UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	**)**	**Docket No. ER25-2653-000**

MOTION FOR LEAVE TO ANSWER AND ANSWER OF PJM INTERCONNECTION, L.L.C.

PJM Interconnection, L.L.C. ("PJM"), pursuant to Federal Energy Regulatory Commission ("Commission" or "FERC") Rules of Practice and Procedure 212 and 213,[1] submits this Motion for Leave to Answer and Answer to the Public Interest Organizations' ("PIOs") protest,[2] the PJM Industrial Customer Coalition's ("PJMICC") limited protest,[3] and East Kentucky Power & Electric's ("EKPC")[4] comments. Each were submitted on July 7, 2025 in response to PJM's proposed addition to PJM's Reliability Assurance Agreement Among Load Serving Entities ("RAA"), Article 7, section 2A,[5] which establishes a cost allocation methodology for recovering costs incurred by Constellation Energy Generation, LLC ("CEG") to effectuate the Secretary of Energy's, United States Department of Energy ("DOE") Order No. 202-25-4 ("DOE Order"). The DOE Order directs CEG to maintain operations of Eddystone Units 3 and 4 ("Eddystone Units")

[1] 18 C.F.R. §§ 385.212, 385.213.

[2] *PJM Interconnection, L.L.C.*, Protest of the Environmental Law & Policy Center, Natural Resources Defense Council, Sustainable FERC Project, Sierra Club, Public Citizen, Inc., Citizens Utility Board of Illinois, and Environmental Defense Fund, Docket No. ER25-2653-000 (June 7, 2025) ("PIOs Protest").

[3] *PJM Interconnection, L.L.C.*, Limited Protest of the PJM Industrial Customer Coalition, Docket No. ER25-2653-000 (July 7, 2025) ("PJMICC Limited Protest").

[4] *PJM Interconnection, L.L.C.*, Comments of East Kentucky Power Cooperative, Inc., Docket No. ER25-785-000 (July 7, 2025) ("EKPC Comments").

[5] *PJM Interconnection, L.L.C.*, PJM Proposal to Allocate Costs Required to Implement U.S. Department of Energy Order No. 202-25-4 of the Secretary of Energy Pursuant to Federal Power Act Section 202(c), at 14–17 Docket No. ER25-2653-000 (June 26, 2025) ("PJM Transmittal Letter").

beyond the resources' Deactivation Date through August 28, 2025.[6] Because the Eddystone Units were retained for resource adequacy purposes, PJM's proposed cost allocation methodology—which would allocate costs associated with the DOE Order to Load Serving Entities in PJM based on each Load Serving Entities' pro rata share of the sum of the total Daily Unforced Capacity Obligations—is based on the cost allocation methodology for region-wide capacity costs.[7]

PJM's proposed cost allocation methodology is the *only* issue before the Commission in this Federal Power Act ("FPA") section 205[8] proceeding. Only the PIOs raised objections to PJM's proposed methodology,[9] while PJMICC and EKPC expressly *supported* the proposed methodology.[10] To the extent the PIOs, PJMICC, and EKPC have raised other issues, they are beyond the scope of this proceeding.

For the reasons discussed below, the Commission should reject the PIOs' arguments against PJM's narrowly tailored cost allocation methodology, find PJM's proposed methodology just and reasonable, and accept the proposal effective June 1, 2025, as requested. PJM also respectfully requests that the Commission reject arguments pertaining to other matters as beyond the scope of this FPA section 205 proceeding.

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[6] Secretary of Energy, *Order No. 202-25-4*, United States Department of Energy (May 30, 2025), https://www.energy.gov/sites/default/files/2025-05/Federal%20Power%20Act%20Section%20202%28c%29%20PJM%20Interconnection.pdf ("DOE Order").

[7] *See* RAA, Article 7, section 2, Schedule 8, Schedule 8.1; *see also* Transmittal Letter at 16.

[8] 16 U.S.C. § 824d.

[9] *See, e.g.*, PIOs Protest at 11-12.

[10] *See* PJMICC Limited Protest at 3 ("PJMICC agrees with PJM that a region-wide cost allocation is consistent with cost-causation principles, considering the purpose and scope of the DOE Order. PJMICC also supports the use of each Load-Serving Entity's . . . pro rata share of the sum of the total Daily Unforced Capacity Obligations as a means of measuring and allocating the shared obligation."); EKPC Comments at 4 ("EKPC supports PJM's narrowly tailored proposal applicable to the instant DOE Order applying to Eddystone Units 3 and 4.").

I. MOTION FOR LEAVE TO ANSWER

Although section 213(a)(2) of the Commission's Rules of Practice and Procedure does not generally permit answers to protests and comments,[11] the Commission allows answers for good cause shown, such as when an answer contributes to a more accurate and complete record or provides useful information that assists the Commission's deliberative process.[12] This answer will aid the Commission's decision-making process by making two discrete points in response to the comments and protests filed in response to PJM's filing in this docket.[13] PJM therefore requests that the Commission accept this answer.

