

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

LS Power Development, LLC)
)
Complainant,)
)
v.) Docket No. EL26-60-000
)
PJM Interconnection, L.L.C.)
)
Respondent.)

COMPLAINT OF LS POWER DEVELOPMENT, LLC

LS Power Development, LLC submits this Federal Power Act section 206 complaint¹ against PJM Interconnection, L.L.C. because PJM has, without notice, stopped following its longstanding rule providing a full remedy for a generator that completes a test of its ability to provide its full seasonal capacity commitment “out of period” *but still in the same season*. Under PJM’s unannounced shift in interpretation, a generator can prove it can provide its full committed seasonal capacity level but now faces a new regime of unauthorized and duplicative performance penalties. The Commission should reject retroactive application of this new penalty regime. Any such regime change must be properly vetted under FPA section 205, and *if approved*, applied prospectively.²

EXECUTIVE SUMMARY

LS Power’s West Deptford unit is a [REDACTED], fully dispatchable, [REDACTED] natural gas-fired power plant outside of Philadelphia, connected to two interstate natural gas pipelines, facing \$17 million in penalties for allegedly selling more capacity than it is capable of

¹ 16 U.S.C. § 824e.

² 16 U.S.C. § 824d.

providing during the summer season of PJM’s 2025/2026 delivery year.³ West Deptford did no such thing and deserves no such penalties. West Deptford suffered [REDACTED] and LS Power returned the unit to service as quickly as possible.

The PJM tariff requires a capacity resource to conduct capability tests during the summer and winter seasons to demonstrate that it can provide the full output it sold in the forward capacity auctions. West Deptford was on a forced outage during the 2025 summer test “period,” which is between June 1 and August 31. The summer season in PJM, however, is three months longer than the summer test period, with the full summer season comprising June 1 through October 31 and May 1-31 of the following calendar year (the PJM delivery year runs from June 1 to May 31). *See* PJM Manual 18, § 4.10. Existing PJM rules allow a capacity resource to conduct its seasonal test “out of period” to “remedy” a missed test, which has always excused seasonal capability penalties.⁴ This is because the seasonal capability test only tests a capacity resource’s ability to produce as much electricity as it committed to sell in the capacity market. The seasonal capability test is not—and never has been—a daily “performance” test. PJM has an extensive Performance Assessment Interval mechanism for measuring performance, which includes carefully calibrated and scrutinized stop-loss mechanisms. PJM also has a separate new operations test.

West Deptford is back online and recently completed its winter test. It plans to complete its summer test at its first opportunity in May 2026. But PJM claims the out of period test remedy that remains in its manuals is no longer applicable. PJM plans to assess approximately \$17 million in penalties against West Deptford. PJM will claim the out of period test remedy was eliminated

³ LS Power requests that certain information be redacted from the public filing. *See* 18 C.F.R. § 388.112. This information is non-public and commercially sensitive, and its release could harm LS Power.

⁴ Penalties were excused if a resource notified PJM of the outage in the online reporting system and later completed a successful out of period test (*i.e.*, after the June 1 to August 31 test period).

when PJM proposed and the Commission approved a new winter seasonal test in 2024, which was added as a part of the extensive suite of capacity market tariff changes PJM sought when it adopted its Effective Load Carrying Capability metric.⁵

There are five grounds to grant the complaint:

First, PJM is wrong that the adoption of a winter seasonal test in 2024 eliminated the out of period test remedy. There was no discussion anywhere in the voluminous record in that docket—in the initial filings, in response to the Commission’s deficiency notice seeking clarity on the specific winter seasonal test changes in the tariff, in PJM’s compliance filings, or in the Commission’s order—that the ability to remedy an out of period test was being eliminated. The first indication that PJM had eliminated this remedy was in October 2025 when PJM informed LS Power that West Deptford would be assessed seasonal capability penalties. This complete lack of notice is not how filed rates work. And, as set forth below, changes of this scope cannot be effectuated in a manual.

PJM did adopt a new calculation of the seasonal capability penalty rate to be applied, switching from charges based on average annual capacity commitments to charges based on the accrual of daily capacity shortfalls. This change in the penalty calculation, however, was never presented as an adoption of a new daily performance mechanism whereby a resource would have no ability to remedy a shortfall, nor should it be treated as such.

Second, the out of period test remedy is an existing rule that remains in the PJM manuals today. For years, any failure to test in period (*i.e.*, between June 1 and August 31) could be remedied by the generator providing notice of the forced outage/derate and performing a successful

⁵ *PJM Interconnection, L.L.C.*, Docket No. ER24-99-000; *see also PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080 (2024) (“ELCC Order”) (order approving same).

out of period test “during the applicable season,” and “[s]uch out of period test may remedy a test shortfall.”⁶ Under this provision, the generator incurred no seasonal capability testing penalties. This is how PJM always has applied this provision and this language remains in the manual today. PJM has added new language in the manual that it claims supersedes and hence eliminates the “old” language that remains in the manual provision and prior practice. Again, there was no discussion of any of this.

Third, the rule against retroactive ratemaking prohibits application of new rates with retroactive effect. West Deptford participated in the Base Residual Auction for the 2025/2026 delivery year on July 17, 2024. At that time, there was no new rule or even indication that the out of period test remedy was being eliminated. Changing market rules *after* an auction has run that affects the rights and obligations of the winning offerors is unlawful retroactive ratemaking that courts have routinely rejected.⁷ Auction sellers must know the applicable rules when they offer and have the opportunity to price those risks into their offers.

Fourth, the Commission’s “rule of reason” precedent requires that “those practices that affect rates and service significantly” must be in rates on file with the Commission.⁸ PJM and others may argue that the out of period test remedy provision is in a manual and that PJM can change its manuals without a Commission filing. Others may argue that the Commission has no jurisdiction to consider a complaint about unfiled manual provisions. But these arguments are wrong if the “practices” in the manual “affect rates and service significantly,” as they do here. No

⁶ Manual 21B, § 10.3(7) (emphasis added).

⁷ See *PJM Power Providers Group v. FERC*, 96 F.4th 390 (3d Cir. 2024); see also *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 (2023), Danly, Comm’r, dissenting (explaining why PJM and the Commission cannot change capacity auction rules after running the auction).

⁸ *Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 811 (D.C. Cir. 2007).

public utility can bypass the filing of significant rates and services; it is unlawful to apply such rates and services without tariff authority.⁹ \$17 million in penalties is significant by any definition, as is transforming seasonal capability testing into a new measure of daily performance. Regardless, LS Power, the Independent Market Monitor, and others expressed concerns about implementation details being in unfiled manuals in the ELCC docket, and this complaint demonstrates exactly why changes of this scope cannot be effectuated in a manual.¹⁰

Fifth, elimination of the out of period test remedy is unjust and unreasonable on its own merits. Requiring daily penalty charges for a resource that can prove it can provide its full committed output during a season turns seasonal capability testing into yet another performance measurement and enforcement mechanism. But that is not what the capability test was meant to be. PJM's Performance Assessment Interval mechanism already exposed West Deptford to approximately \$█ million in penalties if West Deptford failed to perform during a critical period while on forced outage, as it was during the summer testing period. That amount is 1.5 times West Deptford's total capacity revenues for the 2025/2026 delivery year, which was calibrated as the maximum performance penalty a resource should face before the penalty was considered disproportionate to the offense. Now PJM has unilaterally imposed a new daily performance penalty if a resource is delayed, through no fault of its own, in performing its seasonal capability test. The stop-loss apparently does not apply to this new performance penalty. On top of that is another capacity "Operational" test that measures a capacity resource's performance when called upon without notice, with its own penalty regime. And lest we forget, a unit on forced outage also

⁹ See, e.g., *Demand Response Coalition v. PJM Interconnection, LLC*, 143 FERC, ¶ 61,061 (2013); *Energy Storage Association v. PJM Interconnection, LLC*, 162 FERC ¶ 61,296 (2017).

¹⁰ See, e.g., IMM Comments on Response to Deficiency Notice, at 3.

is foregoing energy revenues. How much more incentive does a unit need to return to service as quickly as possible?

