of the Interconnection in writing of its determination of the requested alternate maximum EFORD by no later than ninety (90) days prior to the commencement of the offer period for the Base Residual Auction for the applicable Delivery Year. By no later than eighty (80) days prior to the commencement of the offer period for the Base Residual Auction for the applicable Delivery Year, the Capacity Market Seller shall notify the Office of the Interconnection and the Market Monitoring Unit in writing whether it agrees with the Market Monitoring Unit on the alternate maximum EFORD or, if no agreement has been reached, specifying the level of alternate maximum EFORD to which it commits. If a Capacity Market Seller fails to request an alternate maximum EFORD prior to the specified deadlines, the maximum EFORD for the applicable RPM Auction shall be deemed to be the default EFORD calculated pursuant to this section.

The maximum EFORD that may be used in a Sell Offer for Third Incremental Auction, and for Conditional Incremental Auctions held after the date on which the final EFORD used for a Delivery Year is posted, is the EFORD for the 12 months ending on the September 30 that last precedes the submission of such offers.

(c) [Reserved for Future Use]

(d) In the event that a Capacity Market Seller and the Market Monitoring Unit cannot agree on the maximum level of the alternate EFORD that may be used in a Sell Offer for RPM Auctions held prior to the date on which the final EFORDs used for a Delivery Year are posted, the Office of the Interconnection shall make its own determination of the maximum level of the alternate EFORD based on the requirements of the Tariff and the PJM Manuals, per Tariff, Attachment DD, section 5.8, by no later than sixty-five (65) days prior to the commencement of the offer period for the Base Residual for the applicable Delivery Year, and shall notify the Capacity Market Seller and the Market Monitoring Unit in writing of such determination.

(e) Nothing in this section precludes the Capacity Market Seller from filing a petition with FERC seeking a determination of whether the EFORD complies with the requirements of the Tariff.

(f) Notwithstanding the foregoing, a Capacity Market Seller may submit an EFORD that it chooses for an RPM Auction held prior to the date on which the final EFORD used for a Delivery Year is posted, provided that (i) it has participated in good faith with the process described in this section 6.6 and in Tariff, Attachment M-Appendix, section II.C, (ii) the offer is no higher than the level defined in any agreement reached by the Capacity Market Seller and the Market Monitoring Unit that resulted from the foregoing process, and (iii) the offer is accepted by the Office of the Interconnection subject to the criteria set forth in the Tariff and the PJM Manuals.

(g) A Capacity Market Seller that owns or controls an existing generation resource in the PJM Region that is capable of qualifying as an Existing Generation Capacity Resource as of the date on which bidding commences for an RPM Auction may not avoid the rule in subsection (a) or be removed from Capacity Resource status by failing to qualify as a Generation Capacity Resource, or by attempting to remove a unit previously qualified as a Generation Capacity

Resource from classification as a Capacity Resource for that RPM Auction. However, generation resource may qualify for an exception to the RPM must-offer requirement, as shown by appropriate documentation, if the Capacity Market Seller that owns or controls such resource demonstrates that it: (i) is reasonably expected to be physically unable to participate in the relevant Delivery Year; (ii) has a financially and physically firm commitment to an external sale of its capacity, or (iii) was interconnected to the Transmission System as an Energy Resource and not subsequently converted to a Capacity Resource.

In order to establish that a resource is reasonably expected to be physically unable to participate in the relevant auction as set forth in (i) above, the Capacity Market Seller must demonstrate that:

- A. It has a documented plan in place to retire the resource prior to or during the Delivery Year, and has submitted a notice of Deactivation to the Office of the Interconnection consistent with Tariff, Part V, section 113.1, without regard to whether the Office of the Interconnection has requested the Capacity Market Seller to continue to operate the resource beyond its desired deactivation date in accordance with Tariff, Part V, section 113.2 for the purpose of maintaining the reliability of the PJM Transmission System and the Capacity Market Seller has agreed to do so;
- B. Significant physical operational restrictions cause long term or permanent changes to the installed capacity value of the resource, or the resource is under major repair that will extend into the applicable Delivery Year, that will result in the imposition of RPM performance penalties pursuant to Tariff, Attachment DD;
- C. The Capacity Market Seller is involved in an ongoing regulatory proceeding (e.g. – regarding potential environmental restrictions) specific to the resource and has received an order, decision, final rule, opinion or other final directive from the regulatory authority that will result in the retirement of the resource; or
- D. A resource considered an Existing Generating Capacity Resource because it cleared an RPM Auction for a Delivery Year prior to the Delivery Year of the relevant auction, but which is not yet in service, is unable to achieve full commercial operation prior to the Delivery Year of the relevant auction. The Capacity Market Seller must submit to the Office of the Interconnection and the Market Monitoring Unit a written sworn, notarized statement of a corporate officer certifying that the resource will not be in full commercial operation prior to the referenced Delivery Year.

In order to establish that a resource has a financially and physically firm commitment to an external sale of its capacity as set forth in (ii) above, the Capacity Market Seller must demonstrate that it has entered into a unit-specific bilateral transaction for service to load located outside the PJM Region, by a demonstration that such resource is identified on a unit-specific basis as a network resource under the transmission tariff for the control area applicable to such external load, or by an equivalent demonstration of a financially and physically firm commitment to an external sale. The Capacity Market Seller additionally shall identify the megawatt amount, export zone, and time period (in days) of the export.

A Capacity Market Seller that seeks approval for an exception to the RPM must-offer requirement, for any reason other than the reason specified in Paragraph A above, shall first submit such request in writing, along with all supporting data and documentation, to the Market Monitoring Unit for evaluation, notifying the Office of the Interconnection by copy of the same, by no later than one hundred twenty (120) days prior to the commencement of the offer period for the applicable RPM Auction.

