

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

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| PJM Load Parties |) | |
| |) | |
| v. |) | Docket No. EL24-104-002 |
| |) | |
| PJM Interconnection, L.L.C. |) | |
| |) | |

COMMENTS ON REMAND OF PJM INTERCONNECTION, L.L.C.

PJM Interconnection, L.L.C. (“PJM”) hereby submits these comments to aid in the Federal Energy Regulatory Commission’s (“Commission”) consideration on remand in light of the D.C. Circuit’s opinion in *Maryland Office of People’s Counsel v. FERC* (“*OPC*”).¹ On remand, the Commission should deny the Load Parties’² requested relief because (1) the filed rate doctrine bars changing the outcome of the 2024/2025 Base Residual Auction even for this particular complaint filed under section 206 of the Federal Power Act because it was filed after Capacity Market Sellers submitted irrevocable Sell Offers for the 2024/2025 Base Residual Auction and (2) even if relief were not barred by the filed rate doctrine itself, the Commission should exercise its remedial discretion, based on the Commission’s longstanding policy against rerunning markets and not disrupt settled expectations based on 2024/2025 Base Residual Auction results and the associated performance and payments that have already been completed for the 2024/2025 Delivery Year.

¹ *Md. Office of People’s Counsel v. FERC*, 164 F.4th 920 (D.C. Cir. 2026).

² For purposes of these comments, the Load Parties refer to American Municipal Power, Inc., Delaware Division of the Public Advocate, Delaware Energy Users Group, Delaware Municipal Electric Corporation, Delaware Public Service Commission, Maryland Office of People’s Counsel, Maryland Public Service Commission, and Old Dominion Electric Cooperative.

I. COMMENTS

PJM is sympathetic to the Load Parties' Complaint. In fact, PJM was the original entity that initially sought a Commission order in an attempt to prevent the outcome of the 2024/2025 Base Residual Auction³ and, along with the Load Parties, PJM intervened in support of the Commission's initial order when the underlying matter was appealed to the Third Circuit Court of Appeals. However, PJM cannot support the Load Parties' requested relief at this juncture given the recognition that the requested relief:

- would have its own set of negative consequences at this juncture;
- is barred by the filed rate doctrine and not required given the Commission's long-standing precedent against rerunning market results after-the-fact; and
- would underline market confidence in past investment decisions and actions taken in reliance on the final result of 2024/2025 Base Residual Auction for a Delivery Year that is now fully completed.

The Commission's decision on remand will have significant ramifications for both the Commission's long-standing precedent disfavoring rerunning markets as well as for Market Participant's confidence in relying on market rules that, in this case, produced market outcomes based on irrevocable Sell Offers submitted over three years ago. Should the Commission grant the Load Parties' complaint at this point, market certainty of past, present, and future capacity auction results could be significantly undermined as it would signify that a section 206 complaint may be a viable vehicle to unravel past auction results associated with past performance. This would be true even for Delivery Years where investments and performance made in reliance on

³ *PJM Interconnection, L.L.C.*, Proposed Amendment to the Locational Deliverability Area Reliability Requirement Filed Pursuant to section 205 of the Federal Power Act, Request for Waiver of Notice Requirement, and Request for an Extended Comment Period of 28 Days, Docket No. ER23-729-000 (Dec. 23, 2022).

capacity commitments have already been completed for a past Delivery Year. Such lack of market certainty would deter investors and developers from deploying much needed new capital at a time when the PJM Region is facing the greatest resource adequacy challenges in recent memory.⁴ Such an outcome would further hinder PJM’s capacity market from attracting new and retaining existing Capacity Resources needed to meet the rapidly growing resource adequacy needs of the PJM Region. Thus, the Commission should deny the Load Parties’ complaint and send a strong signal that market certainty associated with past auction results will not be disrupted on the grounds that, as further explained below, (1) the filed rate doctrine bars changing the outcome of the 2024/2025 Base Residual Auction under section 206 of the Federal Power Act and (2) even if relief were not barred by the filed rate doctrine, settled expectations from the 2024/2025 Base Residual Auction results and associated performance that have already been made for the fully completed Delivery Year should not be disrupted.

