

**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.)	
)	
Richland-Stryker Generation HoldCo LLC,)	
Complainant,)	
v.)	Docket No. EL26-59-000
)	(Unconsolidated)
)	
PJM Interconnection, L.L.C.,)	
Respondent.)	

MOTION TO DISMISS AND ANSWER OF PJM INTERCONNECTION, L.L.C.

PJM Interconnection, L.L.C. (“PJM”) moves to dismiss and answer the complaints (“Complaints”) of LS Power Development, LLC (“LS Power”) and Richland-Stryker Generation HoldCo LLC (“Richland-Stryker”) (together, “Complainants”), in the above-captioned unconsolidated proceedings, pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice Procedure,¹ and the Commission’s April 7, 2026 Notice.²

The Complaints object to Generation Resource Rating Test Failure Charges³ (“Test Failure Charges”) assessed against LS Power’s West Deptford unit (“West Deptford”), and

¹ 18 C.F.R. §§ 385.212, 385.213.

² Combined Notice of Filings #1, Docket Nos. EL26-59-000, EL26-60-000, et al., at 1 (Apr. 7, 2026). In addition, given that Richland-Stryker moved to consolidate the Complaints on April 7, 2026, *see LS Power Development, LLC v. PJM Interconnection, L.L.C.*, Motion to Consolidate of Richland-Stryker Generation HoldCo LLC, Docket Nos. EL26-59-000 and EL26-60-000 (Apr. 7, 2026), and the significant overlap in facts and arguments, PJM is answering the Complaints in a single pleading.

³ Except as otherwise defined, capitalized terms used in this filing shall have the meaning provided under the PJM Open Access Transmission Tariff (“Tariff”).

two of Richland-Stryker’s generating units (“Richland Units”) (together, “Generation Capacity Resources” or “Resources”) for each day of June 1, 2025, through October 31, 2025, when the Resources either failed to undergo summer capability testing or failed their summer capability tests.⁴

Complainants’ Generation Capacity Resources sold (and were paid for) more capacity than they were capable of providing in the 2025/2026 Delivery Year. While their Resources were awarded capacity payments for each day in the 2025/2026 Delivery Year, the Resources were unable to physically demonstrate that they were able to meet their capacity commitments from June 1, 2025, through October 31, 2025, during the 2025 summer season of the 2025/2026 Delivery Year.⁵ As a result, the Resources incurred Test Failure Charges from June 1, 2025, through October 31, 2025.⁶

According to the Complaints, certain out of period test rules in PJM’s Manuals, which were in place at the time Complainants offered their Generation Capacity Resources into the July 2024 Base Residual Auction (“BRA”) for the 2025/2026 Delivery Year—when Complainants claim a reliance interest⁷—should have permitted Complainants’ May

⁴ See *LS Power Development, LLC v. PJM Interconnection, L.L.C.*, Complaint of LS Power Development, LLC, Docket No. EL26-60-000, at 2 (Apr. 7, 2026) (“LS Power Complaint”); Complaint of Richland-Stryker Generation Holdco LLC, Docket No. EL26-59-000, at 2-3 (Apr. 7, 2026) (“Richland-Stryker Complaint”). Complainants have filed Public and Privileged versions of their respective Complaints. In the interest of transparency, PJM’s answer relies on and cites solely to the Public version of the Complaints. Furthermore, pursuant to Complainants’ respective Protective Orders, filed with their Complaints on April 7, 2026, PJM has submitted Public (Redacted) and Non-Public (Unredacted) Documents in Support of the Facts provided pursuant to 18 C.F.R. § 385.213(c)(4), Exhibits (“Exhs.”) A and B, attached to Attachment A (Affidavit of Mr. Joshua Bruno) (“Bruno Aff.”).

⁵ LS Power Complaint at 2 (“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.”); Richland-Stryker Complaint at 12 (The “outage prevented the Richland Units from completing a summer capacity test during the usual summer season.”).

⁶ See LS Power Complaint at 2; Richland-Stryker Complaint at 2.

⁷ See LS Power Complaint at 22; Richland-Stryker Complaint at 21.

2026 out of period tests to retroactively excuse their Generation Capacity Resources from Test Failure Charges incurred due to test failure shortfalls in 2025.⁸ The Complaints assert that PJM, “without notice,”⁹ had “eliminated the out of period test remedy” after the July 2024 BRA,¹⁰ and, as a result, Complainants’ Resources incurred Test Failure Charges that were “unforeseeable” in July 2024.¹¹ The Complaints are incorrect as a matter of fact and law.

Contrary to Complainants’ claims, revisions to out of period testing rules in PJM’s Manuals that became effective after the July 2024 BRA did *not* give rise to the Test Failure Charges at the heart of these Complaints. Rather, in October 2023, PJM filed proposed revisions in Docket No. ER24-99-000 to the “Generation Resource Rating Test Failure Charge” provisions in PJM’s Tariff (“October 2023 Tariff Filing”).¹² Prior to being filed, the proposal underwent the Critical Issues Fast Path (“CIFP”) stakeholder review process in 2023.¹³ The proposed revisions were accepted by the Commission in an order issued

⁸ LS Power Complaint at 31 (“A successful May [2026] test should remedy any charges LS Power has accumulated during the summer season.”); Richland-Stryker Complaint at 29-30 (“In all likelihood, the Richland Units will complete an out of period summer test in May 2026. A successful May [2026] test should remedy any charges Richland-Stryker has accumulated during the summer season.”).

⁹ LS Power Complaint at 1; Richland-Stryker Complaint at 1.

¹⁰ LS Power Complaint at 3; Richland-Stryker Complaint at 3.

¹¹ LS Power Complaint at 30; Richland-Stryker Complaint at 29.

¹² *PJM Interconnection, L.L.C.*, Capacity Market Reforms to Accommodate the Energy Transition While Maintaining Resource Adequacy of PJM Interconnection, L.L.C., Docket No. ER24-99-000 (Oct. 13, 2023); *see* Tariff, Attachment DD, section 7.1.

¹³ *See, e.g.*, CIFP-Resource Adequacy, *Capacity Market Reform: PJM’s Initial Proposal*, PJM Interconnection, L.L.C., 20 (Mar. 29, 2023), <https://www.pjm.com/-/media/DotCom/committees-groups/cifp-ra/2023/20230329/20230329-item-04---pjm-cifp-ra-initial-proposal---stage-1-posting.pdf> (“March 2023 CIFP Initial Proposal”); CIFP-Resource Adequacy, *Capacity Market Reform: PJM Proposal, CIFP-Resource Adequacy*, PJM Interconnection, L.L.C., 34 (July 27, 2023), <https://www.pjm.com/-/media/DotCom/committees-groups/cifp-ra/2023/20230727/20230727-item-02a---cifp---pjm-proposal-update---july-27.pdf> (“July 2023 CIFP Reforms Proposal”).

January 30, 2024 (“January 2024 Order”).¹⁴ Subsequently, in June 2024, conforming revisions to PJM Manuals 21 and 21B became effective after receiving stakeholder endorsement.¹⁵ As a result of these duly noticed and stakeholder-approved revisions, beginning with the 2025/2026 Delivery Year, to the extent a resource did not pass certain capability tests in the relevant season, Test Failure Charges would be assessed against Generation Capacity Resources for every single day of that season in the Delivery Year during which the Resources were unable to physically demonstrate that they could meet their capacity commitment.¹⁶ Any prior excusals for Test Failure Charges would no longer apply.¹⁷ As the January 2024 Order adopting the proposed revisions notes, the updated rules will help “ensure capacity resources are physically capable of responding during

¹⁴ *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080 (2024).

¹⁵ Resource Adequacy Planning, *PJM Manual 21B: PJM Rules and Procedures for Determination of Generating Capability*, 56, section 10.3.3, Impact of Test Results (rev. 0, June 27, 2024), <https://www.pjm.com/-/media/DotCom/documents/manuals/archive/m21b/m21bv0-pjm-rules-and-procedures-for-determination-of-generating-capability-06-27-2024.pdf> (“PJM Manual 21B, rev. 0”) (replacing System Planning Department, *PJM Manual 21: Rules and Procedures for Determination of Generating Capability*, 24, section 1.3.6, Impact of Test Results (rev. 19, June 27, 2024), <https://www.pjm.com/-/media/DotCom/documents/manuals/archive/m21/m21v19-rules-and-procedures-for-determination-of-generating-capability-06-27-2024.pdf>) (“PJM Manual 21, rev. 19”); *Executive Summary Manual Changes*, PJM Interconnection, L.L.C. (June 20, 2024), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/mrc/2024/20240627/20240627-consent-agenda-c---1-er24-99-planning-manual-revisions---executive-summary.pdf> (“June 2024 Executive Summary Manual Changes”); Skyler Marzewski, Market Design, Markets and Reliability Committee, *Phase I: Manual 18 Updates for ER24-99*, PJM Interconnection, L.L.C., 3, 6 (May 22, 2024), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/mrc/2024/20240522/20240522-item-03a---1-manual-18-revisions---presentation.pdf> (describing phase out of PJM Manuals 20, 21, and 21A, new Manual 21B, and revisions to testing requirements and Test Failure Charges) (“ER24-99 Manual 18 Updates Presentation”); Markets & Reliability Committees, *Minutes*, PJM Interconnection, L.L.C., 1 (June 27, 2024), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/mrc/2024/20240724/20240724-consent-agenda-a---draft-mrc-minutes---6272024.pdf>.

¹⁶ October 2023 Tariff Filing, Transmittal at 84-85; January 2024 Order, 186 FERC ¶ 61,080 at P 190.

¹⁷ July 2023 CIFP Reforms Proposal at 34 (Reforms 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 [Generator Availability Data System (“GADS”)] (no penalty charge), or if PJM has to submit it for them (penalty assessed).”); March 2023 CIFP Initial Proposal at 20 (proposing to “[r]emove excusals for inability to test,” as part of PJM’s proposed “[m]ulti-tiered framework of performance assessments and testing to help delivery of the capacity that has been committed through [a] forward auction[.]”).

[Performance Assessment Intervals (“PAIs”).”¹⁸ It was these Tariff and PJM Manual revisions—all of which were effective before the July 2024 BRA—that gave rise to the Test Failure Charges at the heart of the Complaints.¹⁹

Furthermore, contrary to the Complaints, the rules in effect before, during, and after the July 2024 BRA required out of period tests to apply prospectively, i.e., as of the date of the test.²⁰ Based on the rules in place at the time of the July 2024 BRA, for a given Delivery Year, an out of period test in May could not have cured Test Failure Charges incurred in June through October of the previous calendar year.²¹ The Complaints incorrectly claim that changes to PJM Manual 18, rev. 60, section 8.5.2, which became effective after the July 2024 BRA, eliminated the out of period test remedy “without notice.”²² But revisions to PJM Manual 18, section 8.5.2 merely reinforced the longstanding fact that the out of period test remedy applies prospectively, as of the date of the test.²³ Thus, for the foregoing reasons, PJM respectfully requests that the Complaints be dismissed with prejudice or, in the alternative, decided on the merits in PJM’s favor.

¹⁸ January 2024 Order, 186 FERC ¶ 61,080 at PP 188, 207.

¹⁹ LS Power Complaint at 22-23; Richland-Stryker Complaint at 21-22.

²⁰ PJM Manual 21, rev. 19 at 24, section 1.3.6, Impact of Test Results (“Example[] of applying the failed test rules using the summer test period: . . . An out of period test is conducted. A successful out of period test is conducted on October 15 commencing at 1700 hours and ending at 1900 hours. A forced outage or derating as described [in section 1.3.6 Failed Test provisions] is applied to the generating unit starting June 1 @0000 hours *and ending October 15 @1900 hours.*”) (emphasis added); Capacity Market & Demand Response Operations, *PJM Manual 18: PJM Capacity Market*, PJM Interconnection, L.L.C., 182, section 8.5.2 (rev. 60, June 1, 2025), <https://www.pjm.com/-/media/DotCom/documents/manuals/archive/m18/m18v60-capacity-market-06-01-2025.pdf> (“PJM Manual 18, rev. 60”) (“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.*”) (emphasis added).

²¹ PJM Manual 21, rev. 19 at 24, section 1.3.6, Impact of Test Results.

²² LS Power Complaint at 1; Richland-Stryker Complaint at 1.

²³ PJM Manual 18, rev. 60 at 182, section 8.5.2.

I. BACKGROUND

A. *Complainants' Generation Capacity Resources Incurred Test Failure Charges from June 1, 2025, Through October 31, 2025, Because the Resources Were Unable to Physically Demonstrate Their Ability to Meet Their Capacity Commitments.*

The Complainants assert that their Resources were wrongly denied the ability to rely on “out of period” testing in the “same season” to cure Test Failure Charges incurred during the 2025/2026 Delivery Year.²⁴ Under the guise of committing to provide out of period tests in “the same season” and the same Delivery Year, Complainants argue that their Resources should be excused for failing to physically demonstrate their ability to meet their capacity commitments for each day from June 1, 2025, through October 31, 2025, so long as their Resources can *later* “provide [their] full committed seasonal capacity level” through a subsequent (approximately 6 months later) out of period summer season test in May 2026.²⁵

1. *The 2025/2026 Delivery Year spans across the middle of the 2025 calendar year until the middle of the 2026 calendar year.*

The Complaints turn on key distinctions between a Delivery Year and a calendar year. As relevant here, the 2025/2026 Delivery Year began in the middle of the 2025 calendar year, on June 1, 2025, and will end in the middle of the 2026 calendar year, on May 31, 2026. In the 2025/2026 Delivery Year, the summer season runs from June 1, 2025, through October 31, 2025, and from May 1, 2026, through May, 31, 2026. Thus, the summer season consists of five months in calendar year 2025 plus one month in calendar year 2026. During the summer season of the 2025/2026 Delivery Year, the summer test

²⁴ LS Power Complaint at 1; Richland-Stryker Complaint at 1.