In sum, PJM's elimination of the out of period test remedy creates a duplicative and disproportionate penalty regime that the Commission should reject. Some will argue that a resource on an outage that cannot test during the three-month test period should not receive capacity payments until it can test. This is an argument that we can have in the light of day with notice and for prospective application if the Commission judges that rule changes are just and reasonable, after taking into account existing performance mechanisms and stop-loss provisions designed to protect a generator from losing its entire business in a day. It is not a justification to allow PJM to discard an existing practice that significantly affects rates without a proper FPA section 205 filing.

COMPLAINT

I. THE PARTIES

LS Power

Through its subsidiaries and affiliates, LS Power develops, owns, and operates independent power projects and merchant transmission projects in the United States, including generation facilities in the PJM market.

PJM

PJM is the regional transmission organization ("RTO") for all or part of 13 states and the District of Columbia. PJM Operates organized wholesale electricity markets and manages the high-voltage electricity grid to ensure reliability for more than 65 million people.

II. BACKGROUND

A. Seasonal Capability Testing and the Out of Period Test Remedy

PJM adopted seasonal capability testing in 2005.¹¹ The purpose of seasonal capability testing is “to verify that committed Generation Capacity Resources are capable of generating up to their committed megawatt amount of installed capacity.”¹² Seasonal capability tests therefore differ from performance tests, which measure a capacity resource’s performance when called upon in crucial conditions and without notice.

Until a recent tariff change (discussed below), PJM only required capacity resources to conduct one annual test in the summer season. The test period for the summer season is between June 1 and August 31. Capacity units must satisfactorily conduct these capability tests; if they do not, PJM issues a Generation Resource Rating Test Failure Charge.¹³

Occasionally, however, capacity units go on an outage, either forced or planned. Sometimes equipment breaks. In the event of such an outage, “the unit is expected to submit an out-of-period capability test when the outage ends.”¹⁴ PJM Manuals allow such out of period tests to “remedy a test shortfall” that occurred during the testing period.¹⁵ PJM Manual 21B, § 10.3(7) provides in full:

Net capability verification outside of the test period can only be accepted and is required when a reduction (outage or derating) in PJM eGADS was in effect during the entire test period which prevented demonstration of maximum Net Capability. The Net Capability shall be demonstrated by either actual operating data or by performing a test during the applicable season, but outside of the

¹¹ See FERC Dkt. Nos. ER05-1410 and EL 05-148.

¹² PJM Filing Letter at 83; *see also* FERC Dkt. Nos. ER05-1410 and EL 05-148.

¹³ See Tariff, Att. DD, § 7.1(a).

¹⁴ Manual 18, § 8.5.

¹⁵ Manual 21B, § 10.3(7).

respective test period. *Such out of period test may remedy a test shortfall* provided that a) the original test was not caused by a lack of fuel availability or other restriction(s) agreed upon in the generating unit's operating licenses or agreements, or b) the original test was not caused by lack of head, steamflow or other restriction(s) agreed upon in the generating unit's operating licenses or agreements.

Under these rules, capacity units can test out of period to avoid penalties that would otherwise be imposed on a unit during a forced outage during the summer test period. We refer to this as the “out of period test remedy.” Under longstanding practice, if a capacity unit conducted an out of period test and met the specified conditions (including notifying PJM of its outage), the unit would not be liable for any Generation Resource Rating Test Failure Charge for the entire season.¹⁶ This is how PJM implemented this Manual provision for years.¹⁷ This out of period test remedy remains in the Manual today and has been interpreted consistently with the purpose of the seasonal capacity test: to ensure that capacity resources can comply with the promised megawatt amount.

B. 2023 Capacity Market Tariff Amendments

In 2023, PJM proposed, and the Commission approved (in 2024) capacity market amendments [to its 2023 Capacity Market Tariff]. Importantly, these amendments did not alter the out of period test remedy. In fact, there was no discussion in the entire voluminous record in the 2023-24 FERC proceeding of out of period tests or the out of period test remedy provision.¹⁸

As a result of the 2023-24 capacity market proceedings, PJM made two relevant changes to Tariff, Att. DD, § 7.1(a). First, PJM bifurcated the annual capacity testing period into two

¹⁶ See Testimony of Nathan Dixon (“Dixon Testimony”) at 6.

¹⁷ *Id.*

¹⁸ See FERC Docket No. ER24-99.

seasonal testing periods: a summer period and a winter period. To do so, it made the following revisions to the Tariff (highlights demark changes):

Each Generation Capacity Resource committed through RPM Auctions or included in a FRR Plan for a Delivery Year, with the exception of Variable Resources, shall be obligated to complete a generation resource capacity test **in both the summer and winter seasons for the associated Delivery Year**, as described in the PJM Manuals. The Market Seller that committed the resource, or Locational UCAP Seller that sold the resource, may perform an unlimited number of tests during each such period. If none of the tests during a testing period certify full delivery of the megawatt amount of installed capacity the Market Seller committed, or Locational UCAP Seller sold, for such Delivery Year, the Market Seller or Locational UCAP Seller shall be assessed a daily Generation Resource Rating Test Failure Charge for each day from the first day of the **summer or winter** season in which such resource failed the rating test through the last day of such Delivery Year, provided, however, that such a seller that fails or is expected to fail a rating test may obtain and commit Unforced Capacity from a replacement Capacity Resource meeting the same locational requirements.¹⁹

Second, PJM altered the method of assessing megawatt capacity deficiencies. It added the following Tariff language:

Effective with the 2025/2026 Delivery Year, such charge shall be evaluated and assessed for each day of the Delivery Year in which the seasonal rating test for such resource fails to certify full delivery of the megawatt amount of installed capacity committed for such day.²⁰

As PJM itself stated in its transmittal letter, this alteration was intended to be “[c]onsistent with existing rules,” and modified only the manner in which PJM “calculate[s]” the Generation Resource Rating Test Failure Charge.²¹ Consistent with this change, PJM “propose[d] to assess

¹⁹ *Id.*

²⁰ Tariff, Att. DD, § 7.1(a) (highlights show amendments).

²¹ PJM Filing Letter at 84 (Oct. 13, 2023).

the resources' MW shortfall on the daily installed capacity commitment of the resource in calculating the MW shortfall rather than annual average of the installed capacity committed on the resource.”²²

LS Power filed comments that “generally support[ed] PJM’s proposals in the ER24-99 Filing to strengthen testing requirements.²³ However, LS Power also expressed concern that critical details were lacking and sought clarification about the new operational testing requirements (as opposed to the new winter/summer capacity testing regime).²⁴ It requested that some of these testing details should be placed in the Tariff rather than PJM’s Manuals and that key implementation requirements be resolved before offer milestones for the 2025/2026 Delivery Year had lapsed.²⁵

LS Power eventually filed a protest seeking to delay application of the new PJM proposed rules by one auction.²⁶ It stated:

While [PJM’s] December 1 Filing continues to request an effective date of December 12, 2023 for the ER 24-99 Filing, it is clear that there are substantial problems with PJM’s proposed schedule. The December 1 Filing states that PJM intends to develop provisions for inclusion in its Manuals providing implementation details only after Commission approval of the ER 24-99 Filing, and also indicates that future compliance filings may be required to clarify PJM’s proposal.²⁷

In response to comments, the Commission issued a deficiency notice requiring that PJM adopt specific tariff language on seasonal testing. During the compliance phase after the

²² *Id.*

²³ 11/9/23 Comments at 16.

²⁴ *Id.* at 16-17.

²⁵ *Id.* at 4, 16-7 ns. 15, 29.

²⁶ *See* 12/22/23 LS Power Protest at 2-3.

²⁷ LS Power Protest at 2-3.

Commission issued its order, PJM never mentioned any change to the out of period test remedy. Instead, PJM stated that compliance would only require it to eliminate certain language in its Manual. It stated:

The proposed revisions in Tariff, Attachment DD, section 7.1(a) do not include a change to effectuate the requirement that an actual, physical test be conducted in each season. Under the existing rules detailed in Tariff, Attachment DD, section 7.1(a), and as discussed in response to question 1(b)(i) above, committed Generation Capacity Resources have their capability assessed in both the summer and winter season. However, there are explicit provisions in the PJM Manuals that allow the winter test to be satisfied by adjusting the most recent summer capability test to winter conditions. Updating the Manual provision regarding the adjustment of summer capability tests to winter conditions does not require changes to the aforementioned Tariff language. As a result, contingent upon acceptance of this filing, *PJM would remove the current provisions that allow a winter test to be satisfied by adjusting the most recent summer capability test to winter conditions in the manuals*. Such an update would effectively require the generator capacity capability test to be conducted in both the summer and winter seasons during Delivery Year for any Generation Capacity Resource that is committed through the RPM Auctions or in an FRR Plan.²⁸

As noted above, PJM's proposed manual language retained the out of period test remedy provisions in Manual 18, § 8.5 and Manual 21B, § 10.3(7).

