

194 FERC ¶ 61,095  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;  
David Rosner, Lindsay S. See,  
Judy W. Chang, and David LaCerte.

PJM Interconnection, L.L.C.

Docket Nos. EL19-58-017  
ER19-1486-005

ORDER ON REMAND

(Issued February 5, 2026)

1. This case is before the Commission on remand from the United States Court of Appeals for the Sixth Circuit (Sixth Circuit).<sup>1</sup> The Sixth Circuit partially vacated and remanded a Commission order on rehearing of a Commission order on voluntary remand,<sup>2</sup> which addressed a prior set of Commission orders pertaining to PJM Interconnection, L.L.C.'s (PJM) Operating Reserve Demand Curves (ORDCs).<sup>3</sup> The prior set of Commission orders had been pending on appeal in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The Sixth Circuit found that the then-Chairman exceeded his authority by unilaterally seeking voluntary remand of the Original ORDC Orders from the D.C. Circuit in the first instance. The Sixth Circuit vacated the part of the Voluntary Remand Rehearing Order where the Commission found the Chairman had unilateral authority to seek voluntary remand of the Original ORDC

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<sup>1</sup> *Elec. Power Supply Ass'n v. FERC*, 89 F.4th 546 (6th Cir. 2023) (Sixth Circuit Opinion).

<sup>2</sup> *PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,209 (2021) (Voluntary Remand Order), *order on reh'g*, 180 FERC ¶ 61,051 (2022) (Voluntary Remand Rehearing Order) (together, Voluntary Remand Orders). Capitalized terms that are not defined in this order have the meaning specified in the PJM Open Access Transmission Tariff (Tariff) and the Amended and Restated Operating Agreement of PJM (Operating Agreement).

<sup>3</sup> *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,153 (May 2020 Order), *order on reh'g*, 173 FERC ¶ 61,123 (2020) (November 2020 Rehearing Order). The Commission accepted PJM's filings in compliance with the May 2020 Order on November 12, 2020. *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134 (2020) (November 2020 Compliance Order), *order on reh'g*, 174 FERC ¶ 61,180 (2021) (March 2021 Compliance Rehearing Order). These four orders, collectively, are referred to as the Original ORDC Orders.

Orders, and the court remanded the matter to the Commission “to determine what, if anything, can or should be done about this ultra vires action.”<sup>4</sup> The Sixth Circuit left the rest of the challenged Voluntary Remand Orders in place. As discussed below, we do not disturb the non-vacated portions of the Voluntary Remand Order.

## **I. Background and Procedural History**

### **A. PJM’s Filing and Original ORDC Orders**

2. On March 29, 2019, PJM submitted filings pursuant to Federal Power Act (FPA) sections 205 and 206<sup>5</sup> asserting that the reserve market provisions of its Tariff and Operating Agreement are unjust and unreasonable and proposing revisions to the Tariff and Operating Agreement as a just and reasonable replacement rate.<sup>6</sup> In its filing, PJM explained that its reserve requirements, and the procedures and products used to meet those requirements, had evolved over time and that purported flaws had developed, which PJM asserted were leading to unjust and unreasonable, and unduly discriminatory and preferential, rates.<sup>7</sup> In particular, PJM contended that: (1) its then-effective ORDCs failed to address uncertainties around load, wind generation, and solar generation forecasts, and unanticipated supply resource outages, which require PJM operators to frequently bias the load forecasts used to schedule resources and make out-of-market generator commitments not reflected in market prices to preserve reliability; (2) reserve market clearing prices did not reflect the operational value of flexibility; (3) Reserve Penalty Factors of \$850/MWh are below the legitimate opportunity cost some resources could face in shortage or near-shortage conditions, as a result of the \$2,000/MWh energy offer price cap; (4) the subdivision of its Synchronized Reserve product definition into

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<sup>4</sup> Sixth Circuit Opinion, 89 F.4th at 550; *see also id.* at 557 (“We leave it to the Commission to decide, in the first instance what, if anything, it could or would have done differently in response to this legal mistake.”).

<sup>5</sup> 16 U.S.C. §§ 824d-824e.

<sup>6</sup> May 2020 Order, 171 FERC ¶ 61,153 at P 1. PJM filed the proposed revisions to the Operating Agreement pursuant to section 206 of the FPA, in Docket No. EL19-58-000, and filed pursuant to section 205 to include the same revisions to its Tariff, Attachment K-Appendix, which merely repeats certain provisions of the Operating Agreement, in Docket No. ER19-1486-000. PJM Transmittal at 1 n.1. All citations to the “PJM Transmittal” herein, unless otherwise noted, refer to the transmittal filed in Docket No. EL19-58-000, which, aside from the cover letter and Attachments A and B, is identical to the transmittal filed in Docket No. ER19-1486-000.

