UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Joint Consumer Advocates,	)	
	)	
Complainant,	)	**Docket No. EL25-76-000**
	)	
v.	)	
	)	
PJM Interconnection, L.L.C.,	)	
	)	
Respondent.	)	

ANSWER OF PJM INTERCONNECTION, L.L.C.

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] PJM Interconnection, L.L.C. ("PJM") respectfully submits this answer to the April 14, 2025 complaint ("Complaint")[2] filed by Joint Consumer Advocates[3] ("Complainants") in the above captioned proceeding. Complainants allege that PJM's Base Residual Auction[4] for the 2025/2026 Delivery Year ("25/26 BRA")[5] produced unjust and unreasonable results, which the Commission must modify under section 206 of the Federal Power Act (FPA). As detailed below, the tardy Complaint is barred by the filed rate doctrine and otherwise lacks merit. Accordingly, the Commission must expeditiously deny the Complaint.

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[1] 18 C.F.R. § 385.213.

[2] *Joint Consumer Advocs. v. PJM Interconnection, L.L.C.*, Complaint of Joint Consumer Advocates and Request for Fast Track Processing, Docket No. EL25-76-000 (Apr. 14, 2025).

[3] The Complainants, Joint Consumer Advocates, are composed of: (1) Illinois Attorney General's Office; (2) Maryland Office of People's Counsel; and (3) New Jersey Division of Rate Council. Complaint at 47.

[4] For the purpose of this filing, capitalized terms not defined herein shall have the meaning as contained in PJM's Open Access Transmission Tariff ("Tariff"), Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., or the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region.

[5] The 2025/2026 Delivery Year runs from June 1, 2025, through May 31, 2026.

The filed rate doctrine wholly precludes the Complaint. The interaction between the filed rate doctrine and PJM's capacity auction rules was recently clarified by the United States Court of Appeals for the Third Circuit ("Third Circuit") in *PJM Power Providers*,[6] and by the Commission in *PJM Load Parties*.[7] In *PJM Power Providers,* the Third Circuit held that the filed rate doctrine precludes any tariff amendment or rate change if it "alters the legal consequences attached to past actions,"[8] and that changing the tariff after an auction commences runs afoul of such rule.[9] As such, the Complaint's challenge to the 25/26 BRA clearing prices resulting from PJM's faithful application of the then-effective auction rules fails and must be rejected.

One of the central purposes of the filed rate doctrine is to ensure "predictability," and it "does not yield, no matter how compelling the equities."[10] As the Third Circuit noted, the filed rate doctrine "reflects a congressional determination that parties in the industry need to be able to rely on the finality of approved rates, and that this interest outweighs the value of being able to correct for decisions that in hindsight may appear unsound."[11] Allowing challenges to posted and final auction clearing prices right before the start of the Delivery Year, or worse, during the Delivery Year, as put forth by the

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[6] *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 395 (3d Cir. 2024) ("*PJM Power Providers"*).

[7] *PJM Load Parties v. PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,020, *order on reh'g*, 189 FERC ¶ 61,199 (2024) ("*PJM Load Parties*").

[8] *PJM Power Providers*, 96 F.4th at 400.

[9] *See PJM Power Providers*, 96 F.4th at 401 ("Here, by contrast, FERC allowed PJM to apply a new rule to an auction that was already underway, with the effect of altering a legal consequence that attached to a past action in the Auction.").

[10] *PJM Power Providers,* 96 F.4th at 401-402 (quoting *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 829-30 (D.C. Cir. 2021)); *see also Oxy USA, Inc. v. FERC*, 64 F.3d 679, 699 (D.C. Cir. 1995); *Consol. Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003) ("By authorizing only prospective rate changes, these doctrines ensure rate predictability . . . ." (citing *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 793 (D.C. Cir. 1990)).

[11] *PJM Power Providers*, 96 F.4th at 402 (quoting *Pub. Utils. Comm'n of the State of Cal. v. FERC*, 894 F.2d 1372, 1383 (D.C. Cir. 1990)).

Complaint—which was filed approximately *nine months after* the 25/26 BRA occurred[12] and less than two months before the 2025/2026 Delivery Year starts—would only serve to create uncertainty in the markets. Such uncertainty would, in turn, deter future investment in generation capacity that is necessary to address reliability needs and to serve forecasted load growth. Entertaining the Complaint—and injecting unneeded uncertainty—would "ultimately harm consumers who buy electricity in those markets."[13] Moreover, entertaining the Complaint would signal to all investors in Commission-regulated markets that they cannot rely on any clearing price, as they would become at risk for adjustment at any time.

The Complaint presents no avenue to overcome the filed rate doctrine. As explained below, the Complaint's reliance on *Public Citizen v. FERC*[14] is misplaced, as it offers no legal or factual path around the filed rate doctrine. The Complaint contains only bald, unsupported assertions of auction participants engaging in exercises of market power and/or market manipulation with no specific allegation that any entity actually exercised market power or manipulated the results of the 25/26 BRA. Further, the Complaint presents no claim or evidence that PJM erred in finalizing the auction results.[15]

Even if the filed rate doctrine does not bar the Complaint, on the merits, the Complaint fails to meet its evidentiary and legal burdens to substantiate a claim under FPA section 206, as detailed below. In fact, the Complaint rehashes the same substantive

[12] The 25/26 BRA took place from July 17 to July 23, 2024. *Analysis of the 2025/2026 RPM Base Residual Auction Part A*, The Independent Market Monitor for PJM, at 1 (Sept. 20, 2024), https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_A_20240920.pdf.

[13] *PJM Power Providers,* 96 F.4th at 402.

[14] *Pub. Citizen, Inc. v. FERC*, 7 F.4th 1177 (D.C. Cir. 2021).

[15] *See* Tariff, Attachment DD, section 5.11(e) (allowing for corrections to the posted auction results in certain circumstances).

arguments that the Complainants presented in a separate complaint filed nearly six months ago; arguments which are meritless and should be denied.[16] Accordingly, consistent with the well-established filed rate doctrine and to avoid needlessly injecting further uncertainty into PJM's capacity market, PJM respectfully requests that the Commission expeditiously deny the Complaint. PJM urges the Commission to dispose of this Complaint in a timely manner to diminish any uncertainty associated with the final 25/26 BRA results during the Delivery Year, which begins on June 1, 2025. Notwithstanding, PJM understands the administrative challenges with resolving any complaint filed under section 206 of the FPA within a matter of weeks. As a result, to the extent possible, PJM urges the Commission to endeavor to issue an order on this Complaint by August 1, 2025.