In order to obtain an exception to the RPM must-offer requirement for the reason specified in Paragraph A above, a Capacity Market Seller shall first submit a preliminary exception request in writing, along with supporting data and documentation indicating the reasons and conditions upon which the Capacity Market Seller is relying in its analysis of whether to retire such resource, to the Market Monitoring Unit for evaluation, notifying the Office of the Interconnection by copy of the same, by no later than (a) November 1, 2013 for the Base Residual Auction for the 2017/2018 Delivery Year, (b) the September 1 that last precedes the Base Residual Auction for the 2018/2019 and subsequent Delivery Years, and (c) two hundred forty (240) days prior to the commencement of the offer period for the applicable Incremental Auction. By no later than five (5) Business Days after the notification deadline for any such preliminary exception requests, the Office of the Interconnection will post on its website a summary of the number of megawatts of Generation Capacity Resources for which it has received notification of preliminary exception requests, on an aggregate basis by Zone and Locational Deliverability Area that comprises a subset of a Zone, as specified in the PJM Manuals.

Thereafter, as applicable, such Capacity Market Seller shall by no later than (a) the December 1 that last precedes the Base Residual Auction for the applicable Delivery Year, or (b) one hundred twenty (120) days prior to the commencement of the offer period for the applicable Incremental Auction, either (a) notify the Office of the Interconnection and the Market Monitoring Unit in writing that it is withdrawing its preliminary exception request and explaining the changes to its analysis of whether to retire such resource that support its decision to withdraw, or (b) demonstrate that it has met the requirements specified under Paragraph A above. By no later than five (5) Business Days after the notification deadline for such notification, the Office of the Interconnection will post on its website a revised summary of the number of megawatts of Generation Capacity Resources for which it has received requests for exceptions to the RPM must-offer requirement for the reason specified in Paragraph A above, on an aggregate basis by Zone and Locational Deliverability Area that comprises a subset of a Zone, as specified in the PJM Manuals.

A Capacity Market Seller that seeks to remove a Generation Capacity Resource from Capacity Resource status shall first submit a preliminary request in writing, along with supporting data and documentation indicating the reasons and conditions upon which the Capacity Market Seller is relying in its analysis of whether to remove the Capacity Resource status of such resource to the Market Monitoring Unit for evaluation, notifying the Office of the Interconnection by copy of the same, by no later than (a) the September 1 that last precedes the Base Residual Auction, and (b) two hundred forty (240) days prior to the commencement of the offer period for the applicable Incremental Auction. For the Base Residual Auction for the 2023/2024 Delivery Year, a Capacity Market Seller that seeks to remove a Generation Capacity Resource from Capacity Resource status shall first submit such preliminary request by no later

than November 1, 2019. By no later than five (5) Business Days after the notification deadline for any such preliminary requests, the Office of the Interconnection will post on its website a summary of the number of megawatts of Generation Capacity Resources for which it has received notification of preliminary requests, on an aggregate basis by Zone and Locational Deliverability Area that comprises a subset of a Zone, as specified in the PJM Manuals.

Thereafter, as applicable, such Capacity Market Seller shall, by no later than (a) the December 1 that last precedes the Base Residual Auction for the applicable Delivery Year, or (b) one hundred twenty (120) days prior to the commencement of the offer period for the applicable Incremental Auction, notify the Office of the Interconnection and the Market Monitoring Unit in writing that it is either (a) withdrawing its preliminary request and explaining the changes to its analysis that support its decision to withdraw, or (b) confirming its preliminary decision to remove the Generation Capacity Resource from Capacity Resource status. By no later than five (5) Business Days after the notification deadline for such notification, the Office of the Interconnection will post on its website a revised summary of the number of megawatts of Generation Capacity Resources for which it has received requests to remove its Capacity Resource status, on an aggregate basis by Zone and Locational Deliverability Area that comprises a subset of a Zone, as specified in the PJM Manuals.

The Market Monitoring Unit shall analyze the effects of the proposed removal of a Generation Capacity Resource from Capacity Resource status with regard to potential market power issues and shall notify the Capacity Market Seller and the Office of the Interconnection in writing of its determination of the request to remove the Generation Capacity Resource from Capacity Resource status, and whether a market power issue has been identified, by no later than ninety (90) days prior to the commencement of the offer period for the applicable RPM Auction. Such notice shall include the specific market power impact resulting from the proposed removal of the Generation Capacity Resource from Capacity Resource status, as well as an initial assessment of any steps that could be taken to mitigate the market power impact.

A Capacity Market Seller may only remove the Generation Capacity Resource from Capacity Resource status if (i) the Market Monitoring Unit has determined that the Generation Capacity Resource meets the applicable criteria set forth in Tariff, Attachment DD, sections 5.6.6 and this section 6.6 and the Office of the Interconnection agrees with this determination, or (ii) the Commission has issued an order terminating the Capacity Resource status of the resource, or (iii) it is required as set forth in Tariff, Attachment DD, section 6.6A(c). Nothing herein shall require a Market Seller to offer its resource into an RPM Auction prior to seeking to remove a resource from Capacity Resource status, subject to satisfaction of this section 6.6. A Generation Capacity Resource that is removed from Capacity Resource status shall no longer qualify as an Existing Generation Capacity Resource, and the Capacity Interconnection Rights associated with such facility shall be subject to termination in accordance with the rules described in Tariff, Part VI, section 230.3.3. The Office of the Interconnection shall amend the applicable Interconnection Service Agreement or wholesale market participation agreement to reflect any such removal of the Capacity Interconnection Rights, and shall report the amended agreement to the Commission in the same manner as the original (e.g., FERC filing or Electronic Quarterly Reports). The Office of the Interconnection shall file the amended agreement unexecuted if the Interconnection Customer or wholesale market participant does not sign the amended Interconnection Service Agreement or wholesale market participation agreement.

If the Capacity Market Seller disagrees with the Market Monitoring Unit's determination of its request to remove a resource from Capacity Resource status or its request for an exception to the RPM must-offer requirement, it must notify the Market Monitoring Unit in writing, with a copy to the Office of the Interconnection, of the same by no later than eighty (80) days prior to the commencement of the offer period for the applicable RPM Auction. After the Market Monitoring Unit has made its determination of whether a resource may be removed from Capacity Resource status, or whether the resource meets one of the exceptions thereto, and has notified the Capacity Market Seller and the Office of the Interconnection of the same pursuant to Tariff, Attachment M-Appendix, section II.C.4, the Office of the Interconnection shall approve or deny the request. The request shall be deemed to be approved by the Office of the Interconnection, consistent with the determination of the Market Monitoring Unit, unless the Office of the Interconnection notifies the Capacity Market Seller and Market Monitoring Unit, by no later than sixty-five (65) days prior to the date on which the offer period for the applicable RPM Auction commences, that the request is denied.

