

Accordingly, PJM respectfully requests that the Commission grant this Motion to Intervene and that PJM be afforded all the rights of a party to this proceeding.

II. COMMENTS

A. The Tariff Requires Capacity Market Sellers to Submit Must-Offer Exceptions by Specified Deadlines to Allow for an Orderly Administration of the RPM Auctions.

To prevent the exercise of market power in the RPM Auctions, PJM's Open Access Transmission Tariff ("Tariff") requires that "all of the installed capacity of all Existing Generation Capacity Resources located in the PJM Region shall be offered by the Capacity Market Seller that owns or controls all or part of such resource (which may include submission as Self-Supply) in all RPM Auctions for each Delivery Year"³ A Capacity Market Seller may request an exception to this "must-offer" requirement if it demonstrates that the underlying Existing Generation Capacity Resource "is reasonably expected to be physically unable to participate in the relevant Delivery Year."⁴ Of relevance here, the Tariff explains that one way a Capacity Market Seller may demonstrate the resource is not expected to be physically available in the Delivery Year is if "[i]t has a documented plan in place to retire the resource prior to or during the Delivery Year, and has submitted a notice of Deactivation to the Office of the Interconnection."⁵ The Tariff also specifies deadlines for a Capacity Market Seller to request a must-offer exception.⁶ Specifically, for the must-offer exception related to deactivations, the Tariff specifies:

³ Tariff, Attachment DD, section 6.6(a).

⁴ Tariff, Attachment DD, section 6.6(g).

⁵ *Id.*

⁶ Given the compressed schedule for the Base Residual Auction associated with the 2028/2029 Delivery Year, the Commission accepted PJM's waiver to eliminate the preliminary must-offer exception deadline, while revising the deadline to submit the final must-offer exception due for deactivations to be 135 days prior to the commencement of the Base Residual Auction. *See* Request for Waiver of PJM Interconnection, L.L.C., to Delay the Reliability Pricing Model Auctions Beginning with the December 2024 Base Residual Auction

such Capacity Market Seller shall by no later than (a) the December 1 that last precedes the Base Residual Auction for the applicable Delivery Year, or (b) one hundred twenty (120) days prior to the commencement of the offer period for the applicable Incremental Auction, either (a) notify the Office of the Interconnection and the Market Monitoring Unit in writing that it is withdrawing its preliminary exception request and explaining the changes to its analysis of whether to retire such resource that support its decision to withdraw, or (b) demonstrate that it has met the requirements specified under Paragraph A above. By no later than five (5) Business Days after the notification deadline for such notification, the Office of the Interconnection will post on its website a revised summary of the number of megawatts of Generation Capacity Resources for which it has received requests for exceptions to the RPM must-offer requirement for the reason specified in Paragraph A above, on an aggregate basis by Zone and Locational Deliverability Area that comprises a subset of a Zone, as specified in the PJM Manuals.⁷

When PJM first proposed the Tariff deadlines associated with the must-offer exception requests, PJM explained that the primary purpose of establishing deadlines for the must-offer exception “is to incorporate clear, task oriented deadlines to ensure timely submission of . . . exception requests. . . by market participants and specify advance deadlines for responses thereto by PJM and the [Market Monitor].”⁸ PJM also explained that “establishing specific deadlines helps to ensure that requests are duly considered by providing sufficient time to [the Market Monitor] and PJM to . . . consider requests . . . and make determinations well in advance of the date on which decisions regarding offers and requests must be final.”⁹

In establishing these deadlines, PJM explained such deadlines “will eliminate last minute requests for exceptions to the must-offer requirement and to remove resources from

for Delivery Year 2026/2027 Through 2029/2030 Delivery Year, Attachment A (Oct. 15, 2024); *see also PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,105 (2024).

⁷ Tariff, Attachment DD, section 6.6(g).

⁸ *PJM Interconnection, L.L.C.*, Transmittal Letter, Docket No. ER13-149-000, at 5 (Oct. 16, 2012).

⁹ *Id.*

the Capacity Resource status list, which PJM and [the Market Monitor] staff do not have adequate time to review or consider immediately prior to or during the RPM Auction offer period.”¹⁰ PJM further explained that:

Requiring PJM to provide its determination by no later than sixty five (65) days prior to the commencement of the offer period for the applicable RPM Auction ensures that the Market Participant and IMM are afforded adequate time to seek a Commission determination in a timely manner. Additionally, imposing such a deadline on PJM will allow the IMM and Market Participants to submit their petitions (or referrals) to the Commission for resolution more than sixty (60) days prior to the clearing of such auctions, and it gives the Commission more time than it is typically currently afforded in which to issue its determination, rather than subjecting the Commission to the filing of emergency petitions requesting expedited review and determination.¹¹

B. Kincaid’s Request for Waiver of the Must-Offer Exception Deadline Due to Deactivation Is Contrary to the Stated Purpose of the Deadlines.