<sup>7</sup> PJM Transmittal at 2-3.

Tier 1 and Tier 2<sup>8</sup> reserve products with disparate rules for commitment, compensation, and non-performance had led to under-compensation and poor resource performance; and (5) its reserve products were misaligned between the day-ahead and real-time markets, leading to inadequate procurement of forward reserves and inefficient commitment and pricing outcomes.<sup>9</sup>

3. PJM proposed a replacement rate design that would: (1) establish higher Reserve Penalty Factors of \$2,000/MWh to align with the maximum price-setting energy offer cap of \$2,000/MWh; (2) revise the shape of the ORDCs to be based on a probabilistic calculation of the risk of a reserve shortage due to operational uncertainties (i.e., replacing the stepped shape of the ORDCs with a downward-sloping curve); (3) consolidate the Tier 1 and Tier 2 reserve products into one Synchronized Reserve product with uniform commitment, compensation, and non-performance penalty structures; and (4) align reserve procurement in the day-ahead and real-time markets by establishing two 10-minute reserve requirements (Synchronized Reserve Requirement and Primary Reserve Requirement) and one 30-minute reserve requirement (30-minute Reserve Requirement) in each market.<sup>10</sup> PJM stated that, based on simulations, it estimated the annual increase in energy and reserve market billing from its proposal would be approximately \$556 million.<sup>11</sup>

4. In the May 2020 Order, the Commission found that PJM had demonstrated that its then-existing reserve market design was no longer just and reasonable.<sup>12</sup> The Commission largely adopted PJM's proposed revisions as the just and reasonable replacement rate, subject to certain modifications in a compliance filing.<sup>13</sup> The Commission also found that the adoption of the replacement rate rendered the

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<sup>8</sup> Tier 1 reserves represented the headroom on online resources that could be converted to energy within 10 minutes based on the resources' current dispatch point and ramp rate. Tier 2 reserves were provided by resources that, absent the need for additional reserves, would be dispatched to their profit-maximizing output for energy.

<sup>9</sup> May 2020 Order, 171 FERC ¶ 61,153 at P 8; November 2020 Rehearing Order, 173 FERC ¶ 61,123 at P 4.

<sup>10</sup> May 2020 Order, 171 FERC ¶ 61,153 at P 9; November 2020 Rehearing Order, 173 FERC ¶ 61,123 at P 5.

<sup>11</sup> PJM Transmittal at 114 (citing *id.* at attach. D, Affidavit of Adam Keech on Behalf of PJM ¶ 46).

<sup>12</sup> May 2020 Order, 171 FERC ¶ 61,153 at PP 1-2.

<sup>13</sup> *Id.* PP 2, 8, 22, 24, 74, 115-121, 153, 219-225, 254-256, 271-278.

backward-looking energy and ancillary services offset (E&AS Offset) aspect of PJM's Reliability Pricing Model capacity market unjust and unreasonable.<sup>14</sup> The Commission established a forward-looking E&AS Offset as the just and reasonable replacement rate and directed PJM to submit a compliance filing accordingly.<sup>15</sup>

5. The November 2020 Rehearing Order sustained the result of the May 2020 Order. In the November 2020 Compliance Order, the Commission accepted PJM's Tariff and Operating Agreement revisions regarding the reserve market reforms, effective May 1, 2022, and the revisions to incorporate a forward-looking E&AS Offset, effective November 12, 2020.<sup>16</sup> As part of a forward-looking E&AS Offset, the Commission accepted PJM's proposal to use a 10% adder in modeled offers for certain resources, which carried forward then-current assumptions used to develop the E&AS Offset that the Commission previously found just and reasonable.<sup>17</sup> The Commission stated that, at that time, the reference resource used in the development of PJM's Variable Resource Requirement (VRR) Curve included a 10% cost adder.<sup>18</sup>

**B. Delaware Division of the Public Advocate v. FERC<sup>19</sup>**

6. On July 9, 2021, the D.C. Circuit issued *Delaware Division*, granting in part and denying in part a petition for review of the Commission's orders approving proposed revisions to PJM's VRR Curve, the demand curve used in its Reliability Pricing Model capacity market. The D.C. Circuit granted the petition on one issue: the Commission's acceptance of a 10% adder in the modeled energy market offers of the reference resource used to establish the VRR Curve. The D.C. Circuit determined that "the Commission's approval of the 10% adder as just and reasonable on this record is arbitrary and

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<sup>14</sup> *Id.* PP 2, 308.