I.

BACKGROUND

PJM conducted the 25/26 BRA from July 17 to July 23, 2024, and published the results on July 30, 2024.[17] PJM faithfully conducted the auction in accordance with its then-current auction rules, and Complainants do not allege otherwise. The auction revealed a near capacity shortfall in the PJM Region generally, with only 20.7 megawatts ("MW") of annual capacity across the entire PJM footprint offering and not clearing,[18] and shortfalls in two Locational Deliverability Areas ("LDAs"), with the Baltimore Gas and Electric

[16] *Joint Consumer Advocs. v. PJM Interconnection, L.L.C.*, Answer of PJM Interconnection, L.L.C., Docket EL25-18 (Jan. 23, 2025) ("PJM Docket No. EL25-18 Answer").

[17] *See Analysis of the 2025/2026 RPM Base Residual Auction Part A*, The Independent Market Monitor for PJM, at 1; *see 2025/2026 Base Residual Auction Report*, PJM Interconnection, L.L.C., at 3 (July 30, 2024), https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.pdf ("*2025/2026 BRA Report*").

[18] *See 2025/2026 BRA Report* at 6 ("For 2025/2026, only 20.7 MW UCAP of annual generation and DR resources did not clear in the auction. Any remaining amount that did not clear was winter only where there were no summer-only resources that did not clear.").

("BGE") and Dominion Virginia Electric Power ("DOM") LDAs clearing at the price cap due to being short of their respective LDA Reliability Requirements.[19] As a result, the 25/26 BRA cleared at record high prices, and were the natural result of the tightening of supply and demand that PJM has been warning of for several years.[20] PJM has explained that demand is growing while supply is shrinking, and that new capacity is required to maintain reliability in the PJM Region.[21] Specifically, a number of external factors are placing upward pressure on PJM capacity prices: (1) electrification coupled with the proliferation of high-demand data centers in the region that will result in material load growth; (2) retirement of thermal generators at a rapid pace due to policy pressures, economics, and third-party litigation; and (3) slow new entry of replacement generation resources due to a combination of industry forces, including siting, permitting, and supply chain constraints.[22] Basic economic principles dictate that prices rise when supply decreases while demand increases.

[19] *See 2025/2026 BRA Report* at 6.

[20] *See PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,088, at P 11 (2025).

[21] *See Energy Transition in PJM: Resource Retirements, Replacements & Risks*, PJM Interconnection, L.L.C., at 17 (Feb. 24, 2023), https://www.pjm.com/-/media/DotCom/library/reports-notices/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx ("Resource Retirements, Replacements & Risks Report") ("For the first time in recent history, PJM could face decreasing reserve margins, . . . should these trends – high load growth, increasing rates of generator retirements, and slower entry of new resources – continue. The amount of generation retirements appears to be more certain than the timely arrival of replacement generation resources, given that the quantity of retirements is codified in various policy objectives, while the impacts to the pace of new entry of the Inflation Reduction Act, post-pandemic supply chain issues, and other externalities are still not fully understood.").

[22] For a more robust discussion of these factors, please see *Sierra Club v. PJM Interconnection, L.L.C.*, Answer of PJM Interconnection, L.L.C., Docket No. EL24-148-000 (Oct. 18, 2024) ("PJM Docket No. EL24-148-000 Answer").

II.

ANSWER

A. The Complaint Is Barred by the Filed Rate Doctrine.

Complainants assert that the filed rate doctrine poses no bar to their Complaint.[23] Instead, they argue that, under the FPA, the Commission is "both empowered and obligated to modify going forward any rate it finds to be unjust and unreasonable," including auction-set rates.[24] And, the Complainants argue that this is permissible here because the Complaint "does not seek changes to rates for services already provided;" rather "it seeks changes to rates for capacity that has not yet been paid for or delivered."[25] Finally, they argue that *PJM Power Providers* and *PJM Load Parties* are not controlling, because the former involved an FPA section 205 filing, as opposed to an FPA section 206 filing, and the latter was limited to the facts, i.e., the conflict between the underlying complaint and the Third Circuit decision.[26]

Contrary to Complainants' claim,[27] that the Complaint was filed under FPA section 206 is irrelevant; the filed rate doctrine applies equally under FPA sections 205 and 206.[28] As discussed below, in seeking to: (1) overturn the results of the 25/26 BRA; (2) change the rules for conducting the Base Residual Auction for the 2025/2026 Delivery Year; and (3) re-run the auction under a different rule set,[29] the Complaint runs squarely into the filed

[23] *See* Complaint at 8, 37-45.

[24] Complaint at 44.

[25] Complaint at 8.

[26] Complaint at 43-44.

[27] *See* Complaint at 37 ("There Is No Filed Rate Bar To Section 206 Relief").

[28] *PJM Load Parties*, 189 FERC ¶ 61,199, at P 10 (stating that granting the [section 206] complaint would be inconsistent with *PJM Power* Providers because it would lead to the same result as the rule change that the Third Circuit found violated the filed rate doctrine").

[29] *See* Complaint at 33-37.

rate doctrine's prohibition of "alter[ing] the legal consequences attached to past actions."[30] "[T]he filed rate doctrine is 'a nearly impenetrable shield' and does not yield, 'no matter how compelling the equities.'"[31] And the scope of the filed rate doctrine "is not limited to rates per se," but also extends to each provision in PJM's Tariff, including the tariff-stated rules governing PJM's capacity auctions.[32] Accordingly, like the Tariff amendment time-barred by the Third Circuit in *PJM Power Providers*[33] and like the complaint denied by the Commission in *PJM Load Parties*,[34] the Complaint was filed too late—over nine months after the completion of the 2025/2026 Base Residual Auction—to be consistent with the filed rate doctrine. As such, grant of the Complaint would be unlawful.

1. As provided by PJM Power Providers and PJM Load Parties, the filed rate doctrine precludes the Complaint.

In *PJM Power Providers*, the Third Circuit found that PJM's proposed Tariff change to an LDA Reliability Requirement after the offer window closed for the 2024/2025 Base Residual Auction violated the filed rate doctrine as applied to the 2024/2025 Base Residual Auction.[35] The court began by explaining that the applicable "filed rate" is the set of auction rules set forth in PJM's Tariff.[36] As such, a party cannot successfully

[30] *PJM Power Providers*, 96 F.4th at 400.