II. ANSWER

PJM limits this Answer to the following two points. First, contrary to the PIOs' claims, Commission precedent and the recent dispatch of the Eddystone Units demonstrate that the proposed, region-wide cost allocation methodology is just and reasonable and in line with cost causation principles. At their core, the PIOs' arguments against the cost allocation methodology are no more than thinly veiled attacks on the DOE Order, which is not before the Commission.

Second, the majority of the objections raised in this proceeding are, in fact, beyond the scope of the proposed cost allocation methodology and without merit. There is no basis, legal or otherwise, for expanding the scope of this FPA section 205 proceeding

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[11] 18 C.F.R. § 385.213(a)(2).

[12] *See, e.g.*, *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,073, at P 13 (2023) ("We accept the answers of J-Power, P3, PJM, Public Interest Entities, and the [Independent Market Monitor for PJM ("Market Monitor")] because they have provided information that assisted us in our decision-making process."); *N.Y. State Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc*., 158 FERC ¶ 61,137, at P 29 (2017) ("We will accept the Companies' and the Complainants' answers because they have provided information that assisted us in our decision-making process."), *order granting in part and denying in part reh'g & clarification*, 170 FERC ¶ 61,120, *order on clarification*, 171 FERC ¶ 61,114 (2020); *Colonial Pipeline Co.*, 157 FERC ¶ 61,173, at P 23 (2016) ("In the instant case, the Commission will accept the Protestors' Answers and Colonial [Pipeline Co.]'s Answer because they have provided information that assisted us in our decision-making process.").

[13] Silence should not be considered agreement or acquiescence to any unaddressed conclusions or statements.

beyond PJM's proposed cost allocation methodology. There is likewise no reason why issues beyond the scope of PJM's proposal should forestall the Commission's review of the cost allocation methodology. Delay in resolving the narrow issue in this proceeding will cloud CEG's receipt of timely payment for complying with the DOE Order. Moreover, expansion of the issues in this docket will embroil the Commission in second-guessing the DOE Order. Challenges to the underlying DOE Order must be addressed by DOE. The Commission has no statutory or regulatory authority to address these concerns.

A. The Proposed Cost Allocation Methodology Is Just and Reasonable.

1. The Eddystone Units Provide PJM Region-Wide Resource Adequacy Benefits.

The PIOs assert, incorrectly, that PJM erred in proposing a region-wide cost allocation and that PJM and DOE have not met their burden to identify "which portions" of the PJM grid should be allocated the cost of retaining the Eddystone Units.[14] First, as a matter of the Eddystone Units' actual operation and location in PJM, the resources are capable of benefiting all Load Serving Entities. The Eddystone Units are located in the PECO Zone, an unconstrained transmission region from which generation resources may serve resource adequacy needs throughout the PJM Region.[15] Had the Eddystone Units participated and cleared in the 2025/2026 Base Residual Auction, the resources would have received the unconstrained Rest-of-RTO clearing price.[16] In other words, the Eddystone Units are not operationally limited to serving the PECO Zone by virtue of any transmission constraints and are, in fact, capable of providing resource adequacy in any zone with

[14] PIOs Protest at 11.

[15] *2025/2026 Base Residual Auction Report*, PJM Interconnection, L.L.C., 5 (July 30, 2024), https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.pdf.

[16] *Id.*

sufficient import capability in the PJM Region. Thus, the Eddystone Units' actual operation and location in PJM support region-wide allocation.

Second, contrary to the PIOs' assertion that "there is no evidence that ratepayers across the PJM footprint will benefit from Eddystone's continued operation[,]"[17] the recent dispatch of the Eddystone Units during the June 23–25, 2025 heatwave[18] bolsters PJM's proposed cost allocation methodology. For each day of the June 2025 heatwave, PJM issued Maximum Generation ("MaxGen") and North American Electric Reliability Corporation ("NERC") Energy Emergency Alert-1 ("EEA-1") alerts for the entire PJM Region.[19] These alerts are issued "when a grid operator foresees or is experiencing conditions where all available resources are committed to meet electricity load, firm transactions, and reserve commitments, and is concerned about sustaining its required contingency reserves."[20] Put simply, MaxGen and EEA-1 alerts are emergency notifications that all resources should be committed to prevent potential resource adequacy and reliability events. Pursuant to the MaxGen and EEA-1 alerts, the Eddystone Units ran

[17] PIOs Protest at 8.

[18] *PJM Compliance Report to Department of Energy Order No. 202-25-4*, PJM Interconnection, L.L.C. (June 24, 2025), https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20250624-doe-compliance-report-for-eddystone-units-3-and-4.pdf ("June 24, 2025 Compliance Report"); *PJM Compliance Report to Department of Energy Order No. 202-25-4*, PJM Interconnection, L.L.C. (June 25, 2025), https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20250625-pjm-report-in-compliance-w-ordering-paragraph-b-of-the-doe-20250530-order-no-202-25-4.pdf ("June 25, 2025 Compliance Report"); *PJM Compliance Report re: Eddystone Units 3 and 4 to Department of Energy Order No. 202-25-4*, PJM Interconnection, L.L.C. (June 26, 2025), https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20250626-pjm-report-in-compliance-with-ordering-para-b-of-the-doe20250530-order-no-202-25-4.pdf ("June 26, 2025 Compliance Report").