²⁵ *Id.*

period—when an in period summer capability testing may occur—was from June 1, 2025, through August 31, 2025. In the 2025/2026 Delivery Year, out of period summer season testing occurred from September 1, 2025, through October 31, 2025, and may also occur from May 1, 2026, through May 31, 2026.

The suggestion that an out of period summer capacity test in May 2026—i.e., in the last month of the summer season of the 2025/2026 Delivery Year—should retroactively cure Test Failure Charges that were incurred because Generation Capacity Resources were unable to physically demonstrate that they could meet their capacity commitments earlier in the summer season—i.e., from June 1, 2025, through October 31, 2025—undercuts the express purpose of the Tariff revisions proposed in PJM’s October 2023 Tariff Filing and accepted by the Commission in the January 2024 Order. Those Tariff revisions, as described in greater detail below, required “Generation Capacity Resources to demonstrate that they are able to meet their capacity commitment for every single day of the Delivery Year. If they cannot, such Generation Capacity Resources will be assessed as deficient and subject to a generation resource rating [T]est [F]ailure [C]harge.”²⁶

2. *Complainants’ Resources incurred Test Failure Charges for failures to undergo capability testing or failing capability tests in the summer of 2025, as such Resources were unable to demonstrate that they could meet their capacity commitment on days when the Resources received capacity payments.*

In July 2024, Complainants’ Generation Capacity Resources obtained capacity commitments in the BRA for the 2025/2026 Delivery Year.²⁷ Thus, beginning on June 1,

²⁶ October 2023 Tariff Filing, Transmittal at 85.

²⁷ LS Power Complaint at 22; Richland-Stryker Complaint at 21.

2025, the Resources were entitled to capacity payments for each day of the 2025/2026 Delivery Year.

However, Complainants' Generation Capacity Resources were either on forced outage or partial forced outage for portions of the 2025/2026 Delivery Year.²⁸ As a result, during the summer season in the 2025 calendar year of the 2025/2026 Delivery Year—June 1, 2025, through October 31, 2025—the Resources were unable to undergo summer capability testing and/or failed their summer capability tests. In other words, for each day of June 1, 2025, through October 31, 2025, Complainants' Resources were unable to physically demonstrate, through capability testing, that their Resources could meet the requisite capacity commitments. Accordingly, Complainants' Generation Capacity Resources incurred Test Failure Charges from June 1, 2025, through October 31, 2025.

In early 2026, PJM put Complainants on notice that their Generation Capacity Resources had incurred Test Failure Charges for each day of June 1, 2025, through October 31, 2025, of the 2025/2026 Delivery Year.²⁹ The Test Failure Charges incurred from June through October 2025 underpin the central issue in controversy. PJM also put Complainants on notice of estimated Test Failure Charges that their Generation Capacity

²⁸ LS Power Complaint at 2; LS Power Complaint, Testimony of Nathan Dixon, Sr. Vice President, Asset Management, LS Power Development, LLC, at 4-7 (“Dixon Test.”); Richland-Stryker Complaint at 2-3.

²⁹ Bruno Aff., Exh. A (PJM Notice of Test Failure Charge to LS Power and Subsequent Communications); *id.*, Exh. B (PJM Notice of Test Failure Charge to Richland-Stryker and Subsequent Communications); LS Power Complaint, Dixon Test. at 5 (“PJM issued a Generation Rating Test Failure Charge notice to LS Power. That notice stated that LS Power must pay . . . due to its capacity shortfall This amount reflects the difference between the West Deptford Unit’s stated ICAP capacity . . . and its actual ICAP capacity during the forced outage . . . , calculated on a day-to-day basis.”); Richland-Stryker Complaint, Testimony of Carla Banks, Vice President of Commercial Asset Management, Rockland Capital LP, at 5-6 (PJM “sent an email to me directly on January 20, 2026 stating that ‘. . . PJM has calculated the preliminary summer portion of the 2025/2026 Generator Rating Test Failure Charges. Please note the method of calculating the Generator Test Failure Charges has changed for 2025/2026 Delivery Year and for future Delivery Years.’. . . The penalty notice was not unexpected, since the Richland units had only returned from outage a couple weeks prior.”).

Resources may incur in May 2026 if Complainants do not remedy test shortfalls by submitting an out of period summer seasonal test in May 2026.³⁰ As to the estimated May 2026 Test Failure Charges, the Complaints state that PJM has already informed Complainants that, if the Generation Capacity Resources perform out of period testing in May 2026, the May 2026 out of period tests could remedy the Test Failure Charges estimated for May 2026, beginning as of the date of the completion of the out of period tests.³¹ Indeed, both Complainants have represented in their respective Complaints that they fully intend to conduct out of period summer seasonal testing of their Generation Capacity Resources in May 2026 to cure the estimated Test Failure Charges for May 2026.³²

Figure 1, below, provides a visual summary of the relevant facts:

Figure 1. Richland Units and West Deptford Generation Capacity Resources in 2025/2026 DY

June 2025	July 2025	Aug. 2025	Sept. 2025	Oct. 2025	Nov. 2025	Dec. 2025	Jan. 2026	Feb. 2026	Mar. 2026	Apr. 2026	May 2026
Summer Test Period											
Summer Season											Summer Season
Test Failure Charges incurred every day of June 2025 through October 2025 because Resources unable to physically demonstrate ability to meet capacity commitment											Out of Period Testing that physically demonstrates ability to meet capacity commitments may cure estimated Test Failure Charges as of date of test

³⁰ Bruno Aff., Exhs. A and B.

³¹ LS Power Complaint at 13 (“PJM acknowledged that LS Power will have an opportunity to cure this . . . charge with an out of period test.”); *id.*, Dixon Test. at 7 (“LS Power plans to complete its out of period summer test in May 2026, which is in the summer season for the 2025-26 delivery year.”); Richland-Stryker Complaint at 13 n.38 (“PJM has acknowledged that Richland-Stryker will have an opportunity to cure this May 2026 charge with an out of period test.”).

³² LS Power Complaint at 2; Richland-Stryker Complaint at 13.

B. Beginning with the 2025/2026 Delivery Year, Test Failure Charges Applied to Generation Capacity Resources That Were Unable to Physically Demonstrate That They Could Meet Their Capacity Commitments for Each Day of the Delivery Year.

In 2022, Winter Storm Elliott “demonstrated that resources that operated within a month of the event experienced a lower forced outage rate than those units that had not run as recently.”³³ Winter Storm Elliott had highlighted the fact that modeling approaches focused on peak load conditions and average generator performance did not fully capture all the risks that impact resource adequacy needs and resource performance.³⁴ PJM proposed revisions to Generation Capacity Resources’ capability testing requirements to “increase reliability by better testing the physical capabilities of committed resources and incentivizing resources to maintain their operational status.”³⁵

The proposed reforms included revisions to how Test Failure Charges are assessed. As described in greater detail in Section I.B.4 below, PJM presented the package of reforms, including revisions to Test Failure Charges, to stakeholders in 2023.³⁶ On October 13, 2023, PJM submitted the October 2023 Tariff Filing, pursuant to Federal

³³ January 2024 Order, 186 FERC ¶ 61,080 at P 188.

³⁴ October 2023 Tariff Filing, Transmittal at 10.

³⁵ January 2024 Order, 186 FERC ¶ 61,080 at P 188.

³⁶ March 2023 CIFP Initial Proposal at 20; July 2023 CIFP Reforms Proposal; CIFP-Resource Adequacy, *Capacity Market Reform: PJM Proposal*, PJM Interconnection, L.L.C., CIFP Packages Matrix at 48:E (Aug. 23, 2023), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/mc/2023/20230823-special/item-01---20230823-cifp-ra-matrix-all-kwa-cifp-stage-4.xls> (“CIFP Packages Matrix”) (“Status quo of seasonal capacity testing with the following changes: 1) Require physical demonstration of capability in each season (no longer accept non-winter test with corrections for ambient winter conditions) 2) Assess any testing shortfalls at seasonal deficiency rate for each day of the season by comparing the seasonal test value against the daily committed ICAP (remove the administrative check on who submits the GADS de-rating to determine if a penalty charge should be assessed for a shortfall”); *Executive Summary: PJM Seasonal and Annual Proposals*, PJM Interconnection, L.L.C., 7 (Aug. 23, 2023), <https://www.pjm.com/-/media/DotCom/committees-groups/cifp-ra/2023/20230823/20230823-item-01a---20230823-cifp-stage-4---pjm-exec-summary.pdf> (“August 2023 Changes Proposal Executive Summary”); *Board of Managers Meeting Minutes*, PJM Interconnection, L.L.C., 4 (Sep. 25, 2023), <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/board-meetings/2023/20230925/20230925-minutes.pdf> (“September 2023 Board of Managers Minutes”).

Power Act (“FPA”) section 205,³⁷ in Docket No. ER24-99-000 to “modify aspects of [the] Reliability Pricing Model (“RPM”), including . . . testing requirements for capacity resources”³⁸ The Commission accepted the proposed revisions on January 30, 2024, effective December 12, 2023.

As the January 2024 Order explains, Test Failure Charges had been previously “calculated at the end of each delivery year by multiplying the Daily Deficiency Rate by the MW shortfall calculation—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.”³⁹ However, effective with the 2025/2026 Delivery Year, as the January 2024 Order explains:

PJM will assess the resource’s [megawatt (“MW”)] shortfall on the daily installed capacity commitment of the resource rather than annual average of the installed capacity committed on the resource. PJM argues that this will allow for a more precise determination of whether the resource’s installed capacity commitment for each day aligns with its demonstrated capability.”⁴⁰

Tariff, Attachment DD, section 7.1(b), was revised to require that, as of the 2025/2026 Delivery Year:

[T]he Generation Resource Rating Test Failure Charge shall be determined for each day of the Delivery Year and shall be equal to the Daily Deficiency Rate multiplied by the following megawatt quantity shortfall, converted to an Unforced Capacity basis using the Generation Capacity Resource’s final Accredited [Unforced Capacity (“UCAP”)] Factor for such Delivery Year: (i) the installed capacity committed for such day of the Delivery Year (adjusted for any replacement capacity), minus (ii) the highest installed capacity

³⁷ 16 U.S.C. § 824d.

³⁸ January 2024 Order, 186 FERC ¶ 61,080 at P 1.

³⁹ *Id.* P 190.

⁴⁰ *Id.* P 190.

rating determined for such resource in any test during the relevant testing period.⁴¹

Corresponding revisions to PJM Manuals 21 and 21B to implement the revised Tariff rules were presented to stakeholders on May 22, 2024,⁴² received stakeholder endorsements in June 2024,⁴³ and became effective on June 27, 2024.⁴⁴ Together these changes provided that, beginning with the 2025/2026 Delivery Year, PJM would assess Test Failure Charges for every single day of the Delivery Year in which a Generation Capacity Resource is unable to physically demonstrate the ability to deliver on its capacity commitment.⁴⁵ Excusals for Test Failure Charges would no longer apply, as the proposed revisions would help “ensure capacity resources are physically capable of responding during a PAI.”⁴⁶

1. *Before the revisions to the rules governing Test Failure Charges, effective with the 2025/2026 Delivery Year, an addback of outage or derate MW entered into the Generator Availability Data System by the Generation Capacity Resource owner could excuse a Test Failure Shortfall.*

Before the adoption of the revisions proposed in PJM’s 2023 Tariff Filing, Generation Capacity Resources could avoid incurring Test Failure Charges if an owner or

⁴¹ Tariff, Attachment DD, section 7.1(b).

⁴² ER24-99 Manual 18 Updates Presentation at 3, 6 (describing phase out of PJM Manuals 20, 21, and 21A, new Manual 21B, and revisions to testing requirements and Test Failure Charges); June 2024 Executive Summary Manual Changes (describing proposed revisions to PJM Manuals 18, 21, and 21B presented May 22, 2024).

⁴³ June 2024 Executive Summary Manual Changes at 1 (noting revisions to PJM Manuals 18, 21, and 21B presented May 22, 2024, were approved/endorsed by acclamation with no objections or abstentions); Planning Committee, *Draft Minutes*, PJM Interconnection, L.L.C., 1 (June 4, 2024), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/pc/2024/20240709/20240709-draft-minutes---pc---060424.pdf> (noting update on Planning Manuals due to the revisions accepted in Docket No. ER24-99 and endorsement of Planning Committee by acclamation with no objections or abstentions).