[31] *Okla. Gas & Elec. Co.*, 11 F.4th at 829-30 (quoting *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018)).

[32] *See PJM Power Providers*, 96 F.4th 390 at 394; *see also Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 578 (D.C. Cir. 1990) ("The Commission need not confine rates to specific, absolute numbers but may approve a tariff containing a rate 'formula' or a rate 'rule').

[33] *See PJM Power Providers*, 96 F.4th at 395.

[34] *See PJM Load Parties*, 188 FERC ¶ 61,020.

[35] *See PJM Power Providers*, 96 F.4th at 395. ("The LDA Reliability Requirement is 'the amount of capacity that must be produced to meet peak demand, including a reserve margin' for a PJM region. The LDA Reliability Requirement is important to the Auction because it forms part of the demand curve in PJM's optimization algorithm." (citation omitted)).

[36] *See PJM Power Providers*, 96 F.4th at 395 ("PJM ran the Auction according to the rules set out in the Tariff, which again is the filed rate in this case.").

challenge the clearing prices that result from application of the auction rules when the calculation of such auction results are consistent with the tariff rules. The court continued explaining that "the Tariff . . . contemplates that the calculated and posted LDA Reliability Requirement must be used in the Auction but may be adjusted under certain limited, enumerated circumstances listed in the Tariff."[37] PJM's proposed Tariff amendment, however, "added a new circumstance to this list."[38] Applying a test for retroactivity examining whether the Tariff revisions altered the legal consequences attached to a past action, the court found that PJM's Tariff amendment violated the filed rate doctrine "because it altered the legal consequence attached to a past action when it allowed PJM to use a different LDA Reliability Requirement than the one it had calculated and posted" for use in the auction.[39] As the court explained, "PJM calculated and posted the LDA Reliability Requirement (past action), and it was required to use it in the Auction (legal consequence)."[40]

Notwithstanding the Third Circuit's straightforward holding, PJM Load Parties filed a complaint with the Commission attempting to do indirectly through FPA section 206 what the Third Circuit said PJM could not do directly through FPA section 205: change the results of an auction after it commenced. In their complaint, PJM Load Parties asked the Commission to find the 2024/2025 auction results recalculated by PJM consistent with the Third Circuit's mandate unjust and unreasonable and replace them going forward with prices reflecting the clearing prices generated using the LDA Reliability Requirement

[37] *PJM Power Providers*, 96 F.4th at 399.

[38] *PJM Power Providers*, 96 F.4th at 399.

[39] *PJM Power Providers*, 96 F.4th at 399.

[40] *PJM Power Providers*, 96 F.4th, at 400.

calculated under the Tariff amendment that the court found to be impermissibly retroactive.[41] The Commission denied that request, finding that "granting the complaint would be inconsistent with *PJM Power Providers* because it would lead to the same result as the rule change that the Third Circuit found violated the filed rate doctrine."[42] The Commission found that it did not need to reach the issue of whether the 2024/2025 auction rate was unjust and unreasonable given granting the complaint would be inconsistent with *PJM Power Providers* and its findings with respect to the filed rate doctrine.[43]

Here, the Complaint suffers from the same flawed arguments and omissions as the PJM Load Parties' complaint and, as such, should be similarly denied. As in *PJM Load Parties*, Complainants: (1) fail to ground their Complaint in the Third Circuit's test for retroactivity, including showing that their Complaint seeks only prospective relief that would not impermissibly alter the legal consequences of past actions;[44] (2) erroneously attempt to distinguish this case based on the fact that the capacity has yet to be delivered; and (3) raise equitable concerns that simply ignore the Third Circuit's holding that "the equities play no role in our application of the filed rate doctrine" even if "this bright-line rule could potentially produce a harsh result in this case."[45] Complainants provide no legal basis for a different result.

While the filed rate doctrine clearly is fatal to the Complaint, no quarter is found in the doctrine's exceptions: "when parties have notice that a rate is tentative and may

[41] *PJM Load Parties*, 189 FERC ¶ 61,199, at P 11.

[42] *PJM Load Parties*, 189 FERC ¶ 61,199, at P 10.

[43] *See PJM Load Parties*, 189 FERC ¶ 61,199, at P 10.

[44] *See PJM Load Parties*, 189 FERC ¶ 61,199, at P 12.

[45] *PJM Load Parties*, 189 FERC ¶ 61,199, at P 4.

be later adjusted with retroactive effect, or when they have agreed to make a rate effective retroactively."[46] No notice was provided ahead of the auction that the rules discussed in the Complaint (e.g., categorical must-offer exemption for certain resource types) were only tentatively in effect. The only agreement on file with the Commission that would allow for retroactive adjustment was Tariff, Attachment DD, section 5.11(e), which allows for corrections to erroneously posted auction results within *days* of the auction closing, circumstances clearly not present here.

2. Granting this tardy Complaint would create needless and extreme market uncertainty.

Finally, as alluded to above, granting the Complaint would have adverse ramifications beyond these proceedings. Among other things, the filed rate doctrine is intended to promote predictability in the market.[47] Granting the Complaint would eliminate any finality associated with clearing prices from future auctions. It is obvious how the lack of finality and certainty in the prices would undermine investor confidence in the market, hampering the development of much needed new resources to maintain reliability. Notwithstanding the legalities, allowing challenges to posted and final auction clearing prices right before the start of the Delivery Year would undermine the certainty of the price signals sent to investors. Such uncertainty has adverse financial and reliability consequences in the longer term from a market investability standpoint, not to

[46] *Consol. Edison Co. of N.Y., Inc.*, 347 F.3d at 969; *see also West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 22-23 & n.1 (D.C. Cir. 2014) (explaining the notice and agreement exceptions).

[47] *See, e.g.*, *PJM Power Providers*, 96 F.4th at 401-402 (explaining that a central purpose of the filed rate doctrine is "predictability," as "[s]table markets depend on stable rules."); *Consol. Edison Co. v. FERC*, 958 F.2d 429, 432 (D.C. Cir. 1992); *W. Deptford Energy, LLC v. FERC*, 766 F.3d at 12 (explaining that "requirement of transparent, public filing of rates ensures evenhandedness, fairness, stability, and predictability in the prices charged for electrical energy").

mention the harm to consumers who buy electricity in these markets.[48] Additionally, without finality or certainty in the capacity market clearing prices and associated capacity commitments before June 1, 2025, there may be significant uncertainty as to which resource still retains a capacity obligation and each committed resource's maximum exposure to Non-Performance Charges given that the stop-loss for Non-Performance Charges is based on the Base Residual Auction clearing price, which could influence resource performance during capacity emergencies.

