

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

Joint Consumer Advocates)	
)	
Complainants,)	Docket No. EL25-18-000
)	
v.)	
)	
PJM Interconnection, L.L.C.,)	
)	
Respondent;)	
)	
and,)	
)	
Joint Consumer Advocates)	
)	Docket No. EL25-76-000
Complainants,)	
)	
v.)	
)	
PJM Interconnection, L.L.C.,)	
)	
Respondent.)	
)	<i>Not Consolidated</i>

**ANSWER OF PJM INTERCONNECTION, L.L.C. TO
MOTION TO LODGE OF COMPLAINANTS**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ PJM Interconnection, L.L.C. (“PJM”) submits this answer to the December 22, 2025 motion to lodge (“Motion”) filed by the Maryland Office of People’s Counsel, New Jersey Division of Rate Counsel, and Illinois Attorney General’s Office (collectively, “Consumer Advocates” or “Complainants”) in the above captioned proceedings.²

¹ 18 C.F.R. §§ 385.212 and 385.213.

² *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Motion to Lodge of Consumer Advocates, Docket No. EL25-18-000 (Dec. 22, 2025) (“Motion”). The Consumer Advocates were Complainants in both

PJM takes no position to the lodging of the Commission’s order approving the transfer of Enerwise Global Technologies, LLC (“CPower”) from LS Power Development, LLC (“LSP”) to NRG East Generation Holdings, LLC (“NRG”)³ (the “Acquisition Order”). However, such action is wholly unnecessary as the Commission can take administrative notice of its own orders.⁴ Requiring precedents to be lodged before they can be considered by the Commission in its decision-making in a given case would create a poor precedent as it implies that the Commission can only rely on precedent that one party or another formally lodged with the Commission in the particular docket in question. Such a result would procedurally straitjacket the Commission in setting forth its rationale consistent with the requirement that it undertake reasoned decision-making.⁵

On the substance, the Acquisition Order demonstrates that Complainants’ allegations regarding the market power impacts of CPower’s transfer were raised by the Independent Market Monitor for PJM (“IMM”) and rejected in that case.⁶ In the Acquisition Order, the Commission had before it actual market power analyses to

Docket Nos. EL 25-18-000 and EL25-76-000, whereas the joint consumer advocates in Docket No. EL25-18-000 also included the Illinois Citizens Utility Board, the Office of the Ohio Consumers’ Counsel, and the Office of the People’s Counsel for the District of Columbia (collectively, “Complainants”). See *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Complaint of Joint Consumer Advocates, Docket No. EL25-18-000 (Nov. 18, 2024) (“Joint Consumer Advocates’ Complaint”); *Joint Consumer Advocates 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) (“Consumer Advocates’ Complaint”).

³ *NRG East Generation Holdings, LLC*, 193 FERC ¶ 61,124 (2025) (“Acquisition Order”).

⁴ See e.g., *Demand Response Comp. in Organized Wholesale Energy Markets PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,213 at P 23 (2010) (“tak[ing] administrative notice of the record in the PJM proceeding so that parties in that proceeding need not refile affidavits or other evidence introduced there.”); *NorthWestern Corp.*, 155 FERC ¶ 61,158, at P 10 (2016) (taking administrative notice of a D.C. Circuit decision, and denying a motion to lodge as unnecessary); *Pacific Gas & Elec. Co.*, 109 FERC ¶ 61,205, at P 7 (2004) (“This Commission and the courts can take official notice of any judicial decision at any time, so there is no need to reopen the record for this purpose.”).

⁵ See, e.g., *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 295 (2016) (“Our important but limited role is to ensure that the Commission engaged in reasoned decision-making”).

⁶ Acquisition Order at P 55 (finding that the transaction will not have an adverse effect on horizontal competition).

determine whether the transfer of such Demand Resources would have an adverse effect on horizontal competition, and conclusively determined that there would be none because PJM's capacity markets model those Demand Resource as supply resources.⁷ The Commission also found that the small levels of Herfindahl-Hirschman Index ("HHI") change did not raise concerns on competition in the PJM capacity market.⁸ The Commission refuted those allegations based on the evidence.

Complainants now seek to relitigate those allegations in this proceeding with even less of a record as no market power analysis has been presented nor has the market power analysis presented in the Acquisition Order proceeding been refuted or distinguished. The Acquisition Order therefore does not add any information that supports the Complaints, as the transfer of a Curtailment Service Provider from one generation owner to another does not provide any new information that is relevant to this docket and does not affect the material circumstances underlying the Complaints.⁹

Moreover, Complainants' Motion rests on the assertion, presented without any empirical analysis, that Demand Resources are able to exercise market power in PJM and must therefore be mitigated. This sweeping claim is incorrect and has been soundly rejected by the Commission in its recent order refusing to require that PJM impose a must-offer requirement on Demand Resources as they "do not present the same level of physical withholding concern as do Generation Capacity Resources and thus, they are not similarly

⁷ *Id.* at P 61.

