

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

)

Docket No. ER23-1609-000

**PROTEST OF
AMERICAN MUNICIPAL POWER, INC. AND
OLD DOMINION ELECTRIC COOPERATIVE**

On April 11, 2023, PJM Interconnection, L.L.C. (“PJM”) submitted, pursuant to Federal Power Act (“FPA”) section 205,¹ revisions to its Open Access Transmission Tariff (“Tariff”) that revise the Reliability Pricing Model (“RPM”) Auction schedules for the 2025/2026 through the 2028/2029 Delivery Years.² Pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure³ and the Commission’s filing notice,⁴ American Municipal Power, Inc. (“AMP”) and Old Dominion Electric Cooperative (“ODEC”) hereby protest PJM’s filing, including the proposed revisions to Tariff Attachment DD, section 5.4.⁵

For the 2025/2026 through 2028/2029 Delivery Years, PJM proposes to replace the Tariff requirement that “[t]he Base Residual Auction [(“BRA”)] shall be conducted in the month of May that is three years prior to the start of such Delivery Year,”⁶ with an open-ended delay. Specifically, PJM proposes that “for Delivery Years 2025/2026 through 2028/2029, the Base Residual Auctions shall be conducted in accordance with the schedule posted on the PJM website.”⁷ PJM’s filing fails to comply with the Commission’s

¹ 16 U.S.C. § 824d.

² PJM, Filing, Docket No. 23-1609-000, at 1 (filed April 11, 2023) (“Auction Delay Filing”).

³ 18 C.F.R. § 385.211.

⁴ Combined Notice of Filings #1 (April 11, 2023).

⁵ AMP and ODEC each submitted its doc-less intervention in the captioned proceedings on April 24, 2023.

⁶ Auction Delay Filing at 3-4 (quoting *existing* Tariff Attachment DD, section 5.4).

⁷ *Id.* at 7 (quoting *proposed* Tariff Attachment DD, section 5.4).

rule of reason that determines the rates, terms, and conditions of service that must be included in the filed tariff. A basic schedule for RPM auctions has been included in the Tariff since the inception of RPM and the record is replete with evidence that the auction schedule is a critical component of the filed rate, but PJM now unreasonably proposes that it have absolute discretion over that schedule. Providing PJM with absolute discretion over a critical auction component is unjust, unreasonable, and unduly discriminatory. The Commission should therefore reject PJM's filing, as originally submitted.

PJM provided an "illustrative auction schedule" with its filing that delays the auctions for Delivery Years 2025/2026 through 2028/2029.⁸ However, preparations for the Delivery Year 2025/2026 BRA are already underway, and it should proceed on schedule in June 2023. Given that, and to accommodate both the need for certainty in the Tariff and a future Tariff revision filing that may follow PJM's ongoing Critical Issue Fast Path ("CIFP") process, while still ensuring compliance with the rule of reason, the Commission should issue a deficiency letter noting these infirmities in PJM's filing and offering PJM the opportunity to amend its filing to include Tariff revisions implementing the timeline contained in the illustrative auction schedule for Delivery Years 2026/2027 through 2028/2029, while retaining in the Tariff the current auction schedule for the 2025/2026 Delivery Year. Should PJM wish to deviate from any filed auction schedule in the future due to unpredictable events or otherwise, PJM can make a filing under FPA section 205 to amend the Tariff and include a specific and well-designed replacement timeline that: (1) provides sufficient time for parties to prepare for each auction, and (2) holds the auctions sufficiently far in advance of each Delivery Year.

⁸ *Id.* at 5, Table 2.

I. PROTEST

AMP and ODEC are actively participating in PJM's CIFP process, which seeks to reform PJM's RPM capacity construct. It is possible that process may produce a filing to revise PJM's Tariff by PJM's October 1, 2023 target date, or it may not. That uncertainty is unavoidable, but it does not justify giving PJM unconstrained discretion to reset the auction schedule simply by making a posting on its website. The auction timeline is a significant term, susceptible to being memorialized, and is not obvious; therefore, it must be set forth in the Tariff. The auction timeline must provide sufficient time for parties to prepare in advance for each auction and conduct the auctions sufficiently far in advance of each Delivery Year. PJM's illustrative schedule meets these requirements with respect to the 2026/2027 through 2028/2029 Delivery Years, but the Delivery Year 2025/2026 BRA must proceed as scheduled in June 2023.

