UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. ) Docket No. ER19-2417-000

MOTION FOR LEAVE TO ANSWER
AND ANSWER OF PJM INTERCONNECTION, L.L.C.

PJM Interconnection, L.L.C. ("PJM") submits this Motion for Leave to Answer and Answer to comments and protests to the proposed must offer exception revisions\(^1\) under Rules 212 and 213 of the Federal Energy Regulatory Commission ("Commission") Rules of Practice and Procedure.\(^2\) Specifically, PJM responds to the August 8, 2019 comments of the FirstEnergy Utility Companies\(^3\) and the limited protest of Exelon Corporation, Duke Energy Corporation, and the PSEG Companies\(^4\) ("Joint Protesters") filed in this proceeding. For the reasons discussed herein, the Commission should reject the arguments and suggestions presented in the FirstEnergy Comments and Joint Protest and accept PJM’s Must Offer Exception Reform Filing as filed.

I. MOTION FOR LEAVE TO ANSWER

The Commission’s rules provide that a party may answer protests where the decisional authority permits the answer for good cause shown. The Commission has accepted responses to protests when doing so will ensure a more accurate and complete record or will assist the

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\(^3\) *PJM Interconnection, L.L.C.*, Comments of the FirstEnergy Utility Companies; Docket No. ER19-2417-000, (filed Aug. 8, 2019) ("FirstEnergy Comments").

Commission in its deliberative process by clarifying the issues.\(^5\) All of these criteria are met. Therefore, PJM respectfully requests that the Commission grant its Motion because the Answer will help clarify the record and contribute to an understanding of the issues.

II. **ANSWER**

A. *The Proposed Reforms Reasonably Ensure a Transparent and Orderly Process For Any Must Offer Exception Requests Based on Physical Inability to Meet Capacity Performance Rules.*

Both FirstEnergy and the Joint Protesters would like the Commission to find there is no need for the reforms to apply to resources seeking an exception to the RPM must offer requirement on the basis of not being physically capable to be a Capacity Performance\(^6\) resource ("CP-capable"). In particular, they argue that requests in this regard have been limited and are declining.\(^7\)

The mere fact that there may be limited must offer exception requests on the basis of a resource not being CP-capable is not dispositive of the reasonableness to establish a transparent and orderly process for when such requests are made. FirstEnergy’s claim that there is already a sufficient exception process\(^8\) misses the point. The current process requires a Capacity Market Seller to demonstrate that a resource is not CP-capable, but the process lacks any means to address an entity that continues to hold Capacity Interconnection Rights ("CIRs"). Specifically, the current tariff does not specify any procedure for the relinquishment of CIRs or, in the

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\(^5\) The Commission regularly allows answers in such cases. See, e.g., *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,165, at P 24 (2012) (accepting answers to a protest because “they have provided information that assisted [the Commission] in [its] decision-making process”); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,031, at P 10 (2003) (accepting answer because “it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will [e]nsure a complete record upon which the Commission may act”).

\(^6\) All capitalized terms not defined herein shall have the meaning as contained in PJM’s Reliability Assurance Agreement Among Load Serving Entities in the PJM Region ("RAA"), Tariff and Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement").

\(^7\) FirstEnergy Comments at p.2 and Joint Protest at pp. 3-5.

\(^8\) FirstEnergy Comments at p.2.
alternative, a means for a Capacity Market Seller to show how it plans to make such resource CP-capable over a defined time period. Simply put, if a resource is not CP-capable and has no plan to become CP-capable, there is no reason for such resource to continue to hold on to CIRs. The inclusion of the proposed provisions in the Tariff ensures that future requests for exceptions to the RPM must offer requirement on this basis will be subject to the common sense rule that a non CP-capable resource cannot be treated as capacity in perpetuity. At the same time, it also provides a balanced approach by allowing the unit owner to present a defined plan as to its intentions to become CP-capable and avoid automatically relinquishing CIRs.

This proposed rule only impacts Capacity Market Sellers that request an exception to the RPM must offer requirement on the basis that a resource is not CP-capable. Thus, implementation of the proposed rules will not have any impact if FirstEnergy and the Joint Protesters’ unsubstantiated claim actually bear out and no more exception requests on this basis are made in the future. At the same time, if such exception requests continue in the future, this proposed rule provides a procedure that ensures resources that are not CP-capable and have no plan to become CP-capable, or do not adhere to such plan, will not retain their Capacity Resource status.

**B. This Proposal Does Not Force Resources in to Retirement**

The Joint Protestors assert that PJM’s proposal effectively forces resources to retire. Such an outcome is simply unfounded. To the contrary, this proposal creates an explicit process for a resource that is not CP-capable to continue participating in PJM’s energy market while no longer being a Capacity Resource. It also ensures a fair reallocation of CIRs to new resources should an existing resource with CIRs fail to demonstrate any plan to make its resource CP-

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9 Joint Protest at p.7.
capable. In that way, it balances the equities and removes barriers to new entry by preventing the hoarding of CIRs by resources that have not demonstrated a plan to make themselves CP-capable.

