

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

Independent Market Monitor for PJM,)	
)	
v.)	Docket No. EL25-87-000
)	
Indicated Energy Efficiency Sellers)	

PROTEST OF PJM INTERCONNECTION, L.L.C.

In accordance with Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission,¹ PJM Interconnection, L.L.C. (PJM) submits this protest to the May 29, 2025 Complaint filed by the Independent Market Monitor for PJM Interconnection, L.L.C. (IMM). The Complaint requests that PJM “should not make any payments for any Energy Efficiency MW during the 2025/2026 Delivery Year” to three Indicated Sellers of Energy Efficiency (EE) Resources based on the IMM’s “preliminary review” of their post-installation measurement and verification (M&V) Reports.² The IMM argues that the Indicated Sellers “are not entitled to and should be directed to not take payments from PJM for EE.”³ Instead, the IMM argues that the Indicated Sellers should be “directed to fully cooperate with an investigation by PJM and the Market Monitor,” who “should be directed to complete the investigation in a timely manner and to each make recommendations to the Commission about whether any of the EE MW have met the requirements to be paid.”⁴ The Commission should promptly deny the IMM’s requests. While the Commission accepted the prospective removal of EE from PJM’s capacity market beginning

¹ 18 C.F.R. §§ 385.211 (2025).

² Complaint at 1-2, 20. The Indicated Sellers are Affirmed Energy LLC, Enel X North America Inc., and Enerwise Global Technologies, LLC.

³ *Id.* at 22.

⁴ *Id.* at 2-3.

with the 2026/2027 Delivery Year,⁵ the relief the IMM requests for the 2025/2026 Delivery Year is inappropriate.

The Complaint should be denied for two reasons: first, the withholding of payments envisioned by the Complaint would contravene the filed rate; and second, it is not appropriate in a complaint proceeding under FPA section 206 for the IMM to request that the Commission pre-condition payments already required to be made on a specific schedule under the Tariff and Manuals based upon IMM's desire to conduct an investigation. The Complaint should also be denied because it seeks to require PJM to impose different M&V reporting requirements for EE Resources after their capacity obligations for the 2025/2026 Delivery Year have attached. Finally, an order granting the Complaint would contravene a stipulation with one of the Indicated Sellers.⁶

I. BACKGROUND

A. First IMM Energy Efficiency Complaint

In EL24-113, the PJM IMM alleged that companies received PJM capacity market payments for unverified energy efficiency resources, relying on retail sales data instead of demonstrating actual, tariff-compliant load reductions.⁷ The IMM argued that this practice violated PJM's tariff, leading to unjust rates and approximately \$128 million in capacity revenue from unverified savings in the 2024/2025 Delivery Year.⁸ The IMM and various state utility

⁵ *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,095 (2024) (EE Sunset Order), *reh'g denied by operation of law*, 190 FERC ¶ 62,005, *reh'g and stay denied*, 190 FERC ¶ 61,081 (2025), *pet'n for rev. pending sub nom. Affirmed Energy LLC v. FERC*, No. 25-1091 (D.C. Cir. filed Mar. 13, 2025).

⁶ *See Enerwise Global Technologies, LLC d/b/a CPower v. PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,139 (2025) (CPower Order) (letter order granting joint motion to dismiss and accepting stipulated satisfaction and withdrawal agreement).

⁷ *See* Complaint of the Independent Market Monitor for PJM, Docket No. EL24-113 (May 31, 2024) (2024 IMM-Indicated Sellers Complaint).

⁸ *Id.* at 1-2.

regulated respondents reached a partial settlement, which the IMM submitted to FERC on September 30, 2024.⁹ The Commission has not yet ruled on the partial settlement or any remaining issues beyond the scope of the settlement.

B. PJM Sunset Filing

In 2024, PJM proposed to sunset its existing tariff provisions governing EE Resource participation in PJM's RPM. PJM based this decision on the conclusion that "end-use customers installing energy efficiency measures and other customers who are forced to subsidize those efforts are realizing no discernible incremental benefits from Energy Efficiency Resources that receive capacity payments."¹⁰ To effectuate the move away from EE's inclusion in the RPM, PJM revised its Tariff and Reliability Assurance Agreement (RAA) to state that the EE rules would be "effective only through the 2025/2026 Delivery Year" and that no EE Resources would qualify to be offered beginning with the 2026/2027 Delivery Year.¹¹

The Commission accepted those revisions.¹² Per the Commission, "sunsetting Energy Efficiency Resources' participation in PJM's capacity market auctions is just and reasonable because it will benefit consumers by reducing capacity payments without adversely affecting resource adequacy or undermining the demand-side benefits that energy efficiency measures can provide to load."¹³ The Commission accepted PJM's argument that load would continue to realize

⁹ See Offer of Settlement of the Independent Market Monitor for PJM, Docket No. EL24-113, (Sep. 30, 2024).