A. **PJM's filing violates the Commission's Rule of Reason by attempting to remove from the Tariff the auction schedule for Delivery Years 2025/2026 through 2028/2029.**

1. **PJM's filing seeks to eliminate the Delivery Year 2025/2026 through 2028/2029 auction schedules from the Tariff and replace them with a non-Tariff web posting scheme that would allow PJM complete discretion over those schedules.**

PJM's filing, submitted pursuant to FPA section 205, proposes revisions to its Tariff stating that "for Delivery Years 2025/2026 through 2028/2029, the Base Residual Auctions shall be conducted in accordance with the schedule posted on the PJM website."⁹ The only guiding parameter PJM proposes with regard to the timing of these BRAs is that "PJM would continue its current practice of scheduling Base Residual Auctions at six-month intervals."¹⁰ However, PJM fails to propose that even this loose

⁹ Auction Delay Filing at 7.

¹⁰ *Id.* at 6.

“practice” be memorialized in the Tariff. Furthermore, PJM offers as support for “not specifying the auction dates in the Tariff” the argument “that the actual schedule of the auction will depend on when FERC issues a workable order on PJM’s forthcoming capacity market reform filing”¹¹

So rather than propose a concrete schedule, memorialized in the Tariff, that could be adjusted if necessary through a future filing with the Commission, PJM proposes retaining absolute discretion to determine the BRA schedule, simply by posting the schedule of its choosing on the PJM website. PJM precludes interested parties from discerning a demonstrable BRA schedule by stating only that it will make that posting “once the Commission issues an order on PJM’s forthcoming capacity reform filing.”¹² This injects two levels of uncertainty over when the BRAs will be held. While PJM is targeting a Tariff filing on October 1, 2023, whether and when PJM actually proceeds with such a filing is currently speculative, and the timing and content of a Commission order on that filing is uncertain as well.

2. The auction schedule must be memorialized in the Tariff because it significantly affects rates, terms, and conditions of service, is reasonably susceptible of specification, and is not obvious.

The Commission’s rule of reason requires that “those practices that affect rates and service *significantly*, that are realistically *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous” be included in the filed Tariff.¹³ The records of Commission proceedings involving PJM’s capacity auctions are replete with evidence that PJM’s capacity auction

¹¹ *Id.*

¹² *Id.*

¹³ *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

schedules significantly affect rates and service. For example, in approving a timeline for the 2019 BRA schedule, the Commission evaluated PJM's proposal and found that it:

appropriately balances the need for stakeholder and investor certainty against the need to ensure that all market participants can prepare for the auction rules that will be in effect for the next auction, and PJM adequately justified the proposed auction timeline. The auction has already been delayed and we agree with commenters arguing that the auction should run as soon as reasonably possible. PJM's proposed schedule balances the need for accurate price signals with the need for market participants to make decisions in the auction. If the schedule is too rushed, market participants will not be able to make informed decisions regarding their offers, which would degrade the value of the price signal resulting from the auction. We similarly accept PJM's proposal to slightly shorten the auction schedules for the following BRAs, relative to the 2019 BRA as PJM has appropriately balanced implementing new Tariff provisions and the importance of running an auction as soon as possible, as well as putting forth a schedule to ensure the orderly resumption of BRAs.¹⁴

PJM's instant proposal would deprive market participants of the benefit of knowing in advance the auction schedule for Delivery Years 2025/2026 through 2028/2029 and would deny them the benefit of the Commission's review of that schedule. This is significant because it provides absolutely no certainty for stakeholders or investors. It provides no assurance that market participants can prepare for potential new market rules in advance of their effect on the next auction. Like the 2019 BRA, the Delivery Year 2025/2026 BRA has already been delayed and should be run as soon as possible in June 2023; PJM's proposal unnecessarily further delays this auction. PJM's proposal provides no balancing of the need for accurate price signals against the need for participants to make decisions and does nothing to ensure the orderly resumption of BRAs.

¹⁴ *Calpine Corp.*, 173 FERC ¶ 61,061, at P 361 (2020) (citations omitted).

While it should be plainly apparent, the Commission's balancing of these interests in connection with the 2019 BRA demonstrates how significant the auction schedule is. On this key significant issue, PJM simply punts toward a speculative October filing that the Commission may or may not approve, and PJM has no apparent intention that the October filing itself would contain an auction schedule. To the contrary, PJM proposes to retain absolute discretion to set the auction schedule as it wishes, following a speculative Commission order on a speculative future PJM Tariff filing.

The auction schedule is certainly susceptible of specification—the currently effective Tariff contains a schedule and PJM's filing includes an illustrative schedule.¹⁵ The schedule is not in any way obvious and memorializing it cannot be reasonably described as superfluous. Consistent with the currently effective Tariff and the rule of reason, the Commission should require PJM to maintain in the Tariff an auction schedule, including for Delivery Years 2025/2026 through 2028/2029.