Given the foregoing, the Commission should expeditiously deny the Complaint and not inject further uncertainty into PJM's capacity auction results at this late stage less than one month before the start of the 2025/2026 Delivery Year.[49]

B. Complainants' Reliance on Public Citizen Is Wrong on the Law and Wrong on the Facts.

In an attempt to circumvent the holdings of *PJM Power Providers* and *PJM Load Parties*, Complainants argue that this case is like that of *Public Citizen* and, as such, is not barred by the filed rate doctrine. In *Public Citizen*, the D.C. Circuit remanded the case back to the Commission for an "expla[nation of] why the problems [the Commission] identified in the existing auction rules affecting pricing—problems it ordered fixed going forward—did not also affect the fairness of the 2015 Auction itself."[50]

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[48] *See PJM Power Providers*, 96 F.4th at 401-402.

[49] Notwithstanding the legal infirmity discussed above, granting the relief requested by Complainants would necessarily raise the same concerns previously identified by the Commission when considering whether to rerun an auction under its remedial authority. *See PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237, at P 25 (2019) (explaining that the equities weigh against rerunning auctions "because both generators and load make decisions on investment based on the price outcome of the auction that cannot be reversed."). Unlike with the 2024/2025 Base Residual Auction where PJM could recalculate the Base Residual Auction results by using the original offers, Complainants' proposed remedy would require previously exempted resources to submit offers and have PJM rerun the auction based on those offers. In addition, it is likely given the answer deadline that any relief would come days before, if not after, the Delivery Year begins.

[50] *Public Citizen*, 7 F.4th at 1182.

There, the court found that the Commission failed to: (1) "reconcile its prospective holding that the [T]ariff could no longer protect against anticompetitive behavior with its conclusion that the conspicuously uneven 2015[/2016 Auction] results—obtained under the same flawed [T]ariff terms—were not similarly infected;" and (2) "provide any explanation for its determination that market manipulation did not lead to unjust and unreasonable rates."[51]

Here, Complainants contend that the facts presented are much like the facts in *Public Citizen* and as such, "there is no filed rate bar to section 206 relief in these circumstances."[52] Complainants put more weight on *Public Citizen* than it can bear.

Moreover, even assuming that the Complaint is not barred by the filed rate doctrine, Complainants have not met their burden under FPA section 206 to demonstrate that the clearing prices determined by the filed rate for the 2025/2026 Delivery Year are unjust and unreasonable.

1. Public Citizen does not address and makes no holding with respect to the filed rate doctrine.

Complainants argue that their Complaint is on all fours with *Public Citizen* and as such, is not barred by the filed rate doctrine.[53] Not so. The court in *Public Citizen* never grappled with how the filed rate doctrine would interact with auction results; in fact, the term "filed rate doctrine" appears nowhere in the decision. Accordingly, the Commission in *PJM Load Parties* correctly addressed the Complaint's position and found it

[51] *Public Citizen*, 7 F.4th at 1196.

[52] Complaint at 43.

[53] *See* Complaint at 43 ("*Public Citizen* also demonstrates that there is no filed rate bar to section 206 relief in these circumstances.").

unavailing.[54] The Commission also found that the court's review and remand did not "necessarily impl[y] that relief was available, and [the Commission] had the power to modify the auction prices," as Complainants also try to suggest.[55] As noted above, there are recognized exceptions to the filed rate doctrine, but *Public Citizen* is not one of them.

2. Even if Public Citizen allows circumvention of the filed rate doctrine, the facts here are not similar to those in Public Citizen and Complainants failed to meet their burden under FPA section 206 to demonstrate that the 25/26 BRA clearing prices are unjust and unreasonable.

As shown below, there are material differences between the record in *Public Citizen* and the record here. In *Public Citizen*, the court grounded its decision to remand the case on the following factual findings:

- The Commission held certain rules related to offer pricing were unjust and unreasonable;[56]
- The Commission held certain rules governing the amount of capacity needed to meet local clearing requirements were unjust and unreasonable;[57]
- The Complaint presented evidence regarding specific seller "conduct during the 2015 Auction met the definition of 'market manipulation' and resulted in unjust and unreasonable rates;"[58]
- There was evidence that the complained of clearing prices were anomalous relative to prior years and to other capacity zones in the same auction;[59] and

[54] *See PJM Load Parties*, 188 FERC ¶ 61,020, at P 22 (rejecting PJM Load Parties' comparison to *Public Citizen* given *Public Citizen* did not address the filed rate doctrine); *see also PJM Load Parties*, 189 FERC ¶ 61,199, at P 15 ("This argument misconstrues *Public Citizen*. We disagree with Petitioners' assertion that the court simply did 'not use the "filed-rate" label' while addressing that doctrine. Rather, the court was, instead, addressing a different issue: whether the rates at issue necessarily met the just and reasonable standard merely because they had been produced through application of the relevant Tariff.").

[55] *PJM Load Parties*, 189 FERC ¶ 61,199 at P 16.

[56] *Public Citizen*, 7 F.4th at 1196-97.

[57] *Public Citizen*, 7 F.4th at 1198.

[58] *Public Citizen*, 7 F.4th at 1199.

[59] *Public Citizen*, 7 F.4th at 1199.

- The Commission did not "grappl[e] with the unusual magnitude of the rate increase and its incongruity with other rates within the same auction."[60]

While the court found this factual predicate significant enough to support remand, the court did not prejudge the outcome, noting that the "Commission could, on an appropriate record, reasonably conclude that a particular price spike, while unusual, was not unjust or unreasonable."[61] But, rather, the court faulted the Commission for "not do[ing] th[e] work. And that failure made its order arbitrary and capricious."[62]

The record here presents a stark and material contrast to that before the court in *Public Citizen.* Specifically, and as discussed below, on the record here:

- The Commission has made no finding that the auction rules under which the 25/26 BRA was conducted were unjust and unreasonable;
- There is no evidence of anomalous prices among the different pricing zones in the 25/26 BRA;
- There is no evidence of anomalous prices as between the 25/26 BRA and previous Base Residual Auctions, as the 25/26 BRA reflects rapidly converging supply and demand; and
- Notwithstanding the Complainants' bald assertions, the record contains no evidence or specific allegations of any entity engaging in an exercise of market power or market manipulation.