¹⁰ Proposal to Enable Energy Efficiency to Benefit Loads Through Demand-Side Reduction to the Peak Load Forecast and Savings from Energy Market Charges, Docket No. ER24-2995, Transmittal Letter at 3 (Sept. 6, 2024).

¹¹ *Id.* at 31; see Tariff, Attach. DD-1 § L; RAA, Sched. 6 § L.

¹² See EE Sunset Order, 189 FERC ¶ 61,095 at P 1.

¹³ *Id.* P 63.

the demand-side benefits that energy efficiency measures provide, including by reducing the amount of capacity that needs to be procured to maintain resource adequacy, lowering capacity prices and costs paid by load, and otherwise reducing end-use customers' energy consumption and therefore retail electricity bills.”¹⁴

Affirmed Energy LLC (Affirmed), an Indicated Seller, submitted a motion for stay and request for rehearing, arguing, among other things, that the sunseting of EE would result in a loss of nearly \$50 million to its business and cause it to cease operations.¹⁵ The Commission ultimately denied both Affirmed's motion for stay and its request for rehearing.¹⁶ Soon after, Affirmed filed a motion for stay and a separate petition for review in the D.C. Circuit, challenging the Commission's orders approving the sunseting of EE as unjust and unreasonable.¹⁷ The parties are currently briefing the petition for review, while the motion for stay was voluntarily dismissed.

Affirmed illustrates the challenges that partially motivated the sunseting of EE. Previously, PJM required Affirmed to post additional collateral after determining that it presented an “unreasonable credit risk” based on its actions following Winter Storm Elliott, difficulties with audit compliance, and the initiation of a FERC Enforcement investigation into Affirmed's business practices. Shortly after Affirmed filed its motion to stay the Commission's EE order, the Commission issued a separate Show Cause Order directing Affirmed, its parent company, and affiliates:

to show cause why they should not be found to have violated (i) Section 222 of the Federal Power Act (FPA), 16 U.S.C. § 824v, and section 1c.2 of the Commission's

¹⁴ *Id.*

¹⁵ Motion for Stay and Request for Rehearing of Affirmed Energy LLC, Docket No. ER24-2995 at 2 (Dec. 5, 2024).

¹⁶ *See PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,081 (2025).

¹⁷ *See Affirmed Energy LLC v. FERC*, Case No. 25-1091 (D.C Cir. filed Mar. 13, 2025).

regulations through a manipulative scheme and course of business in PJM and MISO that extracted millions of dollars in capacity payments for a purported energy efficiency project that did not actually cause reductions in energy use; and (ii) provisions of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff and PJM's Open Access Transmission Tariff for failure to satisfy the tariff requirements for participation as an Energy Efficiency Resource ('EER').¹⁸

The Commission further directed Affirmed and its affiliates to show cause why they should not:

(i) disgorge \$2,116,057, plus interest, in unjust profits back to MISO and \$250,937,821, plus interest, in unjust profits back to PJM; (ii) disgorge additional unjust profits received between April 2024 and the date of any future order of the Commission directing disgorgement, plus interest, back to PJM; and (iii) pay a civil penalty in the amount of \$722,000,000.¹⁹

That market manipulation charge is by far the largest penalty the Commission has ever sought to assess.

The Commission should act expeditiously to resolve this matter, as well as other related proceedings including the prior IMM complaint against EE providers for the 2024/2025 Delivery Year and the Show Cause Order related to Affirmed's EE Resources. As a result of this instant Complaint that seeks to make capacity payments for the 2025/2026 Delivery Year subject to refund, PJM will continue to assess the creditworthiness of the named indicated respondents. But this Complaint (coupled with the other complaint proceedings) contributes to a high level of uncertainty for PJM with respect to collateral requirements, performance risk, and potential refund risk (in advance of the Commission setting a refund effective date). Accordingly, PJM urges the Commission to act with haste on this Complaint to provide clarity going forward.