<sup>15</sup> *Id.* PP 2, 308, 310.

<sup>16</sup> November 2020 Compliance Order, 173 FERC ¶ 61,134 at P 3.

<sup>17</sup> *Id.* PP 172, 180-181; PJM, Intra-PJM Tariffs, O-P-Q, OATT Definitions – O – P - Q (25.0.0) (Docket No. EL 19-58-003).

<sup>18</sup> *Id.* P 180.

<sup>19</sup> 3 F.4th 461 (D.C. Cir. 2021) (*Delaware Division*).

capricious,”<sup>20</sup> and remanded that issue to the Commission “for reassessment of the 10% adder without vacatur.”<sup>21</sup>

**C. D.C. Circuit Proceeding and Motion for Voluntary Remand**

7. Parties sought review of the Original ORDC Orders in the D.C. Circuit. On August 13, 2021, after the Commission filed the agency record but prior to briefs being filed with the D.C. Circuit, the Commission submitted an unopposed motion for voluntary remand of the agency record in the consolidated appeals of the Commission’s Original ORDC Orders to permit the Commission to further consider, and to issue a further order on, the matters set for judicial review.<sup>22</sup> In the Remand Motion, the Commission stated that further review of the orders, under the leadership of a new Chairman, motivated a reconsideration of the Commission’s prior determination. The Commission also stated that the D.C. Circuit’s decision in *Delaware Division*,<sup>23</sup> in which it remanded the Commission’s application of a 10% adder to estimates of hypothetical generation resources’ energy offers in PJM, could have bearing on the Original ORDC Orders, which also involved application of a 10% adder for certain resources in PJM as part of the forward-looking E&AS Offset.<sup>24</sup>

8. On August 23, 2021, the D.C. Circuit issued an order granting the Remand Motion and returning the record to the Commission for further proceedings consistent with its Remand Motion.<sup>25</sup>

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<sup>20</sup> *Id.* at 469.

<sup>21</sup> *Id.*

<sup>22</sup> *Am. Mun. Power, Inc. v. FERC*, Motion for Voluntary Remand, No. 20-1372 (D.C. Cir. 2021) (Remand Motion).

<sup>23</sup> 3 F.4th 461.

<sup>24</sup> Remand Motion at 2-3.

<sup>25</sup> *Am. Mun. Power, Inc. v. FERC*, No. 20-1372 (D.C. Cir. 2021) (Order Granting Remand Motion) (order granting unopposed motion for voluntary remand). The proceeding at the D.C. Circuit is currently in abeyance pending the outcome of the remand from the Sixth Circuit, with periodic status reports. *Am. Mun. Power, Inc. v. FERC*, No. 20-1372 (D.C. Cir. 2024).

**D. Voluntary Remand Orders**

9. In the Voluntary Remand Order, the Commission affirmed in part and reversed in part the Original ORDC Orders.<sup>26</sup> The Commission found that PJM had met its burden of proof under FPA section 206 to show that certain aspects of its Tariff had become unjust and unreasonable, but failed to meet that burden with respect to other aspects of its Tariff. In particular, the Commission found that PJM had met its burden of proof under FPA section 206 to establish that the bifurcation of Tier 1 and Tier 2 Synchronized Reserve products, misalignment of the day-ahead and real-time reserve markets, and infirmities in provisions regarding resources' reserve capability and offer rules had rendered the Tariff unjust and unreasonable.<sup>27</sup>

10. The Commission further found, however, that PJM failed to meet its FPA section 206 burden to show that its Reserve Penalty Factors and stepped ORDCs that were effective at the time of PJM's original filing were unjust and unreasonable.<sup>28</sup>

11. As a result, the Commission also reversed its determination that the prior backward-looking E&AS Offset was unjust and unreasonable. The Commission explained that its findings regarding the E&AS Offset were grounded in the determination that the Reserve Penalty Factors and ORDCs were unjust and unreasonable and, without those findings, it lacked a basis under the FPA to require PJM to adopt a forward-looking E&AS Offset.<sup>29</sup> The Commission directed PJM to restore its Tariff provisions related to its prior backward-looking E&AS Offset, effective November 12, 2020.<sup>30</sup>

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<sup>26</sup> Voluntary Remand Order, 177 FERC ¶ 61,209 at P 2.