[19] *See June 24 Update: MaxGen Alert Extended to June 25*, PJM Inside Lines (June 24, 2025), https://insidelines.pjm.com/june-24-update-maximum-generation-alert-extended-to-june-25/ (last updated June 25, 2025).

[20] *PJM's Emergency Procedures and Messages*, PJM Interconnection, L.L.C., 2 (Jan. 29, 2025), https://www.pjm.com/-/media/DotCom/about-pjm/newsroom/fact-sheets/pjms-emergency-procedures-and-messages.ashx.

on each day of the heatwave, June 23 through June 25, 2025, to support system-wide resource adequacy.

Finally, the PIOs' position that the statement in the DOE Order—"an emergency exists in portions of the electric grid operated by PJM"—must be read to mean that an emergency exists in only *some* portions of PJM's grid, rather than in all portions of the country's electric grid that PJM operates[21] places outsized weight on one phrase while also taking that phrase out of context. The PIOs assert that only *some* portions of PJM's grid should be allocated costs and therefore, to properly support the proposed cost allocation methodology, PJM must identify the appropriate portions of PJM's grid that would benefit from the continued operation of the Eddystone Units.[22] The PIOs' interpretation of an isolated phrase in the DOE Order cannot be reconciled with statements elsewhere in the DOE Order that PJM's entire "system" or "service territory" faces growing resource adequacy concerns.[23]

2. The PIOs' Assertion that the PJM Region Will Not Benefit Materially from the Retention of the Eddystone Units Ignores the Broader Resource Adequacy Concerns in PJM.

The PIOs' bald assertion that "PJM ratepayers have no need for, and will not materially benefit from, additional generating capacity[]"[24] and thus do not reap any material resource adequacy benefits from the continued operation of the Eddystone Units ignores the indisputable fact that, absent the DOE Order, the resources would have been deactivated, which would have reduced available capacity within the PJM footprint and

[21] PIOs Protest at 10. EKPC, in comments, also argues for the latter interpretation, but ultimately does not challenge the cost allocation methodology. EKPC Comments at 2.

[22] PIOs Protest at 10-11.

[23] DOE Order at 1.

[24] PIOs Protest at 9.

exacerbated resource adequacy issues. As the DOE Order recognizes, resource adequacy concerns are not limited to any one particular delivery year; "[t]hrough 2030, PJM anticipates reliability risk from increasing electricity demand, generator retirement outpacing new resource construction, and characteristics of resources in PJM's interconnection queue."[25] The PIOs' claims effectively overlook the overall resource adequacy impact associated with the deactivation of the Eddystone units.

3. The PIOs' Arguments Against the Proposed Cost Allocation Methodology Are Grounded in Issues that Are Not Within Scope of This Proceeding.

While the PIOs have ostensibly challenged PJM's proposed cost allocation methodology, at bottom, those challenges take aim at issues that are neither before the Commission nor within the scope of this proceeding.[26] In fact, the PIOs' claims amount to no more than thinly-veiled attacks on the DOE Order itself.[27]

First, the PIOs' claim that "PJM's cost allocation proposal violates [the cost causation] principle because there is no evidence that ratepayers across the PJM footprint will benefit from Eddystone's continued operation[]"[28] rests on an argument that the continued operation of the Eddystone Units is not beneficial to anyone.[29] By challenging the notion that *any* ratepayers in PJM will benefit from the continued operation of the

[25] DOE Order at 1.

[26] *See supra* section A.

[27] PIOs Protest at 2 (noting PJM's failure to provide "substantial evidence that consumers throughout the PJM region will benefit materially from the retention of Eddystone 3 and 4 for alleged resource adequacy purposes."); *id.* at 7-10 (asserting that forcing PJM customers to pay for a facility from which they "derive no benefits" when "there is no evidence that ratepayers across the PJM footprint will benefit from Eddystone's continued operation" is a violation of cost causation and beneficiary pays principles).

[28] *Id.* at 8.

[29] *See id.* (The PIOs claim that PJM ratepayers are already paying to fulfill their resource adequacy needs this year through PJM's RPM and that the Base Residual Auction for the 2025–2026 delivery year cleared more capacity than PJM determined to be necessary.).