¹⁸ *Am. Efficient, LLC, et al.*, 189 FERC ¶ 61,196, at P 1 (2024) (Show Cause Order).

¹⁹ *Id.*

II. ARGUMENT

A. The IMM Seeks Relief Contrary to the Filed Rate Doctrine

1. PJM Reviews EE Plans and M&V Reports based on Tariff-defined Deadlines Pursuant to Long-Established Standards

The IMM takes issue with the Indicated Sellers receiving payments under the Tariff despite EE having been prospectively removed from the capacity market effective with the 2026/2027 Delivery Year.²⁰ The IMM claims that “PJM should not make payment, and the Indicated Energy Efficiency Sellers are not entitled to and should be directed not to take payment for, any EE during the 2025/2026 Delivery Year based on the filed Reports.”²¹ The IMM seeks to create a new auxiliary review procedure not currently found in the PJM Tariff as a condition of receiving capacity payments whereby EE providers would be required to file supplemental reports containing certain information that the IMM believes is needed “to show that energy efficiency has been provided to PJM.”²²

The additional review process the IMM requests is not contemplated in the PJM Governing Documents or Manuals. PJM reviews EE plans and M&V reports based on Tariff-defined deadlines,²³ and PJM’s approval of those reports is based on existing rules at the time the approval is made. The IMM did not challenge PJM’s approval of individual EE M&V reports under PJM’s long-established approach until the IMM did so for the first time last year, after the parameters for

²⁰ See Complaint at 18.

²¹ *Id.* at 20.

²² *Id.* at 20-21.

²³ See, e.g., RAA, Sched. 6 §§ L.2, 5-6 (requiring EE Resource to submit a new or updated project status and report “no later than 30 days prior to the auction in which the resource is to be offered” and a further update “no later than the start of such Delivery Year”).

the 2025/2026 Delivery Year had already been set.²⁴ Moreover, PJM may audit approvals of M&V reports, and PJM's prior audit findings would be used to inform subsequent approvals.

The Tariff does not provide the IMM with an explicit role in the EE review or audit process, but the IMM may request EE plans or M&V reports at any time.²⁵ Indeed, the IMM requested the EE M&V reports for the 2025/2026 Delivery Year and PJM complied with that request. Thereafter, IMM did not provide any advice or feedback to PJM regarding the 2025/2026 M&V reports. Rather, without prior notice or consultation to PJM, the IMM filed the instant Complaint based on its "preliminary review" of those reports.²⁶

2. The Tariff Does Not Permit PJM to Cease Making Payments to Qualifying EE Providers Based on the IMM's Preliminary Review of Measurement and Verification Reports

The IMM's contentions ignore that the filed rate doctrine requires PJM to pay EE providers for approved EE Resources that have capacity commitments. Under the PJM Operating Agreement and Manuals, PJM is obligated to issue billing statements, including net payments owing to a Market Participant by the fifth business day of a given month for market activities occurring in the previous month.²⁷ Further, for certain categories of payments, which includes

²⁴ The parameters for the 2025-26 BRA were set on April 8, 2024. *See* <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-planning-period-parameters-for-base-residual-auction-pdf.pdf>. The first IMM Complaint was filed on May 31, 2024. *See supra* note 7.

²⁵ *See infra* Part II.B.1 at 12.

²⁶ Complaint at 1-2, 20.

²⁷ *See* PJM Operating Agreement § 14.1(a); PJM Manual 29 §§ 1.1, 1.2. Monthly billing statements to capacity providers may also impose payment obligations. While PJM is required to pay capacity revenues to all committed EE Resources, PJM may assess Capacity Deficiency Charges, which are greater than capacity revenues, if PJM determines through an audit extending into the commitment period that the final nominated EE value based on the Post Installation M&V reports are less than the committed EE quantity. *See* PJM Manual 18B §§ 6.1-6.3.

capacity payments, PJM is obligated to issue weekly billing statements.²⁸ These payment obligations are the direct output of the results of the Reliability Pricing Model Auctions associated with the 2025/2026 Delivery Year. Withholding payments as the IMM requests based on allegations by the IMM that the EE Sellers should be required to comply with a verification process not currently specified in the PJM governing documents is not supportable.