⁴⁴ PJM Manual 21B, rev. 0 at 56, section 10.3.3, Impact of Test Results (replacing PJM Manual 21, rev. 19 at 22, section 1.3.6, Impact of Test Results).

⁴⁵ October 2023 Tariff Filing at 84; January 2024 Order, 186 FERC ¶ 61,080 at P 190.

⁴⁶ January 2024 Order, 186 FERC ¶ 61,080 at P 188.

agent of the Resource reported an outage or derate into GADS. Test Failure Charges were calculated based on a Generation Capacity Resource's average committed Installed Capacity ("ICAP") minus the unit's highest tested ICAP plus any derate or outage MW entered into GADS by the owner or agent of the resource.⁴⁷ As Tariff, Attachment DD, section 7.1(b) provides:

Through the 2024/2025 Delivery Year, the Generation Resource Rating Test Failure Charge shall equal the Daily Deficiency Rate multiplied by the following megawatt quantity, converted to an Unforced Capacity basis *using the Generation Capacity Resource's EFORD for the twelve months* ending the September 30 last preceding the Delivery Year: (i) the annual average of the installed capacity committed for each day of such Delivery Year as a result of all cleared Sell Offers in all RPM Auctions for such Delivery Year relying on such resource, reduction in any such commitment for such resource to the extent and for the time period of any replacement capacity committed in lieu of such resource, and increase in any such commitment for such resource to the extent and for the time period that such resource is committed as replacement capacity for any other resource, *minus* (ii) the highest installed capacity rating determined for such resource in any test during the relevant testing period.⁴⁸

For purposes of calculating the Test Failure Charge, a resource's capability was measured based on the resource's historical operations over a trailing 12-month period ending the September 30 last preceding the Delivery Year, as reflected in the Generation Capacity Resource's Equivalent Demand Forced Outage ("EFORD").⁴⁹ UCAP

⁴⁷ See PJM Manual 21, rev. 19 at 24-25, section 1.3.6; see also System Planning Department, *PJM Manual 21: Rules and Procedures for Determination of Generating Capability*, PJM Interconnection, L.L.C., 22-23, section 1.3.6 (rev. 18, July 26, 2023), <https://www.pjm.com/-/media/DotCom/documents/manuals/archive/m21/m21v18-rules-and-procedures-for-determination-of-generating-capability-07-26-2023.pdf> (same).

⁴⁸ Tariff, Attachment DD, section 7.1(b) (emphasis added).

⁴⁹ *Id.*

incorporated the EFORd rate.⁵⁰ The Daily Deficiency Rate was measured in UCAP and used to assess deficiency charges, including the Test Failure Charge.

EFORd can be thought of as the ICAP-to-UCAP conversion rate. A resource's UCAP was roughly equal to $ICAP \times (1 - EFORd)$.⁵¹ Thus, as part of the Test Failure Charge calculation described in Tariff, Attachment DD, section 7.1(b), the Test Failure Charge was equal to the Daily Deficiency Rate multiplied by MW of ICAP converted to UCAP using the Generation Capacity Resource's EFORd for the twelve months ending the September 30 last preceding the Delivery Year.⁵²

EFORd is calculated using GADS data.⁵³ Reporting a forced outage into GADS increased the EFORd, decreased UCAP and, ultimately reduced a resource's capacity revenues.⁵⁴ Because the EFORd was based on a resource's 12-month historical operations, reporting a forced outage into GADS increased the EFORd, and consequently decreased the UCAP and capacity revenues, for the following Delivery Year.⁵⁵

As described in PJM Manual 21, section 1.3.6, failing to submit testing without entering derate or outage MW into GADS would:

result in a full forced outage being applied to the generating unit in question retroactively from the beginning of the applicable test period and *will remain in effect until* either a successful out of period test is conducted or the next test period begins.⁵⁶

⁵⁰ *Id.*

⁵¹ *See, e.g.*, January 2024 Order, 186 FERC ¶ 61,080 at P 6.

⁵² Tariff, Attachment DD, section 7.1(b).

⁵³ Resource Adequacy Planning, *PJM Manual 22: Generator Resource Performance Indices*, 14, section 3: Equations and Derivations (rev. 18, Mar. 26, 2020), <https://www.pjm.com/-/media/DotCom/documents/manuals/m22.pdf> (“PJM Manual 22”).

⁵⁴ PJM Manual 22 at 14, section 3: Equations and Derivations.

⁵⁵ *See id.*

⁵⁶ PJM Manual 21, rev. 19 at 25, section 1.3.6, Impact of Test Results (emphasis added).

Derates or outages submitted into GADS by the Generation Capacity Resource's owner or agent could offset a test failure shortfall on which Test Failure Charges were based.⁵⁷ The MW quantity submitted into GADS by the owner or agent of a Generation Capacity Resource as a derate or outage was added back to the calculation of the test failure shortfall.⁵⁸ When the Generation Capacity Resource's forced outage ended, the resource could demonstrate that the outage had ended with an out of period test.⁵⁹

The attached affidavit of Mr. Joshua Bruno, Senior Analyst II in the Resource Adequacy Planning department of the System Planning division of PJM, includes an example of how Test Failure Charges were calculated when the owner of a Generation Capacity Resource submitted outage MW into GADS.⁶⁰ As Mr. Bruno explains in his example of a Generation Capacity Resource with a full 50 MW outage:

- Any testing shortfall is applied to the entire summer season, along with a full outage of 50 MW in GADS submitted by the Owner, beginning June 1, 2023.

⁵⁷ See *id.* However, the resource would still be assessed a test failure shortfall and incur Test Failure Charges if the Generation Capacity Resource submitted a test failure shortfall that was not accompanied by derate or outage MW in GADS and/or if the event was not submitted by the owner or agent of the Generation Capacity Resource. For example, if PJM entered the outage MW into GADS or the outage MW was entered into GADS after the testing shortfall was submitted, the resource would incur a test shortfall and thus be subject to Test Failure Charges. *Id.*

⁵⁸ See Manual 21, rev. 19 at 24-25, section 1.3.6, Impact of Test Results; Capacity Market & Demand Response Operations, *PJM Manual 18: PJM Capacity Market*, 181, section 8.5 (rev. 59, June 27, 2024), <https://www.pjm.com/-/media/DotCom/documents/manuals/archive/m18/m18v59-capacity-market-06-27-2024.pdf> (“PJM Manual 18, rev. 59”) (“If a unit is on a partial outage during the test, the amount of the partial outage is added to the highest installed capacity rating in the test to determine the Unit ICAP Shortfall for the summer or winter test period.”).

⁵⁹ See *id.* at 180.

⁶⁰ Bruno Aff. ¶¶ 20-21.

- The zero MW test result is offset by an “add-back” of the GADS Outage MW:
Average Committed ICAP – (Highest Tested ICAP + GADS Derate/Outage
MW)
= MW shortfall for which Test Failure Charges will be assessed
50 MW – (0 MW + 50 MW)
= 0 MW shortfall for which Test Failure Charges will be assessed
Test Failure Charges of \$0.00.⁶¹

Reporting derate or outage MW into GADS resulted in an addback to the test failure shortfall calculation and could thus excuse Test Failure Charges, but it was not a free pass. Because EFORd is determined based on GADS data, an outage entered into GADS would ultimately increase EFORd, thus decreasing the UCAP that the resource could offer into the capacity market in the next Delivery Year and, in turn, decreasing the resource’s potential revenues from the capacity market in the next Delivery Year.⁶² Thus, under the rules effective through the 2024/2025 Delivery Year, a Generation Capacity Resource’s failure to have a successful test (fully demonstrating its ability to meet its capacity commitment) during the summer season would have a direct, adverse affect on the resource’s ability to earn capacity revenues in future Delivery Years.

Even though reporting an outage into GADS might excuse a test failure shortfall and thus allow the Resource to avoid incurring Test Failure Charges, the outage in GADS would ultimately decrease Capacity Resources’ revenues through the EFORd. In other words, under the prior accreditation construct, EFORd, rather than Test Failure Charges

⁶¹ *Id.*

⁶² *See* PJM Manual 18, rev. 59 at 182.

penalized resources for failing to demonstrate that it was capable of meeting its capacity commitment.⁶³ That is, the outage MW reported into GADS increased EFORD for the resource, reduced UCAP, and ultimately reduced the resource’s future revenues in the capacity market.⁶⁴

A successful out of period test would prospectively end the outage in GADS as of the date of the completion of the test. Under the rules, however, an out of period test did not revise or cure Test Failure Charges—either retroactively or prospectively.⁶⁵ Rather, the out of period test revised only the outage or derate in GADS, which in turn revised the EFORD, on a prospective basis, as of the completion of the out of period test.⁶⁶

2. *Beginning with the 2025/2026 Delivery Year, an Addback of Outage or Derate MW entered into GADS by a Generation Owner no longer excused a Test Failure Shortfall.*

As PJM’s October 2023 Tariff filing expressly states, beginning with the 2025/2026 Delivery Year, Test Failure Charges would be assessed against Generation Capacity Resources for every single day of the Delivery Year in which such resources are unable to demonstrate that they are physically able to meet their capacity commitment.⁶⁷ According to the revised Tariff, Attachment DD, section 7.1(b), Test Failure Charges, beginning with the 2025/2026 Delivery Year, are “converted to an Unforced Capacity basis using the Generation Capacity Resource’s final Accredited UCAP Factor” for the Delivery Year, rather than using the Generation Capacity Resource’s EFORD for the twelve months ending

⁶³ See PJM Manual 22, at 14, section 3: Equations and Derivations; PJM Manual 18, rev. 59 at 182, section 8.5.

⁶⁴ See *id.*

⁶⁵ Bruno Aff. ¶¶ 16, 21.

⁶⁶ *Id.* ¶ 21.

⁶⁷ PJM October 2023 Tariff Filing, Transmittal at 85.

the September 30 last preceding the Delivery Year. Corresponding revisions to PJM Manuals 18,⁶⁸ 21, and 21B, effective as of June 27, 2024, provided implementation details to the revised Tariff rules.⁶⁹ In relevant part here, PJM Manual 21, section 1.3.6, was retired. PJM Manual 21B, section 10.3.3, which replaced Manual 21, section 1.3.6, does not permit derates or outages in the GADS system submitted by a Generation Capacity Resource’s owner or agent to offset a test failure shortfall.⁷⁰ Instead, a test failure or a failure to test would “result in a full testing shortfall for the applicable test period” and “an assessment of the Generation Resource Rating Test Failure Charge per PJM Manual 18: PJM Capacity Market.”⁷¹

3. *The out of period test remedy has always applied prospectively.*

The out of period test remedy has always applied to Generation Capacity Resources prospectively, as of the date of the completion of the test. Under the rules in effect through the 2024/2025 Delivery Year—i.e., prior to the effective dates of the reforms proposed in PJM’s 2023 Tariff Filing and the conforming changes to PJM Manuals 21 and 21B—the prospective effect of a successful out of period test was to remove a Generation Capacity Resource’s outage or derate in GADS. In other words, the out of period test applied prospectively to revise the GADS inputs into the calculation of EFORD.

Under the prior rules in place before the 2025/2026 Delivery Year, an out of period test could not prospectively or retroactively remedy Test Failure Charges. In other words,

⁶⁸ Manual 18, rev. 59, became effective June 27, 2024. However, the revision to Manual 18, section 8.5.2 on which Complainants repeatedly rely, became effective June 1, 2025.

⁶⁹ ER24-99 Manual 18 Updates Presentation at 3, 6 (describing phase out of PJM Manuals 20, 21, and 21A, new Manual 21B, revisions to Manual 18, and revisions to testing requirements and Test Failure Charges).

⁷⁰ PJM Manual 21B, rev. 0 at 56, section 10.3.3 (replacing Manual 21, rev. 18 at 22-24, section 1.3.6, Impact of Test Results).

⁷¹ PJM Manual 21B, rev. 0 at 56, section 10.3.3, Impact of Test Results.

if a Generation Capacity Resource's owner or agent failed to report its outage or derate into GADS, the resource incurred Test Failure Charges. A subsequent out of period test could prospectively end the outage or derate from GADS, thus diminishing the impact that outage may have on the EFORd calculation on a prospective basis. However, an out of period test did not cure the Resource's Test Failure Charges prospectively or retroactively.

PJM Manual 21, rev. 18, section 1.3.6 described the impacts of a failed test or a failure to submit a test and included an example of the prospective effect of an out of period test on the outage or derate entered into GADS:

Example[] of applying the failed test rules using the summer test period [is]: . . . **An out of period test is conducted.** A successful out of period test is conducted on October 15 commencing at 1700 hours and ending at 1900 hours. A forced outage or derating as described above is applied to the generating unit starting June 1 @0000 hours and ending October 15 @1900 hours.”⁷²

According to the express language in PJM Manual 21, rev. 18 an out of period test conducted on October 15 ended the forced outage or derate as of end of the successful out of period test at 1900 hours on October 15.⁷³ But the out of period test conducted on October 15 did not change the fact that a forced outage or derate was applied to it from June 1 at 0000 hours until October 15 at 1900 hours.⁷⁴

The example is consistent with other language in PJM Manual 21, rev. 18, section 1.3.6. Where a resource fails to submit a test, PJM Manual 21, rev. 18, section 1.3.6 provided that such failure:

will result in a full forced outage being applied to the generating unit in question retroactively from the beginning of the applicable test period and will remain in effect until either a successful out of period

⁷² PJM Manual 21, rev. 18 at 22-23, section 1.3.6, Impact of Test Results (second emphasis added).