PJM also added language concerning out of period tests in Manual 18, § 8.5.2. The relevant language provides that

In the event a resource is eligible for an out of period capability test for the relevant season ... an updated Unit ICAP Shortfall would be determined based on the date of the out of period test ... and extends through the relevant seasonal period.²⁹

²⁸ PJM Deficiency Response at 14 (emphasis added); *see also id.* n.26 (identifying the manual provisions PJM would remove).

²⁹ Manual 18, § 8.5.2.

But this newly proposed language in Manual 18 was never presented as an elimination of out of period test remedy provisions which, again, remains in Manual 21B, § 8.3(7).³⁰

C. The West Deptford Plant and its Forced Outage

The West Deptford Energy Center is an eleven-year-old, [REDACTED], natural gas-burning, combined-cycle unit located in Gloucester County, New Jersey.³¹ It dispatches into PJM's Eastern Mid-Atlantic Area Council zone, including Philadelphia, and began commercial operations in November 2014.³² West Deptford is an advanced, reliable, and efficient power resource connected to two interstate gas pipelines, Columbia and Transco, and [REDACTED]

[REDACTED]³³

On [REDACTED], West Deptford suffered a critical equipment failure.³⁴ Specifically, [REDACTED]. This caused West Deptford to go on an unplanned forced outage.³⁵

On [REDACTED], LS Power sent [REDACTED] for service. In the interim, LS Power re-fitted the West Deptford plant to operate on reduced capacity, generating [REDACTED].³⁶ LS Power spent \$ [REDACTED] in repairing the [REDACTED].³⁷ On [REDACTED]

³⁰ Dixon Testimony at 5.

³¹ *Id.* at 3-4.

³² *Id.* at 4.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 7

LS Power completed installation and testing of the [REDACTED] and, on [REDACTED] successfully completed its winter capacity test.³⁸

D. PJM Penalty Notice

On [REDACTED] PJM issued a Generation Resource Rating Test Failure Charge notice to LS Power.³⁹ That notice stated that LS Power must pay approximately \$17,000,000 due to its capacity shortfall. The notice also included an assumed penalty for [REDACTED] for an additional [REDACTED]⁴⁰ However, PJM acknowledged that LS Power will have an opportunity to cure this [REDACTED] charge with an out of period test.⁴¹

This complaint follows.

III. LEGAL STANDARD

Under the Federal Power Act, regulated entities are required to file with FERC “schedules showing all rates and charges ... and the classifications, practices, and regulations affecting such rates and charges.”⁴² Once filed, “no change shall be made ... in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days’ notice to the Commission and to the public.”⁴³ “As the statutory terms make clear, the filed rate is not limited to ‘rates’ *per se*, but also extends to matters directly affecting rates.”⁴⁴ In addition, under the Commission’s “rule of reason,” utilities must file “those practices that affect

³⁸ *Id.*

³⁹ *Id.* at 5.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 16 U.S.C. § 824d(c).

⁴³ *Id.* § 824d(d).

⁴⁴ *Oklahoma Gas and Electric Co. v. Federal Energy Regulatory Commission*, 11 F.4th 821, 829 (D.C. Cir. 2021) (cleaned up).

rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.”⁴⁵

Section 206 of the Federal Power Act establishes a two-part process to challenge charges demanded by public utilities. *First*, a complainant must establish by a preponderance of the evidence that one of PJM’s “rule[s], regulation[s], practice[s], or contract[s] is unjust, unreasonable, unduly discriminatory, or preferential.”⁴⁶ A rule may be deemed unjust or unreasonable when it “ha[s] not resulted in, and likely would not incentivize, the development of additional supply capable of resolving the problem going forward.”⁴⁷

Second, once this burden is satisfied, the Commission must then promulgate a just and reasonable alternative rule, regulation, practice, or contract.⁴⁸ The Commission’s discretion is at its zenith when fashioning remedies.⁴⁹ In this case, the replacement rate is for PJM to stop imposing penalties not authorized by its tariff.

IV. ARGUMENT

A. PJM’s 2023 Filing Did Not Eliminate the Out of Period Test Remedy.

PJM Manuals have long allowed an out of period test remedy to “remedy [a] shortfall” caused by a planned or forced outage.⁵⁰ That provision remains in effect; the 2023-24 capacity market amendments did not alter that Manual provision.

⁴⁵ *Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 811 (D.C. Cir. 2007); *see also Chehaulis Power Generating, L.P.*, 145 FERC § 61,052, at ¶ 11 (2013) (“Section 205 requires that rates, terms, and conditions for jurisdictional services must be filed with the Commission; the statute does not make such a filing optional, or otherwise grant discretion to utilities to decide whether or when they must file their rates, terms, and conditions.”).

⁴⁶ 16 U.S.C. § 824e(b).

⁴⁷ *Citadel FNGE Ltd. v. FERC*, 77 F.4th 842, 855 (D.C. Cir. 2023).

⁴⁸ 16 U.S.C. § 824e(b).

⁴⁹ *XO Energy Ma, LP v. FERC*, 77 F.4th 710, 716 (D.C. Cir. 2023).

⁵⁰ Manual 21B, § 10.3(7).

As noted above, the primary relevant 2023-24 capacity market amendment was to require resource units to test in both summer and winter seasons.⁵¹ As PJM explained,

The proposed change to the winter test is to remove the existing provisions in PJM Manuals 21 and 18 that allow a winter capability test to be satisfied by adjusting the most recent summer capability test to reflect performance during winter conditions, and instead require that an actual, physical test be performed on resources during the winter season to demonstrate their capability to perform up to the installed capacity committed on such resource in the season.⁵²

These rules were codified in Tariff, Att. DD 7.1(a) and Manual 18, § 8.5A, respectively.⁵³

PJM also instituted new penalty calculation methodology, shifting from a penalty based on annual average deficiency to a penalty based on the day's deficiency.⁵⁴ The amended language stated that,

Effective with the 2025/2026 Delivery Year, [Generation Resource Rating Test Failure Charges] shall be evaluated and assessed for each day of the Delivery Year in which the seasonal rating test for such resource fails to certify full delivery of the megawatt amount of installed capacity committed for such day.

But there was never any discussion that PJM intended this Tariff change to have any effect on the out of period test remedy. As Adam Keech, PJM Senior Vice President, testified, the Generation Resource Rating Test Failure Charge was altered “*with regard to the calculation of the MW shortfall only.*”⁵⁵ PJM did *not* “propos[e] to change the Daily Deficiency Rate.”⁵⁶ This framing—

⁵¹ PJM Deficiency Response at 9-10.

⁵² 12/1/2023 Deficiency Response at 10; *see also* FERC Order Accepting Tariff Revisions at ¶199 (repeating same).

⁵³ Not at issue in this complaint, PJM also proposed a new operational spot-testing regime “to determine whether a resource can synchronize to the grid within the start-up times specified in the schedule that PJM tests the unit on and operates for the minimal run time.” Deficiency Response at 16. This is distinct from seasonal capability testing.

⁵⁴ *See* Tariff, Att. DD, § 7.1(a).

⁵⁵ Keech Affidavit at ¶ 25.

⁵⁶ *Id.*

that the only change is to the *calculation methodology*—strongly supports the argument that PJM never intended or disclosed that it was eliminating the substantive *remedy* for the test shortfalls.