The IMM's request for PJM to cease EE payments based upon the alleged need for an additional verification process not specified in PJM's tariff would likely violate the filed rate doctrine because PJM conducted the Reliability Pricing Model Auctions associated with the 2025/2026 Delivery Year in compliance with preestablished parameters and awarded capacity commitments to the Indicated Sellers and other Capacity Market Sellers subject to the payment mechanism described in the PJM Tariff and Manuals, which specify when and how payments are made.²⁹ The PJM RAA provides that EE Resources that clear an RPM Auction will be paid based on the final value of that resource determined by PJM based on the data submitted in that resource's post-installation M&V report before the Delivery Year begins."³⁰ Having approved the post-

²⁸ PJM Operating Agreement §14B.1(b) (specifying weekly billing statements for services identified in Manual 29); *id* §§ 3.2, 2.3 (identifying capacity as one of the services covered by weekly billing).

²⁹ *See* RAA, Art. 7, § 2 (Responsibility to Pay Locational Reliability Charge) ("Except to the extent its capacity obligations are satisfied through the FRR Alternative, each Party shall pay, as to the loads it serves in each Zone during a Delivery Year, a Locational Reliability Charge for each such Zone during such Delivery Year. The Locational Reliability Charge shall equal such Party's Daily Unforced Capacity Obligation in a Zone, as determined pursuant to RAA, Schedule 8, times the Final Zonal Capacity Price for such Zone, as determined pursuant to Tariff, Attachment DD."); PJM Manual 18, § 9.2.1 (Locational Reliability Charges) ("Each LSE that serves load in a PJM Zone or load outside PJM using PJM resources (Non-Zone Network Load) during the Delivery Year is responsible for paying a Locational Reliability Charge equal to their Daily Unforced Capacity Obligation in a Zone times the applicable Final Zonal Capacity Price for that Delivery Year.").

³⁰ PJM RAA Sched. 6 § L ("For every Energy Efficiency Resource clearing an RPM Auction for a Delivery Year, the Capacity Market Seller shall submit to the Office of the

installation M&V report, PJM does not have any authority to cease capacity payment obligations that have already attached absent a Commission order or further audit of the post-installation M&V reports.

3. PJM's Tariff and Manuals Authorize the Indicated Sellers to Use Statistical Methodologies in Measurement and Verification Reports

The IMM contends that the verification and measurement practices used by PJM are not just and reasonable because they do not meet a “statistical test requirement” specified in the PJM “tariff” for accuracy.³¹ According to the IMM, this standard is not satisfied because of “the absence of robust actual measurement of the nominated projects.”³² The IMM further claims that the PJM process is flawed because EE providers rely on usage assumptions from industry publications rather than from data collected from measurements of their own customers.³³

First, the IMM misreads the PJM Tariff. Nothing in the PJM governing documents specifies that the Nominated Energy Efficiency Value or Capacity Performance value of an EE Resource must be based on “actual measurement” during operation.³⁴ To the contrary, the Tariff clearly contemplates a statistical measurement process because the Nominated Energy Efficiency Value for an EE Resources specified in the RAA is the “expected average load reduction” over

Interconnection, by no later than the start of such Delivery Year, an updated project status and detailed measurement and verification data meeting the standards for precision and accuracy set forth in the PJM Manuals. The final value of the Energy Efficiency Resource during such Delivery Year shall be as determined by the Office of the Interconnection based on the submitted data.”).

³¹ Complaint at 10.

³² *Id.*

³³ *See id.*

³⁴ *Id.* at 10 (“Given the absence of robust actual measurement of the nominated projects, the Reports do not and cannot demonstrate that the claimed savings meet th[e] tariff statistical test requirement.”); *id.* at 12 (“Given the outright absence or lack of robust actual measurement of the nominated projects, the savings estimates can hardly be characterized as being accurate.”); *see id.* at 10 (“Many EE providers rely on usage assumptions from industry publications rather than from primary data collected from measurements of their own customers.”).

specified periods of the year and specified hours of the day.³⁵ Conducting actual measurements of energy resource reductions over all these time frames *in the future*, as the IMM contends is required, would be impossible. Further, the RAA specifies that the “[t]he measurement and verification plan [submitted by an EE Capacity Seller] shall describe the methods and procedures, *consistent with the PJM Manuals*, for determining the amount of the load reduction and confirming that such reduction is achieved.”³⁶ These acceptable “measures and procedures” are specified in Manual 18B.³⁷ In sum, because the RAA contemplates the use of statistical procedures and explicitly states that acceptable statistical procedures for measurement and verification of EE Resources are specified in the PJM Manuals, the application of the filed rate doctrine necessarily extends to use of those procedures. Requiring EE Providers to rely exclusively upon actual measured energy savings as the IMM contends is not required by those provisions.