⁷³ *Id.* at 23.

⁷⁴ *Id.*

test is conducted or the next test period begins. For example, a generating unit not submitting a verification test for the summer test period will have a full forced outage applied retroactively starting June 1 @0000 hours of the year of the test period and ending December 1 @0000 hours of that same year (ending December 1, the beginning of the winter test period), unless a test is received prior to December 1. The results of this outage will be applied going forward and no retroactive adjustments to PJM Markets will be made.⁷⁵

Thus, according to PJM Manual 21, rev. 18, “a generating unit not submitting a verification test for the summer test period will have a full forced outage applied retroactively starting June 1[,]” i.e., an outage will be imputed as of the beginning of the summer test period.⁷⁶ The outage remains in place “until either a successful out of period test is conducted or the next test period begins.”⁷⁷

Similarly, PJM Manual 21, rev. 18, section 1.3.6 also provided, in relevant part, that a failed test:

will result in a forced outage or derating in the amount of the difference between the claimed installed capacity (ICAP) and the Corrected Net Test Capacity being applied to the generating unit in question, retroactive from the beginning of the respective test period and lasting until either a) a successful out of period test is conducted, b) a reduction in the claimed installed capacity (ICAP) of the generating unit is in effect . . . , or c) the beginning of the next test period.⁷⁸

Thus, a failed test submitted on, for example, July 1 of the summer season would result in a derate or outage being applied retroactively to June 1, the beginning of the summer test period. The derate or outage would remain in place until a successful out of period test was conducted, the beginning of the next test period, or a reduction of the claimed ICAP

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 22.

is in effect. However, as PJM Manual 21, rev. 18 made clear, an out of period test did not apply retroactively to remove the outage or derate MW in GADS that the Resource experienced earlier in the same season of the same Delivery Year.

After PJM's 2023 Tariff Filing and subsequent conforming changes to PJM Manuals 21 and 21B, effective June 27, 2024, out of period tests continued to have prospective effect in the 2024/2025 Delivery Year and future Delivery Years. However, under the rules effective as of the 2025/2026 Delivery Year, an out of period test no longer prospectively remedied an outage in GADS, because the outage addback provisions no longer applied as of the 2025/2026 Delivery Year. Instead, beginning with the 2025/2026 Delivery Year, an out of period test result could remedy a test failure shortfall prospectively, as of the date of the completion of the test, thus curing future, estimated Test Failure Charges in the same season of the Delivery Year.⁷⁹ In other words, test failure shortfalls and the resulting Test Failure Charges no longer turned on whether a Resource had reported its outage or derate MW into GADS.⁸⁰ Rather, test failure shortfalls and the resulting Test Failure Charges were the direct result of whether the Resource could physically demonstrate, through a capability test, that the Resource could provide its committed capacity. For each day of the Delivery Year in which a Generation Capacity Resource was unable to make this demonstration, the resource would incur Test Failure Charges.

After the October 2023 Tariff Filing and conforming revisions to PJM Manuals 21 and 21B, additional conforming revisions to PJM Manual 18, rev. 60, section 8.5.2 were

⁷⁹ PJM Manual 21B, rev. 0 at 46, section 10.3, Impact of Test Results.

⁸⁰ *Id.*

approved May 29, 2025, effective as of June 1, 2025. In relevant part, PJM Manual 18, section 8.5.2 states:

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.⁸¹

This provision in PJM Manual 18 reinforces the longstanding rule that out of period test results apply prospectively, beginning on the date of the out of period test and extending through the relevant seasonal period.

4. *PJM presented stakeholders with the proposed revisions to Test Failure Charges in 2023 prior to the October 2023 Tariff Filing.*

Prior to the October 2023 Tariff Filing, the package of reforms was presented to stakeholders in the 2023 CIFP stakeholder meetings and materials. The reforms, as PJM explained, would, *inter alia*, remove the ability to offset test failure charges with derate or outage MW entered into GADS and require a physical demonstration of capability during the test period.

First, on March 29, 2023, PJM proposed to “[r]emove excusals for inability to test,”⁸² as part of PJM’s proposed “[m]ulti-tiered framework of performance assessments and testing to help ensure delivery of the capacity that has been committed through [a] forward auction[.]”⁸³

Second, on July 27, 2023, PJM expressly set forth updates to rules applicable to seasonal capability testing. PJM explained that the reforms would “[r]emove the current

⁸¹ PJM Manual 18, rev. 60 at 182, section 8.5.2.

⁸² March 2023 CIFP Initial Proposal.

⁸³ *Id.* at 20.

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 it for them (penalty assessed).”⁸⁴ In other words, PJM’s CIPF materials specifically state that the reforms proposed in PJM’s 2023 Tariff Filing and conforming PJM Manual revisions would no longer permit owners of Generation Capacity Resources to avoid Test Penalty Charges by submitting derates in GADS. Stakeholders were on notice that entering derates or outages into GADS would no longer allow generators to avoid Test Failure Charges.

Third, in the decision matrix describing the proposed Tariff revisions, PJM expressly stated that the status quo testing rules remain in place except for “remov[ing] the administrative check on who submits the GADS de-rating to determine if a penalty charge should be assessed for a shortfall.”⁸⁵

Fourth, in an Executive Summary dated August 23, 2023, PJM provided that the proposed changes to seasonal Net Capability Testing would include a “[d]aily deficiency rate for testing shortfalls equal to the commitment compliance deficiency rate.”⁸⁶

Fifth, on September 25, 2023, the PJM Board of Managers “considered revisions to Tariff, Attachment DD, sections 7, 7A (new), and 10A to amend rules related to the testing of [G]eneration [C]apacity [R]esources, assessment of [T]est [F]ailure

⁸⁴ July 2023 CIPF Reforms Proposal at 34.

⁸⁵ CIPF Packages Matrix at 48:E (“Status quo of seasonal capacity testing with the following changes: 1) Require physical demonstration of capability in each season (no longer accept non-winter test with corrections for ambient winter conditions) [and] 2) Assess any testing shortfalls at seasonal deficiency rate for each day of the season by comparing the seasonal test value against the daily committed ICAP (remove the administrative check on who submits the GADS de-rating to determine if a penalty charge should be assessed for a shortfall”).

⁸⁶ August 2023 Changes Proposal Executive Summary at 7.

[C]harge[s],” and other revisions and resolved to approve the proposed revisions to the Reliability Assurance Agreement and Tariff.⁸⁷

5. *PJM presented stakeholders with the corresponding updates to PJM’s Manuals, which were endorsed in June 2024.*

Following the CIFP stakeholder process, PJM’s October 2023 Tariff Filing, and the Commission’s January 2024 Order approving the proposed reforms, PJM presented stakeholders with conforming PJM Manuals changes that ultimately became effective in June 2024.

First, on April 30, 2024, the Planning Committee presented the plan for “Manual Updates for ER24-99” to stakeholders.⁸⁸ The plan expressly sought endorsement votes on PJM Manual updates, including updates to PJM Manuals 18, 21, and 21B, before the July 2024 BRA, such that the updates would be “applicable to the conduct of the 2025/2026 BRA” in July 2024.⁸⁹

Second, on May 22, 2024, PJM presented to the Markets and Reliability Committee with the proposed PJM Manual updates corresponding to the Docket No. ER24-99 revisions.⁹⁰ The presentation likewise expressly sought endorsement votes on PJM Manual updates, including updates to PJM Manuals 18, 21 and 21B, before the July 2024 BRA, such that the updates would be “applicable to the conduct of the 2025/2026 BRA” in July 2024.⁹¹

⁸⁷ September 2023 Board of Managers Minutes at 4.

⁸⁸ Planning Committee, *Planning Manual Updates for ER24-99* (Apr. 30, 2024), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/pc/2024/20240430/20240430-item-05---planning-manual-updates---er24-99.pdf>.

⁸⁹ *Id.* at 6.

⁹⁰ ER24-99 Manual 18 Updates Presentation at 3, 6.

⁹¹ *Id.* at 15.

Third, on June 4, 2024, and June 27, 2024, respectively, the Planning Committee and the Markets and Reliability Committee approved/endorsed the updates to the PJM Manuals by acclamation with no objections or abstentions.⁹²

6. *Distinctions between assessment of Test Failure Charges against Generation Capacity Resources under rules in effect through the 2024/2025 Delivery Year and rules in effect as of the 2025/2026 Delivery Year*

The attached affidavit of Mr. Bruno provides examples comparing how the rules applicable through the 2024/2025 Delivery Year and those applicable with the beginning of the 2025/2026 Delivery Year apply to the calculation of test failure shortfalls and the resulting Test Failure Charges assessed against a hypothetical Generation Capacity Resource.

Table 1 of Mr. Bruno's affidavit demonstrates how the rules in place through the 2024/2025 Delivery Year allowed an outage to zero out a test failure shortfall, thus excusing the hypothetical Generation Capacity Resource from Test Failure Charges where the owner of the hypothetical Generation Capacity Resource has entered the outage into GADS.⁹³ In the hypothetical, an out of period test ends the outage in GADS prospectively as of October 1, 2024.⁹⁴ Under the rules in place through the 2024/2025 Delivery Year, however, an out of period test could not cure the summer test failure shortfall and the

⁹² June 2024 Executive Summary Manual Changes at 1 (noting revisions to PJM Manuals 18, 21, and 21B presented May 22, 2024, were approved/endorsed by acclamation with no objections or abstentions); Planning Committee, *Draft Minutes*, PJM Interconnection, L.L.C., 1 (June 4, 2024), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/pc/2024/20240709/20240709-draft-minutes---pc---060424.pdf> (noting update on Planning Manuals due to the revisions accepted in Docket No. ER24-99 and endorsement of Planning Committee by acclamation with no objections or abstentions). Manual 18, rev. 59, was endorsed with a June 27, 2024 effective date. Additional changes to Manual 18, rev. 60, were effective June 1, 2025.

⁹³ Bruno Aff. ¶ 11 and Table 1.

⁹⁴ *Id.* ¶ 13 and Table 1.

resulting Test Failure Charge.⁹⁵ As column 4 of Table 1 demonstrates, a Resource that had not entered its outage MW into GADS would continue to be assigned a test failure shortfall through the entire 2024/2025 summer season, even after the hypothetical Resource completed an out of period test on October 1, 2024.⁹⁶ In other words, from October 1, 2024 through October 31, 2024 and from May 1, 2025 through May 31, 2025, the hypothetical Resource continued to incur Test Failure Charges, because the Generation Capacity Resource did not report the Resource's outage MW into GADS.⁹⁷ The October 1, 2024 out of period test did not remedy the Test Failure Charges retroactively or prospectively.⁹⁸

Table 2 in Mr. Bruno's affidavit demonstrates how the rules in place beginning with the 2025/2026 Delivery Year apply to the same hypothetical Generation Capacity Resource.⁹⁹ Under the new rules, the Generation Capacity Resource must be able to demonstrate that it is physically capable of meeting its capacity commitment. Thus, the hypothetical Generation Capacity Resource can no longer zero out test shortfalls with an addback of the outage MW that a Resource has reported into GADS.¹⁰⁰ The hypothetical Generation Capacity Resource cannot therefore be excused from Test Failure Charges by entering an outage into GADS.¹⁰¹ Under the new rules, however, an out of period test can now cure test failure shortfalls and the resulting Test Failure Charges prospectively, as of

⁹⁵ *Id.* ¶ 13 and Table 1.

⁹⁶ *Id.* ¶ 16 and Table 1.

⁹⁷ *Id.* ¶¶ 13, 14.

⁹⁸ *Id.* ¶¶ 15, 16.

⁹⁹ *Id.* ¶ 17.

¹⁰⁰ *Id.* ¶ 18.

¹⁰¹ *Id.* ¶ 18.

the date of the successful completion of the out of period test.¹⁰² While, under the old rules, the out of period test would only have ended the outage or derate in GADS prospectively, as of the date of the completion of the test, the rules applicable beginning with the 2025/2026 Delivery Year permit an out of period test to cure test failure shortfalls and estimated Test Failure Charges prospectively.¹⁰³

II. ARGUMENTS

A. *Complainants' Legal Arguments Rest on Inaccurate Assumptions About the Underlying Facts.*

The facts, described in Section I, above, are clear. First, contrary to repeated assertions in the Complaints, PJM has *not changed* the *prospective application* of the out of period test remedy.¹⁰⁴ Second, the Complainants wrongly claim that the rules applicable before the start of the 2025/2026 Delivery Year allowed their Resources to apply an out of period test retroactively to Test Failure Charges incurred by their Resources based on past test failures or failures to test.¹⁰⁵ Every legal argument raised by the Complainants rests on these two core assumptions.¹⁰⁶ Both are wrong.

The Complaints incorrectly assert that the rules applicable to out of period testing in place at the time of the July 2024 BRA would have permitted an out of period test conducted in May 2026 to retroactively apply to Resources from June 1, 2025, through

¹⁰² *Id.* ¶ 19.