Doing so would be consistent with recent Commission precedent in other PJM matters. For example, in rejecting PJM's compliance filing modifying its Amended and Restated Operating Agreement (“Operating Agreement”) and Tariff to address a Commission directive regarding application of PJM's Financial Transmission Rights (“FTR”) forfeiture rule to virtual transactions, the Commission applied the rule of reason and rejected PJM's proposed exceptions to its forfeiture trigger.¹⁶ Under PJM's proposal, “to potentially trigger a forfeiture, the net flow of a market participant's virtual energy portfolio position must exceed the physical limit of a binding constraint by greater than 0.1

¹⁵ See *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,084, at P 66 (2021) (“PJM has already specified several ELCC Classes in its Deficiency Letter Response and states that it would do so in its manuals, which undermines PJM's claim that ELCC Classes are not readily susceptible to specification.”).

¹⁶ *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,137, at P 67 (2021).

MW or 10%, 'or such other percentage under certain circumstances further defined in the PJM Manuals.'"¹⁷ The Commission denied PJM's request for flexibility to provide details of these exceptions in its unfiled Manuals and instead required PJM to include them in the Operating Agreement or Tariff in a further compliance filing. The Commission found that, "for example, PJM could detail circumstances in its manuals imposing a more restrictive trigger threshold that results in forfeiture, which may be unknown to an Effective FTR Holder at the time when it develops its FTR position."¹⁸ This finding is consistent with a finding here that PJM's excessive discretion over the content of the proposed exceptions to the auction schedule in the currently effective Tariff would deny market participants any certainty over those schedules and PJM's filing is therefore unreasonable.

B. The Delivery Year 2025/2026 Base Residual Auction must proceed as scheduled in June 2023.

PJM requests approval to delay the RPM auctions beginning with the BRA for the 2025/2026 Delivery Year that is currently scheduled to open on June 14, 2023.¹⁹ AMP and ODEC agree with PJM that some future auctions should be delayed until after the Commission has had an opportunity to review PJM's forthcoming filing to enhance its capacity market rules, expected to be filed by October 1, 2023. However, AMP and ODEC disagree with PJM's proposal to further delay the BRA for the 2025/2026 Delivery Year. As explained by PJM, pre-auction activities for the BRA for the 2025/2026 Delivery Year have already started and will continue until the Commission issues an order accepting

¹⁷ *Id.* P 66 (quoting PJM Compliance Filing, Docket No. ER17-1433-001, at proposed Operating Agreement Schedule 1, section 5.2, & proposed Tariff Attachment K-Appendix, § 5.2.1(c) (filed April 18, 2017)).

¹⁸ *Id.* P 67.

¹⁹ Auction Delay Filing at 1-2.

PJM's filing.²⁰ PJM's proposal to delay the BRA for the 2025/2026 Delivery Year by a full year contradicts and undermines the very purpose of PJM's three-year forward auction construct: to "provide long-term price signals to ensure capacity sufficient to maintain resource adequacy at just and reasonable rates."²¹ A full year delay in the BRA could have material impacts on the ability to ensure that resources will be available and would further undermine market participants' confidence and certainty regarding PJM's capacity construct.

PJM's request to delay the near-term BRA for the 2025/2026 Delivery Year, for which PJM and market participants have been and continue to prepare, is based on PJM's plan to submit RPM capacity construct enhancements by October 1, 2023. Under PJM's illustrative schedule, the 2025/2026 BRA would be held in June 2024, less than one year in advance of the Delivery Year.²² However, this is PJM's best-case scenario. Under PJM's proposal, there is no guarantee when that BRA will be held or even a minimum timeframe prior to the Delivery Year.²³ The prospect of an uncertain filing in the future simply is not a reasonable or sufficient basis to upend the auction schedule yet again, render all of the preparations and resources expended toward the upcoming BRA stale,²⁴ and leave market participants with uncertainty regarding when the next BRA will be held and what those rules might be.

²⁰ *Id.* at 5.

²¹ *Id.* at 1.

²² *Id.* at 5.

²³ PJM, Potential revised RPM auction schedule, at 3 (April 4, 2023), <https://pjm.com/-/media/committees-groups/committees/mc/2023/20230404-special/item-01---1-potential-revised-rpm-auction-schedule---presentation.ashx> (Attached hereto as Exhibit A).