Indeed, PJM suggested that the rule as traditionally interpreted would remain in place. In a discussion regarding its proposed summer/winter testing bifurcation, PJM stated that “[c]onsistent with the existing rules, a Generation Capacity Resource that fails the generator capacity capability test will continue to be assessed a test failure charge for each day of the Delivery Year.”⁵⁷ The only proposed change to those “existing rules” was to “modify the manner in which [PJM] assesses charges for failure to satisfy seasonal generator capability testing requirements under the Tariff.”⁵⁸ Specifically,

under the current capability testing construct, the Generation Resource Rating Test Failure Charge is calculated at the end of each Delivery Year and includes MW shortfall calculation based on the annual average of the installed capacity committed on each resource minus the highest installed capacity rating determined for the resource during the relevant summer or winter testing period. That MW shortfall is then multiplied by the Daily Deficiency Rate.⁵⁹

Under “existing rules” (both then and now), however, resource units could remedy any shortfall by performing an out of period test.⁶⁰

Further underscoring PJM’s apparent continuation of the status quo, PJM repeatedly used the phrase “[c]onsistent with the existing rules” to describe rules that would not—and did not—change after the 2023-24 capacity market proceeding. For example, PJM stated in its Filing Letter that

[c]onsistent with the existing rules, the resource owner or operator may rely upon an unlimited number of tests or operational data

⁵⁷ Filing Letter at 84 (emphasis added).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Manual 21B, § 10.3(7).

during each seasonal testing period to demonstrate the capability of the resource. This is appropriate because the purpose of the capacity capability test is to verify that committed Generation Capacity Resources are capable of generating up to their committed megawatt amount of installed capacity.⁶¹

PJM Manuals and practice continue to recognize this allowance.⁶² Similarly, “[c]onsistent with the existing rules, Committed Demand Resources that do not satisfy these testing requirements will be assessed a Demand Resources Test Failure Charge equal to the net capability testing shortfall for such products[.]”⁶³ Again, PJM practice continues to recognize that Test Failure Charge in the manner described in PJM’s filing letter.⁶⁴

The closest PJM came to alerting interested parties to a change to the out of period test remedy was a single slide in a lengthy PJM presentation and a subsequent update of the same slide in the next iteration of the presentation in the following months. The first presentation included a slide titled “Generator Seasonal Capability Testing” which discussed “[s]tatus quo rules with the following proposed reforms.”⁶⁵ One of those reforms suggested that PJM would “remove existing administrative rules that allow generators that fall short in their tests to avoid a penalty.”⁶⁶ The updated presentation provided the following month states that PJM would “[r]emove the current administrative rule that bases the decision to assess a penalty charge on if the owner submits the de-rate corresponding to the testing shortfall in GADS (no penalty charge), or if PJM has to submit

⁶¹ Filing Letter at 83 (emphasis added).

⁶² Manual 18, § 8.5 (“An unlimited number of tests may be performed on the unit during each testing period. ... The unit’s installed capacity shortfall for the testing period is determined by the test that resulted in the highest installed capacity rating.”).

⁶³ Filing Letter at 91.

⁶⁴ See Tariff, Att. DD, § 11A(c).

⁶⁵ PIO Protest, Vol. 2, Capacity Market Reform: PJM’s Proposal, RASTF – CIFP (June 14, 2023), Slide 35.

⁶⁶ *Id.*

it for them (penalty assessed).”⁶⁷ PJM did not introduce these PowerPoint presentations in the record before FERC. And even if the Commission views these two unintroduced slides as a sufficient form of notice, the language in the slides themselves are vague. The second slide, for example, appears to describe a narrower change—removing the administrative rule that based the penalty discussion on whether the owner or PJM submitted the derate in GADS, which differs from eliminating the out of period test entirely

More generally, there was no direct—let alone substantive—discussion of this slide during the 2023-24 capacity market stakeholder proceedings. This silence stands in stark contrast to the dozens of pages PJM dedicated to discussing operational testing, dual-fuel verification, variable resource exemptions, gas pipeline stress testing, and the daily calculation methodology. The complete absence of *any* meaningful discussion about the out of period test remedy—from *any* party, including the IMM—is powerful evidence that no participant understood that PJM was eliminating the remedy.

Unsurprisingly, since it was never brought to its attention, FERC orders likewise never discuss any change to the out of period test remedy. The primary focus was directed at PJM’s other proposed changes. In its Order Accepting Tariff Revisions, the Commission’s limited discussion of capability testing noted that:

PJM states that, compared to the current rules—which require only a single test to be conducted in the summer, which is then adjusted to demonstrate winter capability—physical testing in both the summer and winter will give PJM greater confidence that a resource is physically capable of performing during an emergency.⁶⁸

⁶⁷ PIO Protest, Vol. 2, Capacity Market Reform: PJM’s Proposal, CIFP – Resource Adequacy (July 27, 2023), Slide 34.

⁶⁸ FERC Order at ¶188.

The change that PJM now relies on appeared for the first time in a manual update added long after the current action had run. Manual 18, § 8.5.2 states:

In the event a resource is eligible for an out of period capability test for the relevant season, as described in PJM Rules and Procedures for Determination of Generating Capability Manual (M21B) an updated Unit ICAP Shortfall would be determined based on the out of period test and the updated Unit ICAP Shortfall becomes effective on the date of the out of period test, and extends through the relevant seasonal period.⁶⁹

Again, however, PJM never discussed or otherwise signified on the record during the 2023-24 capacity market proceedings that it intended this change to mean that capacity resource units would be liable to daily Test Failure charges that could not be cured by an out of period test. Moreover, this new language is flatly inconsistent not only with PJM's other statements during the capacity market proceedings, but also with Manual 21B, § 10.3(7), which still allows for the out of period test remedy.

PJM will likely argue that its abrupt shift was part of the 2023-24 capacity market filing. It may assert, for example, that the shift to a bifurcated seasonal testing regime or daily assessments logically implied that out of period tests would no longer “remedy a test shortfall.”⁷⁰ But nothing about seasonal testing obviously requires eliminating the out of period test remedy. Indeed, these two alterations—requiring summer/winter seasonal testing and calling for daily capacity resource assessments—are entirely consistent with an out of period test remedy as traditionally interpreted. An out of period test performed outside the summer test period (June 1 through August 31), *but during the summer season* (which includes September, October, and May of the following calendar year) remains a summer season test. The same logic applies to winter testing. Manual 18, § 8.5.2

⁶⁹ Manual 18 § 8.5.2.

⁷⁰ *Id.*

confirms the difference between a summer or winter *season* and the summer or winter *test period*.⁷¹ That the testing periods were bifurcated bears no relationship to the availability of an out of period test remedy. It is entirely reasonable that a generator with an unexpected outage of major equipment would seek to demonstrate its capability as soon as it returned to operations within the season.

Similarly, the addition of daily generation resource charges does not alter the function of an out of period test remedy. Indeed, the Tariff *already provided for daily charges*. Tariff, Att. DD, § 7.1(a) provides, in part, that

If none of the tests during a testing period certify full delivery of the megawatt amount of installed capacity the Market Seller committed, ... the Market Seller ... shall be assessed a daily Generation Resource Rating Test Failure Charge for each day from the first day of the summer or winter season in which such resource failed the rating test through the last day of such Delivery Year[.]⁷²

This language preexisted the 2023-24 capacity market proceedings and was compatible with PJM's long history of interpreting the out of period test remedy to remedy capacity shortfalls for the entire season. The language added during the capacity market proceedings is no different.

Finally, PJM may assert that its shift from annual to daily megawatt shortfall also implied that daily charges would no longer be remedied by an out of season test. But the method of calculating shortfalls is distinct from whether those shortfalls are remedied by an out of period test. Moreover, PJM expressly intended that change to be “[c]onsistent with existing rules.”⁷³ As PJM

⁷¹ Manual 18, § 8.5.2 (“In the event a resource is eligible for an out of *period* capability test for the relevant *season* ... an updated Unit ICAP Shortfall would be determined based on the out of *period* test and the updated Unit ICAP Shortfall becomes effective on the date of the out of period test, and extends through the relevant seasonal *period*.” (emphasis added)).

⁷² Tariff, Att. DD, § 7.1(a).

⁷³ Filing Letter at 84.

acknowledged, that change modified only “the manner in which it *assesses* charges for failure to satisfy seasonal generator capability testing requirements under the Tariff.”⁷⁴

B. The Out of Period Test Remedy Remains, Unchanged, in the Relevant PJM Manual

For years, PJM has allowed resource units to remedy a capacity shortfall by testing out of period. As Mr. Dixon’s testimony explains, PJM has long allowed an out of period test remedy, and LS Power has long utilized that penalty to remedy capacity shortfalls without incurring a penalty.⁷⁵

This prior practice makes sense in light of the plain language of Manual 21, § 1.3(7). That provision provides, in relevant part, that

Net capability verification outside of the test period can only be accepted and is required when a reduction (outage or derating) in PJM eGADS was in effect during the entire test period which prevented demonstration of maximum Net Capability. The Net Capability shall be demonstrated by either actual operating data or by performing a test during the applicable season, but outside of the respective test period. *Such out of period test may remedy a test shortfall[.]*⁷⁶

Under this provision, the generator incurred no seasonal capability testing penalties. This is how PJM always applied this provision and this language remains in the manual today.