¹⁰³ *Id.* ¶¶ 13, 14, 19.

¹⁰⁴ *See supra* Section I.B.3.

¹⁰⁵ *See id.*

¹⁰⁶ *See, e.g.*, LS Power Complaint, Dixon Test. at 5 (LS Power “assumed that it would have recourse to the out of period test remedy” based on historical practice and PJM Manual 18, section 8.5).

October 31, 2025.¹⁰⁷ Based on the rules in place before, during, and after the July 2024 BRA, as set forth in the PJM Manuals, out of period tests apply prospectively, starting with the date when the out of period test is completed.¹⁰⁸ This was—and remains—the case.¹⁰⁹

First, the Complainants’ reliance on language in PJM Manual 21B, section 10.3(7)¹¹⁰ is unavailing. PJM Manual 21B, rev. 0, section 10.3(7) provides only that an out of period test performed during the applicable season but outside the respective test period “may remedy a test shortfall” if certain conditions are met.¹¹¹ However, PJM Manual 21B, rev. 0, section 10.3(7) does not grant a right to apply the out of period test remedy to a *past* test shortfall. Indeed the term “remedy,” by definition, supports prospective only relief.¹¹²

PJM Manual 21B, rev. 0, section 10.3(7) is consistent with language in PJM Manual 21, rev. 19, section 1.3.6, which was in place prior to the July 2024 BRA and which PJM Manual 21B replaced. Under PJM Manual 21, rev. 19, section 1.3.6, out of period testing cured an outage or derate in GADS as of the date (and time) of the completion of

¹⁰⁷ LS Power Complaint at 16 (“Under ‘existing rules’ (both then and now), however, resource units could remedy any shortfall by performing an out of period test.”) (citing PJM Manual 21B, section 10.3(7)); Richland-Stryker Complaint at 16 (same).

¹⁰⁸ *See supra* Section I.B.3.

¹⁰⁹ *See id.*

¹¹⁰ LS Power Complaint at 21 (“For years, PJM has allowed resource units to remedy a capacity shortfall by testing out of period.” “Under this provision [i.e., PJM Manual 21B, section 10.3(7)], the generator incurred no seasonal capability testing penalties.”); Richland-Stryker Complaint at 20 (same).

¹¹¹ PJM Manual 21B, rev. 0 at 56, section 10.3(7).

¹¹² In the context here, remedy refers to curing the condition the resource is currently in—lacking a successful test for the applicable season; it does not refer to a legal right or compensation for some sort of wrong. Thus, remedy here is synonymous with a medicinal treatment for an ailment. Such a remedy cannot go back in time and change the fact that one is ill; rather, it treats the condition to correct it going forward. Likewise, in this context, a demonstration of the resource’s capability would “remedy” its status and fix its condition prospectively. *See Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/remedy> (last updated May 2, 2026).

the test.¹¹³ Indeed, PJM Manual 21, rev. 19, section 1.3.6 expressly states that while a “full forced outage [will be] applied to the generating unit in question retroactively from the beginning of the applicable test period,” the outage will “remain in effect *until* either a successful out of period test is conducted or the next test period begins.”¹¹⁴ Under the rules in effect prior to the July 2024 BRA, the effect of the outage would apply retroactively to the beginning of the test period, but an out of period test could only remove an outage prospectively. The outage applied *until* the successful out of period test or the next test period began. The adoption of PJM Manual 21B, section 10.3(7) did not revise the prospective application of out of period tests.

Second, Complainants likewise rely, to no avail, on language in PJM Manual 18, section 8.5.¹¹⁵ That language, however, is consistent with the longstanding practice and express language in the PJM Manuals that apply out of period tests prospectively. In relevant part, PJM Manual 18, rev. 59, section 8.5 states: “If the entire unit is on a forced or planned outage during the entire summer or winter testing period, the unit is expected to submit an out-of-period capability test when the outage ends.”¹¹⁶ The requirement to submit an out of period test when an outage ends does not imply that an out of period test can cure a *past* test failure. Likewise, the fact that PJM Manual 18, rev. 59, section 8.5 permits an unlimited number of tests during each testing period and allows for an ICAP

¹¹³ PJM Manual 21, rev. 19 at 24, section 1.3.6, Impact of Test Results.

¹¹⁴ *Id.* at 25.

¹¹⁵ LS Power Complaint at 7; Richland-Stryker Complaint at 7.

¹¹⁶ PJM Manual 18, rev. 59 at 180, section 8.5.

shortfall to be determined based on the test that resulted in the highest installed capacity rating, is not dispositive.¹¹⁷

Third, Complainants allege that changes to PJM Manual 18, rev. 60 introduced in January 2025, six months after the July 2024 BRA for the 2025/2026 Delivery Year, and adopted in May 2025, eliminated the out of period test remedy.¹¹⁸ The offending language, according to the Complaints, is set forth for the first time in PJM Manual 18, rev. 60, section 8.5.2, approved May 29, 2025 and effective June 1, 2025. The provision states in relevant part:

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.¹¹⁹

PJM Manual 18, rev. 60, section 8.5.2 simply states that out of period test results would apply beginning on the date of the out of period test and extending through the relevant seasonal period. Even before the addition of this language in PJM Manual 18, section 8.5.2 in 2025, out of period tests applied prospectively, as of the date of the out of period test. At best, the 2025 revision to PJM Manual 18, section 8.5.2 *reinforces* the prospective application of out of period tests, expressly set forth in PJM Manual 21 and PJM Manual 21B, and consistent with Manual 18, rev. 59, section 8.5.

Thus, even if PJM were to apply the rules in place prior to the 2025/2026 Delivery Year to Complainants' Generation Capacity Resources, out of period summer season tests in May 2026 would not have applied retroactively to remedy outages from earlier in the

¹¹⁷ LS Power Complaint at 17 n.62; Richland-Stryker Complaint at 16 n.57.

¹¹⁸ LS Power Complaint at 19, 22; Richland-Stryker Complaint at 18, 21.

¹¹⁹ PJM Manual 18, rev. 60 at 182, section 8.5.2.

2025/2026 Delivery Year summer season, June 1, 2025, through October 31, 2025. Furthermore, as Complainants agree, Generation Capacity Resources may still remedy estimated test shortfalls for May 2026 by submitting out of period tests in May 2026.¹²⁰ Complainants' May 2026 out of period summer season test results would apply prospectively, as of the date of the test.

B. The Complainants' Retroactive Ratemaking and Notice Arguments Are Without Merit.

The Complaints assert, incorrectly, that “PJM’s new Manual language purporting to eliminate or reinterpret the out of period test remedy is impermissible retroactive ratemaking.”¹²¹ As the Commission has explained, “[t]he filed rate doctrine ‘bind[s] regulated entities to charge only the rates filed with FERC.’ The corollary rule against retroactive ratemaking ‘prohibits the Commission from adjusting current rates to make up for a utility’s over-or-under-collection in prior periods.’”¹²² The Commission has specifically held that PJM’s proposed Tariff changes to its capacity market construct do not violate the filed rate doctrine and corollary rule against retroactive ratemaking where the Tariff changes apply only prospectively. Accordingly, the Commission has opined:

We find that PJM’s proposal does not violate the filed rate doctrine because it does not change any rate, term, or condition of service relating to past performance; rather, it applies only prospectively to future performance. The Commission previously has found that the terms and conditions of performance and other obligations that are part of forward capacity markets may be revised, even after a

¹²⁰ LS Power Complaint at 13 (“PJM acknowledged that LS Power will have an opportunity to cure this . . . charge with an out of period test.”); *id.*, Dixon Test. at 7:11-12 (“LS Power plans to complete its out of period summer test in May 2026, which is in the summer season for the 2025-26 delivery year.”); Richland-Stryker Complaint at 13 n.38 (“PJM has acknowledged that Richland-Stryker will have an opportunity to cure this May 2026 charge with an out of period test.”).

¹²¹ LS Power Complaint at 22; Richland-Stryker Complaint at 21.

¹²² *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,058, at P 40 (2023) (quoting *Towns of Concord v. FERC*, 955 F.2d 67, 71 n.2 (D.C. Cir. 1992)).

forward auction for a future delivery period is completed, if the changes are made prospectively.¹²³

Under the applicable law and facts, the Complaints’ retroactive ratemaking arguments must fail. First, the relevant rate on file, which reflects changes to Test Failure Charges as of the 2025/2026 Delivery Year, was accepted by the Commission on January 30, 2024, effective as of December 12, 2023.¹²⁴ As part of the changes to Test Failure Charges, excusals for Test Failure Charges would no longer apply to Generation Capacity Resources.¹²⁵ These proposed revisions to Test Failure Charges were deliberately more stringent, as they were intended to help “ensure capacity resources are physically capable of responding during [emergency periods].”¹²⁶ For every single day in the Delivery Year in which Complainants’ Generation Capacity Resources could not physically demonstrate the ability to deliver on its capacity commitments, Test Failure Charges would be assessed against the Resources.¹²⁷ Thus, the rate on file, applied prospectively to Complainants, resulted in the Test Failure Charges assessed against Complainants in the 2025/2026 Delivery Year.

¹²³ *Id.* (citations omitted).

¹²⁴ January 2024 Order, 186 FERC ¶ 61,080.

¹²⁵ *See, e.g.*, July 2023 CIFP Reforms Proposal at 34 (reforms 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 it for them (penalty assessed).”); March 2023 CIFP Initial Proposal at 20 (proposing to “[r]emove excusals for inability to test,” as part of PJM’s proposed “[m]ulti-tiered framework of performance assessments and testing to help delivery of the capacity that has been committed through [a] forward auction[.]”).

¹²⁶ January 2024 Order, 186 FERC ¶ 61,080 at P 188.

¹²⁷ PJM October 2023 Tariff Filing, Transmittal at 85; January 2024 Order, 186 FERC ¶ 61,080 at P 190.

Second, the Commission has repeatedly held that manuals are “not a rate on file with the Commission.”¹²⁸ While “Manuals cannot override the terms of PJM’s Tariff,” the Commission “may look at Manuals in interpreting the Tariff.”¹²⁹ Nevertheless, the corresponding PJM Manual revisions were likewise in place before the July 2024 BRA. Contrary to Complainants’ assertions that, at the time of the July 2024 BRA for the 2025/2026 Delivery Year, they “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[.]”¹³⁰ PJM had described the relevant reforms to Test Failure Charges in numerous stakeholder meetings and materials in the CIFP before the October 2023 Tariff Filing.¹³¹ Furthermore, the specific changes to PJM Manuals 21 and 21B were presented to stakeholders in April and June of 2024, before the July 2024 BRA.¹³² Thus, Complainants certainly could have—and indeed should have—known about PJM’s intent to alter its Manuals to remove excusals for Test Failure Charges, including those arising from unplanned outages.

Third, Complainants allege, without support, that PJM alerted stakeholders only to changes concerning “seasonal capability testing” but was “insufficiently clear, and did not notify [Complainants]—or anyone else, including the Commission . . . as to *what* changes

¹²⁸ *Salsa Solar Energy, LLC v. Pub. Serv. Co. of Colo.*, 190 FERC ¶ 61,108, at P 157 n.249, *order on reh’g*, 192 FERC ¶ 61,067 (2025); *see also PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,160, at P 77 (2024) (“The Commission does not review and approve PJM’s manuals, which are not filed with the Commission.”); *N.Y. Indep. Sys. Operator v. Astoria Energy LLC*, 118 FERC ¶ 61,216, at P 32 n.17 (2007) (“Unlike the Services Tariff, the ICAP Manual is not a filed rate schedule.”).

¹²⁹ *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,263, at P 42 (2011).

¹³⁰ LS Power Complaint at 23; Richland-Stryker Complaint at 22.

¹³¹ *See supra* Section I.B.4.

¹³² *See supra* Section I.B.5.

PJM would make[.]”¹³³ But PJM’s October 2023 Tariff Filing expressly describes, with specificity, the Tariff changes that would modify the way Test Failure Charges are assessed. While PJM’s October 2023 Tariff Filing notes 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[.]” directly following this statement, the filing continues:

However, PJM is proposing to modify the manner in which it assesses charges for failure to satisfy seasonal generator capability testing requirements under the Tariff. 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. Effective with the 2025/2026 Delivery Year, 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. This will allow for a more precise determination of whether the installed capacity that a committed Generation Capacity Resource is committed for each day aligns with its demonstrated capability.¹³⁴

Furthermore, the Affidavit of Mr. Adam Keech, attached to PJM’s October 2023 Tariff Filing, expressly identifies “*two* shortcomings”¹³⁵ with the approach to PJM’s Generation Capacity Resource capability testing rules that the Tariff revisions sought to reform. While one shortcoming was, as Complainants correctly note, that PJM required, at the time, only summer seasonal testing, Mr. Keech’s affidavit notes that “[*t*]he second

¹³³ LS Power Complaint at 24; Richland-Stryker at 23.

¹³⁴ PJM October 2023 Tariff Filing at 84 (footnotes omitted) (citing then proposed and now, effective Tariff, Attachment DD, section 7.1(b) and Affidavit of Mr. Adam Keech (October 2023 Tariff Filing, Attachment C) ¶ 25 (“Keech Aff.”)).