²⁴ Auction Delay Filing at 6 ("holding the 2025/2026 Base Residual Auction will render the current pre-auction activities outdated, both in terms of staleness and applicability under the enhanced rules.")

PJM claims that proceeding with its current rules “exacerbates the challenge of procuring the necessary resources to facilitate the imminent energy transition while maintaining reliability.”²⁵ However, PJM has offered no explanation or substantive support for what those challenges are. Nor does PJM explain how delaying this upcoming BRA for a full year, in anticipation of changes that are unknown at this time and will depend upon Commission approval before PJM can resume the auctions, will resolve or avoid those challenges. PJM also offers no explanation or analysis to demonstrate that the costs, burdens, and potential reliability impacts of delaying the BRA for the 2025/2026 Delivery Year are outweighed by any benefit to be gained by delaying that BRA. PJM’s general claim that the current tariff provisions “may be unjust and unreasonable and require change”²⁶ certainly does not establish a basis for delaying the BRA that is scheduled to be held next month. Indeed, logic dictates that the better course would be for PJM to proceed with the BRA for the 2025/2026 Delivery Year on June 14, 2023, then delay auctions that are scheduled to be held after PJM’s capacity construct enhancements expected to be filed by October 1, 2023, and use the interim period to transition to the revised construct.

Finally, it is worth noting that, like other market participants, AMP and ODEC have already expended time and resources preparing for the BRA scheduled for June 14, 2023. By PJM’s own statements, those efforts will be completely wasted if the Commission accepts PJM’s filing.²⁷ Capacity Market Sellers like AMP and ODEC will have expended

²⁵ *Id.* at 4.

²⁶ *Id.*

²⁷ *Id.* at 5-6.

resources preparing for the June 14, 2023 BRA, only to have PJM start the process all over again after its capacity market enhancements are implemented.

AMP and ODEC do not at this time oppose PJM's proposal to delay future auctions, for which considerable resources have not yet been expended, until there is more certainty regarding when and what PJM will file as enhancements to its current capacity construct. However, with respect to the BRA for the 2025/2026 Delivery Year, PJM simply has not shown that its proposal to delay the BRA from June 14, 2023, to perhaps June 2024, is just and reasonable. To the contrary, for the reasons discussed above, PJM's proposal to delay the BRA for the 2025/2026 Delivery Year is unjust and unreasonable.

C. PJM's illustrative schedule for the 2026/2027 through 2028/2029 Delivery Years should be memorialized in the Tariff.

PJM proposes to delay the BRAs for all Delivery Years through 2028/2029. PJM's unfiled illustrative schedule for those delayed future BRAs is dependent upon PJM submitting its proposed reforms by October 1, 2023, and the Commission issuing an order accepting those reforms, without material changes on compliance, by December 1, 2023.²⁸ AMP and ODEC support PJM's proposal to delay the BRAs for Delivery Years 2026/2027 through 2028/2029 on the condition discussed *supra* that PJM must include all auction schedules in its Tariff. A website posting that can be changed at PJM's discretion and without any notice to affected parties or review by the Commission violates the rule of reason. Because PJM can provide even an illustrative schedule at this time, the illustrative schedule should be included in PJM's Tariff. When and if PJM intends to

²⁸ PJM Filing at 5.

revise these auction dates, it can submit a filing to the Commission under FPA section 205 to include revised dates in the Tariff.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, AMP and ODEC respectfully request that the Commission issue a deficiency letter: (1) indicating that the Commission is inclined to reject PJM's filing, based on the rule of reason and concerns with further delays of the BRA for the 2025/2026 Delivery Year; (2) suggesting that PJM submit a Tariff filing reflecting the illustrative auction schedule included in PJM's instant filing with respect to the 2026/2027 through 2028/2029 Delivery Years, but maintaining the currently effective schedule for conducting the Delivery Year 2025/2026 auctions, with the base residual auction to be held in June 2023; and (3) granting such further relief as the Commission may deem appropriate.