A. The Filed Rate Doctrine Continues to Bar the Load Parties’ Requested Relief Under Section 206 of the Federal Power Act.

As a threshold matter, the DC Circuit’s opinion in *OPC* is limited to a narrow holding that the Commission committed legal error simply because it did not answer the question of “whether the auction result is subject to revision under section 206 [of the Federal Power Act].”⁵ Thus, on remand, the Commission only needs to explain that the filed rate doctrine continues to bar the Load Parties’ requested relief in the underlying section 206 complaint, which was filed over sixteen months after irrevocable Sell Offers were submitted for the 2025/2025 Base Residual Auction. Indeed, nothing in the DC Circuit’s opinion mandates that the Commission

⁴ This would also be true for all other regions that rely on capacity markets to assist in meeting resource adequacy needs.

⁵ *OPC*, 164 F.4th at 922.

must reach a different result on remand. In fact, the DC Circuit expressly acknowledged that when “a court finds that an agency based its decision upon an improper legal ground, the agency might later . . . reach the same or a similar result for a different reason.”⁶

While the court in *OPC* explained that section 206 of the Federal Power Act provides “a narrow exception to the filed-rate doctrine’s general prohibition of retroactive rate modifications[,]”⁷ any such exception to allow for retroactive rate modifications is still limited to the statutory requirement that the refund effective date “shall not be earlier than the date of the filing of such complaint.”⁸ Thus, Congress only authorized potential retroactive rate modifications up to the date that a complaint is filed under section 206 of the Federal Power Act and did *not* authorize the Commission to retroactively adjust rates prior to such a refund effective date. That is precisely why the DC Circuit explicitly noted that it did “not mean to suggest that the DPL Customers are necessarily entitled to a refund under section 206(b).”⁹ Rather, the Commission must simply explain on remand why the prohibition against retroactive rate making continues to apply to this section 206 complaint.

In this case, the Commission can easily explain that the prohibition against retroactive ratemaking continues to apply to the PJM Load Parties’ section 206 complaint because it was not filed until April 22, 2024. The fact that the underlying complaint was filed before the commencement of the actual Delivery Year is simply irrelevant. It is well-settled that the filed rate doctrine “is not limited to rates but also extends to matters directly affect[ing] . . . rates,”

⁶ *OPC*, 164 F.4th at 927-928 (internal quotation marks omitted).

⁷ *Id.* at 927.

⁸ 16 U.S.C. § 824e(b).

⁹ *OPC*, 164 F.4th at 927.

such as non-rate terms and conditions.¹⁰ Thus, the Commission previously recognized that “for the purposes of the filed rate doctrine, the rate on file with the Commission *is* the [Base Residual Auction] procedures[,]” which “stand in for a stated (i.e., numerical) rate.”¹¹ As relevant here, the Tariff states that Capacity Market Sellers submit Sell Offers during the auction window, which “may not be withdrawn after such period.”¹² After the auction window closes, PJM “employ[s] an optimization algorithm for each Base Residual Auction and each Incremental Auction to evaluate the Sell Offers and other inputs to such auction to determine the Sell Offers that clear such auction.”¹³ Thereafter, the Tariff requires PJM to post the results of each auction “as soon thereafter as possible.”¹⁴ Finally, the Tariff specifies that each LSE is charged a Locational Deliverability Charge “equal to such LSE's Daily Unforced Capacity Obligation in a Zone during such Delivery Year multiplied by the applicable Final Zonal Capacity Price in such Zone.”¹⁵ In other words, “[t]he tariff . . . set the rate and quantity that will be paid to capacity resources that are selected in the auction to provide future service.”¹⁶ In short, the procedures that are detailed in the Tariff specify that Capacity Market Sellers would be allowed to submit Sell Offers into 2024/2025 Base Residual Auction and such offers became irrevocable on December 13, 2022. The Load Parties’ complaint was filed on April 22, 2024, long after the conduct of the 2024/2025 Base Residual Auction ended.

¹⁰ *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 829-30 (D.C. Cir. 2021) (internal quotation markets omitted).

¹¹ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109, at P 165 (2023).