If the Market Monitoring Unit does not timely notify the Capacity Market Seller and the Office of the Interconnection of its determination of the request to remove a Generation Capacity Resource from Capacity Resource status or for an exception to the RPM must-offer requirement, the Office of the Interconnection shall make the determination whether the request shall be approved or denied, and will notify the Capacity Market Seller of its determination in writing, with a copy to the Market Monitoring Unit, by no later than sixty-five (65) days prior to the date on which the offer period for the applicable RPM Auction commences.

After the Market Monitoring Unit and the Office of the Interconnection have made their determinations of whether a resource meets the criteria to qualify for an exception to the RPM must-offer requirement, the Capacity Market Seller must notify the Market Monitoring Unit and the Office of the Interconnection whether it intends to exclude from its Sell Offer some or all of the subject capacity on the basis of an identified exception by no later than sixty-five (65) days prior to the date on which the offer period for the applicable RPM Auction commences. PJM does not make determinations of whether withholding of capacity constitutes market power. A Generation Capacity Resource that does not qualify for submission into an RPM Auction because it is not owned or controlled by the Capacity Market Seller for a full Delivery Year is not subject to the offer requirement hereunder; provided, however, that a Capacity Market Seller planning to transfer ownership or control of a Generation Capacity Resource during a Delivery Year pursuant to a sale or transfer agreement entered into after March 26, 2009 shall be required to satisfy the offer requirement hereunder for the entirety of such Delivery Year and may satisfy such requirement by providing for the assumption of this requirement by the transferee of ownership or control under such agreement.

If a Capacity Market Seller doesn't timely seek to remove a Generation Capacity Resource from Capacity Resource status or timely submit a request for an exception to the RPM must-offer requirement, the Generation Capacity Resource shall only be removed from Capacity Resource status, and may only be approved for an exception to the RPM must-offer requirement, upon the Capacity Market Seller requesting and receiving an order from FERC, prior to the close of the offer period for the applicable RPM Auction, directing the Office of the Interconnection to remove the resource from Capacity Resource status and/or granting an exception to the RPM must-offer requirement or a waiver of the RPM must-offer requirement as to such resource.

(h) Any existing generation resource located in the PJM Region that satisfies the criteria in the definition of Existing Generation Capacity Resource as of the date on which bidding commences for the Base Residual Auction for a Delivery Year, that is not offered into such Base Residual Auction, and that does not meet any of the exceptions stated in the prior subsection (g): (i) may not participate in any subsequent Incremental Auctions conducted for such Delivery Year; (ii) shall not receive any payments under Tariff, Attachment DD, section 5.14 for such Delivery Year for the capacity of such Generation Capacity Resources; and (iii) shall not be permitted to satisfy any LSE's Unforced Capacity Obligation, or any entity's obligation to obtain the commitment of Capacity Resources, for such Delivery Year.

All generation resources located in the PJM Region that satisfy the criteria in the definition of Existing Generation Capacity Resource as of the date on which bidding commences for an Incremental Auction for a particular Delivery Year, but that did not satisfy such criteria as of the date that on which bidding commenced in the Base Residual Auction for that Delivery Year, that is not offered into that Incremental Auction, and that does not meet any of the exceptions stated in the prior subsection (g): (i) may not participate in any subsequent Incremental Auctions conducted for such Delivery Year; (ii) shall not receive any payments under Tariff, Attachment DD, section 5.14 for such Delivery Year for the capacity of such Generation Capacity Resources; and (iii) shall not be permitted to satisfy any LSE's Unforced Capacity Obligation, or any entity's obligation to obtain the commitment of Capacity Resources, for such Delivery Year.

All Existing Generation Capacity Resources that are offered into a Base Residual Auction or Incremental Auction for a particular Delivery Year but do not clear in such auction, that are not offered into each subsequent Incremental Auction, and that do not meet any of the exceptions stated in the prior subsection (g): (i) may not participate in any Incremental Auctions conducted for such Delivery Year subsequent to such failure to offer; (ii) shall not receive any payments under Tariff, Attachment DD, section 5.14 for such Delivery Year for the capacity of such Generation Capacity Resources; and (iii) shall not be permitted to satisfy any LSE's Unforced Capacity Obligation, or any entity's obligation to obtain the commitment of Capacity Resources, for such Delivery Year.

Any such Existing Generation Capacity Resources may also be subject to further action by the Market Monitoring Unit under the terms of Tariff, Attachment M and Tariff, Attachment M – Appendix.

(i) In addition to the remedies set forth in subsections (g) and (h) above, if the Market Monitoring Unit determines that one or more Capacity Market Sellers' failure to offer part or all of one or more existing generation resources, for which the Office of the Interconnection has not approved an exception to the RPM must-offer requirement, into an RPM Auction as required by this Section 6.6 would result in an increase of greater than five percent in any Zonal Capacity Price determined through such auction, and the Office of the Interconnection agrees with that determination, the Office of the Interconnection shall apply to FERC for an order, on an expedited basis, directing such Capacity Market Seller to participate in the relevant RPM Auction, or for other appropriate relief, and PJM will postpone clearing the auction

pending FERC's decision on the matter. If the Office of the Interconnection disagrees with the Market Monitoring Unit's determination and does not apply to FERC for an order directing the Capacity Market Seller to participate in the auction or for other appropriate relief, the Market Monitoring Unit may exercise its powers to inform Commission staff of its concerns and to seek appropriate relief.