¹³⁵ Keech Aff. ¶ 24.

proposed change to the Generation Capacity Resource capability testing process is with regard to the calculation of the MW shortfall portion of the Generation Resource Test Failure Charge.”¹³⁶

Fourth, even if the new PJM Manual 18, ver. 60 language that became effective on June 1, 2025, were, as Complainants seem to assert, a filed rate, the rule against retroactive ratemaking is clear. While the BRA for the 2025/2026 Delivery Year occurred in July 2024, it is well-settled “that the terms and conditions of performance and other obligations that are a part of forward capacity markets may be revised, even after a forward auction for a future delivery year is completed, if the changes are made prospectively and after notice.”¹³⁷ Here, PJM Manual revisions, effective as of June 1, 2025, to the 2025/2026 Delivery Year cannot be said to have been retroactively applied, as the risk of Generation Capacity Resource outages faced by Complainants’ Resources occurred during the 2025/2026 Delivery Year, after the June 1, 2025 effective date.¹³⁸ Indeed, even if the rate on filed had changed after the July 2024 BRA, Complainants were not stuck with the

¹³⁶ *Id.* ¶ 25.

¹³⁷ *ISO New Eng. Inc.*, 190 FERC ¶ 61,063, at P 29 (2025) (quoting *ISO New Eng., Inc. and New Eng. Power Pool Participants Comm’n*, 165 FERC ¶ 61,266, at P 24 (2019) (“[T]he terms and conditions of performance and other obligations that are a part of forward capacity markets may be revised, even after a forward auction for a future delivery year is completed, if the changes are made prospectively”)); *id.* (quoting *ISO New England Inc.*, 145 FERC ¶ 61,095, at PP 28, 31 (2013) (“finding ISO[New England’s] proposed effective date for what constitutes a shortage event complies with the rule against retroactive ratemaking because the changes ‘apply only prospectively and after notice.’”)); *see also id.* (quoting *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103, at P 62 (2014) (“(finding that PJM’s revision of certain rules under which a demand response resource could be required to reduce its load was not a filed rate doctrine violation, even though it would apply to delivery years for which PJM had already held its capacity auction, because ‘PJM is not changing rates, or terms and conditions of service, relating to past performance; it is only changing the requirements applicable to future performance [and] PJM’s proposed tariff provisions will have a prospective application only.’”)).

¹³⁸ *ISO New Eng. Inc.*, 190 FERC ¶ 61,063 at P 32 (“We agree with [ISO New England, Inc.] that the Tariff revisions do not violate the filed rate doctrine here because the [ISO New England’s Financial Assurance Policy] Revisions will only have a prospective effect as they address future financial assurance requirements associated with risks of non-performance penalties that will occur after the requested effective date.”).

outcomes of the July 2024 BRA. For example, Complainants could have obtained replacement capacity through bilateral agreements, even during the June 1, 2025, through October 31, 2025, period.

C. *The Complainants’ Rule of Reason Arguments Are Without Merit.*

The Complainants claim that the Test Failure Charges that they incurred are simply “too stiff a penalty to chalk up to ‘implementation details’” which PJM may include in its Manuals.¹³⁹ The rule of reason requires that practices affecting rates and services significantly be on file.

But, as discussed above, the formula that gave rise to these “stiff” Test Failure Charges to which Complainants object *are*, in fact, on file.¹⁴⁰ Lest there be any doubt, the relevant Tariff provisions on file are entitled “Generation Resource Rating Test Failure Charge.”¹⁴¹ The Tariff on file sets forth the formula for calculating Test Failure Charges through the 2024/2025 Delivery Year and the revised formula for calculating Test Failure Charges effective with the 2025/2026 Delivery Year.¹⁴² Indeed, while Complaints assert that the Test Failure Charges are “too stiff a penalty to chalk up to ‘implementation details,’” in Docket No. ER24-99, PJM specifically acknowledged that these charges as “very substantial charge[s] for test failure.”¹⁴³ This was by design. In the wake of Winter Storm

¹³⁹ LS Power Complaint at 26; Richland-Stryker Complaint at 25.

¹⁴⁰ Tariff, Attachment DD, section 7.1(b).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket No. ER24-99-000, at 42 (Dec. 21, 2023) (“PJM ER24-99 Answer”).

Elliott, PJM had specifically sought to strengthen the “incentives to retain and attract sufficient Capacity Resources necessary to maintain reliability.”¹⁴⁴

The “rule of reason” grants the Commission broad discretion to determine whether practices affecting rates and services are so significant that they must be included in the Tariff.¹⁴⁵ In this case, the PJM October 2023 Tariff Filing made clear that the assessment of Test Failure Charges was changing.¹⁴⁶ Furthermore, the relevant implementation details were properly included in PJM’s Manuals in June 2024 and logically flow from the removal of EFORd from the Test Failure Charge calculation and the requirement that Test Failure Charges be incurred for each day in which a Generation Capacity Resource is unable to physically demonstrate that the Resource can meet its capacity commitment.¹⁴⁷ As discussed in Section I.B.6, above, the Manual revisions preventing resources from being excused from Test Failure Charges by entering their Resource’s outage or derate MW into GADS implement the deliberately more stringent and precise testing requirements and Test Failure Charge rules that have been accepted and are on file with the Commission.

¹⁴⁴ PJM October 2023 Tariff Filing at 10-11.

¹⁴⁵ *Sw. Power Pool Inc.*, 190 FERC ¶ 61,157, at PP 19-20 (2025) (finding that the “rule of reason” did not require SPP’s proposed Tariff language to include outage study procedures; “due to the ‘infinite of practices affecting rates and services . . . only those practices that affect rates and services significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous’ must be in tariffs. Moreover, the U.S. Court of Appeals for the D.C. Circuit has made clear that the Commission has ‘broad bounds of discretion’ (quoting *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)) (citing *Hecate Energy Greene Cnty. 3 LLC v. FERC*, 72 F.4th 1307, 1314 (D.C. Cir. 2023)).

¹⁴⁶ See *supra* note 131 and accompanying text.

¹⁴⁷ See *supra* Section I.B.5.

A. *Test Failure Charges Are Not Unjust and Unreasonable for Other Reasons.*

The Complaints, under the cover of PJM’s alleged “elimination of the out of period test remedy,”¹⁴⁸ assert that the Test Failure Charges assessed against Complainants’ Generation Capacity Resources are unjust and unreasonable irrespective of notice, retroactivity, or rule of reason concerns. The Test Failure Charges, according to the Complaints, were “unforeseeable, disproportionate, and duplicative”¹⁴⁹

In challenging Test Failure Charges, Complainants effectively challenge the application of the filed rate to their Generation Capacity Resources in Delivery Year 2025/2026. The Commission accepted the proposed revisions to Test Failure Charges on January 30, 2024, as part of a package of penalties that would strengthen PJM’s ability to procure resources capable of providing capacity during emergencies.¹⁵⁰

The Test Failure Charges assessed against Generation Capacity Resources that experienced test shortfalls were foreseeable. The penalties resulted from Commission-accepted revisions to the Tariff and associated Manual revisions—all of which were in place before Complainants claim to have had any reliance and notice interests.

The Test Failure Charges were proportionate. As the Commission noted, while the narrower definition of Emergency Action “should reduce how often, and for how long, PAIs are triggered, resulting in fewer hours for which Non-Performance Charges will be assessed,” the Commission reasoned that, on balance, “PJM’s proposed improvements to resource accreditation, testing requirements, *and penalties for test failures* will strengthen

¹⁴⁸ LS Power Complaint at 5; Richland-Stryker Complaint at 6.

¹⁴⁹ LS Power Complaint at 30; Richland-Stryker Complaint at 29.

¹⁵⁰ January 2024 Order, 186 FERC ¶ 61,080 at P 237.

the likelihood that PJM is procuring resources capable of providing capacity during emergencies.”¹⁵¹

The Test Failure Charges are neither duplicative nor inequitable. According to the Complainants, the Generation Capacity Resources already “faced significant potential penalties and charges” because “[h]ad PJM called a [PAI], whereupon [the Generation Capacity Resources] would have been assessed based on its ability to deliver its specified megawatt amount, [Complainants] would have faced Capacity Performance Penalties from PJM subject to a stop loss.”¹⁵²

Complainants’ position is undermined by the black letter of the Tariff. Specifically, Tariff, Attachment DD, section 7.1(b-1) states that Generation Capacity Resources “shall not be assessed a charge under both this [Generation Resource Rating Test Failure Charge] section and Tariff, Attachment DD, section 10A for such simultaneous occurrence of a resource capacity rating deficiency and Performance Shortfall.”¹⁵³ Rather the Tariff limits the charge to be “equal to the greater of the charge determined under [the Generation Resource Rating Test Failure Charge] section and the [Non-Performance] charge determined under Tariff, Attachment DD, section 10A.”¹⁵⁴

Further, PJM’s December 21, 2023 Answer in Docket No. ER24-99 expressly states that “PJM’s stop-loss charge is part and parcel of a set of coordinated Tariff

¹⁵¹ January 2024 Order, 186 FERC ¶ 61,080 at P 237.

¹⁵² LS Power Complaint at 29; Richland-Stryker Complaint at 28.

¹⁵³ In any event, the Generation Resource Rating Test Failure Charge is equal to the weighted average Capacity Resource clearing price plus the higher of .2 times the weighted average Capacity Resource clearing price or \$20/MW-Day, which is lower than the stop-loss for Non-Performance Charge equal to 1.5 times the BRA clearing price. In other words, the Generation Resource Rating Test Failure Charge for the 2025/2026 Delivery Year would never exceed the stop loss for Performance Assessment Intervals. Tariff, Attachment DD, section 7.1(b-1).

¹⁵⁴ *Id.*

changes”¹⁵⁵ Together, PJM’s proposed changes intentionally “take a much more rigorous view of what a resource can contribute to PJM Region resource adequacy, and to that extent enhance reliability and reduce the region’s vulnerability to the adverse effects of sub-par performance by any given resource.”¹⁵⁶

B. The Complaints Fail to State a Claim on Which Relief Can Be Granted.

Not only are the Complaints based on incorrect assumptions about the facts and law, but Complainants’ requested relief would not cure the Test Failure Charges incurred by Complainants’ Generation Capacity Resources from June 1, 2025, through October 31, 2025. The Complaints request that the Commission “reject the new provision in Manual 18, [section] 8.5.2 that eliminates the out of period test remedy for the full summer or winter period.”¹⁵⁷ According to the Complaints, rejecting Manual 18, section 8.5.2 would render Complainants’ resources “eligible for an out of period test that will ‘remedy’ the daily charges” such that “[a] successful May test should remedy any charges [Complainants’ Resources have] accumulated during the summer season.”¹⁵⁸ In the alternative, if the Commission “is inclined to keep the new provision in Manual 18 . . . and eliminate the out of period test remedy,” the Complaints request that the Commission apply the new PJM Manual 18, section 8.5.2 rule “only prospectively after the next relevant auction.”¹⁵⁹

¹⁵⁵ PJM ER24-99 Answer at 42; January 2024 Order, 186 FERC ¶ 61,080 at P 237.

¹⁵⁶ PJM ER24-99 Answer at 42-43; January 2024 Order, 186 FERC ¶ 61,080 at PP 188, 237.

¹⁵⁷ LS Power Complaint at 31; Richland-Stryker Complaint at 29.

¹⁵⁸ LS Power Complaint at 31; Richland-Stryker Complaint at 29-30.

¹⁵⁹ LS Power Complaint at 31; Richland-Stryker Complaint at 30.

But even if the Commission were to reject the new provisions of PJM Manual 18, section 8.5.2—which it should not—Complainants would *still* not be permitted to apply out of period tests in May 2026 retroactively to June through October 2025. PJM Manual 18, section 8.5.2 merely reiterates the longstanding rule, provided expressly elsewhere in PJM’s Manuals, that out of period tests apply prospectively, as of the date of the test’s competition. As explained, above, Tariff revisions filed with the Commission in 2023 and conforming revisions to PJM Manuals 21 and 21B, effective June 2024, changed the way Test Failure Charges are assessed.

Complaints furthermore request, contrary to longstanding rules, that the Commission, pursuant to its authority under FPA section 309, refund the Test Failure Charges incurred in 2025 by the Complainants. Such a result would, indeed, constitute retroactive ratemaking contrary to the filed rate, as set forth in Tariff, Attachment DD, section 7.1(b) and would, furthermore, undermine the intent of the Commission’s January 2024 Order. “[T]he goal of the proposed testing framework is to promote increased accuracy and accountability in the capacity market.”¹⁶⁰ Test failure charges “incentivize resources to be available without being overly punitive.”¹⁶¹

¹⁶⁰ January 2024 Order, 186 FERC ¶ 61,080 at P 201.

¹⁶¹ January 2024 Order, 186 FERC ¶ 61,080 at P 205.