¹² Tariff, Attachment DD, section 5.8(d).

¹³ Tariff, Attachment DD, section 5.12.

¹⁴ Tariff, Attachment DD, section 5.11(e).

¹⁵ Tariff, Attachment DD, section 5.14(e).

¹⁶ *Md. Pub. Serv. Comm’n v. PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,276, at 26 (2008).

Similarly, the fact that the underlying complaint was filed prior to the re-calculated Base Residual Auction results is equally unpersuasive. When PJM re-calculated the Base Residual Auction, the methodology that was used in recalculating the results were based on the Tariff rules that existed in December of 2022 at the time the 2024/2025 Base Residual Auction was conducted. That is, the Third Circuit vacated “the portion of [the Commission’s] orders that allows PJM to apply the Tariff Amendment to the 2024/25 capacity auction.”¹⁷ Thus, “the Court held that PJM was required to use the Initial LDA Reliability Requirement in the 2024/2025 BRA,”¹⁸ so PJM recalculated the auction results based on the *existing* Tariff rules in December 2022 when the irrevocable Sell Offers were submitted.

Here, the earliest that the Commission could have set a refund effective date associated with the underlying complaint would have been April 22, 2024 since that is the date it was filed. However, by the time the Load Parties filed the underlying complaint, the 2024/2025 Base Residual Auction had already ended, and Capacity Market Sellers’ Sell Offers became irrevocable in accordance with the Tariff rules over sixteen months prior to the earliest potential refund effective date. PJM then calculated the 2024/2025 Base Residual Auction results in accordance with the Tariff rules that were in effect at the time such irrevocable Sell Offers were submitted.¹⁹

¹⁷ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 402 (3d Cir. 2024).

¹⁸ *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,065, at P 22 (2024).

¹⁹ While PJM initially calculated auction results that adjusted the Locational Deliverability Area Reliability Requirement that the Commission had accepted, PJM recalculated the 2024/2025 Base Residual Auction results based on the Tariff provisions that were in effect prior to such updates upon the Third Circuit’s remand of that section 205 filing.

The Third Circuit has explained that “retroactive rules [are ones that] alter the past legal consequences of past actions.”²⁰ For the 2024/2025 Base Residual Auction, Capacity Market Sellers’ Sell Offers became binding and irrevocable on December 13, 2022, when the auction window closed. Once the Sell Offers for the 2024/2025 Base Residual Auction became irrevocable, they constituted a past action that produced a legal consequence. That is, PJM was then required to employ an optimization algorithm to calculate the auction results based on such irrevocable Sell Offers in accordance with the rules specified in the Tariff.²¹ That is precisely how the latest 2024/2025 Base Residual Auction results were derived and, based on such auction results, “[t]he cost of payments to Capacity Market Sellers for Capacity Resources that clear such auction shall be paid.”²²

Given that that the Load Parties’ complaint was filed on April 22, 2024, over sixteen months after such irrevocable offers were submitted, the filed rate doctrine bars the Load Parties’ requested relief even under this section 206 complaint since changing the auction results at this juncture would impermissibly alter the legal consequences of Capacity Market Sellers’ Sell Offers that were submitted for the 2024/2025 Base Residual Auction, which became irrevocable on December 13, 2022. In short, the Load Parties’ requested relief would effectively require the Commission to find the Tariff that existed at the time of the 2024/2025 Base Residual Auction and the rules that existed in December of 2022 that PJM followed in finalizing the 2024/2025 Base Residual Auction results to be unjust and unreasonable. However, because the complaint

²⁰ *PJM Power Providers Grp. v. FERC*, 96 F.4th at 399.

²¹ While PJM generally supports the comments of Constellation Energy Generation, LLC and the PJM Power Providers’ remand comments, PJM does not take the position that amendments to the Reliability Pricing Model Auctions may be deemed retroactive once the planning parameters for such auction are posted. Rather, as further explained below, PJM believes the filed rate doctrine applies once the auction closes and Sell Offers become irrevocable.