Second, the statistical methodologies used by EE Providers in their M&V plans are methodologies authorized by Manual 18B. Under Manual 18B, EE Providers may rely upon “[e]quations and formulas, [a]ssumptions, [m]anufacturers (sic) equipment specifications, [d]irect measurement data, [i]ndirect measurement data, [e]ngineering factors, parameters and other variables.”³⁸ For example, the IMM criticizes the EE Providers’ use of the Maryland/Mid-Atlantic Technical Reference Manual (TRM) facilitated and managed by Northeast Energy Efficiency Partnerships as a “commonly referenced document in supporting Post Installation Measurement

³⁵ RAA, Sched. 6 § L 2 (emphasis added).

³⁶ *Id.*

³⁷ See PJM Manual 18B § 10.1 (specifying alternatives for demonstrating compliance by EE Resources with measurement and verification requirements).

³⁸ *Id.* (cleaned up).

and Verification reports.”³⁹ But TRMs clearly qualify for consideration within the data set categories expressly authorized by Manual 18B, including as “assumptions, . . . indirect measurement data, engineering factors, parameters and other variables.” Similarly, the IMM criticizes the use of “customer surveys to establish key performance variables.”⁴⁰ Yet these customer surveys are also clearly within the scope of Manual 18B as “assumptions, . . . indirect measurement data, . . . and other variables.”

Third, the IMM’s claim that the 10% accuracy level for Measurement and Verification Plans specified in Manual 18B cannot be achieved unless supported by actual operating data fails because the IMM ignores PJM’s measurement and verification review process. Under Section 10.3 of Manual 18B, PJM has the authority to reduce the amount of claimed energy savings for the express purpose of meeting the 10% accuracy standard.

Fourth, the IMM also claims that midstream and upstream EE programs cannot comply with the definitional requirements of the PJM Tariff for “Capacity Market Sellers” because there is no causal nexus between capacity payments and operation of EE Resources.⁴¹ As PJM has explained in past complaint proceedings, PJM’s “current capacity market rules do not require a showing of a causal link between capacity payments made to Energy Efficiency Resources and energy efficiency investment.”⁴² On the other hand, that nexus requirement can be reasonably and fairly construed from PJM’s Governing Documents and Manuals for the reasons set forth by Commission staff in the Commission’s pending Order to Show Cause directed at American

³⁹ Complaint at 10-11.

⁴⁰ *Id.* at 13.

⁴¹ *See id.* at 14.

⁴² *See* EE Sunset Order, 189 FERC ¶ 61,095 at P 9.

Efficient and Affirmed.⁴³ If the Commission ultimately holds that FERC Enforcement’s interpretation of the nexus requirement set forth in the pending Order to Show Cause is the “best reading”⁴⁴ of PJM’s Governing Documents and Manuals, or in response to the IMM’s pending complaint in Docket No. EL24-113, PJM will act accordingly with respect to any audits of EE Resources and any associated collateral held by PJM.

B. The IMM’s Request to Compel PJM and the IMM to Conduct Parallel Investigations is Not Appropriate

1. The Tariff Defines the Terms Whereby PJM and the IMM May Conduct Investigations

The IMM’s request that it be directed to conduct an investigation of the Indicated Seller’s trading activities is unnecessary and contradictory.⁴⁵ It is unnecessary because the Tariff already grants the IMM the broad authority to investigate market conduct—including the Indicated Sellers—without a Commission order. It is contradictory because, to the extent that the IMM alleges a Market Violation⁴⁶ has occurred here, the IMM is required to submit the matter to the Office of Enforcement and may not simultaneously investigate the matter unless specifically authorized by the Commission.⁴⁷

⁴³ See, e.g., Show Cause Order, 189 FERC ¶ 61,196, Part V.A.1.b (contending that “American Efficient’s Program Does Not Cause Reductions in Energy Consumption” as required by the PJM Governing documents and similar requirements under the MISO Tariff).

⁴⁴ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024).

⁴⁵ See Complaint at 2-3 (“PJM and the Market Monitor should be directed to complete the investigation in a timely manner and to each make recommendations to the Commission about whether any of the EE MW have met the requirements to be paid.”).