<sup>27</sup> *Id.* PP 2, 24.

<sup>28</sup> *Id.* PP 2, 25.

<sup>29</sup> *Id.* P 25; *see also id.* P 46 (“[W]e are not finding that a forward-looking E&AS offset is unjust and unreasonable or that PJM cannot propose a forward-looking E&AS offset.”).

<sup>30</sup> In a subsequent FPA section 205 proceeding, in Docket No. ER22-2984, the Commission accepted PJM's proposal to use a forward-looking E&AS Offset starting with the 2026/2027 delivery year. *See PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,073, at P 103 (2023).

12. In the Voluntary Remand Rehearing Order, the Commission reached the same conclusions.<sup>31</sup> Most relevant here, the Commission rejected challenges to the then-Chairman's authority to unilaterally have sought voluntary remand from the D.C. Circuit, on the basis that the decision was consistent with Commission practice as well as the Chairman's authority to oversee "the executive and administrative operation of the Commission" under the Department of Energy Organization Act.<sup>32</sup> In particular, the Commission explained that: (1) the Voluntary Remand Order was the subject of standard Commission voting procedures and supported by a majority of Commissioners;<sup>33</sup> (2) "[t]he Commission speaks through its orders," which reflect a majority vote of a quorum of the Commission;<sup>34</sup> (3) the Order Granting Remand Motion returned jurisdiction to the Commission to reconsider and, as appropriate, improve the decision;<sup>35</sup> and (4) the Voluntary Remand Order reflected a substantive policy and regulatory determination to affirm in part, and reverse in part, the Original ORDC Orders, duly voted by a quorum of the Commission.<sup>36</sup> The Commission also explained that, on January 20, 2022, in Docket No. ER19-105, the Commission directed PJM to remove the 10% adder from the E&AS Offset used to determine the VRR Curve for the Base Residual Auction for the 2023/2024 delivery year and subsequent auctions.<sup>37</sup>

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<sup>31</sup> Voluntary Remand Rehearing Order, 180 FERC ¶ 61,051 at PP 3, 25-28.

<sup>32</sup> *Id.* PP 104-108 (citing 42 U.S.C. § 7171(c)).

<sup>33</sup> *Id.* P 104 (citing 42 U.S.C. § 7171(e) ("Actions of the Commission shall be determined by a majority vote of the members present.")).

<sup>34</sup> *Id.* P 106 (citing *Indianapolis Power & Light Co.*, 48 FERC ¶ 61,040, at 61,203 & n.29, *order on reh'g*, 49 FERC ¶ 61,328 (1989); 42 U.S.C. § 7171(e); *Entergy Servs., Inc.*, 119 FERC ¶ 61,187, at P 52 n.44 (2007), *order on reh'g*, 122 FERC ¶ 61,216 (2008); 16 U.S.C. § 824d(g)).

<sup>35</sup> *Id.* P 107 (noting that, as the Commission has done in other remand orders, in the Voluntary Remand Order the Commission continued to reach the same results on certain issues as the Original ORDC Orders (citing *ISO New England Inc.*, 155 FERC ¶ 61,023, at P 2 (2016); *Chehalis Power Generating, L.P.*, 145 FERC ¶ 61,052, at P 1 (2013); *ISO New Eng., Inc.*, 113 FERC ¶ 61,055, at P 1 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,302, at P 1 (2004); *Williston Basin Interstate Pipeline Co.*, 68 FERC ¶ 61,357, at 62,427-28 (1994))).

<sup>36</sup> *Id.* P 108.

<sup>37</sup> *Id.* P 96 & n.300 (citing *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,020, at PP 1, 20 (2022)).

## II. Sixth Circuit Opinion

13. On review in the Sixth Circuit, the court found that the then-Chairman exceeded his administrative authority by seeking voluntary remand without obtaining a quorum majority to do so.