**PJM PROPOSED AMENDMENT REDLINE TO TARIFF**  
**DEFINITIONS L-M-N & ATTACHMENT DD §5.12**

*Excerpted from Attachment A to R.1, PJM Interconnection, L.L.C. Proposed  
Amendment to the Locational Deliverability Area Reliability Requirement  
(Dec. 23, 2022)*



## **Definitions – L – M – N**

### **Legacy Policy:**

“Legacy Policy” shall mean any legislative, executive, or regulatory action that specifically directs a payment outside of PJM Markets to a designated or prospective Generation Capacity Resource and the enactment of such action predates October 1, 2021, regardless of when any implementing governmental action to effectuate the action to direct payment outside of PJM Markets occurs.

### **Limited Demand Resource:**

“Limited Demand Resource” shall have the meaning specified in the Reliability Assurance Agreement.

### **Limited Demand Resource Reliability Target:**

“Limited Demand Resource Reliability Target” for the PJM Region or an LDA, shall mean the maximum amount of Limited Demand Resources determined by PJM to be consistent with the maintenance of reliability, stated in Unforced Capacity that shall be used to calculate the Minimum Extended Summer Demand Resource Requirement for Delivery Years through May 31, 2017 and the Limited Resource Constraint for the 2017/2018 and 2018/2019 Delivery Years for the PJM Region or such LDA. As more fully set forth in the PJM Manuals, PJM calculates the Limited Demand Resource Reliability Target by first: i) testing the effects of the ten-interruption requirement by comparing possible loads on peak days under a range of weather conditions (from the daily load forecast distributions for the Delivery Year in question) against possible generation capacity on such days under a range of conditions (using the cumulative capacity distributions employed in the Installed Reserve Margin study for the PJM Region and in the Capacity Emergency Transfer Objective study for the relevant LDAs for such Delivery Year) and, by varying the assumed amounts of DR that is committed and displaces committed generation, determines the DR penetration level at which there is a ninety percent probability that DR will not be called (based on the applicable operating reserve margin for the PJM Region and for the relevant LDAs) more than ten times over those peak days; ii) testing the six-hour duration requirement by calculating the MW difference between the highest hourly unrestricted peak load and seventh highest hourly unrestricted peak load on certain high peak load days (e.g., the annual peak, loads above the weather normalized peak, or days where load management was called) in recent years, then dividing those loads by the forecast peak for those years and averaging the result; and (iii) (for the 2016/2017 and 2017/2018 Delivery Years) testing the effects of the six-hour duration requirement by comparing possible hourly loads on peak days under a range of weather conditions (from the daily load forecast distributions for the Delivery Year in question) against possible generation capacity on such days under a range of conditions (using a Monte Carlo model of hourly capacity levels that is consistent with the capacity model employed in the Installed Reserve Margin study for the PJM Region and in the Capacity Emergency Transfer Objective study for the relevant LDAs for such Delivery Year) and, by varying the assumed amounts of DR that is committed and displaces committed generation, determines the DR penetration level at which there is a ninety percent probability that DR will

not be called (based on the applicable operating reserve margin for the PJM Region and for the relevant LDAs) for more than six hours over any one or more of the tested peak days. Second, PJM adopts the lowest result from these three tests as the Limited Demand Resource Reliability Target. The Limited Demand Resource Reliability Target shall be expressed as a percentage of the forecasted peak load of the PJM Region or such LDA and is converted to Unforced Capacity by multiplying [the reliability target percentage] times [the Forecast Pool Requirement] times [the DR Factor] times [the forecasted peak load of the PJM Region or such LDA, reduced by the amount of load served under the FRR Alternative].

**Limited Resource Constraint:**

“Limited Resource Constraint” shall mean, for the 2017/2018 Delivery Year and for FRR Capacity Plans the 2017/2018 and Delivery Years, for the PJM Region or each LDA for which the Office of the Interconnection is required under Tariff, Attachment DD, section 5.10(a) to establish a separate VRR Curve for a Delivery Year, a limit on the total amount of Unforced Capacity that can be committed as Limited Demand Resources for the 2017/2018 Delivery Year in the PJM Region or in such LDA, calculated as the Limited Demand Resource Reliability Target for the PJM Region or such LDA, respectively, minus the Short Term Resource Procurement Target for the PJM Region or such LDA, respectively.

**Limited Resource Price Decrement:**

“Limited Resource Price Decrement” shall mean, for the 2017/2018 Delivery Year, a difference between the clearing price for Limited Demand Resources and the clearing price for Extended Summer Demand Resources and Annual Resources, representing the cost to procure additional Extended Summer Demand Resources or Annual Resources out of merit order when the Limited Resource Constraint is binding.

**List of Approved Contractors:**

“List of Approved Contractors” shall mean a list developed by each Transmission Owner and published in a PJM Manual of (a) contractors that the Transmission Owner considers to be qualified to install or construct new facilities and/or upgrades or modifications to existing facilities on the Transmission Owner’s system, provided that such contractors may include, but need not be limited to, contractors that, in addition to providing construction services, also provide design and/or other construction-related services, and (b) manufacturers or vendors of major transmission-related equipment (e.g., high-voltage transformers, transmission line, circuit breakers) whose products the Transmission Owner considers acceptable for installation and use on its system.

**Load Interest:**

“Load Interest” shall mean, for the purposes of the minimum offer price rule, responsibility for serving load within the PJM Region, whether by the Capacity Market Seller, an affiliate of the Capacity Market Seller, or by an entity with which the Capacity Market Seller is in contractual privity with respect to the subject Generation Capacity Resource.

**Load Management:**

“Load Management” shall mean a Demand Resource (“DR”) as defined in the Reliability Assurance Agreement.

**Load Management Event:**

“Load Management Event” shall mean a) a single temporally contiguous dispatch of Demand Resources in a Compliance Aggregation Area during an Operating Day, or b) multiple dispatches of Demand Resources in a Compliance Aggregation Area during an Operating Day that are temporally contiguous.

**Load Ratio Share:**

“Load Ratio Share” shall mean the ratio of a Transmission Customer’s Network Load to the Transmission Provider’s total load.

**Load Reduction Event:**

“Load Reduction Event” shall mean a reduction in demand by a Member or Special Member for the purpose of participating in the PJM Interchange Energy Market.

**Load Serving Charging Energy:**

“Load Serving Charging Energy” shall mean energy that is purchased from the PJM Interchange Energy Market and stored in an Energy Storage Resource for later resale to end-use load.