PJM may argue that the out of period test remedy now applies only prospectively from the date of the test to the remaining summer or winter season. Under this interpretation, for example, an October 15 out of period test would stop penalties from accruing for the remainder of the summer season, including October 15-31 and May 1-31. But the out of period test remedy has, for

⁷⁴ *Id.* (“PJM proposes to assess the resource’s MW shortfall on the daily installed capacity commitment of the resource in calculating the MW shortfall rather than annual average of the installed capacity committed on the resource.”).

⁷⁵ Dixon Testimony at 6.

⁷⁶ Manual 21B, § 10.3(7) (emphasis added).

years, been applied to remedy charges accumulated for the entire season, not simply prospectively from the date of the out of period test. As Mr. Dixon explains, PJM has long allowed an out of period test remedy to remedy capacity shortfalls without incurring penalties.⁷⁷ Moreover, as discussed at length above, PJM did not raise the possibility of this change during the 2023-24 capacity market proceedings.

C. Even if PJM Eliminated the Out of Period Test Remedy as Previously Interpreted, Such a Change Amounts to Retroactive Ratemaking.

PJM’s new Manual language purporting to eliminate or reinterpret the out of period test remedy is impermissible retroactive rulemaking. “[A] regulated seller of power is prohibited from collecting a rate other than the one filed with the Commission.”⁷⁸ The Commission “has no authority under the Act to allow retroactive change in the [filed] rates.”⁷⁹ This doctrine “is shorthand for the interconnected statutory requirements that bind regulated entities to charge only the rates filed with FERC and to change their rates only prospectively.”⁸⁰

LS Power successfully submitted its auction offer on July 17, 2024.⁸¹ Its offer reflected LS Power’s expected risk exposure as of that date. PJM, however, introduced the relevant Manual changes over six months later, in January 2025, and adopted its changes nearly a year later in May 2025.⁸² According to PJM, those Manual changes were applicable to the entire Delivery Year. It stated:

⁷⁷ Dixon Testimony at 6.

⁷⁸ *Old Dominion Electric Cooperative v. Federal Energy Regulatory Commission*, 892 F.3d 1223, 1227 (D.C. Cir. 2018).

⁷⁹ *Oklahoma Gas and Electric Co. v. Federal Energy Regulatory Commission*, 11 F.4th 821, 829 (D.C. Cir. 2021) (cleaned up) (internal quotation marks omitted).

⁸⁰ *Oklahoma Gas and Electric Co.*, 11 F.4th at 829.

⁸¹ Dixon Testimony at 4.

⁸² PJM 3/15/24 Answer at 15.

In any event, PJM has informed stakeholders of its plan for adopting marginal ELCC Manual language. As explained to stakeholders at the March 5, 2024 Planning Committee meeting, PJM intends to develop and adopt such manual provisions in two phases, with the first phase focused on provisions applicable to the conduct of the 2025/2026 Base Residual Auction in July 2024. Those provisions will be developed and adopted prior to the conduct of the upcoming Base Residual Auction. The second phase will focus on provisions *applicable to the Delivery Year (e.g., seasonal capability testing)* and will be developed and adopted in the second half of 2024.⁸³

At the time of its offer, LS Power could not have known that PJM intended to alter its Manual provisions regarding the existing out of period testing regime and therefore had no ability to adequately price-in the new risks associated with an unplanned outage. As PJM itself has recognized, it is critical for grid operators to finalize rules before auction so that market participants can adequately price risks.⁸⁴ Moreover, there is always a risk of forced, unplanned outages. PJM's new testing regime therefore alters the risk that such a forced outage would have significantly detrimental consequences. LS Power should have an opportunity to price those changes into its offer price.

PJM may argue that its rule change does not involve altering “rates.”⁸⁵ Courts have foreclosed that argument. Once a rate is filed, Section 824d(d) prevents “change[s]” to “any such rate, charge classification, or service, *or in any rule regulation or contract relating thereto,*” except after a notice and comment period.⁸⁶ “As the statutory terms make clear, the filed rate is not limited to ‘rates’ *per se*, but also extends to matters directly affecting rates.”⁸⁷ Indeed, retroactivity is

⁸³ *Id.*

⁸⁴ *See generally* Deficiency Response at 2-3.

⁸⁵ 16 U.S.C. § 824d(d).

⁸⁶ *Id.* (emphasis added).

⁸⁷ *Oklahoma Gas and Electric Co.*, 11 F.4th at 829 (cleaned up).

defined broadly: “[R]etroactive rules alter the past legal consequences of past actions.”⁸⁸ Because “determining retroactivity is not always a simple or mechanical task” courts must “rely on familiar considerations of fair notice, reasonable reliance, and settled expectations [for] sound guidance.”⁸⁹

Eliminating the out of period remedy “directly affect[s]” rates by adding a duplicative \$17 million charge unforeseen at the time of the relevant auction. Had LS Power been aware of this possibility, it may have priced such risks into its auction price. This is precisely the kind of rule that alters a “past action” (out of period test remedy as traditionally interpreted) affecting a “legal consequence” (new daily, charges that cannot be remedied).⁹⁰ And there is every reason to believe that the market as a whole would have also accounted for this new, multi-million-dollar risk. This retroactive change “directly affect[s]” rates.⁹¹

PJM may alternatively argue that its rule change was not retroactive because LS Power was on notice of potential changes during the 2023-24 capacity market proceedings. It may cite, for example, its 3/15/24 Answer, which indicated that PJM would adopt Manual revisions “applicable to the Delivery Year,” including changes concerning “seasonal capability testing.”⁹² But this language was insufficiently clear, and did not notify LS Power—or anyone else, including the Commission even after issuing a deficiency letter on seasonal capability testing—as to *what* changes PJM would make by adopting winter testing. PJM’s “purported exception ... does not recognize any sort of notice given by one regulated entity to another.”⁹³ Rather, notice of rate

⁸⁸ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 398 (3d Cir. 2024) (internal quotation marks omitted).

⁸⁹ *Id.* (internal quotation marks omitted).

⁹⁰ *See PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 400 (3d Cir. 2024) (internal quotation marks omitted).

⁹¹ *Oklahoma Gas and Electric Co.*, 11 F.4th at 829 (cleaned up).

⁹² PJM 3/15/24 Answer at 15.

⁹³ *Oklahoma Gas and Electric Co.*, 11 F.4th at 830.

changes is sufficient only when a regulated entity received “*formal notice*” of the rate change.⁹⁴ Such “formal notice” exists only in two circumstances: (1) when a tariff has a formula for calculating a rate, which states clearly that changes will depend on application of the formula,” and (2) “when a court invalidates a filed rate as unlawful, and FERC must make retroactive changes to the rates.”⁹⁵ “In both instances, the regulated parties receive formal notice—either through a FERC proceeding or through the courts.”⁹⁶ Neither of those circumstances apply here, and courts have “generally declined to find notice outside of these two limited circumstances.”⁹⁷ As the Independent Market Monitor concluded during the 2023-24 capacity market proceedings, PJM’s filings were “not ready for prime time even on their own terms, as they include multiple vague and incompletely defined elements and defer many important elements of the stated rate to PJM for inclusion in manuals that should be included in the tariff.”⁹⁸ “The level of uncertainty that would be created by accepting PJM’s filings would be inconsistent with efficient and competitive markets both because key elements of the filings are not final and because even if the proposal works as intended it will create significant and unnecessary levels of uncertainty for all market participants.”⁹⁹

Rules that significantly affect rates and service can only be changed *prospectively* after notice. There was no notice here that the out of period test remedy was being eliminated.

⁹⁴ *Id.* at 831; *see also Old Dominion Electric Cooperative*, 892 F.3d at 229 (“That otherwise categorical prohibition against retroactively charging rates that differ from those that were on file during the relevant time yields in only two limited circumstances.”).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* (internal quotation marks omitted).

⁹⁸ IMM Comments on Response to Deficiency Notice, at 3.