14. The Sixth Circuit explained that the Commission “holds the power as a collective to ‘modify or set aside, in whole or part,’ an order while it retains the record” but “[o]nce the Commission has filed the record with the court of appeals, it no longer has the authority to take such action.”<sup>38</sup> The Sixth Circuit stated that “[a]t that point, the agency may initiate a proceeding to issue a new order [under FPA section 206], or it may request that the court remand the record to the Commission so that it may ‘reconsider, re-review, or modify the original agency decision.’”<sup>39</sup> The Sixth Circuit further explained that “[e]ither way, the agency may act only when a quorum majority supports the decision.”<sup>40</sup>

15. The Sixth Circuit found that the statutory context reinforces this conclusion. First, the Sixth Circuit stated that Congress provided five examples of the Commission’s operations that fall within the Chairman’s responsibilities and pertain to personnel or ministerial tasks, none of which hint at a unilateral authority to undo a Commission order by moving a court to remand an order to the agency.<sup>41</sup> Second, the Sixth Circuit concluded that a separate statutory authorization “cuts in the same direction.”<sup>42</sup>

16. The Sixth Circuit stated that these requirements make particular sense for a multimember commission, where “[q]uorum rules ensure that the action of a collective body represent its whole, not its individual members.”<sup>43</sup> Although Commissioners may work independently of the others, the Sixth Circuit reasoned that “none has the power to

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<sup>38</sup> Sixth Circuit Opinion, 89 F.4th at 553 (citations omitted).

<sup>39</sup> *Id.* at 553-54 (citing *Sierra Club v. EPA*, 60 F.3d 1008, 1021 (6th Cir. 2023) (quoting *Limnia Inc. v. U.S. Dep’t of Energy*, 857 F.3d 379, 387 (D.C. Cir. 2017 (Kavanaugh, J.))).

<sup>40</sup> *Id.* at 554 (citations omitted).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* (citations omitted).



countermand an action of the agency”<sup>44</sup> and “[o]nly authentic actions of the Commission itself count.”<sup>45</sup>

17. Noting that the then-Chairman’s request to the D.C. Circuit for remand stated that the agency requested the voluntary remand, the Sixth Circuit concluded that the then-Chairman had exceeded his authority by moving for remand on his own.<sup>46</sup> The Sixth Circuit stated that “substantive motions going to the enforceability of the order require actions of the Commission, not just the Chairman.”<sup>47</sup> The Sixth Circuit concluded that “[a]t a minimum, the Commission must support a decision about a motion to confess error, to reconsider an order, or to obtain a remand from a court to permit the agency to supplement or alter its decision—all matters about the enforceability or not of a pending order.”<sup>48</sup>

18. As to the remedy, the court vacated “the part of the Commission’s order on rehearing claiming the Chairman had this unilateral authority” to request voluntary remand, “leaving the rest of the challenged orders in place,” and remanded to the Commission “to decide in the first instance what, if anything, it could or would have done differently in response to this legal mistake.”<sup>49</sup>

19. The Sixth Circuit noted that, once the D.C. Circuit returned the record to the Commission, the Commission regained the authority to revise its original order at will and that the Sixth Circuit could not review the D.C. Circuit’s decision to remand the record to the Commission by recalling and vacating the remand order.<sup>50</sup> The Sixth Circuit also stated that “[b]ecause the record is silent on whether the Commission could or would have granted PJM’s request for a rehearing had it recognized that [then-]

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<sup>44</sup> *Id.* (citing 42 U.S.C. § 7171(b)-(c)).

<sup>45</sup> *Id.* (citing 42 U.S.C. § 7171(g); 18 C.F.R. § 375.102(b) (2025)); *see id.* at 554-55 (noting that “[j]ust as we colloquially ascribe the issuance of a rule or order to an agency and not its commissioners, we also typically ascribe a voluntary remand to that body ‘so that it could reconsider its decision’” (citations omitted)).

<sup>46</sup> *Id.* at 555.

<sup>47</sup> *Id.* at 557.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

Chairman Glick exceeded his authority, we must vacate that part of the rehearing order and remand for further deliberation.”<sup>51</sup>

### III. Commission Determination

20. Upon further consideration, and in light of the Sixth Circuit’s instruction to determine “what, if anything [the Commission] could or would have done differently in response to this legal mistake,”<sup>52</sup> for practical reasons discussed below, we do not disturb the outcome of the non-vacated portions of the Voluntary Remand Order, which remains in effect. Although the Sixth Circuit found that the requested remand was a legal mistake, the decision to remand the record to the Commission belonged to the D.C. Circuit and the Sixth Circuit could not review that decision itself.<sup>53</sup> After the D.C. Circuit returned the full record in the proceeding to the Commission’s jurisdiction, albeit because the then-Chairman erred in seeking a remand, a majority of the then Commission made its determination in the Voluntary Remand Orders under normal Commission procedures. At this stage, we will not disturb the outcome of the Commission’s denial of the request to reverse the Voluntary Remand Order on rehearing.<sup>54</sup> During the pendency of the instant proceeding, market conditions in PJM have changed significantly. PJM has also implemented several market design changes, which make it inadvisable on this record to reconsider whether the PJM Tariff in effect on March 29, 2019, the date PJM submitted its complaint and proposed revisions, was just and reasonable.<sup>55</sup> We also note that the Commission has accepted several significant changes to energy and reserve market designs since PJM initially filed its complaint in

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<sup>51</sup> *Id.*

<sup>52</sup> Sixth Circuit Opinion, 89 F.4th at 557.