**Load Serving Entity (LSE):**

“Load Serving Entity” or “LSE” shall have the meaning specified in the Reliability Assurance Agreement.

**Load Shedding:**

“Load Shedding” shall mean the systematic reduction of system demand by temporarily decreasing load in response to transmission system or area capacity shortages, system instability, or voltage control considerations under Tariff, Part II or Part III.

**Local Upgrades:**

“Local Upgrades” shall mean modifications or additions of facilities to abate any local thermal loading, voltage, short circuit, stability or similar engineering problem caused by the interconnection and delivery of generation to the Transmission System. Local Upgrades shall include:

(i) Direct Connection Local Upgrades which are Local Upgrades that only serve the Customer Interconnection Facility and have no impact or potential impact on the Transmission System until the final tie-in is complete; and

(ii) Non-Direct Connection Local Upgrades which are parallel flow Local Upgrades that are not Direct Connection Local Upgrades.

**Location:**

“Location” as used in the Economic Load Response rules shall mean an end-use customer site as defined by the relevant electric distribution company account number.

**LOC Deviation:**

“LOC Deviation,” shall mean, for units other than wind units, the LOC Deviation shall equal the desired megawatt amount for the resource determined according to the point on the Final Offer curve corresponding to the Real-time Settlement Interval real-time Locational Marginal Price at the resource’s bus and adjusted for any reduction in megawatts due to Regulation, Synchronized Reserve, or Secondary Reserve assignments and limited to the lesser of the unit’s Economic Maximum or the unit’s Generation Resource Maximum Output, minus the actual output of the unit. For wind units, the LOC Deviation shall mean the deviation of the generating unit’s output equal to the lesser of the PJM forecasted output for the unit or the desired megawatt amount for the resource determined according to the point on the Final Offer curve corresponding to the Real-time Settlement Interval integrated real-time Locational Marginal Price at the resource’s bus, and shall be limited to the lesser of the unit’s Economic Maximum or the unit’s Generation Resource Maximum Output, minus the actual output of the unit.

**Locational Deliverability Area (LDA):**

“Locational Deliverability Area” or “LDA” shall mean a geographic area within the PJM Region that has limited transmission capability to import capacity to satisfy such area’s reliability requirement, as determined by the Office of the Interconnection in connection with preparation of the Regional Transmission Expansion Plan, and as specified in Reliability Assurance Agreement, Schedule 10.1.

**Locational Deliverability Area Reliability Requirement:**

“Locational Deliverability Area Reliability Requirement” shall mean the projected internal capacity in the Locational Deliverability Area plus the Capacity Emergency Transfer Objective for the Delivery Year, as determined by the Office of the Interconnection in connection with preparation of the Regional Transmission Expansion Plan, less the minimum internal resources required for all FRR Entities in such Locational Deliverability Area. Notwithstanding the foregoing, effective with the 2024/2025 Delivery Year, during the auction process, the Office of Interconnection shall exclude from the Locational Deliverability Area Reliability Requirement any Planned Generation Capacity Resource in an LDA that does not participate in the relevant RPM Auction as projected internal capacity and in the Capacity Emergency Transfer Objective

model where the Locational Deliverability Area Reliability Requirement for the Base Residual Auction increases by more than one percent over the reliability requirement used from the prior Delivery Year's Base Residual Auction (for Incremental Auctions the Locational Deliverability Area Reliability Requirement would be compared with the reliability requirement used in the prior relevant RPM Auction associated with the same Delivery Year) for that LDA due to the cumulative addition of such Planned Generation Capacity Resources.

**Locational Price Adder:**

“Locational Price Adder” shall mean an addition to the marginal value of Unforced Capacity within an LDA as necessary to reflect the price of Capacity Resources required to relieve applicable binding locational constraints.

**Locational Reliability Charge:**

“Locational Reliability Charge” shall have the meaning specified in the Reliability Assurance Agreement.

**Locational UCAP:**

“Locational UCAP” shall mean unforced capacity that a Member with available uncommitted capacity sells in a bilateral transaction to a Member that previously committed capacity through an RPM Auction but now requires replacement capacity to fulfill its RPM Auction commitment. The Locational UCAP Seller retains responsibility for performance of the resource providing such replacement capacity.

**Locational UCAP Seller:**

“Locational UCAP Seller” shall mean a Member that sells Locational UCAP.

**Long-lead Project:**

“Long-lead Project” shall have the same meaning provided in the Operating Agreement.

**Long-Term Firm Point-To-Point Transmission Service:**

“Long-Term Firm Point-To-Point Transmission Service” shall mean firm Point-To-Point Transmission Service under Tariff, Part II with a term of one year or more.

**Loss Price:**

“Loss Price” shall mean the loss component of the Locational Marginal Price, which is the effect on transmission loss costs (whether positive or negative) associated with increasing the output of a generation resource or decreasing the consumption by a Demand Resource based on the effect of increased generation from or consumption by the resource on transmission losses, calculated

## 5.12 Conduct of RPM Auctions

The Office of the Interconnection shall employ an optimization algorithm for each Base Residual Auction and each Incremental Auction to evaluate the Sell Offers and other inputs to such auction to determine the Sell Offers that clear such auction.

### a) Base Residual Auction

For each Base Residual Auction, the optimization algorithm shall consider:

- all Sell Offers submitted in such auction;
- the Variable Resource Requirement Curves for the PJM Region and each LDA;
- any constraints resulting from the Locational Deliverability Requirement and any applicable Capacity Import Limit;
- for Delivery Years starting June 1, 2014 and ending May 31, 2017, the Minimum Annual Resource Requirement and the Minimum Extended Summer Resource Requirement for the PJM Region and for each Locational Deliverability Area for which a separate VRR Curve is required by Tariff, Attachment DD, section 5.10(a); for the 2017/2018 Delivery Year, the Limited Resource Constraints and the Sub-Annual Resource Constraints for the PJM Region and for each Locational Deliverability Area for which a separate VRR Curve is required by Tariff, Attachment DD, section 5.10(a); and for the 2018/2019 and 2019/2020 Delivery Years, the Base Capacity Demand Resource Constraints and the Base Capacity Resource Constraints for the PJM Region and for each Locational Deliverability Area for which a separate VRR Curve is required by Tariff, Attachment DD, section 5.10(a);
- For the Delivery Years through May 31, 2018, the PJM Region Reliability Requirement minus the Short-Term Resource Procurement Target;
- For the 2018/2019 Delivery Year and subsequent Delivery Years, the PJM Reliability Requirement; ~~and~~
- For the 2024/2025 and subsequent Delivery Years, the Locational Deliverability Requirement Reliability Requirement, including any revised Locational Deliverability Area Reliability Requirement based on the actual participation of Planned Generation Capacity Resources in the relevant Base Residual Auction; and
- For the 2020/2021 Delivery Year and subsequent Delivery Years, the requirement that the cleared quantity of Summer-Period Capacity