Eddystone Units, the PIOs effectively challenge, under the cover of a cost causation argument, the Secretary of Energy's determination in the DOE Order that "operational availability and economic dispatch of the aforementioned Eddystone Units 3 and 4 (Eddystone Units) is necessary to best meet the emergency and serve the public interest for purposes of FPA section 202(c)."[30]

Second, under the banner of asserting that insufficient evidence has been proffered to support the Commission's ability to make a "reasoned cost allocation determination," the PIOs claim that neither PJM nor DOE have provided sufficient evidence of an emergency[31] and have, furthermore, failed to "explain the specific nature of that emergency, including the 'other causes' the Department [of Energy] references in the Order."[32] The PIOs claim that, without this information, "the Commission cannot determine which ratepayers, if any, benefit from Eddystone's continued operation and, accordingly, cannot make a reasoned decision" about the cost allocation methodology.[33] However, as DOE has expressly noted, consistent with the statutory division of authority between DOE and the Commission, "DOE's finding of an emergency" is not before the Commission.[34]

The PIOs' arguments have no place in this FPA section 205 proceeding. In fact, five of the seven PIOs—i.e., the Natural Resources Defense Council, Sierra Club, Public Citizen, Inc., Citizens Utility Board of Illinois, and Environmental Defense Fund—have

[30] DOE Order at 2.

[31] PIOs Protest at 10-11.

[32] *Id.* at 11.

[33] *Id.*

[34] DOE Referral to the Federal Energy Regulatory Commission, Docket No. AD25-15-000, at 2 (June 17, 2025) ("DOE Referral"))

filed requests for rehearing with DOE that similarly assert that retaining the Eddystone Units is not in the public interest and question whether a public emergency exists at all.[35] In filing rehearing requests with the DOE, the PIOs have implicitly acknowledged that these issues must be raised with DOE, not the Commission, and certainly do not belong in a protest against PJM's proposed costs allocation methodology.

4. The Proposed Cost Allocation Methodology Received Overwhelming Support from PJM Stakeholders, Including EKPC and PJMICC.

PJM's proposed, narrowly tailored cost allocation methodology received overwhelming stakeholder support during the Critical Issue Fast Path ("CIFP") process, passing by a sector-weighted tally of 4.308 out of 5.[36] In fact, EKPC's comments and PJMICC's limited protest, as filed in this proceeding, expressly support PJM's proposed cost allocation methodology.

Specifically, EKPC states that it "supports PJM's narrowly tailored proposal applicable to the instant DOE Order applying to Eddystone Units 3 and 4."[37] EKPC's filed comments are limited to urging that the Commission accept the proposed cost allocation

[35] *Motion to Intervene and Request for Rehearing of Natural Resources Defense Council, Citizens for Pennsylvania's Future, Environmental Defense Fund, Sierra Club and Public Citizen*, United States Department of Energy (May 30, 2025), https://www.energy.gov/sites/default/files/2025-07/PJM%20Motion%20to%20Intervene%20and%20Request%20for%20Rehearing%20of%20Public%20Interest%20Organizations.pdf (asserting that the continued operation of the Eddystone Units are not in the public interest and challenging issuance of Order No. 202-25-4 on grounds that declaration of emergency to address resource adequacy was improper); *Motion to Intervene and Request for Rehearing of the Joint Consumer Advocates*, United States Department of Energy (June 27, 2025), https://www.energy.gov/sites/default/files/2025-07/Motion%20to%20Intervene%20and%20Request%20for%20Rehearing%20of%20the%20Joint%20Consumer%20Advocates.pdf (The Joint Consumer Advocates includes the Citizens Utility Board of Illinois.).

[36] PJM Transmittal Letter at 6 (citing PJM Members Committee, *Supplemental Voting Results*, PJM Interconnection, L.L.C., 3 (June 18, 2025), https://www.pjm.com/-/media/DotCom/committees-groups/committees/mc/2025/20250618/20250618-mc-voting-results---item-05b---package-b---gabel-associates.pdf).

[37] EKPC Comments at 4.

methodology as is by refraining from expanding the applicability of the methodology beyond the DOE Order and the Eddystone Units.[38] In other words, EKPC is ultimately aligned with PJM.

Likewise, PJMICC "agrees with PJM that a region-wide cost allocation is consistent with cost-causation principles, considering the purpose and scope of the DOE Order," and supports PJM's proposal to "use of each Load-Serving Entity's . . . pro rata share of the sum of the total Daily Unforced Capacity Obligations as a means of measuring and allocating the shared obligation."[39] PJMICC's limited protest is instead focused on a purely legal point concerning the scope of PJM's authority and the Commission's oversight over costs.[40] Thus, at bottom, the PIOs stand alone in challenging the justness and reasonableness of PJM's cost allocation proposal.

B. Issues Beyond the Scope of PJM's Proposed Cost Allocation Methodology Have No Place in This Proceeding.

Despite the fact that the proposed cost allocation methodology is the *only* issue before the Commission, the lion's share of the arguments raised in response to PJM's proposal takes aim at other, tangentially-related issues. Namely, the PIOs collaterally attack the underlying DOE Order and DACC-based formula rate,[41] and PJMICC calls into question PJM's authority to address the underlying DACC-based formula rate and the Commission's oversight of the Eddystone Units' cost recovery.[42] However, there is simply

[38] EKPC Comments at 3-4.

[39] PJMICC Limited Protest at 3.

[40] *Id.*

[41] PIOs Protest at 10 (asserting that DOE has failed to provide evidence to support for declaring a resource adequacy emergency across all load-serving entities in PJM).