For the 2028/2029 Base Residual Auction, the deadline to submit a must-offer exception based on a planned deactivation was February 15, 2026.¹² However, Kincaid submitted its request for a must-offer exception four days later on February 19, 2026.¹³ Kincaid’s waiver request seeks permission from the Commission to effectively disregard the Commission’s previously approved deadlines because it believed “that the must-offer

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² PJM was granted a waiver by the Commission to adjust many of the original deadlines for the 2028/2029 BRA, and, relevant here, the deadline for exceptions on the basis of deactivation is 135 days prior to the start of the offer period, which was February 15, 2026. *See PJM Interconnection, L.L.C., Request for Waiver, Attachment A, Docket No. ER25-118-000, at 2 (Oct. 15, 2024); PJM Interconnection, L.L.C., 189 FERC ¶ 61,105 (2024) (accepting PJM’s proposal).* The auction schedule for the 2028/2029 BRA requires that (1) the IMM provide notice of its determination no later than April 1, 2026, (2) Capacity Market Sellers notify the IMM and PJM as to whether they agree with the IMM’s determination by April 11, 2026, (3) PJM render its determination by April 27, 2026, and (4) Capacity Market Sellers notify PJM and the IMM of its intent to exclude capacity from its Sell Offer by April 27, 2026.

¹³ Kincaid Petition at 5.

exception that it had obtained for the 2027/2028 BRA would extend to the 2028/2029 BRA and that a separate request for the upcoming auction was not required.”¹⁴

However, receipt of a must-offer exception in one RPM Auction does not automatically extend to subsequent RPM Auctions. That is, Kincaid is an Existing Generation Capacity Resource for purposes of the 2028/2029 Base Residual Auction because it is “a Generation Capacity Resource that, *as of the date on which bidding commences for such auction . . . is in service.*”¹⁵ In other words, Kincaid will be in service and will not be deactivated when the 2028/2029 Base Residual Auction commences on June 30, 2026. Thus, as an Existing Generation Capacity Resource, Kincaid is subject to the capacity must-offer requirement regardless of whether it previously received an exception to the must-offer requirement. Indeed, the Tariff states that “all of the installed capacity of all Existing Generation Capacity Resources located in the PJM Region shall be offered by the Capacity Market Seller that owns or controls all or part of such resource (which may include submission as Self-Supply) *in all RPM Auctions for each Delivery Year*, less any amount determined by the Office of the Interconnection to be eligible for an exception to this RPM must-offer requirement”¹⁶

Here, Kincaid acknowledges that it received an exception to the capacity must-offer requirement only for the 2027/2028 Delivery Year and correctly concedes that it needs to obtain an exception to the must-offer requirement for the 2028/2029 Delivery Year in order to be exempt from the must-offer requirement.¹⁷ As a result, the Tariff requires Kincaid to

¹⁴ Kincaid Petition at 7.

¹⁵ RAA, Article 1 – Definitions, Existing Generation Capacity Resource (emphasis added.)

¹⁶ Tariff, Attachment DD, section 6.6(a) (emphasis added).

¹⁷ Kincaid Petition at 5.

be offered into the capacity auction absent a determination that Kincaid is eligible for the exception to the capacity must-offer requirement. However, because Kincaid submitted its request for the must-offer exception after the February 15, 2026 deadline for the 2028/2029 Base Residual Auction, PJM cannot accept such a request absent the Commission granting the instant petition.

Despite the above rationale for and implications of Tariff deadlines, PJM has often not opposed petitions for waiver of the must-offer exception deadline in the past when the deadline was missed for a valid reason. However, given the expected supply and demand imbalance for the foreseeable future, it may no longer be reasonable for the Commission to continue granting such waiver requests in the face of such resource adequacy challenges in the PJM Region. As an initial matter, granting such a waiver request effectively nullifies this Tariff deadline and undermines the rationale for establishing such deadlines in the first instance. In fact, it is questionable whether Kincaid should even continue to proceed with deactivation (or whether the Federal government would even permit such resource to deactivate) given the ongoing resource adequacy challenges on a national level. Indeed, the President of the United States has proclaimed that it is “the policy of the United States that in order to ensure adequate and reliable electric generation in America, to meet growing electricity demand, and to address the national emergency declared pursuant to Executive Order 14156 of January 20, 2025 (Declaring a National Energy Emergency), our electric grid must utilize all available power generation resources.”¹⁸ Additionally, the