Performance Resources equal the cleared quantity of Winter-Period Capacity Performance Resources for the PJM Region.

The optimization algorithm shall be applied to calculate the overall clearing result to minimize the cost of satisfying the reliability requirements across the PJM Region, regardless of whether the quantity clearing the Base Residual Auction is above or below the applicable target quantity, while respecting all applicable requirements and constraints, including any restrictions specified in any Credit-Limited Offers. Where the supply curve formed by the Sell Offers submitted in an auction falls entirely below the Variable Resource Requirement Curve, the auction shall clear at the price-capacity point on the Variable Resource Requirement Curve corresponding to the total Unforced Capacity provided by all such Sell Offers. Where the supply curve consists only of Sell Offers located entirely below the Variable Resource Requirement Curve and Sell Offers located entirely above the Variable Resource Requirement Curve, the auction shall clear at the price-capacity point on the Variable Resource Requirement Curve corresponding to the total Unforced Capacity provided by all Sell Offers located entirely below the Variable Resource Requirement Curve. In determining the lowest-cost overall clearing result that satisfies all applicable constraints and requirements, the optimization may select from among multiple possible alternative clearing results that satisfy such requirements, including, for example (without limitation by such example), accepting a lower-priced Sell Offer that intersects the Variable Resource Requirement Curve and that specifies a minimum capacity block, accepting a higher-priced Sell Offer that intersects the Variable Resource Requirement Curve and that contains no minimum-block limitations, or rejecting both of the above alternatives and clearing the auction at the higher-priced point on the Variable Resource Requirement Curve that corresponds to the Unforced Capacity provided by all Sell Offers located entirely below the Variable Resource Requirement Curve. For the 2020/2021 Delivery Year and subsequent Delivery Years, the supply curve formed by the Sell Offers submitted within an LDA for which a separate VRR Curve is established, shall only consider the quantity of MW from Summer-Period Capacity Performance Resources that are equally matched with Winter-Period Capacity Performance Resources within the LDA, such that only the equally matched quantity of opposite-season Sell Offers are considered in satisfying the LDA's reliability requirement.

The Sell Offer price of a Qualifying Transmission Upgrade shall be treated as a capacity price differential between the LDAs specified in such Sell Offer between which CETL is increased, and the Import Capability provided by such upgrade shall clear to the extent the difference in clearing prices between such LDAs is greater than the price specified in such Sell Offer. The Capacity Resource clearing results and Capacity Resource Clearing Prices so determined shall be applicable for such Delivery Year. The Capacity Resource clearing results and Capacity Resource Clearing Prices determined for Summer-Period Capacity Performance Resources shall be applicable for the calendar months of June through October and the following May of such Delivery Year; and shall be applicable for Winter-Period Capacity Performance Resources for the calendar months of November through April of such Delivery Year.

b) Scheduled Incremental Auctions.

For purposes of a Scheduled Incremental Auction, the optimization algorithm shall consider:

- For the Delivery years through May 31, 2018, the PJM Region Reliability Requirement, less the Short-term Resource Procurement Target;
- For the 2018/2019 Delivery Year and subsequent Delivery Years, the PJM Reliability Requirement;
- Updated LDA Reliability Requirements taking into account any updated Capacity Emergency Transfer Objectives;
- The Capacity Emergency Transfer Limit used in the Base Residual Auction, or any updated value resulting from a Conditional Incremental Auction;
- All applicable Capacity Import Limits;
- For the Delivery Years through May 31, 2018, for each LDA, such LDA's updated Reliability Requirement, less such LDA's Short-Term Resource Procurement Target;
- For the 2018/2019 Delivery Year and subsequent Delivery Years, for each LDA, such LDA's updated Reliability Requirement, [and for the 2024/2025 Delivery Year and subsequent Delivery Years, including any revised Locational Deliverability Area Reliability Requirement based on the actual participation of Planned Generation Capacity Resources in the relevant Incremental Auction;](#)
- For Delivery Years starting June 1, 2014 and ending May 31, 2017, the Minimum Annual Resource Requirement and the Minimum Extended Summer Resource Requirement for the PJM Region and for each LDA for which PJM is required to establish a separate VRR Curve for the Base Residual Auction for the relevant Delivery Year; for the 2017/2018 Delivery Year, the Limited Resource Constraints and the Sub-annual Resource Constraints for the PJM Region and for each Locational Deliverability Area for which a separate VRR Curve is required by Tariff, Attachment DD, section 5.10(a); and for the 2018/2019 and 2019/2020 Delivery Years, the Base Capacity Demand Resource Constraints and the Base Capacity Resource Constraints for the PJM Region and for each Locational Deliverability Area for which a separate VRR Curve is required by Tariff, Attachment DD, section 5.10(a);
- For the 2020/2021 Delivery Year and subsequent Delivery Years, the requirement that the cleared quantity of Summer-Period Capacity Performance Resources equal the cleared quantity of Winter-Period Capacity Performance Resources for the PJM Region;
- A demand curve consisting of the Buy Bids submitted in such auction and, if indicated for use in such auction in accordance with the provisions below, the Updated VRR Curve Increment;



- The Sell Offers submitted in such auction; and
- The Unforced Capacity previously committed for such Delivery Year.