⁸ *Id.* at P 62.

⁹ See, e.g., *AEP Oklahoma Transmission Company, Inc.*, 191 FERC ¶ 61,239, at P 17 (2025) ("*AEP*") (denying the motion to lodge because it did not provide information that assisted the Commission in its decision-making process); *ISO New England Inc.*, 147 FERC ¶ 61,027, at P 13 (2014) (denying a motion to lodge when it did not provide information that assisted in the decision-making process).

situated.”¹⁰ PJM has also previously detailed the impracticalities associated with trying to impose any must-offer obligation on such a “large number of disparate end-use customers within a specific geographic area . . . given that they are also much more mobile than traditional Generation Capacity Resources.”¹¹

Unfortunately, Complainants have inappropriately utilized the Motion to relitigate their substantive points rather than simply moving that the Commission undertake this administrative task to lodge the Acquisition Order in this record. Whether or not the Commission accepts the Complainants’ Motion, the overall record still does not support the Complaints.

I. ANSWER

No motion to lodge is necessary here because the Commission can take administrative notice of its own precedent without needing it to be lodged and because the Acquisition Order does not demonstrate any changes that are relevant or material to the underlying Complaints.¹² In any event, the Acquisition Order refutes allegations that are foundational to the Complaints as the Commission determined that the transfer of a Curtailment Service Provider within PJM would not have any adverse effect on horizontal competition despite the lack of a must-offer requirement on Demand Resources.¹³

¹⁰ See *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117, at P 111 (2025).

¹¹ See *PJM Interconnection, L.L.C.*, Extending the Capacity Must-Offer Requirement to All Generation Capacity Resources, Docket No. ER25-785 at 30 (Dec. 20, 2024).

¹² See, e.g., *AEP*, 191 FERC ¶ 61,239 at P 17.

¹³ Acquisition Order at P 55.

The Acquisition Order involves the transfer of CPower, a Curtailment Service Provider, from LSP, a generation owner,¹⁴ to NRG, another generation owner.¹⁵ Consumer Advocates nevertheless allege that the Acquisition Order is relevant to their Complaints because the Complaints generically allege market power concerns in an effort to support their requested relief: a lowering of the RPM Auction clearing prices.¹⁶

However, this contention is doubly incorrect. First, the Acquisition Order does not provide any new information relevant to the Complaints, as the change in ownership of CPower occurred between two similarly situated generation owners, meaning that any underlying market mitigation concerns that Complainants allege after the transfer would have likely remained substantively unchanged. The only new and relevant information provided by the Acquisition Order is the Commission's determination that the transfer of a Curtailment Service Provider within PJM would have no adverse effect on horizontal competition, which refutes the claims foundational to the Complaints and supports their dismissal. Second, the underlying premise for why Complainants seek to include the Acquisition Order in the first place is misguided, as the Commission has already determined that Demand Resources do not need to be mitigated for market power within PJM through the imposition of a must-offer requirement.¹⁷

¹⁴ Acquisition Order at P 3.

¹⁵ *Id.* at P 1 n.4

¹⁶ Joint Consumer Advocate Complaint at 7-8 (requesting that the Commission direct PJM to re-clear the 2025/2026 Base Residual Auction); Consumer Advocate Complaint at 34-35 (requesting that the Commission adopt a replacement rate).

¹⁷ See *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117, at P 111 (2025).

A. The Acquisition Order Does Not Add Any Information that Supports the Complaints and Raises Concerns More Appropriately Addressed in a Separate Docket.

Concerns regarding potential market power resulting from the Acquisition Order were raised by the IMM and the Consumer Advocates and addressed by the Commission in that proceeding.¹⁸ Specifically, the Commission found that it had not been demonstrated that the Acquisition Order would have an adverse effect on horizontal competition and declined to require PJM to impose behavioral conditions on the entities.¹⁹

There is no basis for Complainants to relitigate alleged market power concerns associated with the transfer of CPower through this Motion in these Complaint proceedings. The Commission has previously denied motions to take administrative notice of concerns more appropriately addressed in a separate docket²⁰ and should apply that same rationale here. Moreover, lodging these filings in this proceeding is unnecessary, as the Commission can take administrative notice of federal issuances as well as filings and affidavits on its own accord if it deems appropriate.²¹

While the Commission may take administrative notice and consideration of the Acquisition Order, the Consumer Advocates' Motion constitutes an attempt to relitigate

¹⁸ See Acquisition Order at PP 65-66 (finding that the IMM, whose conditions the Consumer Advocates supported, had not demonstrated that the transfer of CPower will have an adverse effect on horizontal competition and declining to require PJM to impose behavioral conditions to mitigate market power).