Given the lack of factual similarities, *Public Citizen* offers no support to upset or revisit the 25/26 BRA results.

a. Unlike *Public Citizen*, the Commission has not made any findings of unjustness and unreasonableness with respect to the 25/26 BRA rules.

In *Public Citizen*, the D.C. Circuit found that the Commission's conclusion that the 2015/2016 auction results for Zone 4 were just and reasonable because they resulted from

[60] *Public Citizen*, 7 F.4th at 1199.

[61] *Public Citizen*, 7 F.4th at 1200.

[62] *Public Citizen*, 7 F.4th at 1200.

application of MISO's then-effective Tariff was insufficient to justify the 2015/2016 auction results.[63] This was, in part, because the Commission "failed to reconcile its prospective holding that the tariff could no longer protect against anticompetitive behavior with its conclusion that the conspicuously uneven 2015 results—obtained under the same flawed tariff terms—were not similarly infected."[64]

Similar facts do not exist here. In particular, the Commission has not found that *any* of the Tariff rules underlying the 25/26 BRA were unjust and unreasonable. It is true that after the 25/26 BRA, PJM filed changes to certain auction rules pursuant to FPA section 205, and the Commission accepted those changes as just and reasonable.[65] But, this is of no legal significance, as it is well-established that "there is not a single 'just and reasonable rate' but rather a zone of rates that are just and reasonable," and "a just and reasonable rate is [any] one that falls within that zone."[66] As such, the Commission's acceptance of various auction rules proposed by PJM under FPA section 205 to be effective beginning with the 2026/2027 Base Residual Auction cannot be interpreted as a finding that the pre-existing Tariff was unjust and unreasonable without these changes or that

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[63] *See Public Citizen*, 7 F.4th at 1200.

[64] *Public Citizen*, 7 F.4th at 1196.

[65] *See, e.g.*, *PJM Interconnection L.L.C.,* 190 FERC ¶ 61,088 (2025) (accepting subject to condition Tariff changes, including changes to recognize the resource adequacy contribution of RMR units, change Reference Resource and clarify Must-Offer Exemption); *PJM Interconnection L.L.C.,*190 FERC ¶ 61,117 (2025) (accepting Tariff revisions to extend the capacity must-offer requirement to all available Existing Generation Capacity Resources and update the Market Seller Offer Cap).

[66] *Me. Pub. Utils. Comm'n v. FERC*, 520 F.3d 464, 471 (D.C. Cir. 2008) (citation omitted), *rev'd in part*, *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165 (2010); *see also PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,060, at P 29 (2024) ("Having found PJM's proposal to be just and reasonable, we need not address the Market Monitor's proposed alternative.") (citing *N.Y. State Pub. Serv. Comm'n v. FERC*, 104 F.4th 886, 894 (D.C. Cir. 2024) ("FERC must accept any proposed rates that are just and reasonable—even if the current rates might already be reasonable or if other optional rate designs might be 'more or less reasonable' than the utility's selected rate schedule.") (citing *City of Bethany v. FERC*, 727 F.2d 1131, 1136) (D.C. Cir. 1984); *City of Winnfield v. FERC*, 744 F.2d 871, 874-75, (D.C. Cir. 1984)); *Montana-Dakota Utils. Co. v. Nw. Pub. Serv. Co.*, 341 U.S. 246, 251 (1951) ("Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint.").

including such changes was the only just and reasonable approach.[67] The Complainants acknowledge these legalities but then quickly brush them aside.[68] The Commission should not sanction such blithe dismissal of the parameters of both FPA sections 205 and 206.

Notwithstanding this clear infirmity, the Complainants also fail to show that the Tariff rules under which the 25/26 BRA was conducted were unjust and unreasonable. For example, the Complaint argues that the 25/26 BRA "wrongly ignored . . . [Reliability Must-Run ("RMR")] capacity in the BGE LDA,"[69] specifically, the Brandon Shores and H.A. Wagner resources.[70] Leaving aside whether "wrongly ignoring" rises to the level of unjust and unreasonable, the Complaint's sole evidence to support its claim is PJM's FPA section 205 filing in Docket No. ER25-682 to consider the capacity contributions of those RMR resources that can be reasonably expected to perform during capacity emergencies during the 2026/2027 and 2027/2028 Delivery Years based on an objective set of criteria set forth in the Tariff.[71] But, this is not evidence that the pre-existing Tariff was unjust and unreasonable.

Further, after the 25/26 BRA, PJM in fact demonstrated that the pre-existing Tariff was just and reasonable. In response to a complaint, PJM showed that an examination of the facts and circumstances regarding each RMR resource would be required on a case-by-

[67] *See, e.g., Shanker v. PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,209, at P 49 (2024) ("Although the 2023 [effective load carrying capability ("ELCC")] Order adopts a different approach to the treatment of CIRs in the upstream ELCC modeling process, it does not make the prior approach unjust and unreasonable as two different accreditation constructs may both be just and reasonable.").

[68] *See* Complaint at 10 ("Because PJM filed the changes under FPA section 205, it did not need to show that the previous rules produced unjust and unreasonable results. But PJM's support for the changes—and the Commission's reasoning in accepting them—lead unavoidably to that conclusion.").

[69] Complaint at 9.

[70] *See* Complaint at 12-13.

[71] *See* Complaint at 9-14.

case basis to ascertain whether PJM can reasonably rely on such resource to perform comparably to a Capacity Resource.[72] Such individual facts and circumstances would include the resource's legal ability to operate throughout a given Delivery Year. Relevant to the 25/26 BRA, PJM presented evidence that, at the time of the 25/26 BRA, the Brandon Shores RMR resource was contractually prohibited from operating after December 31, 2025, i.e., it was not permitted to operate for five months of the 2025/2026 Delivery Year, unless it obtained authorization from the Secretary of the U.S. Department of Energy pursuant to FPA section 202(c).[73] Thus, at the time of the auction, it would have been unreasonable to assume Brandon Shores could be counted on to perform in capacity emergencies during the 2025/2026 Delivery Year.

b. The 25/26 BRA clearing prices were not anomalous either as among the LDAs or between Delivery Years.