III. 18 C.F.R. § 385.213 MATERIALS

A. Documents in Support of the Facts (18 C.F.R. § 385.213(c)(4))

In addition to the publicly available materials cited to above, the following documents are attached in support of the facts:

- The Affidavit of Joshua Bruno (Attachment A);
- Exhibit A: Notice to LS Power of Summer Season Test Failure Charge Estimates and Subsequent Correspondence Between LS Power and PJM (PUBLIC and NON-PUBLIC);¹⁶² and
- Exhibit B: Notice to Richland-Stryker of Summer Season Test Failure Charge Estimates and Subsequent Correspondence Between Richland-Stryker and PJM (PUBLIC and NON-PUBLIC).¹⁶³

B. Admissions or Denials Pursuant to 18 C.F.R. § 385.213(c)(2)(i)

To the extent that any allegation set forth in the Complaints is not specifically admitted in this answer, it is denied.

¹⁶² PJM has submitted Public (Redacted) and Non-Public (Unredacted) versions of Exh. A pursuant to LS Power's Protective Order, filed with the LS Power Complaint on April 7, 2026.

¹⁶³ PJM has submitted Public (Redacted) and Non-Public (Unredacted) versions of Exh. B pursuant to Richland-Stryker's Protective Order, filed with the Richland-Stryker Complaint on April 7, 2026.

IV. CONCLUSION

For the reasons set forth in this motion to dismiss and answer, the Commission should dismiss the Complaints with prejudice or deny the Complaints on their merits.

Respectfully submitted,

/s/ Vivian W. Chum

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May 7, 2026

Attachment A

Affidavit of Joshua Bruno

**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.)	
)	
Richland-Stryker Generation HoldCo LLC)	
Complainant,)	
v.)	Docket No. EL26-59-000
)	(Unconsolidated)
PJM Interconnection, L.L.C.,)	
Respondent.)	

**AFFIDAVIT OF JOSHUA BRUNO
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

1. My name is Joshua Bruno. My business address is 2750 Monroe Blvd., Audubon, Pennsylvania, 19403. I am a Senior Analyst II in the Resource Adequacy Planning department in the System Planning division of PJM Interconnection, L.L.C. (“PJM”). I joined PJM in 2015. As a Senior Analyst II in the Resource Adequacy Planning department, I am responsible for facilitating and reviewing the submittal of Verification Tests into GADS. Prior to the 2025/2026 Delivery Year, part of this review included determining whether any test shortfalls have the appropriate outage/derate entered into the system. Prior to my role in PJM’s Resource Adequacy Planning department, I was in PJM’s Capacity Market department from 2015 to 2022, where I calculated any Generation Resource Rating Test Failure Charges for resources that failed a test and did not have the corresponding derate. Therefore, I have been involved in each step of determining the final charges to apply to resources with a testing shortfall.

I. PURPOSE OF AFFIDAVIT

2. The purpose of my affidavit is to:
- provide a chronological order of relevant events, including the dates when the relevant revisions to PJM’s Open Access Transmission Tariff (“Tariff”) and PJM Manuals became effective, when the capacity market auctions for the 2025/2026 Delivery Year occurred, and when Complainants’ Generation Capacity Resources incurred Test Failure Charges;
 - walk through two examples demonstrating how the rules applicable through the 2024/2025 Delivery Year applies to a hypothetical Generation Capacity Resource that is on outage (Table 1), and how the rules applicable beginning

with the 2025/2026 Delivery Year applies to that same hypothetical Resource (Table 2);

- provide a step-by-step explanation of how Test Failure Charges were calculated through the 2024/2025 Delivery Year; and
- introduce the following exhibits attached to my affidavit:
 - Exhibit A: Notice to LS Power of 2025/2026 Delivery Year Summer Season Test Failure Charge Estimates and Subsequent Correspondence Between LS Power and PJM
 - Exhibit B: Notice of Summer Season 2025/2026 Delivery Year Test Failure Charge Estimates and Subsequent Correspondence Between Richland-Stryker and PJM

II. TIMELINE OF TEST FAILURE CHARGES INCURRED, 2025/2026 DELIVERY YEAR FORWARD AUCTIONS, AND RELEVANT TARIFF FILINGS AND MANUAL CHANGES

3. The below timeline is a chronology of the relevant events from March 2023 through the present.

4. Calendar Year 2023

- March 2023-September 2023: Stakeholder Process (CIFP) – Tariff Changes Addressing Test Failure Charges and Other Amendments to Capacity Market Rules (2023 Tariff Revisions)
- October 13, 2023: PJM’s 2023 Tariff Filing in Docket No. ER24-99-000 Revising Capacity Market Rules Including Revision to Test Failure Charge provisions
- January 30, 2024: PJM’s 2023 Tariff Filing in Docket No. ER24-99-000 Accepted by the Commission, effective December 12, 2023

5. Calendar Year 2024

- June 27, 2024: Effective Date of:
 - Revisions/Retirement of Testing Failure provisions in PJM Manual 21 (rev. 19)
 - PJM Manual 21B (rev. 0) replacing Manual 21
 - PJM Manual 18 (rev. 59)
- July 2024: Base Residual Auction (“BRA”) for the 2025/2026 Delivery Year

- July 30, 2024: BRA Results for the 2025/2026 Delivery Year

6. Calendar Year 2025

- February 2025: Incremental Auction for the 2025/2026 Delivery Year
- March 11, 2025: Incremental Auction Results for the 2025/2026 Delivery Year
- June 1, 2025: Manual 18 (rev. 60) Effective Date
- June 1, 2025: First Day of the 2025/2026 Delivery Year
- June 1, 2025 – August 31, 2025: 2025/2026 Delivery Year Summer Test Period; Complainants incur Test Failure Charges
- September 1 – October 31, 2025: 2025/2026 Delivery Year Summer Season for Calendar Year 2025; Complainants incur Test Failure Charges
- 2025/2026 Winter Season: Generation Capacity Resources return online and provide winter capability tests

7. Calendar Year 2026

- January – April, 2026: Notices of Test Failure Charge estimates and subsequent correspondences between Complainants and PJM (Exhs. A and B)
- May 1-31, 2026: 2025/2026 Delivery Year Summer Season for Calendar Year 2026; last month in which out of period summer season testing may occur for the 2025/2026 Delivery Year
- May 31, 2026: Last Day of the 2025/2026 Delivery Year

III. APPLICATION OF RULES TO HYPOTHETICAL GENERATION CAPACITY RESOURCE ON OUTAGE

8. The below examples apply the rules applicable through the 2024/2025 Delivery Year and the rules applicable starting with the 2025/2026 Delivery Year to a hypothetical Generation Capacity Resource that is on outage for all or part of the summer season in a Delivery Year.

9. The hypothetical resource has a Committed ICAP of 90 MW and a ICAP Rating of 100 MW. “GO” refers to the Generation Capacity Resource owner.

A. Application of rules in place through 2024/2025 Delivery Year (Table 1)

10. Table 1, below, applies the rules in place through the 2024/2025 Delivery Year to the hypothetical Generation Capacity Resource.

11. In column 1 of Table 1, the Generation Capacity Resource is on outage for the entire 2024/2025 Delivery Year summer season, i.e., from June 1, 2024, through October 31, 2024, and from May 1 to May 31, 2025. However, the GO enters the outage into Generator Availability Data System “(GADS)”. Thus, under the Manual 21 rules in effect through the 2024/2025 Delivery Year, even though the resource was on outage, the Generation Capacity Resource reflects a test shortfall of 0 MW ICAP. The outage in GADS zeros out the test shortfall. Therefore, the resource does not incur a Test Failure Charge.
12. In column 2 of Table 1, the only difference from the example in column 1 is that PJM rather than the GO enters the outage into GADS. Under the Manual 21 rules, because PJM, rather than the GO, has entered the outage into GADS, the outage MW are not added back. Thus, the Generation Capacity Resource reflects a test shortfall of 90 MW ICAP. The resource incurs Test Failure Charges based on the test shortfall.
13. In column 3 of Table 1, the GO has entered an outage beginning June 1, 2024, into GADS. On October 1, 2024, the Generation Capacity Resource undergoes out of period summer season capability testing and successfully demonstrates a summer test capability of 100 MW. The out of period test ends the outage in GADS prospectively as of October 1, 2024, but the out of period test does not apply retroactively to remove the outage in GADS with the beginning of the 2024/2025 Delivery Year summer season. Thus, the out of period test conducted on October 1, 2024, does not have the effect of retroactively removing the outage from GADS for the period beginning June 1, 2024, and ending October 1, 2024.
14. In addition, under the rules applicable through the 2024/2025 Delivery Year, the out of period test end the outage in GADS but does not retroactively or prospectively cure any test shortfalls that gave rise to the Test Failure Charges.
15. In column 4 of Table 1, PJM has entered an outage beginning June 1, 2024, into GADS in column 4 of Table 1. Because PJM, rather than the Generation Owner, entered the outage, the Generation Capacity Resource reflects a test shortfall of 90 MW ICAP. On October 1, 2024, the Generation Capacity Resource undergoes out of period summer season capability testing and successfully demonstrates a test capability of 100 MW. The effect of the out of period test is to remove the outage from the GADS system as of October 1, 2024. The tested quantity thus impacts the EFORd, which ultimately impacts the capacity revenues that a Resource may be eligible for in the following Delivery Year.
16. Under the rules in place through the 2024/2025 Delivery Year, an out of period test cannot cure the test shortfall and the resulting Test Failure Charge, which continues to apply through the entire 2024/2025 summer season, including from October 1, 2024 through October 31, 2024 and from May 1, 2025 through May 31, 2025, because the Generation Capacity Resource failed to report the Resource’s outage MW into GADS.

Table 1. Rules Applicable to Test Failure Charges Before the 2025/2026 Delivery Year

	2024/2025			
	No Test Outage Submitted by GO No Out Of Period	No Test Outage Submitted by PJM No Out Of Period	No Test Outage Submitted by GO Submits Out Of Period	No Test Outage Submitted by PJM Submits Out Of Period
ICAP Rating	100	100	100	100
Committed ICAP	90	90	90	90
Net Test Capability MW	0	0	0	0
Outage MW	100	100	100	100
Outage Start	6/1/2024	6/1/2024	6/1/2024	6/1/2024
Outage End	5/31/2025	5/31/2025	10/1/2024	10/1/2024
Outage Entered by	GO	PJM	GO	PJM
Out of Period Test Date			10/1/2024	10/1/2024
Out of Period Test MW			100	100
Gen Rating Test Shortfall MW ICAP	0	90	0	90

B. Application of rules in place beginning with the 2025/2026 Delivery Year

17. Table 2 demonstrates how the rules in place beginning with the 2025/2026 Delivery Year would apply to the same hypothetical Generation Capacity Resource.
18. In column 1 of Table 2, the hypothetical Generation Capacity Resource is on outage for the entire 2025/2026 Delivery Year summer season, i.e. from June 1, 2025, through October 31, 2025, and from May 1 to May 31, 2026. In this example, the rules applicable beginning with the 2025/2026 Delivery Year are applied to the hypothetical resource. The resource does not submit any capability test—whether out of period or in period—at any point during the summer season for the 2025/2026 Delivery Year. Thus, under the new rules, the test shortfall is 90 MW for each day of the summer season,¹ and thus Test Failure Charges are assessed for each day of the summer season accordingly.
19. In column 2 of Table 2, the hypothetical Generation Capacity Resources successfully completes an out of period summer season test on October 1, 2025. Thus, as of the completion of the test, the test shortfall will be 0 MW, and no Test Failure Charges will apply prospectively through the remainder of the summer season—i.e., from October 1, 2025, through October 31, 2025, and from May 1, 2026, through May 31, 2026. However, the completion of the out of period test does not excuse test shortfalls and resulting Test Failure Charges from earlier in the summer season—i.e., from June 1, 2025, through September 30, 2025.

¹ The commitment did not change at any point in this example, but Resources have the ability to replace commitments prospectively and thus reduce the charge going forward.

**Table 2. Rules Applicable to Test Failure Charges
Beginning with the 2025/2026 Delivery Year**

	2025/2026	
	No Test No Out Of Period	No Test Submits Out Of Period
ICAP Rating	100	100
Committed ICAP	90	90
Net Test Capability MW	0	0
Outage MW	100	100
Outage Start	6/1/2025	6/1/2025
Outage End	5/31/2026	10/1/2025
Out of Period Test Date		10/1/2025
Out of Period Test MW		100
Gen Rating Test Shortfall MW ICAP	90	6/1/2025 - 9/30/2025: 90 10/1/2025 - 10/31/2025: 0 5/1/2026 - 5/31/2026: 0

IV. EXAMPLE OF HOW TEST FAILURE CHARGES WERE CALCULATED THROUGH THE 2024/2025 DELIVERY YEAR

20. Below, I walk through, in more granular detail, the steps taken to calculate Test Failure Charges when an Owner of a Generation Capacity Resource reports an outage into GADS.

21. In this example, the Owner of a Generation Capacity Resource with a 50 MW average committed ICAP attempts, for the first time in the summer season, a capability test on July 1, 2023, and experiences a full forced outage. The full forced outage extends from July 1, 2023, through October 15, 2023.