⁴⁶ A Market Violation is “a tariff violation, violation of a Commission-approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.”

⁴⁷ See Tariff, Attach. M § IV.I.1.g.

Tariff Attachment M governs the IMM's investigatory powers. The IMM was created to "objectively monitor, investigate, evaluate and report on the PJM Markets, including, but not limited to, structural, design or operational flaws in the PJM Markets or the exercise of market power or manipulation in the PJM Markets."⁴⁸ Within this authority, the IMM will "objectively monitor the competitiveness of PJM Markets [and] investigate violations of FERC or PJM Market Rules."⁴⁹ If the IMM believes that a Market Participant's behavior "may require investigation, including but not limited to suspected Market Violations," the IMM may refer that matter to the Commission's Office of Enforcement.⁵⁰ Once the IMM refers a case for investigation, however, it "shall desist from, and not independently undertake any investigative steps regarding, the alleged Market Violation or Referral except at the express direction of the Commission or Commission staff."⁵¹

The Complaint faces two contradictory problems that nullify the relief it requests. First, the IMM's authority to independently investigate possible violations of the Tariff already exists and is at play without any order of the Commission. Second, given the evidence the IMM has

⁴⁸ *Id.* § I.

⁴⁹ *Id.* § IV.A.

⁵⁰ *Id.* § IV.I.1. PJM may also require further inquiry by the IMM or refer the matter to Office of Enforcement investigation upon identifying a "significant market problem or a potential Market Violation." *Id.*

⁵¹ *Id.* § IV.I.1.g.

provided in this and related proceedings⁵² and the ongoing investigation involving American Efficient, LLC,⁵³ IMM should now be deferring to the Office of Enforcement.⁵⁴

2. Audit Procedures Are Already Established in the Tariff

The IMM claims that because the Indicated Sellers' post installation M&V reports "do not contain the information indicated in PJM Manual 18B, PJM does not have the ability to conduct audits during the delivery year that the RAA provides for."⁵⁵

The RAA explains that "the Office of the Interconnection *may* audit, at the Capacity Market Seller's expense, any Energy Efficiency Resource committed to the PJM Region."⁵⁶ An audit under that provision "*may* be conducted any time including the Performance Hours of the Delivery Year."⁵⁷ PJM Manual 18B, section 6.1 continues:

PJM or an independent third-party (as directed by PJM) may conduct an audit, at the EE Resource Provider's expense, of the energy efficiency installation prior to or during the Delivery Year. The M&V Audit may be conducted any time, including during the defined EE Performance Hours. If the M&V Audit is performed and results finalized prior to the start of a Delivery Year, the Nominated EE Value and Capacity Performance value confirmed by the Audit becomes the Final Nominated EE Value and Final Capacity Performance value that is used to measure RPM Commitment Compliance during the Delivery Year. If the M&V Audit is performed and results finalized after the start of a Delivery Year, the Nominated EE Value and Capacity Performance value confirmed by the M&V Audit becomes the basis to determine if any incremental RPM Commitment

⁵² See 2024 IMM-Indicated Sellers Complaint; Complaint of the Independent Market Monitor for PJM, Docket No. EL24-126 (July 11, 2024).

⁵³ See Show Cause Order.

⁵⁴ See Tariff, Attach. M § IV.I.1. The IMM has not shown that Indicated Sellers other than the American Efficient family of entities are under investigation by the Office of Enforcement.

⁵⁵ Complaint at 20.

⁵⁶ RAA, Sched. 6 § L.7 (emphasis added).

⁵⁷ *Id.* (emphasis added).

Compliance Shortfall needs to be assessed retroactively from June 1 of the Delivery Year to May 31 of the Delivery Year.⁵⁸

Manual 18B, section 1.1 similarly explains that PJM “reserves the right to audit the results presented in an Initial or Updated Post-Installation M&V Report,” and the “M&V Audit may be conducted any time.”⁵⁹

Those audit provisions are permissive, but in its previous comments to the IMM in Docket No. EL24-113, PJM explained that it “intend[ed] to engage an independent third party to audit all of the Post-Installation M&V Reports submitted for the 2024/2025 Delivery Year.”⁶⁰ PJM confirmed that this independent third party specializing in EE would “*confirm or amend the final Nominated EE Value and Capacity Performance value for the EE Resources ... for the 2024/25 Delivery Year*” consistent with the Tariff allowing adjustment of those values through the audit process.⁶¹ Those audits for the 2024/2025 Delivery Year are nearing completion and PJM will adjust EE values as appropriate based on the outcome of the independent audits. In the meantime,

⁵⁸ Manual 18B § 6.1 (Overview of the M&V Audit).