In *Public Citizen*, the D.C. Circuit was troubled with the Commission's finding that the 2015 Auction results in Zone 4 were just and reasonable in the face of the "starkly anomalous rates that the Auction produced."[74] For example, the court thought that "the $150 per MW-day auction clearing price, which was *40 times higher* than all of the other auction clearing prices in zones where Dynegy lacked such market dominance, *should have*

[72] *See* PJM Docket No. EL24-148-000 Answer at 9.

[73] *See* PJM Docket No. EL24-148-000 Answer at 22-23, Attachment A (Sierra Club-Talen 2023 Amendment).

[74] *Public Citizen*, 7 F.4th at 1182.

raised eyebrows."[75] The court also pointed out that the $150 per MW-day auction clearing price was also "vastly higher than the Zone 4 clearing prices from prior years."[76]

Despite claiming that *Public Citizen* is "remarkably like this one,"[77] the Complaint fails to identify similar pricing anomalies with respect to the 2025/2026 BRA auction results. The 25/26 BRA clearing prices were higher than previous auctions, but prices were higher throughout PJM.[78] And, as *Public Citizen* acknowledges, even an "extraordinary price spike" does not necessarily demonstrate a malfunctioning auction process or market manipulation.[79] Here, the price spike is the result of what PJM has been warning over the past few years—an impending convergence of supply and demand. As the Commission is well aware, PJM published a number of reports on the evolving resource mix and its impacts on the supply/demand balance.[80] Through these reports, PJM alerted stakeholders that "[t]he changes occurring in the electric industry and evolving resource mix have the potential to significantly impact the provision of adequate supply and reliability in PJM,"[81] and that "the current pace of new entry would be insufficient to keep up with expected retirements and demand growth by 2030."[82] Further, electrification coupled with the

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[75] *Public Citizen*, 7 F.4th at 1199 (emphasis added); *see id.* at 1200 ("The clearing price was not just higher, but was massively higher than the rates in every other zone, and substantial evidence in the record raised the question of a market failure.").

[76] *Public Citizen,* 7 F.4th at 1199. The clearing price was $16.75 per MW-day in 2014-2015, and $1.05 per MW-day in 2013-2014. *Id.*

[77] Complaint at 40.

[78] *Public Citizen*, 7 F.4th at 1199 (highlighting that the Commission failed to grapple with "the unusual magnitude of the rate increase *and* its incongruity with other rates within the same auction.").

[79] *Public Citizen*, 7 F.4th at 1200.

[80] *See, e.g.*, Resource Retirements, Replacements & Risks Report at 2.

[81] *Reliability in PJM: Today and Tomorrow*, PJM Interconnection, L.L.C., at 12 (Mar. 11, 2021), https://www.pjm.com/-/media/library/reports-notices/special-reports/2021/20210311-reliability-in-pjm-today-and-tomorrow.ashx.

[82] Resource Retirements, Replacements & Risks Report at 2.

proliferation of high-demand data centers in the region is resulting in material load growth not seen in the years preceding the 25/26 BRA.

This convergence has occurred even faster than previously anticipated. In the 25/26 BRA, only 20.7 MW of annual capacity across the entire PJM footprint offered and did not clear,[83] and the BGE and DOM LDAs cleared *short* of their respective Reliability Requirements.[84] Thus, higher clearing prices are the natural result of supply and demand fundamentals given resource retirements (without timely replacements) and a large increase in expected load growth, driven in large part by electrification trends and data center development in the PJM Region. Notably, the results of the 2025/2026 Third Incremental Auction, which the Complaint does not contest, further demonstrate that there were no pricing anomalies associated with the 25/26 BRA. Indeed, the 2025/2026 Third Incremental Auction resulted in even higher clearing prices compared with the 25/26 BRA where the entire PJM Region cleared at $323.90/MW-day with the exception of BGE LDA which cleared at $559.64/MW-day.[85] Thus, contrary to the arguments presented in the Complaint, the 25/26 BRA clearing prices were properly grounded in well-understood economics of tightening supply and demand.

c. The Complaint presents no specific allegations of an exercise of market power or market manipulation.

In *Public Citizen*, the D.C. Circuit found that the Commission failed to adequately address Public Citizen's specific allegations that Dynegy's exercise of market power and/or

[83] *See 2025/2026 BRA Report* at 6 ("For 2025/2026, only 20.7 MW UCAP of annual generation and DR resources did not clear in the auction. Any remaining amount that did not clear was winter only where there were no summer-only resources that did not clear.").

[84] *See 2025/2026 BRA Report*.

[85] *See 2025/2026 RPM Third Incremental Auction Results*, PJM Interconnection, L.L.C., at 2 (Mar. 11, 2025), https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-3ia-report.pdf.

market manipulation in the form of economic withholding had rendered the 2015 auction results unjust and unreasonable. Contrary to the Commission's finding, the court found that Public Citizen had met its burden under section 206 to show that Dynegy's conduct during the 2015 Auction met the definition of "market manipulation" and resulted in unjust and unreasonable rates. The court found that Public Citizen both "straightforwardly asserted that '[i]t is illegal for an energy market participant to intentionally withhold economically viable supply from a generating facility for the purpose of inflating prices so it can earn greater profits on sales from other remaining generating assets at the higher price caused by the withholding'" and pointed to "significant evidence" that market power or manipulation could have affected the outcome.[86]

In contrast, here, Complainants make no attempt to advance any specific allegations of market manipulation or an exercise of market power. In fact, Complainants erroneously claim that they "need not . . . show that auction participants engaged in exercises of market power or market manipulation."[87] Instead, Complainants point to PJM's statements that in the 25/26 BRA certain sellers of Intermittent Resources, Capacity Storage Resources, and Hybrid Resources had the ability and incentive to exercise market power.[88] But, ability and incentive do not equate to actual exercises of market power. As PJM made clear, its analysis in support of that filing was "limited to whether Capacity Market Sellers with existing large generation portfolios *could* have the incentive and ability to exercise market power."[89] PJM stated that its analysis "should not be construed as concluding that there

[86] *Public Citizen*, 7 F.4th at 1199.

[87] Complaint at 19.

[88] *See* Complaint at 21-22.