²² Tariff, Attachment DD, section 5.4(a).

was not filed until April 22, 2024, the Commission should deny the underlying complaint on the ground that the requested relief would impermissibly require the Commission to establish a retroactive rate that is barred under section 206 of the Federal Power Act.

B. The Commission Should Exercise its Remedial Discretion in Denying the Load Parties' Complaint.

The Commission has previously explained that there is a difference between upsetting the expectations of Market Participants and retroactive ratemaking.²³ Thus, even assuming, *arguendo*, that the filed rate doctrine somehow does not bar the Load Parties' requested relief under section 206 of the Federal Power Act, the Commission should exercise its remedial discretion and not disrupt the 2024/2025 capacity auction results to maintain investor confidence in PJM's market. As the Commission has explained, unsettling market results "creates two different types of risk: (1) capital risk for resources that made investments based on auction results, and (2) regulatory risk going forward (i.e., investors would be unlikely to want to invest capital in a market if the results were subject to change at a later date due to legal error)."²⁴ The Commission should especially be wary of this capital and regulatory risk at this time given that significant investments are needed to meet the resource adequacy challenges currently present in the PJM Region and nationally.

Changing the Base Residual Auction results at this juncture when the 2024/2025 Delivery Year has already been entirely completed would certainly upset settled expectations and run afoul of the Commission's long standing precedent that it "generally does not order a remedy that requires rerunning a market because market participants participate in the market with the

²³ See *ISO New England Inc.*, 148 FERC ¶ 61,185, at P 29 (2014), *reh'g denied*, 150 FERC ¶ 61,129 (2015).

²⁴ *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237, at P 10 (2019).

expectation that the rules in place and the outcomes will not change after the results are set.”²⁵ Indeed, the Commission has “recognize[d] the importance of regulatory stability and respecting settled expectations, *even before* rights and obligations have been actually awarded or adjudicated.”²⁶ In considering whether “the Commission will consider disruptions to parties’ ‘settled expectations’ . . . the Commission has considered a ‘balancing of interests’ or ‘balancing of equities’ in determining the appropriate outcome.”²⁷

Here, in considering the balancing of interests, the Commission must consider the fact that Capacity Market Sellers made investment decisions in reliance on the Base Residual Auction results in advance of and during the 2024/2025 Delivery Year. Additionally, resource owners make decisions on whether to retain existing resources or develop new resources, in part, based on the price signals that are produced by the Reliability Pricing Model Auctions (“RPM Auctions”). Indeed, in the Delmarva Power and Light (“DPL”) Zone which is the focus of the underlying complaint, the resource owner of the Vienna units 8 and 10 submitted a deactivation request on March 24, 2023, which was after the initial 2024/2025 Base Residual Auction results were posted. However, after the Third Circuit vacated the Commission’s order and PJM recalculated the 2024/2025 Base Residual Auction results, the resource owner withdrew the previously planned deactivations for these units on February 2, 2025.²⁸ Additionally, for capacity commitments associated with the actual 2024/2025 Delivery Year itself, Capacity Market Sellers may have expended significant additional capital into new Capacity Resources so

²⁵ *Id.*

²⁶ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109, at 174 (emphasis added).

²⁷ *Id.* at 175.

²⁸ See PJM, Withdrawn Generation Deactivations, <https://www.pjm.com/planning/service-requests/gen-deactivations>.

that they became in service prior to the 2024/2025 Delivery Year and ensure that such resources remained operational during the Delivery Year to meet the obligations based on those capacity commitments. Likewise, Capacity Market Sellers of existing Capacity Resources likely also deployed capital during the Delivery Year into maintaining such resources that they otherwise may not have incurred if such resources did not have capacity commitments for the relevant Delivery Year. Additionally, other Capacity Market Sellers may have needed to cover their capacity obligations during the Delivery Year in the event the underlying committed Capacity Resource was unable to meet the initial capacity commitment. In other words, Capacity Market Sellers may have transacted in the bilateral market to seek replacement capacity based on the outcome of the recalculated 2024/2025 Base Residual Auction results. All of these actions were taken in reliance on the results of the 2024/2025 Base Residual Auction going into actual 2024/2025 Delivery Year.

