

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

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 29, 2025 request for rehearing of East Kentucky Power Cooperative, Inc. and the Attorney General of the Commonwealth of Kentucky (collectively, “Protestors”) seeking rehearing of the Commission’s December 5, 2025 Order in the above-captioned docket² accepting PJM’s proposed cost allocation methodology for orders issued by the United States Department of Energy (“DOE Emergency Orders”) pursuant to Federal Power Act (“FPA”) section 202(c)³ that direct a resource to maintain operations for resource adequacy purposes for the PJM Region.⁴

Protestors' main argument on rehearing is that the Commission "departed from its cost causation methodology" by "simply requir[ing] that PJM's cost allocation methodology align with DOE's emergency finding" and "erred in failing to conduct a

¹ 18 C.F.R. §§ 385.212 and 385.213 (2025).

² *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,192 (2025) (“December 5 Order”).

³ 16 U.S.C. § 824a(c).

⁴ See *PJM Interconnection, L.L.C.*, Proposal to Allocate Costs Required to Implement Certain Orders of the Secretary of Energy Pursuant to Federal Power Act Section 202(c) and Request for Waiver to Allow August 28, 2025 Effective Date, Docket No. ER26-39-000 (Oct. 6, 2025) (“202(c) Filing”).

meaningful analysis.”⁵ Protestors appear to argue that the Commission must second guess DOE’s emergency findings and, for each individual finding, conduct its own “meaningful analysis.”⁶ However, as the Commission itself has recognized, it is not within the Commission’s jurisdiction to supersede the DOE’s emergency findings with its own analysis.⁷

Protestors’ argument that the cost allocation methodology is not just and reasonable because it may allocate costs to customers who receive no meaningful benefit from the continued operation of units similarly fails. As the Commission has explained, all Load Serving Entities (“LSEs”) in the PJM Region are benefited by the DOE Emergency Orders covered by the proposal because the proposal only applies to DOE Emergency Orders that direct a resource to maintain operations for resource adequacy purposes for the PJM Region and are not expressly limited to resolving resource adequacy issues in specific Locational Deliverability Areas or Zones.⁸ Under the Commission’s cost causation methodology, there is no need to further scrutinize the exact benefit received by each customer because “in a situation in which the units may be used for multiple services, cost allocation does not need to be so precise that it allocates costs for specific uses.”⁹

⁵ Request for Rehearing at 1.

⁶ *Id.*

⁷ *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,229, at P 24 (2025) (“Under the DOE Organization Act, the determination of the need for the operation of the Eddystone Units rests solely with DOE; the Commission’s responsibility is to provide for “compensation or reimbursement” of the costs of operation.”) (citing 42 U.S.C. § 7151(b); 16 U.S.C. § 824a(c); 10 C.F.R. § 205.376 (2025)); *see PJM Interconnection, L.L.C.*, 192 FERC ¶ 61,159, at P 4 (2025) (“August 15 Order”).

⁸ December 5 Order at P 34 (disagreeing with the assertion that LSEs relying on PJM’s capacity auctions to meet capacity obligations benefit more from DOE’s retention of generation units than LSEs that self-supply); *see* 202(c) Filing at 1.

⁹ August 15 Order at P 38 (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004) (“not surprisingly, we have never required a ratemaking agency to allocate costs with exacting precision”) (citing *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) (“FERC is not bound to reject any rate mechanism that tracks the cost causation principle less than perfectly”)); *see*

I. MOTION FOR LEAVE TO ANSWER

Although the Commission’s rules do not generally permit answers to requests for rehearing,¹⁰ the Commission will accept such an answer where, as here, it assists the Commission in its decision-making process.¹¹ PJM therefore respectfully requests that the Commission grant leave and accept this answer.