¹⁹ *Id.* at P 66.

²⁰ See *Entergy Servs., Inc.*, 139 FERC ¶ 61,103, at P 5 (2012) (denying the Louisiana Public Service Commission's motion requesting the Commission take administrative notice of Entergy's Opinion No. 505 compliance filing in a separate docket when considering whether to grant rehearing because "[c]oncerns about Entergy's compliance filing are more appropriately raised in the compliance proceeding" and the Commission saw "no reason to address compliance issues here").

²¹ See e.g., *Demand Response Comp. in Organized Wholesale Energy Markets*, 130 FERC ¶ 61,213 at P 23 (2010) ("tak[ing] administrative notice of the record in the PJM proceeding so that parties in that proceeding need not refile affidavits or other evidence introduced there."); *NorthWestern Corp.*, 155 FERC ¶ 61,158, at P 10 (2016) (taking administrative notice of a D.C. Circuit decision, and denying a motion to lodge as unnecessary); *Pacific Gas & Elec. Co.*, 109 FERC ¶ 61,205, at P 7 (2004) ("This Commission and the courts can take official notice of any judicial decision at any time, so there is no need to reopen the record for this purpose.").

the Commission's findings on the market power impact of the transfer of CPower from LSP to NRG.²² As such, the Commission should reject these arguments as an impermissible collateral attack on the determinations made in the Acquisition Order.²³

B. Complainants' Contention that Demand Resources Exercise Market Power within PJM and that the Commission Must Therefore Impose a Must-Offer Requirement is an Impermissible Collateral Attack.

As PJM and the Commission have explained, Complainants are mistaken in the underlying premise that Demand Resources must be mitigated for market power within PJM. Unlike traditional resources, Demand Resources provide capacity by reducing energy consumption instead of injecting energy into the transmission system.²⁴ 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."²⁵

Thus, a blanket must-offer requirement on Demand Resources is not necessary, as the Consumer Advocates had requested in a separate proceeding,²⁶ because those resources have highly idiosyncratic operational and economic characteristics and primarily engage

²² See Acquisition Order at PP 55, 66.

²³ See e.g., *Sacramento Mun. Util. Dist. v. FERC*, 428 F.3d 294, 299 (D.C. Cir. 2005) ("Because the time for seeking judicial review has long passed, Sacramento's argument amounts to an impermissible collateral attack on the previously approved California ISO tariff.").

²⁴ See *PJM Interconnection, L.L.C.*, Extending the Capacity Must-Offer Requirement to All Generation Capacity Resources, Docket No. ER25-785-000 at 29 (Dec. 20, 2024).

²⁵ *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117, at P 64.

²⁶ *Id.* at P 36.

in load curtailment as a cost-saving supplement to their principal commercial interest (*e.g.*, manufacturing, commercial retail, air conditioning services, etc.) so they may not voluntarily decrease their load at the expense of that commercial interest.²⁷ Nevertheless, Consumer Advocates attempt to relitigate that conclusion in this proceeding through the lodging of the Acquisition Order. As the Commission has already rejected the Consumer Advocates' argument that PJM must impose must-offer requirements or market seller offer caps on Demand Resources participating as supply in the capacity market, the Commission should reject such arguments as an impermissible collateral attack.²⁸

In short, while the Commission could take notice of the findings in the Acquisition Order, which support dismissal of the Complaints, the Motion itself does not offer any new evidence material to this proceeding and impermissibly attempts to collaterally attack prior Commission findings regarding market power resulting from PJM's capacity market rules for Demand Resources and from the transfer of CPower.

III. CONCLUSION

For the foregoing reasons, the Commission should accept this answer, reject impermissible collateral attacks embedded in the Consumer Advocates' Motion to lodge, and dismiss the Complaints.

Respectfully submitted,

/s/ Daniel Vinnik

²⁷ *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Docket No. EL25-18-000, Answer of PJM at 8-9 (Jan. 23, 2025).

²⁸ *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117, at P 58 (2025); *see Sacramento Mun. Util. Dist.*, 428 F.3d 294 at 299.

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January 6, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2026, I have served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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