(i) When the requirement to seek additional resource commitments in a Scheduled Incremental Auction is triggered by Tariff, Attachment DD, section 5.4(c)(2), the Office of the Interconnection shall employ in the clearing of such auction the Updated VRR Curve Increment.

(ii) When the requirement to seek additional resource commitments in a Scheduled Incremental Auction is triggered by Tariff, Attachment DD, section 5.4(c)(1), and the conditions stated in Tariff, Attachment DD, section 5.4(c)(2) do not apply, the Office of the Interconnection first shall determine the total quantity of (A) the amount that the Office of the Interconnection sought to procure in prior Scheduled Incremental Auctions for such Delivery Year that does not clear such auction, plus, for the Delivery Years through May 31, 2018, the Short-Term Resource Procurement Target Applicable Share for such auction, minus (B) the amount that the Office of the Interconnection sought to sell back in prior Scheduled Incremental Auctions for such Delivery Year that does not clear such auction, plus (C) the difference between the updated PJM Region Reliability Requirement or updated LDA Reliability Requirement and, respectively, the PJM Region Reliability Requirement, or LDA Reliability Requirement, utilized in the most recent prior auction conducted for such Delivery Year plus any amount required by section 5.4(c)(2)(ii), plus (D) the reduction in Unforced Capacity commitments associated with the transition provisions of Tariff, Attachment DD, sections 5.14B, 5.14C, 5.14E, and 5.5A(c)(i)(B) and RAA, Schedule 6, section L.9, minus (E) the quantity of new Unforced Capacity commitments for the 2016/2017 and 2017/2018 Delivery Years associated with the transition provisions in Tariff, Attachment DD, section 5.14D where this quantity is assumed to have been procured in the form of non-Capacity Performance Resources for purposes of this paragraph E. If the result of such equation is a positive quantity, the Office of the Interconnection shall employ in the clearing of such auction a portion of the Updated VRR Curve Increment extending right from the left-most point on that curve in a megawatt amount equal to that positive quantity defined above, to seek to procure such quantity. If the result of such equation is a negative quantity, with exception for the Third Incremental Auction for the 2017/2018 Delivery Year, the Office of the Interconnection shall employ in the clearing of the auction a portion of the Updated VRR Curve Decrement, extending and ascending to the left from the right-most point on that curve in a megawatt amount corresponding to the negative quantity defined above, to seek to sell back such quantity. In seeking to sell back such quantity for the Third Incremental Auction for the 2017/2018 Delivery Year, the Office of the Interconnection shall employ in the clearing of the auction a curve represented by a straight line connecting two points with the first point located at 0 megawatts and at a price set to the lowest price point of the Updated VRR Curve Decrement and the second point located at a megawatt amount corresponding to the negative quantity defined above and at a price set to the Resource Clearing Price of the 2017/2018 Base Residual Auction.

(iii) When the possible need to seek agreements to release capacity commitments in any Scheduled Incremental Auction is indicated for the PJM Region or any

LDA by Tariff, Attachment DD, section 5.4(c)(3)(i), the Office of the Interconnection first shall determine the total quantity of (A) the amount that the Office of the Interconnection sought to procure in prior Scheduled Incremental Auctions for such Delivery Year that does not clear such auction, plus, for the Delivery Years through May 31, 2018, the Short-Term Resource Procurement Target Applicable Share for such auction, minus (B) the amount that the Office of the Interconnection sought to sell back in prior Scheduled Incremental Auctions for such Delivery Year that does not clear such auction, plus (C) the difference between the updated PJM Region Reliability Requirement or updated LDA Reliability Requirement and, respectively, the PJM Region Reliability Requirement, or LDA Reliability Requirement, utilized in the most recent prior auction conducted for such Delivery Year minus any capacity sell-back amount determined by PJM to be required for the PJM Region or such LDA by Tariff, Attachment DD, section 5.4(c)(3)(ii), plus (D) the reduction in Unforced Capacity commitments associated with the transition provisions of Tariff, Attachment DD, sections 5.14B, 5.14C, 5.14E, and 5.5A(c)(i)(B) and RAA, Schedule 6, section L.9, minus (E) the quantity of new Unforced Capacity commitments for the 2016/2017 and 2017/2018 Delivery Years associated with the transition provisions in Tariff, Attachment DD, section 5.14D where this quantity is assumed to have been procured in the form of non-Capacity Performance Resources for purposes of this paragraph E; provided, however, that the amount sold in total for all LDAs and the PJM Region related to a delay in a Backbone Transmission upgrade may not exceed the amounts purchased in total for all LDAs and the PJM Region related to a delay in a Backbone Transmission upgrade. If the result of such equation is a positive quantity, the Office of the Interconnection shall employ in the clearing of such auction a portion of the Updated VRR Curve Increment extending right from the left-most point on that curve in a megawatt amount equal to that positive quantity defined above, to seek to procure such quantity. If the result of such equation is a negative quantity, with exception for the Third Incremental Auction for the 2017/2018 Delivery Year, the Office of the Interconnection shall employ in the clearing of the auction a portion of the Updated VRR Curve Decrement, extending and ascending to the left from the right-most point on that curve in a megawatt amount corresponding to the negative quantity defined above, to seek to sell back such quantity. In seeking to sell back such quantity for the Third Incremental Auction for the 2017/2018 Delivery Year, the Office of the Interconnection shall employ in the clearing of the auction a curve represented by a straight line connecting two points with the first point located at 0 megawatts and at a price set to the lowest price point of the Updated VRR Curve Decrement and the second point located at a megawatt amount corresponding to the negative quantity defined above and at a price set to the Resource Clearing Price of the 2017/2018 Base Residual Auction.