II. ANSWER

A. The Commission Conducted a Meaningful Analysis of Issues within its Purview.

Protestors claim the Commission erred by having “relied solely on DOE’s actions under section 202(c)” and that it must have instead “engage[d] in its own analysis” instead of deferring to the DOE’s findings.¹² However, Protestors misconstrue the framework of the Federal Power Act and incorrectly apply the arbitrary and capricious standard under which the Commission must engage in reasoned decision-making. Specifically, Protestors attempt to shift and duplicate the burden of the reasoned decision-making engaged in by the DOE in the issuance of a 202(c) Emergency Order by foisting onto the Commission the requirement to second-guess and superimpose their own analysis onto the DOE’s findings. Such an interpretation is, however, contrary to the DOE Organization Act which bifurcates the determination of the need for the operation of emergency units, which rests solely with DOE, and the responsibility to provide for “compensation or reimbursement”

also Ill. Com. Comm’n v. FERC, 576 F.3d 470, 477 (7th Cir. 2009) (“We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.”) (citation omitted).

¹⁰ 18 C.F.R. § 385.713(d).

¹¹ See, e.g., *Appalachian Power Co.*, 161 FERC ¶ 61,070, at P 15 (2017); *Columbia Gas Transmission, LLC*, 146 FERC ¶ 61,116, at P 1 n.3 (2014); *New England Power Pool*, 109 FERC ¶ 61,252, at P 12 (2004).

¹² Request for Rehearing at 12.

of the costs of operating the unit, which rests with the Commission.¹³

As the Commission has repeatedly found, neither it nor PJM are required to make further demonstrations of the beneficiaries of a DOE order pursuant to FPA section 202(c).¹⁴ On the contrary, the need for the operation of generation units under FPA section 202(c) rests solely with the DOE.¹⁵ Indeed, neither PJM nor the Commission are statutorily authorized by FPA section 202(c) to declare or determine the parameters for an energy emergency requiring a resource to operate, as that authority was ultimately delegated by Congress to the Secretary of Energy.¹⁶ Accordingly, Protestors' arguments that more analysis is required on the need established by any DOE 202(c) Emergency Order are appropriately argued before the DOE, not before the Commission, as the DOE is the entity charged under the Administrative Procedure Act to engage in reasoned decision-making in the issuance of its own orders.¹⁷

The Commission, for its part, did engage in reasoned decision-making and meaningful analysis in its consideration of the appropriate cost allocation methodology. PJM's proposed cost allocation methodology only applies when two conditions are met, and the Commission analyzed both conditions meaningfully. It found that the first condition ensures that the allocation method will apply only to costs that a generation owner incurs to comply with a PJM Region-wide DOE 202(c) Emergency Order.¹⁸ It also found that the second condition ensures that whenever the cost of maintaining such a

¹³ See e.g., PJM, 193 FERC ¶ 61,229, at P 24.

¹⁴ See *id.*; December 5 Order at P 33; August 15 Order at P 37.

¹⁵ December 5 Order at P 33; 16 U.S.C. § 824a(c)(1).

¹⁶ See 16 U.S.C. 824a(c); 42 U.S.C. § 7151(b).

¹⁷ See 5 U.S.C. §§ 706(2)(A), 706(2)(E).

¹⁸ December 5 Order at P 31.

resource is not based on the Deactivation Avoidable Cost Credit (“DACC”), it will require a separate filing with separate approval.¹⁹ As the Commission has previously approved DACC-based methodology, and as the proposal only applies to DOE 202(c) Emergency Orders “that makes findings of an emergency in the entire PJM Region,” the Commission has fulfilled the requirement to conduct meaningful analysis and engage in reasoned decision-making.²⁰

B. The December 5 Order Did Not Violate the Cost Causation Principle and Appropriately Allocates Costs Across the Entire PJM Region.