⁹⁹ *Id.*

D. Under the Rule of Reason, PJM’s Rule Change Must be Filed in the Tariff

The rule of reason requires utilities to file “those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.”¹⁰⁰ The rule of reason must be analyzed on a “case-by-case” basis.¹⁰¹ The Commission has “broad discretion[] to give concrete application to” the rule of reason.¹⁰²

PJM’s rule change both significantly affects rates and is capable of specification. As discussed above, the change in rule significantly affects rates by subjecting resource units to tens of millions of dollars in penalty charges. The rule change is also clearly susceptible to specification: it is already contained in PJM manuals.

Of course, the tariff need not include “mere implementation details,” which PJM may properly include in a manual.¹⁰³ But \$17 million (for a single capacity market participant) is too stiff a penalty to chalk up to “implementation details,” especially here where the new penalties reflect a transformation in seasonal capability testing from simply to “verify that committed Generation Capacity Resources are capable of generating up to their committed megawatt amount of installed capacity”¹⁰⁴ into yet another measurement and penalty regime geared toward performance. And reversing its prior practice on out of period tests (and ignoring its own manual

¹⁰⁰ *Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 811 (D.C. Cir. 2007); *see also Chehaulis Power Generating, L.P.*, 145 FERC § 61,052, at ¶ 11 (2013) (“Section 205 requires that rates, terms, and conditions for jurisdictional services must be filed with the Commission; the statute does not make such a filing optional, or otherwise grant discretion to utilities to decide whether or when they must file their rates, terms, and conditions.”).

¹⁰¹ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at p. 656 (2007).

¹⁰² *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993).

¹⁰³ *Hecate Energy Green Cnty. 3 LLC v. FERC*, 72 F.4th 1307, 1314 (D.C. Cir. 2023); *see also Cometa Energia, S.A. de C.v. v. Cal. Indep. Sys. Operator Cor.*, 191 FERC ¶ 61,089, at ¶¶ 21-22 (2025).

¹⁰⁴ PJM Filing Letter at 83; *see also* FERC Dkt. Nos. ER05-1410 and EL 05-148.

language explaining that test) likewise is not a mere implementation detail. LS Power and other resource capacity units made regular use of the out of period test as previously implemented.¹⁰⁵ The remedy was a key backstop that saved the capacity market tens if not hundreds of millions of dollars in charges. And the implementation of a new penalty of this magnitude is a rate-setting mechanism.¹⁰⁶ As noted above, its elimination therefore significantly affects rates.

The change that PJM seeks to the out of period test remedy would need to be explicit in a section 205 pleading seeking a tariff change and not left to the manuals. Indeed, during the 2023-24 capacity market proceedings, numerous parties (and indeed, the Commission itself) expressed concerns about leaving critical implementation details in the manuals. The IMM, for example, commented that PJM failed to explain the details of how it would assess resource units in both the summer and winter seasons and urged the Commission to require PJM to file the “basic rules governing testing” in the tariffs.¹⁰⁷ Although none of the parties, including LS Power, expressed concern about PJM’s alteration to the out of test remedy, that omission is easily explained: PJM did not explain that position or notify the Commission of that alteration. Had LS Power been aware of the magnitude of changes PJM was apparently contemplating, it would have advocated that this specific rule change be included in the tariff.

¹⁰⁵ Dixon Testimony at 6.

¹⁰⁶ See *Southwest Power Pool*, 117 FERC ¶ 61,139, at P 25 (2006) (“We caution SPP that its actions must be in accord with terms, conditions, and rates on file under the FPA. SPP should include details in its tariff on how its penalty factor solutions would or would not be used to make dispatch instructions to market participants as well as their use in setting prices, if indeed the penalty factors are used in the dispatch process. We view these actions as affecting rates, terms and conditions. Accordingly, they must be on file with the Commission if used to manage the imbalance market.”); see also *Midwest Indep. Transmission Sys. Operator*, 136 FERC ¶ 61,038, PP 8-11 (2011) (finding that certain tariff revision related procedures, which affect the reassignment of ARR revenues, significantly affect rates and require a FPA 205 filing); *id.* P 9 (“The allocation of money between parties is the definition of a rate, and the reassignment of ARR revenues is an allocation of money.”).

¹⁰⁷ IMM Comments on Deficiency Notice and Answer, at 11; see also *American Municipal Power, Inc. Request for Rehearing* at 8-9.

Moreover, even if the out of period test remedy (as previously interpreted) was properly in PJM's Manual, certain Manual changes can elevate what used to be appropriately in a manual into something that now belongs in the tariff. In *ANP Funding I, LLC v. ISO New Eng., Inc.*, 110 FERC ¶ 61,040, ¶¶ 22-24 (2005), the Commission concluded that ISO New England Operating Procedures, which the Commission had previously not required to be filed, had to file the manual provision into the tariff.¹⁰⁸ It stated:

[W]e note that, as we gain experience with market rules and procedures and a better understanding of how operating procedures may actually affect rates or service, over time the Commission may need to exercise its discretion under the rule of reason differently We conclude that OP20 and revised OP5 could significantly affect rates and services. The revisions could affect compensation that generators receive under Market Rule 1 by limiting the circumstances under which they can declare economic outages.¹⁰⁹

Accordingly, even though the out of period test remedy was appropriately in PJM's manual, that does not necessarily imply that any subsequent changes to that provision are not Tariff-worthy.

The Commission must therefore require PJM to include its alteration to the out of period test in an appropriate Federal Power Act filing to be included in the tariff under the rule of reason.

E. Elimination of the Out of Period Test Remedy Would be Unjust and Unreasonable Irrespective of Notice, Retroactivity, or Rule of Reason Concerns

PJM's elimination or reinterpretation of the out of period test remedy is duplicative of other charges and penalties, raises capacity costs without commensurate reliability benefits, and could drive needed resources into early retirement. PJM's action is therefore unjust and unreasonable.

¹⁰⁸ *ANP Funding I, LLC v. ISO New Eng., Inc.*, 110 FERC ¶ 61,040, ¶¶ 22-24 (2005)

¹⁰⁹ *Id.*

PJM's capacity charge is duplicative of other charges, penalties, and losses. LS Power has already faced significant losses as a result of the forced outage. During the forced outage, LS Power lost access to the vast majority of its energy payments. We estimate that LS Power lost \$ [REDACTED] in energy payments over that period.¹¹⁰ On top of that lost revenue, LS Power expended considerable resources in bringing West Deptford back online. As a result of the ground-fault, LS Power was forced to remove and repair [REDACTED].¹¹¹ LS Power spent approximately \$ [REDACTED] in returning West Deptford to full capacity.¹¹² In addition to the \$17 million capacity charge assessed by PJM, therefore, LS Power lost approximately \$ [REDACTED].¹¹³

In addition to these actual losses, LS Power faced significant potential penalties and charges. As discussed above, the capacity charge at issue here is not equivalent to performance charges, which resource units may incur if they do not produce their stated megawatt amount when called upon. Had PJM called a Performance Assessment Interval ("PAI"), whereupon West Deptford would have been assessed based on its ability to deliver its specified megawatt amount, LS Power would have faced Capacity Performance Penalties from PJM subject to a stop loss. PJM's stop-loss provisions provide that the maximum yearly non-performance charge is limited to 1.5 times a resource's capacity payment. For West Deptford, that penalty could have amounted to approximately \$ [REDACTED].¹¹⁴ Between LS Power's actual and potential losses, LS Power could have been on the hook for \$ [REDACTED]. Viewed in light of these existing and unavoidable costs

¹¹⁰ Dixon Testimony at 7.

¹¹¹ *Id.* at 4.

¹¹² *Id.* at 7.

¹¹³ *Id.* at 7.

¹¹⁴ *Id.* at 6-7.

and penalties, PJM's capacity charge is duplicative, overly punitive, and in contravention of PJM's stop-loss provisions which were specifically calculated to prevent bankrupting generators.

Daily capacity charges also raise costs without commensurate reliability benefits. As discussed in detail above, resources must have the opportunity to price risks into their auction offers. LS Power had no such opportunity. If it did, LS Power may have increased its asking price significantly to reflect the risk that West Deptford would experience an unplanned outage. Additionally, resources must also convince the IMM to allow a risk premium, which as a practical matter has proven difficult. Moreover, eliminating the out of period test remedy does nothing to bolster resource unit reliability. Capacity tests are designed only to show that the capacity resource is *capable* of delivering its stated megawatt amount. Imposition of daily charges for unplanned outages does little to ensure that resource units are theoretically capable of delivering that amount, and clearly that was not the intent of this provision. For example, a unit could test on June 1 and then not perform the entire period through October without incurring any penalty. This outcome clearly demonstrates that period testing was not intended to be a daily performance penalty. The out of period test remedy allows resources units to avoid unnecessary charges due to unplanned outages by providing those units time to repair those units.