[42] PJMICC Limited Protest at 4-5 (challenging PJM's authority to reach cost compensation decisions for 202(c) resources).

no grounds for expanding the Commission's inquiry beyond the scope of PJM's proposed cost allocation methodology.

1. The Scope of This FPA Section 205 Proceeding Is Limited by PJM's Proposal.

It is well-settled that the scope of a FPA section 205 proceeding is limited by the original filing,[43] and Commission precedent supports the principle that issues pertaining to actual costs are beyond the scope of section 205 proceedings addressing only the *allocation* of actual costs.[44] Furthermore, the Commission has held that information on costs and operations are simply "not necessary in order to make a finding that [a] proposed cost allocation methodology is just and reasonable[.]"[45] As the Commission has previously acknowledged, a cost allocation methodology "is a formulaic allocation process" that should not be conflated "with the dollar amounts that result from the proposed methodology."[46]

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[43] *See NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 116 (2017) (finding that FERC exceeded its authority under section 205 of the FPA where "FERC's modifications expanded the scope of the exemptions not just beyond PJM's original filing, but beyond the scope of the exemptions as they had stood before PJM's filing.").

[44] *See, e.g.*, *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC 61,188, at PP 151-152 (2008) (protest "is outside the scope of this [formula rate] proceeding, and is a collateral attack on the Commission's order" in the separate cost allocation proceeding; in PJM's RTEP process "cost allocation is not part of the individual transmission owner's incentive request or its rate filing, but rather, is filed by PJM."); *Entergy Ark., Inc.*, 171 FERC 61,037, at PP 7-9 (2020) (denying request for rehearing where party sought reconsideration of the reasonableness of Control Center costs and overall rate increase, because Commission's "review of the Ownership Agreement in this proceeding under section 205 of the FPA is instead limited to the reasonableness of the provisions that establish the allocation of ownership interests and the specific terms under which Entergy Services will continue to provide services related to the Control Centers."); *see also Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,091, at P 10 n.27 (2019) (quoting *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,133, at P 20 (2016)); *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,216, at P 62 (2015).

[45] *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,216 at P 64.

[46] *Id.* PP 34, 63 (agreeing with Midcontinent Independent System Operator, Inc.'s position to reject requests that the Commission not accept MISO's proposed cost allocation methodology without additional information).

The Commission's regulations, 18 C.F.R. § 35.10(c), dictates that "only those revisions appropriately designated and marked . . . constitute the filing."[47] That is, only the proposed changes to the filed rate—here, redlined changes to add new Article 7, section 2A to the RAA—define the scope of the matter before the Commission. In fact, the Commission has rejected proposed amendments to 18 C.F.R. § 35.10(c) that would have permitted "comments on unmarked and undesignated language . . . when such comments provide useful information to the Commission for the resolution of issues directly related to the filing."[48] In so doing, the Commission reasoned that, rather than permitting such comments as a matter-of-course, the Commission must have the ability to determine, on a case-by-case basis, whether "the protest or comment on the unchanged tariff text bears upon the justness and reasonableness of the proposed tariff change[.]"[49]

Likewise, to the extent PJM's original filing in this proceeding has made any mention at all of the DOE Order or the underlying costs and formula rate, it does so only for the limited purposes of providing the relevant context for the cost allocation methodology and explaining why the scope of the cost allocation proposal at issue here does *not* extend to the DOE Order or associated costs and underlying formula rate.[50]

2. The Applicable Statutory and Regulatory Framework Provides for DOE and Commission Intervention When Parties Are Unable to Agree on Underlying Rates.

As PJM has previously stated, "a rate reached by mutual agreement of PJM and CEG obviates the need to obtain Commission (or, for that matter, DOE) approval of the

[47] 18 C.F.R. § 35.10(c).

[48] *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270, at P 54 (2008), *final rule*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).

[49] *Electronic Tariff Filings*, 124 FERC ¶ 61,270 at P 54.

[50] PJM Transmittal Letter at 5, 11-13.

rate."[51] The PIOs claim that this essentially means "that the Eddystone costs are unreviewable[]"and "not subject to regulatory scrutiny of any kind."[52] PJMICC contends that PJM's application of the law would create a "regulatory gap."[53] Both parties mischaracterize PJM's position as well as the underlying statutory and regulatory framework.

On May 30, 2025, the Secretary of Energy ordered the retention of the Eddystone Units pursuant to "the authority vested in the Secretary of Energy by section 202(c) of the [FPA], 16, U.S.C. § 824a(c), and section 301(b) of the Department of Energy Organization Act, U.S.C. § 7151(b)[.]"[54] The DOE Order requires that "PJM and [CEG] . . . take all measures necessary to ensure that Eddystone Units are available to operate[]"[55] and "file with the [Commission] any tariff revisions or waivers necessary to effectuate this order." The DOE Order further notes that "[r]ate recovery is available pursuant to [202(c) of the FPA,] 16 U.S.C. s 824a(c)."[56]

Until 1977, authority to declare an emergency and to establish, review, and enforce the underlying rates and charges pursuant to section 202(c) of the FPA resided wholly in the Commission's predecessor, the Federal Power Commission.[57] In 1977, however, the Federal Power Commission was abolished, and emergency authority pursuant to

[51] PJM Transmittal Letter at 12.