The Protestors again urge the Commission to reject PJM’s proposed cost allocation for PJM Region-wide Emergency Orders, arguing that the approved cost allocation methodology violates the Commission’s cost causation principle because it allocates costs to utilities and their customers who Protestors allege do not proportionally benefit.²¹ However, as the Commission explained in the December 5 Order, the Commission’s rate analysis did apply the cost causation principle, ensuring that “all approved rates reflect to some degree the costs actually caused by the customer who must pay them.”²²

However, Protestors seek to establish a new standard for meeting the cost causation principle, arguing that the Commission failed to apply this principle because “it lacks evidence that all LSEs in the PJM region are contributing equally to the need to retain the units under the DOE 202(c) Orders or benefitting equally from the retention of the units.”²³ This argument replaces the actual cost causation principle with a much more rigorous test

¹⁹ *Id.*

²⁰ See *El Paso Elec.*, 832 F.3d 495, 503 (5th Cir. 2016).

²¹ Request for Rehearing at 4-6.

²² December 5 Order at P 30 (quoting *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)).

²³ Request for Rehearing at 15.

which demands that costs and benefits be equal. The Courts, however, have explained that, to “the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred” and a cost allocation methodology can satisfy this principle so long as the benefits are “roughly commensurate with” the allocation of costs.²⁴

Rather than demanding exact equality and proportionality, the cost causation principle simply requires that the benefits be roughly commensurate.²⁵ As a result, PJM’s proposed cost allocation methodology, which is limited to resources directed to maintain operations for resource adequacy purposes for the PJM Region at large, clearly satisfies this criteria.²⁶ Under the cost causation methodology, there is no need to further scrutinize the exact benefit received by each customer because “in a situation in which the units may be used for multiple services, cost allocation does not need to be so precise that it allocates costs for specific uses.”²⁷

Moreover, Protestors’ argument cannot be reconciled with the necessary findings of a DOE 202(c) Emergency Order that would result in this cost allocation methodology being utilized. Specifically, PJM’s proposal requires that any DOE 202(c) Emergency Order for which this cost allocation methodology would be utilized is one that directs a resource to maintain operations for resource adequacy purposes for the PJM Region and is

²⁴ December 5 Order at P 30 (quoting *Ill. Com. Comm’n v. FERC*, 576 F.3d at 476-77).

²⁵ See *Ill. Com. Comm’n*, 576 F.3d at 477.

²⁶ 202(c) Filing at 1.

²⁷ August 15 Order at P 38 (citing *Midwest ISO Transmission Owners*, 373 F.3d at 1369 (“not surprisingly, we have never required a ratemaking agency to allocate costs with exacting precision”) (citing *Sithe/Independence Power Partners, L.P.*, 285 F.3d at 5 (“FERC is not bound to reject any rate mechanism that tracks the cost causation principle less than perfectly”)); see also *Ill. Com. Comm’n*, 576 F.3d at 477 (“We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.”) (citation omitted)).

not expressly limited to resolving resource adequacy issues in specific Locational Deliverability Areas or Zones.²⁸

As the Commission explained in the August 15 Order accepting the same cost allocation methodology for DOE 202(c) Emergency Orders for the Eddystone Units under the same rationale as that captured by this proposal, “the most reasonable reading of the Emergency Order’s intended scope is that the emergency necessitating the continued operation of the Eddystone Units is in the entire PJM Region.”²⁹ “[T]he Emergency Order makes findings that the emergency is regionwide and does not identify in greater detail particular portions of the system or other causes.”³⁰ Accordingly, as with the allocation of the Eddystone Units, the costs of operating other similarly situated units directed to continue operation by an applicable DOE 202(c) Emergency Order are appropriately allocated across the PJM Region.

In any event, the Protesters are mistaken in arguing that they derive no benefit from the resources that may be ordered to continue operating to address a regionwide resource adequacy problem.³¹ Under the Reliability Assurance Agreement Among Load Serving Entities (“RAA”), each LSE commits “to share its Capacity Resources with the other Parties to reduce the overall reserve requirements for the Parties while maintaining reliable service.”³² The RAA is therefore designed as a pool wherein additional capacity provides

²⁸ 202(c) Filing at 1.