(iv) If none of the tests for adjustment of capacity procurement in subsections (i), (ii), or (iii) is satisfied for the PJM Region or an LDA in a Scheduled Incremental Auction, the Office of the Interconnection first shall determine the total quantity of (A) the amount that the Office of the Interconnection sought to procure in prior Scheduled Incremental Auctions for such Delivery Year that does not clear such auction, plus, for the Delivery Years through May 31, 2018, the Short-Term Resource Procurement Target Applicable Share for such auction, minus (B) the amount that the Office of the Interconnection sought to sell back in prior Scheduled Incremental Auctions for such Delivery Year that does not clear such auction. If the result of such equation is a positive quantity, the Office of the Interconnection shall employ in the clearing of such auction a portion of the Updated VRR Curve Increment extending right from

the left-most point on that curve in a megawatt amount equal to that positive quantity defined above, to seek to procure such quantity. If the result of such equation is a negative quantity, the Office of the Interconnection shall employ in the clearing of the auction a portion of the Updated VRR Curve Decrement, extending and ascending to the left from the right-most point on that curve in a megawatt amount corresponding to the negative quantity defined above, to seek to sell back such quantity. For the Delivery Years through May 31, 2018, if more than one of the tests for adjustment of capacity procurement in subsections (i), (ii), or (iii) is satisfied for the PJM Region or an LDA in a Scheduled Incremental Auction, the Office of the Interconnection shall not seek to procure the Short-Term Resource Procurement Target Applicable Share more than once for such region or area for such auction

(v) If PJM seeks to procure additional capacity in an Incremental Auction for the 2014-15, 2015-16 or 2016-17 Delivery Years due to a triggering of the tests in subsections (i), (ii), (iii) or (iv) then the Minimum Annual Resource Requirement for such Auction will be equal to the updated Minimum Annual Resource Requirement (based on the latest DR Reliability Targets) minus the amount of previously committed capacity from Annual Resources, and the Minimum Extended Summer Resource Requirement for such Auction will be equal to the updated Minimum Extended Summer Resource Requirement (based on the latest DR Reliability Targets) minus the amount of previously committed capacity in an Incremental Auction for the 2014-15, 2015-16 or 2016-17 Delivery Years from Annual Resources and Extended Summer Demand Resources. If PJM seeks to release prior committed capacity due to a triggering of the test in subsection (iii) then PJM may not release prior committed capacity from Annual Resources or Extended Summer Demand Resources below the updated Minimum Annual Resource Requirement and updated Minimum Extended Summer Resource Requirement, respectively.

(vi) If the above tests are triggered for an LDA and for another LDA wholly located within the first LDA, the Office of the Interconnection may adjust the amount of any Sell Offer or Buy Bids otherwise required by subsections (i), (ii), or (iii) above in one LDA as appropriate to take into account any reliability impacts on the other LDA.

(vii) The optimization algorithm shall calculate the overall clearing result to minimize the cost to satisfy the Unforced Capacity Obligation of the PJM Region to account for the updated PJM Peak Load Forecast and the cost of committing replacement capacity in response to the Buy Bids submitted, while satisfying or honoring such reliability requirements and constraints, in the same manner as set forth in subsection (a) above.

(viii) Load Serving Entities may be entitled to certain credits (“Excess Commitment Credits”) under certain circumstances as follows:

- (A) For either or both of the Delivery Years commencing on June 1, 2010 or June 1, 2011, if the PJM Region Reliability Requirement used for purposes of the Base Residual Auction for such Delivery Year exceeds the PJM Region Reliability Requirement that is based on the last updated load forecast prior to such Delivery Year, then such excess will be allocated to Load Serving Entities as set forth below;

- (B) For any Delivery Year beginning with the Delivery Year that commences June 1, 2012, the total amount that the Office of the Interconnection sought to sell back pursuant to subsection (b)(iii) above in the Scheduled Incremental Auctions for such Delivery Year that does not clear such auctions, less the total amount that the Office of the Interconnection sought to procure pursuant to subsections (b)(i) and (b)(ii) above in the Scheduled Incremental Auctions for such Delivery Years that does not clear such auctions, will be allocated to Load Serving Entities as set forth below;
- (C) the amount from (A) or (B) above for the PJM Region shall be allocated among Locational Deliverability Areas pro rata based on the reduction for each such Locational Deliverability Area in the peak load forecast from the time of the Base Residual Auction to the time of the Third Incremental Auction; provided, however, that the amount allocated to a Locational Deliverability Area may not exceed the reduction in the corresponding Reliability Requirement for such Locational Deliverability Area; and provided further that any LDA with an increase in its load forecast shall not be allocated any Excess Commitment Credits;
- (D) the amount, if any, allocated to a Locational Deliverability Area shall be further allocated among Load Serving Entities in such areas that are charged a Locational Reliability Charge based on the Daily Unforced Capacity Obligation of such Load Serving Entities as of June 1 of the Delivery Year and shall be constant for the entire Delivery Year. Excess Commitment Credits may be used as Replacement Capacity or traded bilaterally.

c) Conditional Incremental Auction

For each Conditional Incremental Auction, the optimization algorithm shall consider:

- The quantity and location of capacity required to address the identified reliability concern that gave rise to the Conditional Incremental Auction;
- All applicable Capacity Import Limits;
- the same Capacity Emergency Transfer Limits that were modeled in the Base Residual Auction, or any updated value resulting from a Conditional Incremental Auction; and
- the Sell Offers submitted in such auction.

The Office of the Interconnection shall submit a Buy Bid based on the quantity and location of capacity required to address the identified reliability violation at a Buy Bid price equal to 1.5 times Net CONE.

The optimization algorithm shall calculate the overall clearing result to minimize the cost to address the identified reliability concern, while satisfying or honoring such reliability requirements and constraints.

d) Equal-priced Sell Offers

If two or more Sell Offers submitted in any auction satisfying all applicable constraints include the same offer price, and some, but not all, of the Unforced Capacity of such Sell Offers is required to clear the auction, then the auction shall be cleared in a manner that minimizes total costs, including total make-whole payments if any such offer includes a minimum block and, to the extent consistent with the foregoing, in accordance with the following additional principles:

1) as necessary, the optimization shall clear such offers that have a flexible megawatt quantity, and the flexible portions of such offers that include a minimum block that already has cleared, where some but not all of such equal-priced flexible quantities are required to clear the auction, pro rata based on their flexible megawatt quantities; and

2) when equal-priced minimum-block offers would result in equal overall costs, including make-whole payments, and only one such offer is required to clear the auction, then the offer that was submitted earliest to the Office of the Interconnection, based on its assigned timestamp, will clear.