[52] PIOs Protest at 13.

[53] PJMICC Limited Protest at 9.

[54] DOE Order at 1.

[55] *Id.* at 3.

[56] *Id.* at Ordering Paragraph E; *see also U.S. Dep't of Energy*, 191 FERC ¶ 61,217, at P 2 (2025).

[57] *In re Amendment of Reguls. Under the Fed. Power Act*, Order No. 520, 52 F.P.C. 1554, at 4 (1974), *modified by* Order No. 520-A, 53 F.P.C. 282 (1975), *final rule*, *Nat. Gas Policy Act of 1978*, 50 FERC ¶ 61,175 (1990).

section 202(c) of the FPA was subsequently transferred to the Secretary of Energy.[58] Only conditional authority to establish, review, and enforce associated rates and charges was transferred to the Commission.[59] With respect to the Commission's authority over underlying rates and charges, section 202(c) of the FPA states, in relevant part:

> *If* the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such part.[60]

By the plain terms of section 202(c) of the FPA, the "parties affected by such order" are those "carrying [it] out."[61]

DOE's regulations elaborate on the rates and charges necessary to carry out FPA section 202(c) orders. In relevant part, 10 C.F.R. § 205.376 provides:

> The applicant and the generating or transmitting systems from which emergency service is requested are encouraged to utilize the rates and charges contained in approved existing rate schedules or to negotiate mutually satisfactory rates for the proposed transactions. In the event that the DOE determines that an emergency exists under section 202(c), and the "entities" are unable to agree on the rates to be charged, the DOE shall prescribe the conditions of service and refer the rate issues to the Federal Energy Regulatory Commission for determination by that agency in accordance with its standards and procedures.

In adopting its regulations implementing FPA section 202(c), DOE explained that "the terms of any arrangements for carrying out an emergency order under this section will be prescribed only if the affected 'entities' cannot reach an agreement on their own."[62]

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[58] 42 U.S.C. § 7151.

[59] 42 U.S.C. § 7172.

[60] 16 U.S.C. § 824a(c)(1) (emphasis added).

[61] *Id.*

[62] *Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power*, 46 Fed. Reg. 39984 (Aug. 6, 1981) (codified at 10 C.F.R. part 205).

DOE's regulations, 10 C.F.R. § 205.370, expressly limits the applicability of section 202(c) of the FPA to owners or operators of generation, transmission, or distribution facilities, that may include a utility, governmental agency, municipality or cooperative that DOE has "the authority to order the temporary connection of facilities, or the generation or delivery of electricity, which it deems necessary to alleviate an emergency."

In short, consistent with the plain language of the statue, DOE's regulations contemplate that it is up to PJM and CEG to determine the applicable rates in the first instance. Section 202(c) of the FPA, 10 C.F.R. § 205.376, and DOE's final rulemaking implementing 10 C.F.R. § 205.376 plainly state that the Commission's authority to review rates to be charged is conditioned on the parties or entities not being able to reach consensus.

Commission precedent is consistent with this understanding of the statute. The Commission, in *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Services* ("*SDG&E*"), expressly stated that FPA section 202(c) "provides no role for the Commission in the event the parties agree on the rates that will apply to the transactions."[63] Both the PIOs and PJMICC attempt to distinguish *SDG&E*, but none of the factual differences between the *SDG&E* matter and this proceeding undermine the similarities between them or the Commission's straightforward statement of the law in *SDG&E*.

In *SDG&E*, CAISO, like PJM, was among the parties to an emergency order issued by DOE.[64] CAISO, like PJM, agreed to rates that applied to transactions with other parties

[63] *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 97 FERC ¶ 61,275 at 62,196 (2001) ("SDG&E").

[64] *See id.* at 62,231 (citing to Secretary of Energy, *Order Pursuant to Section 202(c) of the Federal Power Act*, United States Department of Energy (Dec. 14, 2000), https://www.energy.gov/sites/default/files/202%28c%29%20order%20December%2014%2C%202000%20-%20California.pdf).

named in the emergency order.[65] As the Commission concluded in *SDG&E*, where "the parties agreed on the terms and rates for the sales[,] . . . the statute provides for no further adjustments."[66]

Indeed, the Commission's statement in *SDG&E* is bolstered by additional Commission precedent, which provides that when parties to an emergency order issued by the Secretary of Energy pursuant to section 202(c) of the FPA "have not been able to reach agreement on appropriate compensation relating to the [e]mergency [o]rder[,]" the Commission may act to prescribe such terms as the Commission finds to be just and reasonable.[67] In 2002, for example, the Secretary of Energy determined, pursuant to section 202(c) of the FPA, that an emergency existed in Long Island due to a shortage of electric energy and facilities for generation and transmission of electric energy. The Secretary of Energy therefore issued an emergency order directing the Cross-Sound Cable Company, LLC ("CSC") to operate the Cross-Sound Cable and related facilities to transmit and deliver electricity capacity and/or energy to the Long Island Power Authority ("LIPA").[68] In that case, however, CSC and the Long Island Power Authority were unable to reach agreement on the appropriate compensation. As a result, DOE referred the matter to the Commission to ascertain the appropriate compensation,[69] and the Commission set the question of appropriate compensation for hearing.[70] CSC and LIPA subsequently filed a joint stipulation that they had reached a "comprehensive agreement establishing a price

[65] *See SDG&E*, 97 FERC ¶ 61,275 at 62,196.