- The Owner submits a 50 MW outage as of July 1, 2023, into GADS.
- While the Generation Capacity Resource is on outage, the resource’s highest tested ICAP is zero MW.
- Any testing shortfall is applied to the entire summer season, along with a full outage of 50 MW in GADS submitted by the Owner, beginning June 1, 2023.
- The zero MW test result is offset by an “add-back” of the GADS Outage MW:

$$\text{Average Committed ICAP} - (\text{Highest Tested ICAP} + \text{GADS Derate/Outage MW})$$

$$= \text{MW shortfall for which Test Failure Charges will be assessed}$$

$$50 \text{ MW} - (0 \text{ MW} + 50 \text{ MW})$$

$$= 0 \text{ MW shortfall for which Test Failure Charges will be assessed}$$

Test Failure Charges of \$0.00

- GADS Outage MW is reflected in the EFORD, a historical twelve-month trailing metric, which reduces UCAP for the following Delivery Year:

$$\text{UCAP} = \text{ICAP} \times (1 - \text{EFORD})$$

- Because the Owner entered the outage MW into GADS, the Generation Capacity Resource, despite having a zero MW test result beginning June 1, 2023, is excused from Test Failure Charges. As a result, the resource avoids Test Failure Charges for the summer season beginning June 1, 2023.
- On October 15, 2023, the Generation Capacity Resource completes out of period testing at 7 PM. The Owner submits a successful summer season out of period test.
- The out of period test ends the outage in GADS, beginning as of the end of the test at 7 PM on October 15, 2023. This means that, in GADS, the Generation Capacity Resource is no longer shown to be on forced outage prospectively as of 7 PM on October 15, 2023.
- The out of period test has no impact on the Test Failure Charges since the excusal from the Test Failure Charge was a result of entering a derate into GADS.

**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.)	
)	
Richland-Stryker Generation HoldCo LLC)	
Complainant,)	
v.)	Docket No. EL26-59-000
)	(Unconsolidated)
)	
PJM Interconnection, L.L.C.,)	
Respondent.)	

VERIFICATION

I, Joshua Bruno, pursuant to 28 U.S.C. § 1746, state, under penalty of perjury, that I am the Joshua Bruno referred to in the foregoing “Affidavit of Joshua Bruno, on Behalf of PJM Interconnection, L.L.C.,” and that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

/s/ Joshua Bruno
Joshua Bruno

Executed on: May 7, 2026

Exhibit A

**Email to LS Power,
Notice of Summer Season Test Failure Charges and
Subsequent Correspondence Between LS Power and PJM**

From: Boyd, Emily <Emily.Boyd@pjm.com>
Sent: Tuesday, February 17, 2026 9:17 AM
To: Dan Pierpont; Rich, Edward III
Cc: GADS Support; RPM Hotline; Nathan Dixon; Marjorie Philips
Subject: RE: IMPORTANT - Information Regarding 2025/2026 Generator Rating Test Failure Charges - Summer Portion

Hi Dan,

Thanks for reaching out. Just wanted to clarify that if you complete an out of period test on [REDACTED], it would alleviate charges incurred for the month of May after the test is completed, assuming the test demonstrates full capacity of the unit. This would not alleviate the charge incurred between June 1 and November 1. Please see below from Manual 18, Section 8.5.2. The charge is applicable on a daily basis until the capacity is demonstrated.

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.**

Thanks,

Emily Boyd
Analyst II, Resource Adequacy Planning

Emily.Boyd@pjm.com
PJM Interconnection | 2750 Monroe Blvd. | Audubon, PA 19403

From: Dan Pierpont <DPierpont@lspower.com>
Sent: Friday, February 13, 2026 3:59 PM
To: Rich, Edward III <Edward.Rich@pjm.com>
Cc: GADS Support <gadssupport@pjm.com>; RPM Hotline <rpm_hotline@pjm.com>; Nathan Dixon <NDixon@lspower.com>; Marjorie Philips <MPhilips@lspower.com>
Subject: RE: IMPORTANT - Information Regarding 2025/2026 Generator Rating Test Failure Charges - Summer Portion

! External Email! Think before clicking links or attachments.

Contact the Support Center immediately if you click on a link or open an attachment that appears malicious.

Dear Ed,

LS Power disputes the Generator Rating Test Failure Charges transmitted to us from PJM on [REDACTED]. LS Power plans to complete an out-of-period test on [REDACTED] or as soon thereafter as possible. Under PJM Manual 21B, § 10.3(7), and in accordance with PJM's historical practice, such an out-of-period test will relieve LS Power from PJM's [REDACTED] charge allegedly incurred up to November 1, 2025. Additionally, the Summer period between May 1, 2026, and June 1, 2026, has not occurred. Accordingly, LS Power is not subject to any charges occurring between those dates, and PJM's charge assumes that LS Power will not perform a successful test in [REDACTED].

We hope to resolve this without recourse to other means. We look forward to a response at your earliest convenience.

Sincerely,
Dan Pierpont

Dan Pierpont

Vice President

dpierpont@lspower.com

732 859 2439



From: Rich, Edward III <Edward.Rich@pjm.com>

Sent: [REDACTED]

To: Dan Pierpont <DPierpont@lspower.com>

Cc: GADS Support <gadssupport@pjm.com>; RPM Hotline <rpm_hotline@pjm.com>

Subject: *ext* IMPORTANT - Information Regarding 2025/2026 Generator Rating Test Failure Charges - Summer Portion

CAUTION: This email originated from outside of the organization. Do **not** click links or open attachments unless you recognize the sender and know the content is safe.

PJM has completed their evaluation of the Summer Test for all generation, and pursuant to the OATT, Attachment DD, Section 8.2, PJM has calculated the preliminary summer portion of the 2025/2026 Generator Rating Test Failure Charges. Please note the method of calculating the Generator Rating Test Failure Charges has changed for 2025/2026 Delivery Year and for future Delivery Years.

The following resources were found to have under complied with the summer test, and the following amounts are expected to be billed in the June Monthly Bill issued in July of 2026. These charges are based on the commitment MWs as of December 2025 and small adjustments may occur depending on changes to commitment values between now and the end of the delivery year.

ParticipantName	ResourceName	EffectiveDay	TerminationDay	Generator Rating Test Failure Charges
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

If you have any questions regarding the test data and procedures used, please contact the Resource Adequacy Planning Department (cc'd on this email). For any questions regarding the Penalty rate or penalty charges, please contact the RPM Hotline (cc'd on this email).

Regards,

Ed Rich
Sr. Analyst II
Capacity Market Operations

RPM Hotline: rpm_hotline@pjm.com
PJM Interconnection | 2750 Monroe Blvd. | Audubon, PA 19403

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PUBLIC

Exhibit B

**Email to Richland-Stryker,
Notice of Summer Season Test Failure Charges and
Subsequent Correspondence Between Richland-Stryker and
PJM**

PUBLIC

From: [Carla Banks](#)
To: [Rich, Edward III](#)
Cc: [GADS Support](#); [RPM Hotline](#)
Subject: RE: IMPORTANT - Information Regarding 2025/2026 Generator Rating Test Failure Charges - Summer Portion
Date: Thursday, April 2, 2026 5:36:27 PM

External Email! Think before clicking links or attachments.
Contact the Support Center immediately if you click on a link or open an attachment that appears malicious.

Dear Ed and RPM team,


Rockland Capital disputes a portion of the Generator Rating Test Failure Charges transmitted to us from PJM on January 20, 2026. Specifically, Rockland Capital challenges the penalty assessed to Richland Units [REDACTED]. Rockland Capital plans to complete an out-of-period test on [REDACTED], or as soon thereafter as possible. Under PJM Manual 21B, § 10.3(7), and in accordance with PJM’s historical practice, such an out-of-period test will fully relieve Rockland Capital from the penalties assessed to Richland Units [REDACTED].

Additionally, PJM’s penalties include the Summer period between May 1, 2026, and June 1, 2026. That period has not yet occurred. Moreover, Rockland Capital intends to perform an out-of-period capacity test on [REDACTED]. Accordingly, Rockland Capital is not subject to any charges occurring between May 1, 2026, and June 1, 2026.

We hope to resolve this without recourse to other means. We look forward to a response at your earliest convenience.

Sincerely,
Carla Banks

CARLA D. BANKS

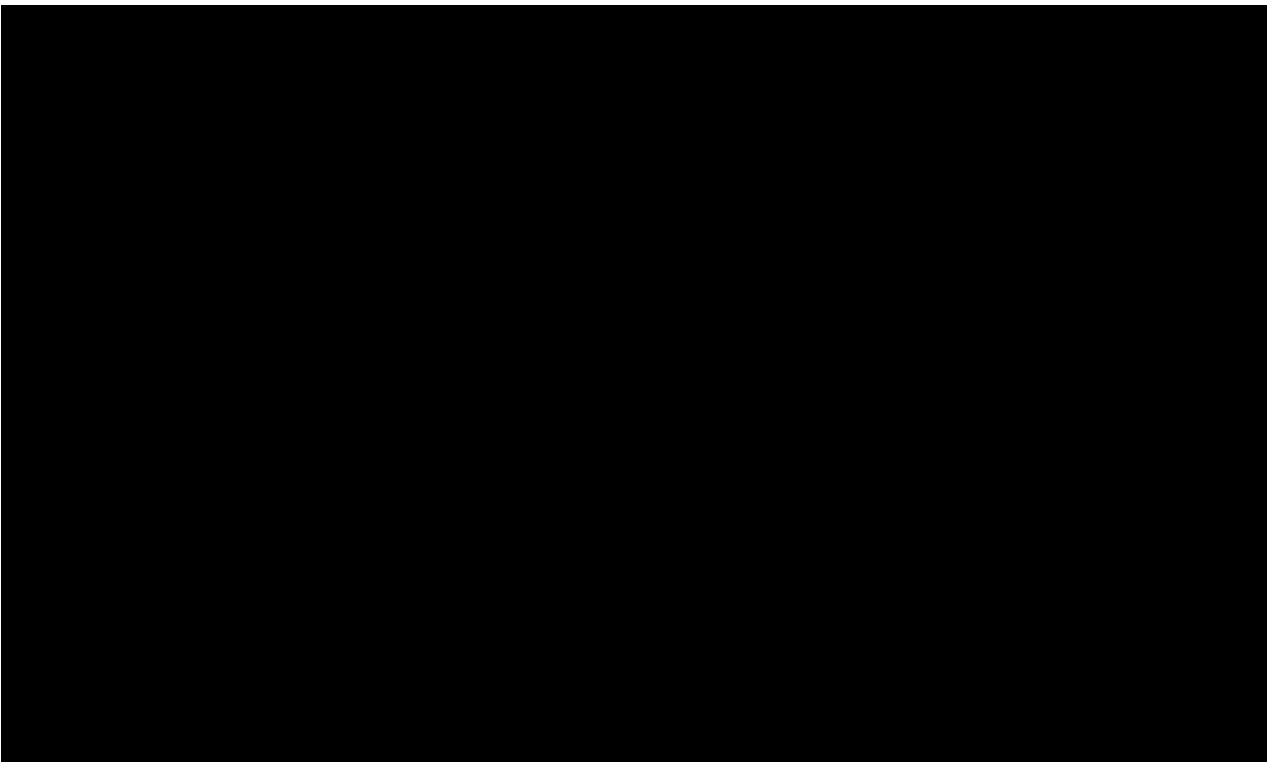

24 WATERWAY AVENUE, SUITE 400, THE WOODLANDS, TX 77380
T: (281) 863-9013 | M: (713) 898-0530 | F: (281) 863-9063
CARLA.BANKS@ROCKLANDCAPITAL.COM | WWW.ROCKLANDCAPITAL.COM

From: Rich, Edward III <Edward.Rich@pjm.com>
Sent: Tuesday, January 20, 2026 10:50 AM
To: Carla Banks <carla.banks@rocklandcapital.com>
Cc: GADS Support <gadssupport@pjm.com>; RPM Hotline <rpm_hotline@pjm.com>
Subject: IMPORTANT - Information Regarding 2025/2026 Generator Rating Test Failure Charges - Summer Portion

PJM has completed their evaluation of the Summer Test for all generation, and pursuant to the OATT, Attachment DD, Section 8.2, PJM has calculated the preliminary summer portion of the 2025/2026 Generator Rating Test Failure Charges. Please note the method of calculating the Generator Rating Test Failure Charges has changed for 2025/2026 Delivery Year and for future Delivery Years.

The following resources were found to have under complied with the summer test, and the following amounts are expected to be billed in the June Monthly Bill issued in July of 2026. These charges are based on the commitment MWs as of December 2025 and small adjustments may occur depending on changes to commitment values between now and the end of the delivery year.

ParticipantName	ResourceName	EffectiveDay	TerminationDay	Generator Rating Test Failure Charges



If you have any questions regarding the test data and procedures used, please contact the Resource Adequacy Planning Department (cc'd on this email). For any questions regarding the Penalty rate or penalty charges, please contact the RPM Hotline (cc'd on this email).

Regards,

Ed Rich
Sr. Analyst II
Capacity Market Operations

RPM Hotline: rpm_hotline@pjm.com
PJM Interconnection | 2750 Monroe Blvd. | Audubon, PA 19403

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CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 7th day of May 2026.

/s/ Vivian W. Chum

Vivian W. Chum

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