[89] *See PJM Interconnection, L.L.C.*, Extending the Capacity Must-Offer Requirement to All Generation Capacity Resources of PJM Interconnection, L.L.C., Docket No. ER25-785-000, Attachment C (Affidavit of Dr. Walter Graf on Behalf of PJM Interconnection, L.L.C.) at P 21 (Dec. 20, 2024) ("Graf Aff."). Mr. Graf's

was an exercise of market power in the [25/26 BRA]."[90] More is needed to substantiate a claim that the 25/26 BRA clearing prices were affected by market manipulation or the exercise of market power.[91]

PJM takes seriously the integrity of its markets, and cooperates with the Market Monitor and the Commission's Office of Enforcement in investigating any specific allegation of market manipulation currently being investigated. However, there has been no finding of market manipulation or specific allegation regarding the exercise of market power that would affect the results of the 25/26 BRA. Given the burden under FPA section 206 is clearly on the Complainants, without more, the Complaint's claims must be rejected.

C. The Complaint Fails to Demonstrate That the Auction Rules for the 25/26 BRA Were Unjust and Unreasonable.

In any event, the auction rules criticized by the Complainants have either been addressed prospectively by PJM or are meritless. Again, Complainants argue that the 25/26 BRA clearing prices are unjust and unreasonable because they fail to: (1) reflect the capacity provided by the Brandon Shores and Wagner RMR resources; (2) impose must-offer requirements on Intermittent Resources, Capacity Storage Resources, and Hybrid Resources; (3) adjust the effective load carrying capability ("ELCC") capacity accreditation for thermal generators to correct a mismatch of applying winter-driven ELCC

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analysis considered all exempt generation rather than exempt generation that chose not to participate in the capacity auction.

[90] Graf Aff at P 21.

[91] *See, e.g.*, 18 C.F.R. § 1c.2 (elements of the Commission's Anti-Manipulation Rule, are, in relevant part: (1) using a fraudulent device, scheme or artifice, or making a material misrepresentation, or engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite scienter; (3) in connection with the purchase or sale of electric energy subject to the jurisdiction of the Commission); *Talen Energy Mktg., LLC*, 176 FERC ¶ 61,199, at PP 43-48 (2021) (rejecting Independent Market Monitor for PJM protest to sellers' market-based rate authority on the grounds that the IMM did not provide any specific evidence of sellers' ability to exercise market power and failed to explain how the PJM Tariff's existing mitigation rules were insufficient to address sellers' alleged market power).

discounts to summer capability ratings; and (4) impose must-offer requirements and market seller offer caps on Demand Resources.[92] Complainants fail to sufficiently substantiate these claims, and they each fail.

As Complainants acknowledge, PJM proposed under FPA section 205, and the Commission accepted, Tariff changes to recognize the resource adequacy contribution of those RMR resources that can reasonably be relied on to perform during capacity emergencies[93] and eliminate the categorical must-offer exemption for all Generation Capacity Resources.[94] While Complainants argue in favor of these changes, they do not demonstrate that the pre-existing Tariff was unjust and unreasonable without them. It is axiomatic that there can be more than one just and reasonable approach.[95]

Further, sustaining Complainants' argument would establish a "Catch-22" for administrators of regional markets, like PJM. On one hand, such entities are obligated to follow and implement their existing rules under the filed rate doctrine. But if the Complaint were to be granted, market administrators would be loath to propose prospective improvements to those rules under section 205, as PJM did here, lest they face complaints that their past actions were unjust and unreasonable and could be undone on such grounds. The Commission should not create such a conundrum, which works against the FPA's different standards of review under section 205 and section 206.

Regarding their ELCC-related claim, the Complaint fails to demonstrate that PJM's current ELCC accreditation approach—which the Commission only recently found to be

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[92] *See* Complaint at 9-28.

[93] *PJM Interconnection L.L.C.,* 190 FERC ¶ 61,088.

[94] *PJM Interconnection L.L.C.,*190 FERC ¶ 61,117.

[95] *See, e.g., ISO New England Inc*., 153 FERC ¶ 61,223, at P 90 (2015) ("it is well established that there can be more than one just and reasonable rate").

just and reasonable[96]—has somehow become unjust and unreasonable in the past year. The Complaint identifies no change in circumstances that could support such a finding. Rather, the Complaint simply advocates for a tweak to the existing accreditation methodology approach.[97] But, that alone does not render the existing approach unjust and unreasonable. PJM's existing approach is just and reasonable, and it may very well be that PJM's ELCC methodology could be just and reasonable if it is amended to address their issue—both can be true.[98]

With respect to Demand Response, as PJM has already stated in response to the Complainants' prior prospective complaint on this issue, given the practical limitations "there is no basis for the Commission to find that [it] is somehow unjust and unreasonable for PJM not to impose a must-offer requirement immediately on all possible Demand Resources in its footprint."[99] And, the Commission has recognized that "Demand Resources are unlike Generation Capacity Resources and do not present the same level of physical withholding concern as do Generation Capacity Resources," and "while Generation Capacity Resources produce capacity from a single source and require substantial capital and investments to operate, Demand Resources do not require such investments and generally consist of a large number of disparate end-use customers."[100] Finally, the Complainants continue to fail to "explain how to craft, let alone implement, a

[96] *See PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080, *order on reh'g*, 189 FERC ¶ 61,043 (2024).

[97] *See* Complaint at 16-18.

[98] *See, e.g.*, *Shanker v. PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,209, at P 49 ("Although the 2023 ELCC Order adopts a different approach to the treatment of CIRs in the upstream ELCC modeling process, it does not make the prior approach unjust and unreasonable as two different accreditation constructs may both be just and reasonable.).

[99] PJM Docket No. EL25-18 Answer at 9.

[100] *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117, at P 64.

generally-applicable rule for thousands of MW of diverse Demand Resources throughout the PJM footprint."[101]

D. The Relief Sought By the Complaint Is Unlawful, and Even If the Commission Were to Find the Complaint Valid, the Commission Should Exercise Its Remedial Discretion and Grant No Relief.

To the extent the Commission somehow determines that the Complaint is not barred by the filed rate doctrine and the Complaint meets the evidentiary burden that the rules under which the 25/26 BRA was conducted were unjust and unreasonable, the Commission should nonetheless exercise its remedial discretion to forego providing any relief.[102] A couple well-established policies would support such an outcome.

First, as discussed, certainty in clearing prices is vital to maintaining investor confidence in the capacity market. And, not just PJM's capacity market, but all other Commission-regulated markets that rely on price signals to incent investment. Entertaining retroactive adjustment of clearing prices based on facts and changes in circumstances coming to light *only after* the auction would mean that no final auction price can be relied on.