<sup>53</sup> *Id.*

<sup>54</sup> Voluntary Remand Rehearing Order, 180 FERC ¶ 61,051.

<sup>55</sup> See, e.g., *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,244 (2020) (accepting, in part, PJM’s compliance filing implementing fast-start pricing reforms); *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,028 (2020) (accepting PJM’s proposal to align the dispatch and pricing intervals in its energy and reserve markets); cf. November 2020 Rehearing Order, 173 FERC ¶ 61,123 at P 57 (explaining that the market design flaws motivating PJM’s complaint include “the misalignment of dispatch and pricing intervals.”).

2019, which suggest that the record in this proceeding may be stale.<sup>56</sup> Further, we recognize that this drawn-out and procedurally unusual proceeding has left PJM and market participants with significant uncertainty. Accordingly, we address that uncertainty by clarifying that the Voluntary Remand Rehearing Order will remain operative unless and until the Commission revisits this matter in a future proceeding. We encourage PJM and others to consider proposing additional market design changes that account for current market needs and realities in such a proceeding.

The Commission orders:

The Commission does not disturb the outcome of the non-vacated portions of the Voluntary Remand Rehearing Order, as discussed in the body of this order.

By the Commission. Commissioner See is dissenting with a separate statement attached.

( S E A L )

Debbie-Anne A. Reese,  
Secretary.

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<sup>56</sup> See, e.g., *Sw. Power Pool, Inc.*, 180 FERC ¶ 61,088 (2022) (accepting a new Uncertainty Reserve product); *ISO New England Inc.*, 186 FERC ¶ 61,076 (2024) (accepting new “call option” reserve products).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, LLC

Docket No. EL19-58-017  
ER19-1486-005

(Issued February 5, 2026)

SEE, Commissioner, *dissenting*:

1. As the majority recognizes, the Sixth Circuit gave us broad authority to say “what, if anything, [the Commission] could or would have done” in response to a previous Chairman’s error in unilaterally asking the D.C. Circuit to remand the Commission’s Original ORDC Orders.<sup>1</sup> Because part of the Commission’s underlying orders in this matter include findings that the then-status quo was unjust and unreasonable,<sup>2</sup> closing out this matter, to my mind, includes assessing if the findings and replacement rate in the now-pending Voluntary Remand Orders are just and reasonable. But here we run into a problem: as the majority explains (and I agree), market conditions and PJM’s market design have changed significantly since the D.C. Circuit remand.

2. These new circumstances make it difficult to determine on this record what the right replacement rate is—the rate in the original order, the rate in the Voluntary Remand Order, or something else. In response to this dilemma, the majority opts to keep the Voluntary Remand Order in place. I see the appeal: Today’s order closes out this matter with minimal disruption because it leaves the now-status quo undisturbed and doesn’t wade into difficult merits questions. Nevertheless, letting the Voluntary Remand Order stand is an implicit judgment that it contains the appropriate replacement rate. I cannot responsibly make that finding on a record that doesn’t reflect current market realities. Instead, I would have sought supplemental briefing to give the Commission enough information to set a just and reasonable replacement rate or take other steps consistent with FPA section 206. For that reason, I respectfully dissent.

3. That said, I fully endorse the majority’s hope that closing this docket will give PJM and all market participants certainty about the Commission’s course—and thus spur

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<sup>1</sup> *Elec. Power Supply Ass’n v. FERC*, 89 F.4th 546, 557 (6th Cir. 2023).

<sup>2</sup> *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,153, PP 22, 24, 74 (May 2020 Order), *order on reh’g*, 173 FERC ¶ 61,123 (2020), *order on remand PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,209 (2021), *order on reh’g*, 180 FERC ¶ 61,051 (2022).

them forward to propose whatever reforms may be most appropriate to meet today's market needs. With any luck, today's order will be a bridge and not the destination.

For these reasons, I respectfully dissent.

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Lindsay S. See  
Commissioner