[66] *See id.*

[67] *U.S. Dep't of Energy*, 101 FERC ¶ 61,389, at PP 4-5 (2002).

[68] *Id.* PP 3-5.

[69] *Id.*

[70] *Id.*

for the sale of transmission capacity, on an interim basis, over the Cross-Sound Cable"[71] and asked the Commission to terminate the proceeding as a result. CSC and LIPA did not file the agreement as part of the joint stipulation. Noting that the joint stipulation provided that CSC would report "all price and transaction data" to the Commission on a quarterly basis, the Commission—without review of the agreement—approved the joint stipulation and terminated the proceeding.[72]

Similarly, in this case, where CEG and PJM have reached agreement on the rates that will apply to the relevant transactions, the Commission need not provide additional guidance or review. This is especially relevant here since the parties have essentially utilized a formula rate based on PJM's existing Open Access Transmission Tariff ("Tariff") provisions.

3. As the Commission Has Recognized, the Secretary of Energy and DOE Expressly Limited the Matters Before the Commission to Cost Allocation.

On May 30, 2025, the Secretary of Energy directed PJM and CEG "to file with the Federal Energy Regulatory Commission any tariff revisions or waivers necessary to effectuate this order. Rate recovery is available pursuant to 16 U.S.C. § 824a(c)."[73] Subsequently, in a June 17, 2025 letter, DOE referred "certain matters" related to the DOE Order to the Commission ("DOE Referral") and clarified that "DOE's finding of an emergency, the prescription of conditions of service, or any other matter arising from

[71] *U.S. Dep't of Energy*, Joint Stipulation of Cross-Sound Cable Company, L.L.C. and Long Island Lighting Company and LIPA Reflecting Agreement on Compensation Under Emergency Order, Docket No. ER03-246-000, at 2 (May 6, 2004).

[72] *U.S. Dep't of Energy*, 107 FERC ¶ 61,258 (2004).

[73] DOE Order at Ordering Paragraph E.

DOE's exercise of its authority under section 202(c)" are not before the Commission.[74] Specifically, the DOE Referral acknowledges that PJM and CEG had agreed that the Eddystone Units will be compensated on a DACC-based rate while noting that PJM's payment obligation will be contingent upon the Commission's approval of a cost allocation methodology.[75] Thus, the DOE Referral can only be reasonably read to be limited to the cost allocation methodology at issue in this docket rather than the broader DACC-based formula rate. The DOE Referral expressly states that "DOE is not referring to the Commission any other matters[.]"[76] In fact, in the final rulemaking establishing DOE's rules concerning DOE's FPA section 202(c) authority over "rates and charges," 10 C.F.R. § 205.376, DOE expressly states that the "specific allocation of costs was not included in the [DOE's] regulations since this responsibility is vested in the [Commission] and must be addressed by its regulations."[77]

On June 24, 2025, the Commission acknowledged that the DOE Referral states that PJM and CEG have agreed on a rate at which the Eddystone Units would be compensated and that CEG would be making this "informational filing . . . which is not subject to approval, offering additional information about the rate."[78] The Commission also acknowledged DOE's statement that PJM would be filing a separate FPA section 205 filing proposing OATT revisions to implement a cost allocation mechanism through which PJM can collect compensation due to CEG under the Eddystone Agreement.[79]

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[74] DOE Referral at 1-2.

[75] *Id.* at 1.

[76] *Id.* at 2.

[77] *Emergency Interconnection of Electric Facilities and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power*, 46 Fed. Reg. 39,984 (Aug. 6, 1981) (codified at 10 C.F.R. part 205).

[78] *U.S. Dep't of Energy*, 191 FERC ¶ 61,217 at P 3.

[79] *Id.* PP 4-6.

On June 26, 2025, PJM filed the proposed cost allocation methodology with the Commission pursuant to section 205 of the FPA.[80] CEG made the aforementioned informational filing with the Commission on the same day.

Thus, the only issue that remains before the Commission is PJM's proposed cost allocation methodology for assigning costs associated with effectuating the DOE Order. To the extent the PIOs or PJMICC have taken aim at "DOE's finding of an emergency, the prescription of conditions of service, or any other matter arising from DOE's exercise of its authority under section 202(c),"[81] DOE has made clear that those issues are not before the Commission and are thus beyond the scope of this proceeding.