⁵⁹ *Id.* § 1.1 (Overview of Energy Efficiency). The language of this provision largely replicates that in Section 6.1, stating in full:

PJM reserves the right to audit the results presented in an Initial or Updated Post-Installation M&V Report. The M&V Audit may be conducted any time, including during the defined EE Performance Hours. If the M&V Audit is performed and results finalized prior to the start of a Delivery Year, the Nominated EE Value and Capacity Performance value confirmed by the Audit becomes the Final Nominated EE Value and Capacity Performance value that is used to measure RPM Commitment Compliance during the Delivery Year. If the M&V Audit is performed and results finalized after the start of a Delivery Year, the Nominated EE Value and Capacity Performance value confirmed by the M&V Audit becomes the basis to determine if any incremental RPM Commitment Compliance Shortfall needs to be assessed retroactively from June 1 of the Delivery Year to May 31 of the Delivery Year.

⁶⁰ Comments of PJM Interconnection, L.L.C., Docket No. EL24-113 at 12 (July 3, 2024).

⁶¹ *Id.* (emphasis added).

PJM awaits any forthcoming direction from the pending *American Efficient* Show Cause proceeding or from the IMM's pending complaint in EL24-113.

C. The Commission Should Not Contravene the Stipulation Filed and Accepted in Docket No. EL24-128

The Commission should not contravene the stipulated satisfaction agreement between PJM and CPower (CPower Agreement), which resolved the dispute in Docket No. EL24-128.⁶²

The IMM's requested relief appears to directly contradict the CPower Agreement and the Commission's order accepting it. Specifically, the IMM would have PJM not pay CPower based on its report for the 2025/2026 Delivery Year,⁶³ despite the CPower Agreement requiring that:

*No pending or newly announced energy efficiency audit of a measurement and verification plan or post-installation measurement and verification report that pertains to the 2023/2024, 2024/2025 or 2025/2026 Delivery Years will be used by PJM to deviate from these commitments in this stipulated agreement, subject to additional inquiries, modification, and acceptance by the Commission.*⁶⁴

The Commission therefore should not grant relief that contravenes the accepted stipulation absent the requisite finding of serious harm to the public interest.⁶⁵

⁶² See CPower Order, 189 FERC ¶ 61,139 (granting joint motion to dismiss and accepting stipulated satisfaction and withdrawal agreement).

⁶³ See Complaint at 20.

⁶⁴ Joint Motion to Dismiss Complaint and Stipulated Satisfaction Agreement of PJM Interconnection, L.L.C. and Enerwise Global Technologies, LLC d/b/a CPower, Docket No. EL24-128 at 2 (Sept. 27, 2024) (emphasis added).

⁶⁵ See *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165, 167, 176 (2010); *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 530 (2008).

III. COMMUNICATIONS

PJM requests that the Commission place the individuals listed in the signature block below on the official service list for this proceeding.⁶⁶

IV. CONCLUSION

For the reasons set forth in this answer, the Commission should deny the Complaint.

Respectfully submitted,

/s/ John Lee Shepherd, Jr.

John Lee Shepherd, Jr.

Kenneth R. Carretta

Blake Grow

Johnson Mihaly

Hunton Andrews Kurth LLP

2200 Pennsylvania Avenue, NW

Washington, DC 20037

(202) 419-2135

(202) 955-1500

jshepherd@hunton.com

kcarretta@hunton.com

bgrow@hunton.com

jmihaly@hunton.com

Craig Glazer

Vice President–Federal Government Policy

PJM Interconnection, L.L.C.

1200 G Street, N.W., Suite 600

Washington, D.C. 20005

(202) 423-4743 (phone)

craig.glazer@pjm.com

Chenchao Lu

Associate General Counsel

PJM Interconnection, L.L.C.

2750 Monroe Boulevard

Audubon, PA 19403

(610) 666-2255

chenchao.lu@pjm.com

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⁶⁶ To the extent necessary, PJM requests a waiver of Commission Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to permit more than two persons to be listed in the official service list for this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2023).

/s/ *Blake Grow*

Blake Grow
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 955-1500
bgrow@hunton.com

June 27, 2025