¹⁸ Exec. Order No. 14262, *Strengthening the Reliability & Security of the United States Elec. Grid*, 90 Fed. Reg. 15,521, at 15,521 (Apr. 14, 2025) (“EO 14262”); *see also* Exec. Order 14156, *Declaring a Nat’l Energy Emergency*, 90 Fed. Reg. 8,433 (Jan. 29, 2025) (“EO 14156”); *see also* Exec. Order 14261, *Reinvigorating America’s Beautiful Clean Coal Industry and Amending Executive Order 14241*, 90 Fed. Reg. 15,517 (Apr. 8, 2025).

executive order directs the Secretary of Energy to prevent . . . generation resource[s] in excess of 50 megawatts of nameplate capacity from leaving the bulk-power system”¹⁹

And the Secretary of Energy has followed through with this executive order by issuing numerous orders for various existing resources that otherwise would have deactivated to remain operational pursuant to section 202(c) of the Federal Power Act.²⁰

Given the aforementioned executive orders and consistent pattern of the Secretary of Energy issuing orders under section 202(c) of the Federal Power Act, it is probable that Kincaid may also be directed to remain operational after its current deactivation date (i.e., November 30, 2027).²¹ Moreover, the U.S. Environmental Protection Agency has proposed to extend the deadline for certain generators to complete closure of unlined coal combustion residuals surface impoundments from October 17, 2028, to October 17, 2031, with an EPA notice of rulemaking being posted on November 28, 2025,²² which may further extend the ability of Kincaid to operate beyond the 2028/2029 Delivery Year. Likewise, any potential concern that the Illinois Climate and Equitable Jobs Act would require Kincaid to cease operations could be addressed by the fact that the statute expressly allows large resources, such as Kincaid, to continue operating past 2030 if PJM determines

¹⁹ EO 14262.

²⁰ *See e.g.*, Department of Energy Order No. 202-26-18 (directing TransAlta to ensure Unit 2 of the Centralia Generating Station in Centralia, Washington remain in operation; DOE Order No. 202-26-17 (directing Constellation Energy Corporation to ensure Units 3 and 4 of the Eddystone Generating Station in Pennsylvania remain available for operation; Order No. 202-26-16, (directing MISO to ensure that the J.H. Campbell coal-fired power plant in West Olive, Michigan remain available for operation.

²¹ PJM’s review of Kincaid’s deactivation notice is narrowly limited to whether the deactivation of such “unit would adversely affect the reliability of the Transmission System.” *See* Tariff, Part V, section 113.2. In other words, PJM’s acceptance of the deactivation notice is not a determination that the unit is no longer needed from a resource adequacy perspective.

²² [Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Extension of an Alternative Closure Requirement Deadline](#), 90 Fed. Reg. 54,611 (Nov. 28, 2025).

that continued operation of the unit “is necessary to maintain power grid supply and reliability.”²³

In short, given the likelihood that Kincaid will remain operational during (and after) the 2028/2029 Delivery Year due to the aforementioned federal policies and resource adequacy concerns, it is questionable whether this resource should be excluded from the supply stack in the associated Base Residual Auction. If the Commission grants the requested waiver, however, PJM must duly follow the Tariff and grant the must-offer exception because Kincaid “has a documented plan in place to retire the resource prior to or during the Delivery Year, and has submitted a notice of Deactivation.”²⁴ On the other hand, if the Commission denies the requested waiver or does not act on this petition prior to the 2028/2029 Base Residual Auction, then PJM would not be able to grant Kincaid’s must-offer exception request because it was not timely submitted in accordance with the Tariff specified deadline. Such an outcome would require Kincaid to be offered and counted as supply in the upcoming Base Residual Auction.²⁵

²³ 415 Ill. Comp. Stat. Ann. 5/9.15(l).

²⁴ Tariff, Attachment DD, section 6.6(g)(A).

²⁵ To be clear, because Kincaid submitted a notice of deactivation that is effective November 1, 2027, PJM did not include this resource in the planning models for the 2028/2029 Delivery Year. Notwithstanding, the lack of inclusion in such planning models would likely not create any meaningful difference in the auction outcomes given that the proposed extension of the price collar would be applied to all Locational Deliverability Areas.

III. CONCLUSION

Based on the foregoing, PJM requests that the Commission consider PJM's comments in adjudicating Kincaid's petition for a waiver of the must-offer exception deadline.

Respectfully submitted

/s/ Chenchao Lu

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CERTIFICATE OF SERVICE

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

Dated at Audubon, PA on this 27th day of March 2026.

/s/ Chenchao Lu

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