PJM's unforeseeable, disproportionate, and duplicative charges may also drive needed resources into early retirement—precisely the outcome PJM sought to avoid during the 2023-24 capacity market proceedings. As PJM itself recognized during the Capacity Market Amendments, duplicative and unnecessary penalties are “overly punitive charges [that] can have chilling effects on investment, contribute to premature retirements, and result in harm to the market.”¹¹⁵

¹¹⁵ 12/21/2023 Answer at 37.

PJM will likely argue that outage during the full summer or winter test period jeopardizes reliability. But PJM misstates the purpose of the capacity test and overlooks the causes of a full test-period outage. Specifically, the purpose of the capacity test was never intended to operate as a performance test and should not punish a generator for forced outages which are, by definition, beyond its control.

Elimination of the full out of period test remedy instead jeopardizes a critical natural gas resource doing everything it can to stay in service to meet reliability. Adding a daily penalty to an unplanned outage does nothing to reduce the likelihood of such outages (which, by definition, are forced and out of resources' control) and indeed may backfire.

V. REMEDY

LS Power requests that the Commission reject the new provision in Manual 18 § 8.5.2 that eliminates the out of period test remedy for the full summer or winter period. Under the unchanged language in Manual 21B § 10.3(7), West Deptford is eligible for an out of period test that will “remedy” the daily charges. Indeed, West Deptford has successfully completed its winter season capacity test. In all likelihood, West Deptford will complete an out of period summer test in May 2026. A successful May test should remedy any charges LS Power has accumulated during the summer season. If the Commission elects to refund the penalty, LS Power asks that it exercises its Section 309 authority to ensure that LS Power is made whole, rather than provide relief prospectively at the time of filing this Complaint under Section 206.

If the Commission is inclined to keep the new provision in Manual 18 § 8.5.2 and eliminate the out of period test remedy, LS Power requests that it apply only prospectively after the next relevant auction. PJM should file these changes pursuant to FPA section 205.

VI. RULE 206 COMPLIANCE

Rule 206(b) of the Commission's Rules of Practice and Procedure requires complaints to include certain specified information.¹¹⁶ LS Power respectfully submits it has addressed each of these requirements in this complaint, as explained below.

- **Section 206(b)(1) – Clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements.**

See supra, Section II(B). PJM's addition of Manual 18, § 8.5.2, its reinterpretation of the out of period test remedy, Manual 21B, § 10.3(7), and its failure to add language to Tariff, Att. DD 7.1(a) are the acts constituting violations.

- **Section 206(b)(2) – Explain how the action or inaction violates applicable statutory standards or regulatory requirements.**

See supra, Section IV.

- **Section 206(b)(3) – Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant.**

LS Power faces unjustified seasonal capability charges imposed by PJM. By effectively eliminating the out of period test remedy, PJM disincentivizes participation in the capacity market by increasing the costs of outages that lay outside of a resource owner's control. This policy harms economic development and increases the cost to capacity market resources, which will be required to attempt to price-in this additional cost of unplanned outages. These charges are duplicative of performance costs and charges.

- **Section 206(b)(4) – Make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction.**

Due to the forced outage, LS Power lost approximately \$ [REDACTED] in lost energy revenues, cost of repair, and the Generation Resource Rating Test Failure Charge.

¹¹⁶ 18 C.F.R. § 385.206(b).

- **Section 206(b)(5) – Indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction.**

PJM’s alteration of the out of test remedy will add significant risk to capacity market participants. Under PJM’s asserted rule, resource units will face duplicative charges during times of unplanned outages. This disincentivizes participation in the capacity market and increases costs to resources without attendant reliability benefits. This may well result in less overall capacity—precisely the outcome PJM wished to avoid during the 2023-24 capacity market proceedings.

- **Section 206(b)(6) – State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum.**

The issues presented here are not pending in an existing Commission proceeding or a proceeding in any other forum.

- **Section 206(b)(7) – State the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief.**

LS Power seeks a Commission order rejecting PJM’s new provision in Manual 18, § 8.5.2 that eliminates or significantly alters the out of period test remedy for the full summer or winter period. The Commission should require PJM to propose any such change in its tariff under a proper FPA section 205 filing. Alternatively, LS Power seeks a refund for the approximately \$17,000,000 charge because PJM failed to provide proper notice to stakeholders of the change, which it applied retroactively after completion of the relevant auction. Under the alternative relief, PJM may apply the newly created language prospectively.

- **Section 206(b)(8) – Include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits.**

LS Power submits the testimony of Mr. Nathan Dixon, Senior Vice President of Asset Management at LS Power as Exhibit 1.

- **Section 206(b)(9) – State (i) whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used; (ii) whether the complainant believes that alternative dispute resolution (ADR) under the Commission’s supervision could successfully resolve the complaint; (iii) what types of ADR procedures could be used; and (iv) any process that has been agreed on for resolving the complaint.**

LS Power communicated its concerns directly with PJM and PJM’s position is that daily seasonal capability test penalties are authorized. LS Power has not used other dispute resolution mechanism as these would be unlikely to resolve the dispute.

- **Section 206(b)(10) – Include a form of notice of the complaint suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this part. The form of notice shall be on electronic media as specified by the Secretary.**

Attached to this complaint is a form of notice of complaint that is suitable for publication in the *Federal Register* in accordance with Section 385.203 of the Commission’s Rules of Practice and Procedure.

- **Section 206(c) – Service on Respondent.**

Pursuant to Rule 206(c), concurrent with its filing with the Commission, LS Power has served copies of this complaint by email on the contacts for PJM as listed on the Commission’s list of Corporate Officials:

Thomas DeVita
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
Telephone: (610) 635-3042
Email: Thomas.devita@pjm.com

Mark J. Stanisz
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Telephone: (610) 666-4707
Email: FERCeService@pjm.com

- **Section 206(h) – Fast Track processing.**

LS Power is not requesting fast track processing.

A. Submitted documents

1. Complaint

**2. Exhibit 1: Testimony of Mr. Nathan Dixon, Senior Vice
President, LS Power**

3. Certificate of Service

4. Notice of Complaint

B. Correspondence and communications

All correspondence and communications in this docket should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary in connection with this proceeding:

Daniel Pierpont
Marjorie R. Philips
LS Power Development, LLC
250 West 55th Street, 31st Floor
New York, NY, 10019
732-859-2439
dpierpont@lspower.com
mphilips@lspower.com

CONCLUSION

WHEREFORE, LS Power respectfully requests that the Commission grant this complaint and the remedies requested above.

Respectfully submitted,

/s/ Paul F. Wight

Paul F. Wight
DLA Piper LLP (US)
500 Eighth Street NW
Washington, D.C. 20004
202-799-4858
paul.wight@us.dlapiper.com

Counsel for LS Power

April 7, 2026

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

LS Power Development, LLC)
)
 Complainant,)
)
 v.)
)
 PJM Interconnection, L.L.C.)
)
 Respondent.)

Docket No. EL26-____-000

**Testimony of Nathan Dixon
Senior Vice President, Asset Management
LS Power Development, LLC**

**On behalf of
LS Power Development, LLC**

April 7, 2026



LS Power Development, LLC.

West Deptford Unit

Testimony of Nathan Dixon, Senior Vice President, Asset Management, LS Power Development, Inc.

1 Introduction

Q1. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.

A1. My name is Nathan Dixon. My current position is Senior Vice President of Asset Management at LS Power Development, LLC (“LS Power”). My business address is 250 W 55th Street, 31st Floor, New York, NY 10019.

Q2. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND AND EXPERIENCE.

A2. I received a B.S. in Mechanical Engineering from the University of Maryland Baltimore Country, and an M.B.A. from the University of Maryland Global Campus. I have held positions at several corporations, including Constellation Energy, Raven Power, PSEG, and LS Power.