²⁹ August 15 Order at P 36.

³⁰ *Id.*

³¹ Request for Rehearing at 17.

³² See RAA, Preamble.

a reliability benefit to all participants.³³ Regardless of whether entities rely completely on the Reliability Pricing Model (“RPM”), choose to self-supply and use the RPM Auctions only for residual supply, or choose to participate entirely as a Fixed Resource Requirement (“FRR”) Entity, PJM operates capacity resources to meet the load needs of all LSEs across the PJM footprint. As all LSEs have signed onto RAA and have agreed to sharing capacity resources, all capacity provides a reliability benefit to all of PJM’s load.

Moreover, Protesters’ concern that this will reduce the incentive for resources to self-supply is overstated.³⁴ A PJM Region-wide DOE section 202(c) Emergency Order is bound to have impacts on ratepayers and consumers in unexpected ways. PJM’s proposed cost allocation methodology represents an approach that justly and reasonably allocates those impacts given the amount of direction available to PJM and the Commission regarding DOE’s directives.

LSEs will still be incentivized to self-supply and procure their own capacity through bilateral contracting because they will continue to be able to hedge against clearing prices from the RPM Auctions through such efforts. Additionally, LSEs that have self-supplied will continue to be able to sell capacity into the RPM Auctions and be compensated for those resources through the market. Even if an LSE has excess capacity to meet their load requirements, such excess resources will be compensated based on the RPM clearing price and used to offset such LSE’s net capacity charges. Accordingly, PJM’s proposed cost allocation methodology does not alter the benefits of self-supply as they pertain to offsetting RPM Auction capacity prices. Although the impacts of a

³³ See RAA, Article II (stating that the purpose of the RAA is to ensure that there are adequate capacity resources “planned and made available to provide reliable service to loads within the PJM Region, to assist other Parties during Emergencies and to coordinate planning of such resources”).

³⁴ Request for Rehearing at 17.

regionwide DOE Emergency Order cannot be completely nullified through prudent self-supply, the costs from RPM Auction clearing prices to consumers can still be hedged. Therefore, the incentive remains for LSEs to continue to self-supply and procure their own capacity.

As with the August 15 Order, the Commission has again clarified here that “all LSEs in the PJM Region will benefit from generation units retained to address regionwide resource adequacy concerns identified by DOE” and that such benefit occurs “[r]egardless of whether LSEs meet their reliability requirements through self-supply or through the capacity market.”³⁵ Accordingly, because any potential DOE 202(c) Emergency Order that would trigger the application of this cost allocation methodology would be for the benefit of the entire PJM Region, all LSEs will receive a benefit that is “roughly commensurate” with the DACC-based cost allocation methodology being applied.³⁶ As a result, the Commission’s cost causation principle has been satisfied by this cost allocation methodology.

IV. CONCLUSION

For the reasons stated above, PJM requests that the Commission reject Protestors’ requests for rehearing of the December 5 Order.

³⁵ December 5 Order at P 34.

³⁶ *See Ill. Com. Comm’n*, 576 F.3d at 477.

Respectfully submitted,

Craig Glazer
Vice President – Federal Government
Policy
PJM Interconnection, L.L.C.
1200 G Street, NW, Suite 600
Washington, DC 20005
(202) 423-4743 (phone)
(202) 393-7741(fax)
craig.glazer@pjm.com

January 13, 2026

/s/ Daniel Vinnik
Daniel Vinnik
Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA* 19403
(*Licensed in the District of
Columbia and Illinois)
(267) 858-9451 (phone)
daniel.vinnik@pjm.com

**Counsel for
PJM Interconnection, L.L.C.**

CERTIFICATE OF SERVICE

I hereby certify that I have this day, January 13, 2026, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Daniel Vinnik
Daniel Vinnik
Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
(267) 858-9451 (phone)
daniel.vinnik@pjm.com

Attorney for
PJM Interconnection, L.L.C.