4. The PIOs' Claim that the Eddystone Units' Underlying Costs Are "Unreviewable" Is Not Supported by the Record.

As a factual matter, it is simply not the case that the Eddystone costs are, as the PIOs assert, "unreviewable."[82] First, a summary of the Operating Memorandum pursuant to which the Eddystone Units operate is publicly available.[83]

Second, on June 26, 2024—the same day that PJM filed the proposed cost allocation methodology—CEG submitted an informational filing to the Commission that provided the formula rate agreement between CEG and PJM for the operation of the Eddystone Units pursuant to section 203(c) of the FPA ("Formula Rate Agreement").[84]

[80] PJM Transmittal Letter, Attachment A, 7.2A—Responsibility to Pay 202(c) Charge.

[81] DOE Referral at 2.

[82] PIOs Protest at 13.

[83] *Eddystone 3 and 4 Unit Reporting Commitment Process*, PJM Interconnection, L.L.C. (June 12, 2025), https://www.pjm.com/-/media/DotCom/committees-groups/committees/oc/postings/20250612-eddystone-3-and-4-unit-reporting-and-commitment-process.pdf.

[84] Constellation Energy Generation LLC, *Informational Filing Related to DOE Order No. 202-25-4*, Docket No. AD25-15-000 (June 26, 2025) ("Informational Filing").

The Formula Rate Agreement details how the DACC-based formula rate and resulting costs will be calculated.[85]

Third, as set forth in the Formula Rate Agreement provided to the Commission by CEG[86] and also explained in PJM's transmittal letter accompanying the initial filing in this proceeding,[87] the underlying formula rate relies on a DACC-based formula rate methodology and processes set forth in Part V, sections 114, 115, 116, 118, and 118A of the Tariff.[88] The Formula Rate Agreement makes clear that the Market Monitor will review the cost components reflected in the formula "pursuant to the processes specified in Tariff, Part V, section 114, and take action as needed based on such review."[89]

In accordance with section 114 of the Tariff, the Market Monitor has reviewed the agreement with CEG on a Deactivation Avoidable Cost Rate ("DAC Rate") component of $63.51/MW-day for each of the Eddystone Units.[90] The DAC Rate reflects the cost components defined in section 115, Part V of the Tariff.[91] If the Market Monitor does not agree on the appropriate level of each component included in the DAC Rate, the Market Monitor has the authority to "petition the Commission for an order that would require the generating unit owner to include an appropriate cost component"[92] pursuant to section 114, Part V of the Tariff on file.

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[85] Informational Filing, Attachment B (Eddystone Agreement).

[86] *Id.*, CEG Transmittal Letter at 3; *id.*, Attachment B (Eddystone Agreement) at 1-3.

[87] PJM Transmittal Letter at 12-13.

[88] PJM Open Access Transmission Tariff, part V, sections 114, 115, 116, 118, and 118A.

[89] Informational Filing, Attachment B (Eddystone Agreement) at 5.

[90] *Id.*, CEG Transmittal Letter at 3.

[91] *Id.* at 3 n.9.

[92] Tariff, Part V, section 114.

Fourth, the agreed upon DAC Rate expressly states that "PJM's obligation to pay CEG shall be contingent upon FERC acceptance of a cost allocation methodology that allows PJM to collect the Rate from market participants."[93] In other words, absent Commission acceptance of the proposed allocation, no rate would actually be paid to CEG for the retention of the Eddystone Units. Simply put, there is no regulatory gap under this arrangement.

At bottom, the underlying formula rate is publicly available for review, based on a methodology and process set forth in Commission-approved Tariff provisions, and incorporates a proposed DAC Rate to which the Market Monitor has agreed that is based on an assessment of the cost inputs set forth and defined in Part V, section 115 of the Tariff.[94] Far from being "unreviewable," the underlying formula rate methodology and costs are transparent and publicly available.

5. Neither the PIOs Nor PJMICC Have Directly Challenged the Use of a DACC-Based Rate or the Resulting Costs.

Even if the Commission were to entertain the PIOs and PJMICC's arguments with respect to the underlying formula rate and costs,[95] which have been reviewed by the Market Monitor pursuant to Commission-approved Tariff provisions, the Commission should find the underlying DACC-based formula rate and actual costs just and reasonable. In fact, despite raising concerns, PJMICC makes clear that it "does not oppose the proposed substantive resolution of the cost issues caused by the DOE Order."[96] Similarly, while the PIOs raise legal questions and broad questions about the regulatory framework under

[93] Informational Filing, Attachment B (Eddystone Agreement).

[94] *Id.* at 3.

[95] PJMICC Limited Protest at 3.

[96] *Id.*

which the rates were negotiated, the PIOs have not claimed that the level of the DAC Rate or resulting costs of retaining the Eddystone Units are unjust and unreasonable.

III. CONCLUSION

PJM ask that the Commission consider this answer and accept the proposed revisions to the RAA in this docket, effective June 1, 2025, as requested.

Respectfully submitted,

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July 18, 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 18th day of July 2025.

/s/ Vivian W. Chum

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