Respectfully submitted,

/s/ Adrienne E. Clair

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Dated: May 2, 2023

Exhibit A

PJM

Potential revised RPM auction schedule

**MC Special Session
April 4, 2023**

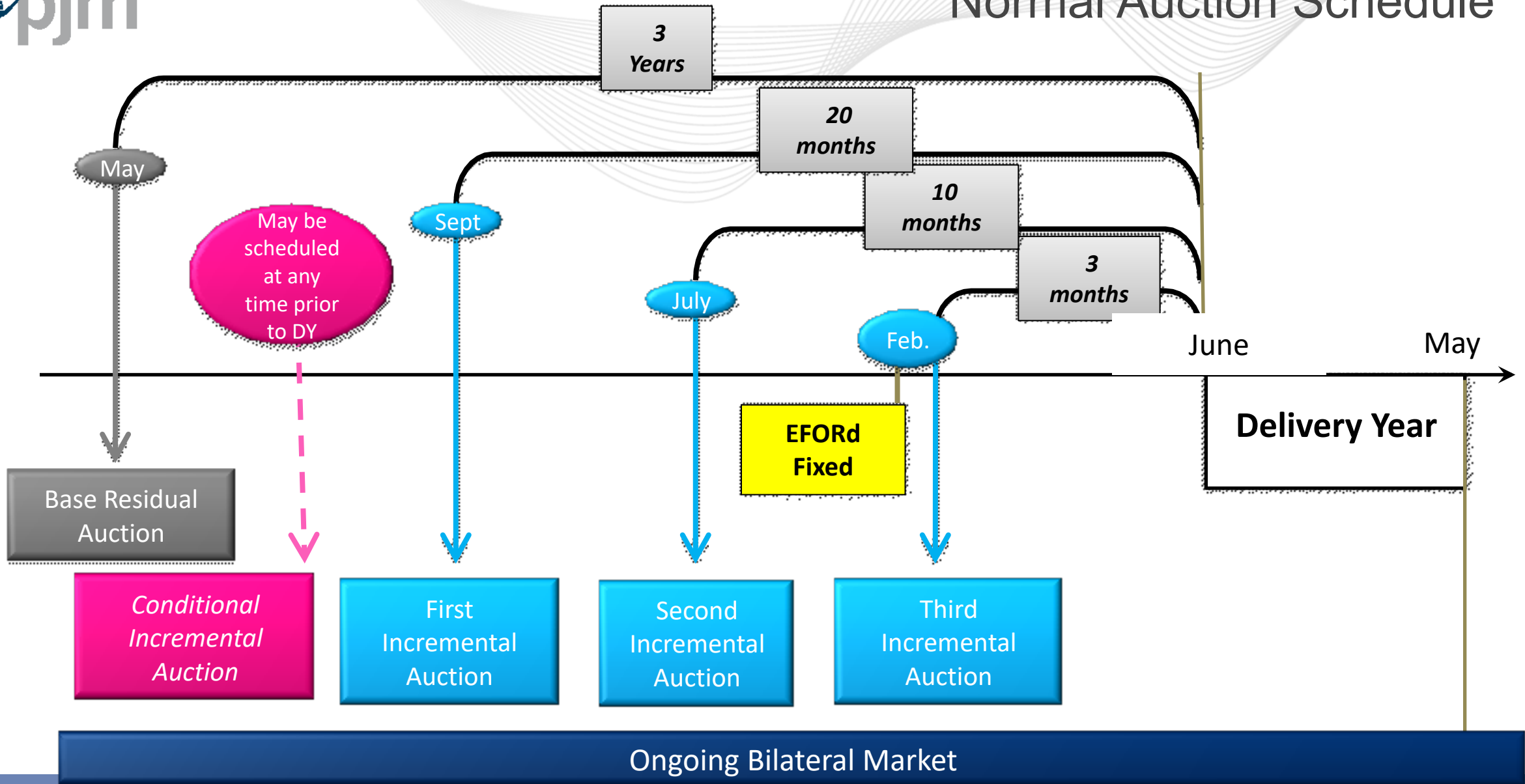


Potential revised RPM auction schedule

MC Special Session
April 4th, 2023



Normal Auction Schedule





Potential Schedules based on outcome of FERC filing

BRA every ~6 months, keep all 3rd IAs, cancel 1st and 2nd IAs based on prior filing rules

FERC filing by 10/1/23	Current BRA Schedule	Potential BRA Schedule (clean FERC order on 12/1/23)	Potential BRA Schedule (Final FERC approval on 3/1/24)	IA's Cancelled
2025/26	Jun 2023	Jun 2024	Oct 2024	1st and 2nd
2026/27	Nov 2023	Dec 2024	May 2025	1st and 2nd
2027/28	May 2024	Jun 2025	Dec 2025	1st and 2nd
2028/29	May 2025	Dec 2025	Jun 2026	1st
2029/30	May 2026	May 2026*	Dec 2026	1st
2030/31	May 2027		May 2027*	

* Back on normal 3 year forward BRA with associated IA's schedule

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio, this 2nd day of May, 2023.

/s/ Lisa G. McAlister

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Document Content(s)

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