1 **Q3. PLEASE DESCRIBE YOUR QUALIFICATIONS AS IT RELATES TO THE**
2 **TOPIC OF WHOLESALE ELECTRICITY MARKET DESIGN AND**
3 **CAPACITY MARKETS.**

4 A3. In my role as Senior Vice President of Asset Management, I am responsible for
5 managing the gas generation assets owned by LS Power, including those in PJM
6 Interconnection, L.L.C (“PJM”).

7 **Q4. PLEASE STATE WHETHER YOU HAVE PREVIOUSLY TESTIFIED**
8 **BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**
9 **(“FERC”)?**

10 A4. I have previously provided written testimony to FERC in Dkt. No. EL 21-91-003.

11 **Q5. PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.**

12 A5. In this testimony, I provide an overview of the West Deptford Unit. I also describe
13 events leading to an unplanned forced outage experienced by the West Deptford
14 Unit in [REDACTED], and LS Power’s efforts in repairing the West Deptford Unit. I
15 further outline the Generation Resource Rating Test Failure Charge notice
16 transmitted to LS Power by PJM, and LS Power’s reaction to that notice. Finally,
17 I provide an overview of West Deptford’s [REDACTED] return to service.

18 **2. The West Deptford Unit and the Unplanned Outage.**

19 **Q6. PLEASE PROVIDE AN OVERVIEW OF THE WEST DEPTFORD UNIT.**

20 A6. The West Deptford Unit is an efficient [REDACTED] MW gas-fired combined-cycle unit in
21 New Jersey comprised of two gas turbines and a steam turbine. The Unit is

1 connected to the Columbia and Transco interstate gas pipelines and [REDACTED]
2 [REDACTED]. The Unit dispatches
3 into PJM's Eastern Mid-Atlantic Area Council zone, which has historically been a
4 capacity constrained zone, and primarily serves the Philadelphia region.

5 **Q7. PLEASE DESCRIBE THE EVENTS LEADING TO THE UNPLANNED**
6 **OUTAGE.**

7 A7. On [REDACTED] the West Deptford Unit suffered a forced outage due to critical
8 equipment failure. Specifically, [REDACTED]
9 [REDACTED].

10 On [REDACTED] LS Power sent the [REDACTED] for service. LS
11 Power also re-fitted the West Deptford plant to operate on reduced capacity,
12 generating [REDACTED]

13 **Q8. PLEASE STATE WHEN LS POWER SUCCESSFULLY SUBMITTED ITS**
14 **AUCTION OFFER.**

15 A8. LS Power submitted its auction offer for the 2025/2026 BRA on July 17, 2024. LS
16 Power received its award from PJM on July 30, 2024.

17 **Q9. PLEASE DESCRIBE WEST DEPTFORD'S CAPACITY SUPPLY**
18 **OBLIGATION FOR THE RELEVANT YEAR.**

19 A9. West Deptford's capacity commitment for the 2025/2026 delivery year is [REDACTED]
20 [REDACTED] on a UCAP basis.

21 Pursuant to Tariff, Att. DD, § 7.1, the West Deptford Unit was required to perform
22 a generation resource capacity test during the summer testing period. LS Power

1 understood that, had the West Deptford Unit suffered a capacity shortfall reflected
2 in the generation resource capacity test, it would be able to remedy that capacity
3 shortfall through an out of period test as reflected in PJM Manual 21B, § 7.3(7).

4 **3. The Penalty Notice**

5 **Q10. PLEASE DESCRIBE THE PENALTY NOTICE.**

6 A10. On [REDACTED] PJM issued a Generation Resource Rating Test Failure Charge
7 notice to LS Power. That notice stated that LS Power must pay [REDACTED] due
8 to its capacity shortfall of [REDACTED] MW on an ICAP basis. This amount reflects the
9 difference between the West Deptford Unit's stated ICAP capacity ([REDACTED]) and
10 its actual ICAP capacity during the forced outage ([REDACTED]), calculated on a day-
11 to-day basis.

12 The notice also included an assumed [REDACTED] penalty for [REDACTED].
13 However, PJM acknowledged that LS Power will have an opportunity to cure this
14 [REDACTED] charge with an out of period test.

15 **Q11. PLEASE DESCRIBE LS POWER'S REACTION TO RECEIVING THE**
16 **PENALTY NOTICE.**

17 A11. LS Power assumed that it would have recourse to the out of period test remedy,
18 Manual 18 § 8.5, to remedy these daily shortfalls, consistent with many years of
19 historical practice. During the PJM stakeholder process for ER 24-99, which added
20 a winter seasonal test requirement to the seasonal test provisions in the PJM Tariff,
21 Att. DD § 7.1(a), there was never any clear discussion of any plans to eliminate the

1 out of period test remedy. To my knowledge, PJM did not substantively discuss
2 potential elimination of the out of period test remedy.

3 **Q12. PLEASE STATE WHETHER LS POWER HAS PREVIOUSLY UTILIZED**
4 **PJM’S OUT OF PERIOD TEST REMEDY.**

5 A12. Yes, LS Power has previously utilized PJM’s out of period test remedy. When LS
6 Power has used these out of period tests for resources that were eligible to take
7 them, PJM treated those tests as remedying any rating shortfall charge accumulated
8 during the entire testing period. For example, [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 **Q13. PLEASE STATE THE POTENTIAL PENALTY LS POWER COULD HAVE**
17 **FACED HAD PJM CALLED A PERFORMANCE ASSESSMENT**
18 **INTERVAL (“PAI”) DURING THE FORCED OUTAGE.**

19 A13. Had PJM called the West Deptford Unit into service during the forced outage, LS
20 Power would have been potentially liable for approximately \$ [REDACTED].

1 **Q14. PLEASE STATE LS POWER'S LOST ENERGY REVENUES AS A**
2 **RESULT OF THE FORCED OUTAGE.**

3 A14. LS Power lost approximately \$ [REDACTED] in energy margin related to the West
4 Deptford Unit outage.

5 **4. The West Deptford Unit's Return to Service**

6 **Q15. PLEASE STATE WHETHER THE WEST DEPTFORD UNIT HAS**
7 **RETURNED TO SERVICE.**

8 A15. On [REDACTED] LS Power completed installation and testing of [REDACTED]
9 [REDACTED], returning the West Deptford Unit back
10 to service. On [REDACTED], the West Deptford Unit satisfactorily completed
11 its winter capacity test. LS Power plans to complete its out of period summer test
12 in May 2026, which is in the summer season for the 2025-26 delivery year.

13 **Q16. PLEASE STATE THE COST TO LS POWER IN REPAIRING THE WEST**
14 **DEPTFORD UNIT.**

15 A16. LS Power spent \$ [REDACTED] in repairing the West Deptford Unit.

16 **Q17. PLEASE ESTIMATE THE LS POWER'S TOTAL LOSS AS A RESULT OF**
17 **THE WEST DEPTFORD OUTAGE.**

18 A17. In total, LS Power lost approximately \$ [REDACTED] due to the West Deptford Unit
19 outage. This includes repair costs, lost energy revenue costs, and the Generation
20 Resource Rating Test Failure Charges.

1 **Q18. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 A18. Yes.

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of April, 2026, I have caused to be served a copy of the foregoing upon PJM at the following addresses obtained from the Commission's list of corporate officials designated to receive service in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2022):

Thomas DeVita
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
Telephone: (610) 635-3042
Email: Thomas.devita@pjm.com

Mark J. Stanisz
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Telephone: (610) 666-4707
Email: FERCeService@pjm.com

/s/ Sophia Browning
Sophia Browning
4365 Executive Drive
Suite 1100
San Diego, CA 92121
858-677-1455
sophia.browning@us.dlapiper.com

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

LS Power Development LLC)	
)	
Complainant,)	
)	
v.)	Docket No. EL26-____-000
)	
PJM Interconnection, L.L.C.)	
Respondent.)	
)	

NOTICE OF COMPLAINT

Take notice that on April 7, 2026, LS Power Development LLC (“LS Power”) filed a formal complaint against PJM Interconnection, LLC (“PJM”), pursuant to Section 206 of the Federal Power Act and Rule 206 of the Commission’s Rules of Practice and Procedure, alleging that PJM issued an unannounced, retroactive, and duplicative seasonal capability penalty of \$17 million. LS Power asserts that PJM’s elimination of the out of period test remedy violates the rule of reason and is unjust and unreasonable.

LS Power certifies that copies of the complaint were served on the contacts for PJM as listed on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on LS Power.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.