In short, Capacity Market Sellers of committed Capacity Resources have already provided the capacity services (i.e., energy and reserve must offer obligations, Generation Capacity Resource and Demand Resource testing requirements, and exposure to potential Performance Assessment Intervals) or transacted bilaterally for the 2024/2025 Delivery Year based on the expectation that they would be paid the relevant capacity clearing price for such Delivery Year. At the same time, PJM has already invoiced and fully collected the Locational Deliverability Charge from the relevant LSEs. After collection of such charges, PJM paid the relevant Capacity Market Sellers their portion of the capacity revenues each month during the 2024/2025 Delivery Year for the capacity services that were provided during that Delivery Year. Undoing the 2024/2025 Base Residual Auction results at this juncture would be akin to

attempting to unscramble an egg that was already consumed.²⁹ Based on all these facts, the balancing of interests and equities clearly points to not disrupting the well settled expectations associated with the 2024/2025 Base Residual Auction results.

This is precisely why the Commission previously denied a similar complaint filed under section 206 of the Federal Power Act that sought to undo the results of PJM’s past capacity auctions.³⁰ In that case, certain load entities filed a complaint under section 206 of the Federal Power Act that sought refunds from the past RPM Auctions by alleging that the results from the first four Base Residual Auctions were not just and reasonable because “[t]he absence of price discipline provided by new capacity resources and the ability of existing resources to withhold some capacity within the RPM rules combined to produce capacity prices in the transition period that are not comparable to those that would be produced in a competitive market or determined under cost-based regulation.”³¹ In denying that complaint, the Commission held that “no party violated PJM’s tariff and the prices determined during the auctions were in accord with the tariff provisions governing the auctions.”³² Importantly, the Commission explained that “[c]hanging a rate and quantity already determined in accordance with existing tariff provisions on which parties have relied would defeat the purpose of the forward binding commitment, and undo the incentives for new capacity resources.”³³ This same logic and conclusion applies equally here.

In fact, Commission’s goal of providing market stability is now even more important than ever

²⁹ Further, any post hoc changes to the applicable capacity prices and capacity payments raise issues with respect to resources that cleared the market based on offers higher than any revised clearing price. For example, retroactively reducing the payment to a resource below its cost level (as represented by its Sell Offer price) could be confiscatory.

³⁰ *Md. Pub. Serv. Comm’n v. PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,276 (2008).

³¹ *Id.* at P 9.

³² *Id.* at P 23.

³³ *Id.* at P 26.

as supply struggles to keep pace with the increasing demands driven primarily by large data centers.

Under section 206 of the Federal Power Act, “[t]he Commission’s discretion is ‘at [its] zenith when the action relates primarily . . . to the fashioning of . . . remedies.’”³⁴ In the context of auction results, the Commission has long exercised its remedial discretion in declining to rerun auction results and refrained from undoing past market results.³⁵ For instance, the Commission previously declined to order PJM to rerun past capacity auctions because “both generators and load make decisions on investment based on the price outcome of the auction that cannot be reversed.”³⁶ Indeed, the Commission acknowledged that “generators that fail to clear auctions will not make investments in new or expanded plants, while generators that do clear will make such investments, which cannot be undone,” and load may develop peak shaving programs or enter interruptible contracts.³⁷

The same rationale applies here. As such, the Commission should decline to require PJM to rerun the 2024/2025 Base Residual Auction and claw back capacity revenues that have already been fully paid out for a Delivery Year that has long been completed. Rerunning the 2024/2025 Base Residual Auction at this point will severely undermine long term investor confidence in PJM’s markets where such investors have acted in reliance on past auction results for past Delivery Years.

³⁴ *W. Farmers Elec. Coop. v. Sw. Power Pool, Inc.*, 183 FERC ¶ 61,218, at P 26 (2023) (quoting *Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 159 (D.C. Cir. 1979)) (alterations in *W. Farmers*).

³⁵ *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,107, at P 11 n.30 (2024) (collecting cases).

³⁶ *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237, at P 25.

³⁷ *Id.*

CERTIFICATE OF SERVICE

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

Dated at Audubon, PA, this 10th day of April 2026.

/s/ Chenchao Lu

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