Noble Americas Energy Solutions LLC ("Noble"), Stream Energy\(^1\) and IGS Energy (referred to jointly as "Independent RESs")\(^2\) are members of the Retail Energy Supply Association, but are an ad-hoc coalition of competitive retail electric suppliers not affiliated with electric distribution companies, generator companies or transmission owners. The comments expressed in this filing represent those of the Independent RESs, and not RESA.

The Independent RES’s appreciate the opportunity to provide comments to PJM’s Capacity Performance Proposal. With that said, as active participants in PJM’s capacity markets, we find that the market should be structured in a manner that is transparent where all participants are held accountable; and is predicated on sound market principles that ensure efficient outcomes and consistency. In addition, every participant must perform its obligations, including capacity suppliers, with proper incentives and penalties in place to ensure compliance with existing rules.

Noble is a retail Load Serving Entity (LSE) serving commercial, industrial customers throughout the PJM region. Stream Energy is a LSE serving residential and commercial customers in the PJM region. IGS Energy is a retail LSE serving residential and commercial customers in the PJM region. As retail LSEs, the Independent RESs offer customers electricity and other products and services that can and often do include fixed price terms in a long-term contract. Among other things, critical components of the fixed price include capacity and energy costs. All retail LSEs, including the Independent RESs hedge their risks to the greatest extent possible to ensure that they can deliver a fixed price product that benefits the customer. If costs are increased, there may be no mechanism on a real-time basis for the LSE to modify the fixed price contract with the customer. In other words, the increased cost is a significant burden on the LSE especially when it is unforeseen.

Unfortunately, last winter highlighted some of the deficiencies in the PJM capacity market design:

- In January, 2014, many generators compensated to provide capacity were unable to perform and faced limited ramifications
- Balancing Operating Reserves, a type of uplift, were nearly $550 million for January 2014, as PJM struggled to operate its system during two cold snaps
- Nearly all amounts allocated to uplift at PJM have grown and become unpredictable and is a category of costs for which there is little transparency and accountability

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\(^1\) Stream Energy operates in the PJM market as: Stream Energy Pennsylvania, LLC; Stream Energy Maryland, LLC, Stream Energy New Jersey, LLC; and Stream Energy Columbia, LLC.

\(^2\) Stream Energy operates in the PJM market as: Stream Energy Pennsylvania, LLC; Stream Energy Maryland, LLC, Stream Energy New Jersey, LLC; and Stream Energy Columbia, LLC.
PJM’s apparent solution is to create a new capacity product and increase compensation to capacity resources, without first addressing some of the other issues that have caused significant market uncertainty, inefficiency and turmoil in the capacity markets. PJM proposes to create this new capacity product on an expedited basis with a proposed transition mechanism that may significantly adversely affect retail LSEs like the Independent RESs.

1. PJM Should Improve Transparency in Its Existing Capacity Market Prior to Implementing New Products – Implementation of New Capacity Products is Premature

- Before implementing a new product, Market Participants need to understand the deficiencies in the current market and understand whether those can be remedied.
- PJM should explain, report on and determine the causes of generator failures to perform when called, provide details to market participants on such performance and describe whether additional performance metrics are necessary, including penalties included in tariffs. This should be assessed before implementing new capacity products that have the effect of shifting risk and costs to retail LSEs and their customers.
- While broad stakeholder discussions must explore these issues and whether any additional capacity products should be included at all. It is imperative that PJM first look to remedies that do not add new costs. PJM must not rush changes to the market before all ramifications, including cost and reliability impacts are understood. Thus, PJM’s proposed capacity product is premature.
- PJM IMM notes in its 2013 State of the Market Report that there is significant concentration of capacity resources receiving uplift payments. The top 10 units receiving total energy uplift payments received 38% of the credits. The top 10 organizations received 83% of the credits. See State of the Market Report at 141. In this State of the Market Report (at 141), the PJM IMM notes that the “lack of transparency makes it impossible for competition to affect these dynamic payments.” Transparency requires that this concentration be understood and information disclosed to market participants so that market participants can assess whether there are market-based opportunities for additional generation or transmission to remedy the identified concentration and to reduce a significant amount of uplift and that would improve market performance.

2. The Transition Mechanism Must Not Be Implemented

- Significant harm would arise to retail LSEs as a result of the proposed transition mechanism that fails to recognize that retail LSEs – serving substantial load in the PJM region – have relied on the current market design in pricing and executing contracts with customers, many of which extend up to three years in duration.
- Independent RESs are concerned that there is no detail around the proposed mechanisms other than what appears to be a clear intent for LSEs to pay for it in addition to amounts that they have already planned to pay for capacity in the Base Residual Auction. PJM’s description of the proposed transition mechanism is brief, consisting of two paragraphs. Details consist of a general statement that PJM submits a proposal to “hold an incremental auction for the 2015/16, 2016/17 and 2017/18 Delivery Years to
incrementally procure a sufficient amount of capacity that adheres to the performance standards and requirements of the Capacity Performance product.

- Retail LSEs have already planned for, priced services and hedged assuming the capacity prices and auction results for the 2015/2016, 2016/2017 and 2017/2018 Delivery Years. Retail LSEs have reasonably relied on the Base Residual Auction and the forward capacity market price scheme.
- Retail LSEs with firm full requirements fixed price contracts will likely not be able to collect these costs from load, resulting in significant financial harm to retail LSEs.

3. **The Transition Mechanism Is Unnecessary: Improving Performance Metrics, Including Tarriff-Based Penalties, Should Be Implemented First for This Winter to Ensure that Capacity Resources Perform**

- If PJM is concerned about performance of capacity resources this winter, the simple solution is to impose performance metrics within the scope of the current rules and, if necessary, impose tariff-based penalties to properly incent capacity resources to perform.
- The harm to retail LSEs and customers resulting from the proposed transition mechanism is far outweighed by any benefits that could arise, especially when PJM has not exhausted more straightforward tools.
- Capacity suppliers receive a capacity payment to perform when called upon. A failure to perform must result in a penalty. PJM would unconscionably shift the Generator’s obligation and business risk and impose a transition capacity charge—increasing costs to consumers, imposing additional risk and costs to retail LSEs. LSEs cannot control the performance of capacity resources – only the capacity resources can control their performance. Capacity resources should not be able to shift the business risk of their decisions onto market participants. Those who have control of the behavior should bear the costs of failure to perform. Simply put, shifting these costs and risks to market participants does not provide proper incentives for capacity resources to perform.

4. **The Transition Mechanism is Unnecessary: Additional Payments to Capacity Resources Prior to the Next BRA Will Not Incent the Entry of New Generation and Will Constitute Retroactive Ratemaking in Direct Violation of the Federal Power Act**

- Increasing payments to existing Capacity Resources during the proposed transition period will not only increase risks and costs to retail LSEs, and increase payments and reduce risks to Generator Resources, but will not result in the entry of new generation between now and the next BRA.
- The Transition mechanism that would be implemented for 2015/2016, 2016/2017 and 2017/2018 delivery years would violate fundamental principles of retroactive ratemaking.