Second, Commission policy disfavors re-running markets, "because market participants participate in the market with the expectation that the rules in place and the outcomes will not change after the results are set."[103] The Commission has explained that

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[101] PJM Docket No. EL25-18 Answer at 9-10.

[102] *See, e.g.*, *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) ("[T]he breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies and sanctions . . . in order to arrive at maximum effectuation of Congressional objectives").

[103] *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252, at P 55 (2017) (citing *Md. Pub. Serv. Comm'n v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, at P 49 (2008), *order on reh'g*, 125 FERC ¶ 61,340 (2008) ("In a case involving changes in market design, we generally exercise our discretion over remedies and do not order refunds that require rerunning a market."); *see also Bangor Hydro-Elec. Co. v. ISO New England Inc.*, 97 FERC ¶ 61,339 (2001) (finding that rerunning markets, even when a software error results in clearing prices that are inconsistent with the market rules, would do more harm to electric markets than is justifiable);

"[r]erunning past auctions creates two different types of risk: (1) capital risks for resources that made investments based on auction results, and (2) regulatory risk going forward (i.e., investors would be unlikely to want to invest capital in a market if the results were subject to change at a later date due to legal error)."[104]

Based on these principles, that Commission has concluded that, "as a general matter, rerunning the markets undermines the markets themselves by creating uncertainty for market participants, and we generally eschew directing them to be rerun."[105] Should the Commission reach the relief stage here, it should continue to follow this well-reasoned policy.[106]

However, were the Commission to fashion a remedy, the Commission simply cannot accept the Complainants' two proffered approaches. The Complainants' preferred approach is blatantly unlawful, as it would: (1) require PJM to re-run the 25/26 BRA; (2) require all generation resources that were categorically exempt from the must-offer requirement "to submit offers to provide capacity during the 2025/2026 [D]elivery [Y]ear or request unit-specific exemptions;" and (3) add the Brandon Shores and Wagner resources to the supply stack as price takers.[107]

Cal. Indep. Sys. Operator, 120 FERC ¶ 61,271, at P 25 (2007) (identifying market reruns as the exception, not the rule)).

[104] *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252, at P 55 (2017).

[105] *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252, at P 55.

[106] *Cf. PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,065, at P 25 & n.65, *reh'g denied*, 187 FERC ¶ 61,107 (2024). In that case, the Commission dismissed the parties' concerns about rerunning auction and the equities, explaining that the Third Circuit's "opinion vacating the portion of the Commission's orders allowing PJM to apply the Tariff amendments to the 2024/2025 BRA indicates that PJM 'was required to use' the Initial LDA Reliability Requirement." *Id.* The Commission also noted that rerunning the auction did not pose the same technical difficulties as other cases wherein the Commission declined to rerun an auction. *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,065, at P 25 n.65 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 162 FERC ¶ 61,173, at P 22 (2018); *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237, at P 28 (2019)).

[107] Complaint at 34.

The second prong of this approach is most troublesome. Such an approach would commandeer resources that did not seek to commit to provide capacity *and then retroactively force them to offer to provide capacity* and expose them to Non-Performance Charges. Practically speaking, such a remedy would require months to retroactively untangle the RPM Auction results and bilateral transactions associated with the 2025/2026 Delivery Year and simply cannot be completed prior to the June 1, 2025 start of the 2025/2026 Delivery Year. Specifically, the Complainants' requested remedy would require PJM to retroactively restart the pre-auction process for the 25/26 BRA and allow Capacity Market Sellers of resources that were previously categorically exempt to request unit-specific Market Seller Offer Caps. It would also likely require voiding bilateral transactions that have occurred outside of the market for resources that were previously categorically exempt from being offered into the capacity market. Such a process would take months to complete if it were even possible. Additionally, such a remedy would also require retroactively undoing the results of the 2025/2026 Third Incremental Auction, which is not the subject of this Complaint, given that the changes to capacity obligations from the 25/26 BRA would impact commitments (or lack thereof) from the 2025/2026 Third Incremental Auction.

In short, it simply is not be feasible to redo the pre-auction process for the 25/26 BRA, rerun the 25/26 BRA, repeat the pre-auction process for the 2025/2026 Third Incremental Auction, and rerun the 2025/2026 Third Incremental Auction all before the start of the 2025/2026 Delivery Year on June 1, 2025. The result of this, should such a remedy be directed, is significantly increased reliability risks as the specter of changing capacity commitments after the Delivery Year begins would create mass uncertainty as to which resource actually has a capacity obligation to perform should there be any

declarations of Emergency Actions that trigger Performance Assessment Intervals during the Delivery Year.

While less offensive, the Complainants' other approach of only inputting the Brandon Shores and Wagner resources into the supply stack as price takers and then re-running the auction is also unlawful. As noted above, at the time of the 25/26 BRA, Brandon Shores contractually could not operate after December 31, 2025, meaning that PJM could not reasonably rely on that resource to perform at all after that date, much less perform during capacity emergencies. Relying on Brandon Shores could have jeopardized reliability. Since the 25/26 BRA, that contractual commitment has gone away, and Brandon Shores can be relied on to perform during capacity emergencies through the end of the 2027/2028 Delivery Year.[108] But, it would be odious and unlawful to retroactively change auction outcomes based on a post-auction change in circumstances. Results could never be finalized if they were a moving target always subject to revision.

III.

ADMISSIONS AND DENIALS

In accordance with Rule 213(c)(2) of the Commission's Rules of Practice and Procedure,[109] except as stated in this Answer, PJM does not admit any facts in the form and manner stated in the Complaint. To the extent that any fact or allegation in the Complaint is not specifically admitted in this answer, it is denied.

[108] *See PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket No. ER25-682-000, at 10-11 (Jan. 24, 2025).

[109] 18 C.F.R. § 385.213(c)(2).

IV.

NOTICES AND COMMUNICATIONS

All correspondence and other communications regarding this proceeding should be directed to:

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* Designated for inclusion on the Commission's official service list for this docket.

V.

CONCLUSION

For the foregoing reasons, the Commission should expeditiously deny the Complaint on or before August 1, 2025.

Respectfully submitted,

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May 5, 2025

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 5th day of May 2025.

/s/ Anna Fernandez

Anna Fernandez
Attorney for
PJM Interconnection, L.L.C.