The Joint Consumer Advocates (JCA), comprising the Delaware Division of the Public Advocate, Maryland Office of People’s Counsel, New Jersey Division of Rate Counsel, Illinois Citizens Utility Board, West Virginia Consumer Advocate Division, Pennsylvania Office of Consumer Advocate, Indiana Office of Utility Consumer Counselor, and District of Columbia Office of People’s Counsel, submit these comments to express our concerns with regard to PJM’s Capacity Performance (CP) proposal.

The JCA acknowledge the extensive efforts that PJM and its stakeholders have taken following the extremely cold conditions in January 2014. These rare weather conditions revealed a lack of preparation at many generation stations. The JCA are concerned about these outcomes and support the various ongoing efforts to prevent their reoccurrence. While the JCA believe that this problem is important, we also believe that PJM’s CP proposal goes beyond what is necessary, is likely to be unacceptably costly, and poses a grave potential for resource owners to exercise market power.

PJM’s proposal goes far beyond what is necessary – PJM and stakeholders, including many market participants, have engaged in a series of efforts to reduce the risk that generation will be unreliable during extreme cold weather. These efforts include the Cold Weather Performance Improvement process under the Operating Committee, the Gas Unit Commitment Coordination effort, and a variety of other efforts resulting from the analyses that pinpointed the reasons for generation failures. These efforts have led to solutions that will incrementally but substantially improve winter generation performance through reasonable, well understood approaches. Nothing more is needed than for PJM and generation owners to follow through on plans to ensure that generation owners use best practices for readying their generation for winter, including testing the performance of selected units, and ensuring that a sufficient number of gas-fired units adequately secure gas supplies. Together with proposed efforts to better coordinate the gas and electric markets, these steps should significantly improve winter generation performance and alleviate concerns over resource adequacy during the coldest winter days. It appears to the JCA that no more is needed in order to achieve reliability.

PJM’s proposal is unacceptably costly – PJM plans capacity to limit outages attributable to resource adequacy to one event in 10 years. PJM’s practice of following this standard has been vital as a means to ensure a high level of resource adequacy. The standard has also served as a cap on capacity prices by establishing an upper boundary on required infrastructure and thus on costs.

PJM proposes to identify the quantity of the new CP product that it will procure through a new reliability study that will focus on winter peak needs. However, the new methodology apparently suggests PJM will require 85 to 90% of all capacity to be CP. We are concerned that the proposed study will rely upon extremely conservative and unrealistic assumptions.

PJM notes that a significant quantity of existing capacity already qualifies under the proposed CP definition, but there are many thousands of megawatts of existing capacity that do not. Many currently unqualified resources will be needed to meet the minimum quantity of CP capacity, and this will require physical upgrades, changes to gas supply acquisition, or other costly measures to ensure performance. The JCA have to conclude on the basis of information provided so far that this will result in significant
cost increases. In addition, PJM has not demonstrated that sufficient currently unqualified resources can be upgraded in time for the winter of 2015/2016 to satisfy the very high CP acquisition target PJM apparently intends to propose. Should insufficient quantities of qualified resources be able to upgrade for winter 2015/2015, the market will be short and CP prices will be very high.

PJM’s proposal poses a strong risk of the exertion of market power – The risk of market power is inherent in both the CP product definition and the very short time frame within which PJM proposes to begin acquiring CP. As noted above, shortages of the CP product – due to delayed upgrades, upgrades that are not feasible, or choices of the resource owners regarding offering CP – will result in high capacity prices. The CP definition and substantial potential penalties for poor performance of CP resources afford resource owners with ample opportunities to withhold some of their poorer-performing resources and offer them as Base Capacity. Reasonable excuses for this can be the choice to avoid the substantial risks they would face if committed as CP. In addition, owners of large portfolios will have strong incentives to hold back a small portion of their portfolio from CP, and/or to offer a portion of their portfolio as CP only at high prices. Withholding would reduce CP MW quantities available in the auction. That will enhance the opportunity for high CP offers to set the clearing price. and, in turn, would support higher prices to the benefit of the remainder of the portfolio. It is possible that resource owners may claim that the needed upgrades are infeasible in the short run, for example, because materials are unavailable or the unit is too old or required permits will not be granted. Verifying the veracity of these excuses for inaction is extremely difficult. Further, with artificially short quantities of the CP product, resource owners can also claim that in order to offer CP they will need to make very costly upgrades, and reflect these high costs in the offer prices for CP. Finally, an owner can simply decline to meet the higher standards required of CP and offer as the existing product. In other words, there are numerous opportunities for reducing the quantity and raising the price of offered CP MW.

It will be difficult for PJM or its Market Monitor to show that a resource owner has deliberately failed to bring a plant upgrade to completion on time, or has overstated the cost. Furthermore, the speed of the transition to CP as the dominant capacity product creates an even greater risk of market power. The rush to the planned interim auction will make it easier for intentional non-performance to be obscured. There is no mechanism proposed -and one may not be possible - to prevent this exertion of market power.

The JCA are also concerned that PJM’s proposal, in making very substantial changes to the capacity product and market, may have various other unanticipated and unintended impacts. As one possible example, it appears that the proposal, through limits on DR quantities in the BRA, will have a substantially negative impact on the ability for Demand Response to meaningfully participate in PJM’s capacity market despite the fact that DR compensated for faulty generators during January 2014, delivering substantial benefits to the grid. In the case of DR that seeks to qualify as a CP product, the PJM proposes reducing the response time and increasing penalties for non-performance. Similarly, DR products that are unable to meet the minimum standards for the CP product—most notably Extended Summer DR and Limited DR which are barred from participating by definition since they are not available at all times of the year—are further limited in their ability to participate in the market. This, in
addition to PJM’s other recent initiatives to restrict DR participation including the caps it has placed on Extended Summer and Limited DR resources several months ago, is likely to further increase prices.

The JCA and other stakeholders have requested additional information about the January weather events and plant outages at that time and over recent years, to better understand the relationship between generator performance and extreme winter weather. Some key data requests that would address some significant gaps in PJM’s problem statement have not yet received responses. We emphasize the importance of having the most important data requests resolved as soon as possible so that stakeholders have sufficient information to evaluate PJM’s CP proposal and any alternatives that may be put forward.

**Conclusion** - In closing, the JCA are concerned by the high level of outages last winter. We support efforts to improve generation winter performance, in particular, to firm up gas supplies for electric generation. However, PJM’s proposal goes far beyond what is necessary and would very likely result in unjust and unreasonably high costs for consumers and other unintended consequences. Finally, the proposal creates a new, very serious, and likely intractable, market power problem.

Further, the JCA support, and urge PJM to consider, the comments submitted by other load interests regarding the Transition Auction Mechanism (“TAM”). The JCA are also concerned that the proposed TAM will be implemented in such haste that it could have an unintended negative effect on CP which would harm operation of the market. We encourage PJM not to proceed with such a substantial revision of CP without further benefit of reflection and discussion of the consequences of its proposal