The existing Tariff-defined means for a resource to permanently relinquish its capacity status if it no longer wishes to be a Capacity Resource or if it simply cannot be CP-capable is to retire. Currently, there is no defined path for such resource to become an Energy Resource and continue participating in PJM’s markets. Recognizing the deficiency of the process, PJM welcomed the stakeholder process to develop rules for voluntary relinquishment of CIRs – which aspect of the instant proposal is not being challenged by any stakeholder – and also a process for involuntary relinquishment. In both cases, the resource will be able to continue participating in PJM’s markets as an Energy Resource.

Indeed, Capacity Market Sellers whose resources may be subject to involuntary relinquishment of CIRs are the very same entities that have come to PJM showing how the resources are not CP-capable. If such a Capacity Market Seller produces a plan for its resource to become CP-capable and adheres to such plan, then the resource will maintain its Capacity Resource status and associated CIRs. However, if the Capacity Market Seller does not have a plan to make the necessary investments to become CP-capable or does not comply with such plan, then it is just and reasonable for such resource to be removed from Capacity Resource status, relinquish CIRs, and become an Energy Resource. This avoids CIRs being denied to new entities with CP-capable resources that seek interconnection to the grid. This is not “forced retirement” but instead a reasonable requirement to avoid hoarding of CIRs by non CP-capable

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10 While Tariff, Attachment DD, section 6.6 suggests that a Capacity Market Seller may remove the Capacity Resource status from a Generation Capacity Resource, it is silent on what documentation, along with the requisite timelines, such Capacity Market Seller must submit to PJM and the Market Monitor. In addition, there are currently no clear review standards for PJM or the Market Monitor when evaluating a request by an Existing Generation Capacity Resource to become an Energy Resource.
resources. In short, the proposed revision merely ensures that resources do not withhold capacity from the system and hoard CIRs, while still allowing them to participate in PJM’s energy markets.

C. PJM’s Proposal Offers a Reasonable Approach to Address Potential Physical Withholding Consistent with Commission Precedent

Joint Protesters also claim there is Commission precedent disfavoring forfeiture of CIRs by citing the Commission’s rulemakings establishing the interconnection process in Order No. 2003, as well as the recent interconnection rulemaking in Order No. 845. Yet, neither of those orders address the specific circumstance PJM seeks to address with the proposed rules here: a resource that has, by its own submission to PJM, declared it cannot be a Capacity Resource under PJM’s capacity resource rules (i.e., it is not CP-capable). Thus, the claim that CIRs are a contractual right that cannot be taken away on such “flimsy justification” must fail.

To be sure, CIRs are part of the “contract” – the Interconnection Service Agreement (“ISA”) or Wholesale Market Participation Agreement (“WMPA”) – that results from the process to connect the resource to the system (the ISA) or to participate in PJM’s markets (the WMPA), but both agreements require the resource to be compliant with PJM’s rules. If a resource can no longer be compliant with the rules around being a Capacity Resource – i.e., if it is not CP-capable – then it follows that it should no longer have the same claim to the CIRs as when it declared it would be a Capacity Resource.

11 Joint Protest at pp. 7-9.
12 Notably, the Commission has approved the termination of CIRs in circumstances for resources that fail to meet the operational standards of operating at the specified capacity level. See Tariff, Part VI, section 230.3.1 and 230.3.2.
Furthermore, PJM is not, ripping the rights away without recourse. Joint Protestors rightly point out that these rights are tradable.\textsuperscript{13} PJM’s proposal recognizes that fact and thus allows the CIRs to be transferred for up to one year before they are terminated.\textsuperscript{14}

\textbf{D. PJM’s Filing Meets the Section 205 Threshold and its Reasonableness is Not Dependent on the Provision of Additional “Commission Guidance.”}

Joint Protestors suggest that the Commission provide “additional guidance” to either remove the portion of the proposal that terminates CIRs for resources seeking exceptions to the RPM must offer requirement on the basis that they are not CP-capable or allow for a longer period of time for resources to become CP-capable before CIRs are terminated.\textsuperscript{15} Given that PJM’s filing was submitted pursuant to section 205 of the Federal Power Act, the Commission only needs to find this filing to be just and reasonable. Thus, the Commission does not need to consider and suggest other alternatives that may also be just and reasonable.\textsuperscript{16}

The proposed changes are just and reasonable as they ensure that Capacity Market Sellers do not unreasonably withhold Capacity Resources from the RPM Auctions and exert market power. Further, while a Capacity Market Seller may seek a one-time exception to the RPM must offer requirement on the basis that the resource is not CP-capable, it can also receive a one-year extension if upgrades are delayed by forces outside of the Capacity Market Seller’s control. This effectively provides Capacity Market Sellers with over five years to make an Existing Generation Capacity Resource CP-capable. As previously explained,\textsuperscript{17} this provides Capacity Market Sellers with ample time to complete any necessary upgrades for a resource to become CP-capable.

\begin{enumerate}
\item Joint Protest at p. 8.
\item See Proposed Tariff, Part IV, section 230.3.3.
\item Joint Protest at pp. 2, 10.
\item Further, it is noted that this filing is the product of an extensive stakeholder process and was ultimately endorsed by PJM’s Members Committee with a 4.0 sector weighted vote out of 5.0.
\item See Must Offer Exception Reform Filing at p. 10.
\end{enumerate}
CP-capable. Thus, the common sense rules in this filing meet the just and reasonable threshold and the Commission need not modify the proposed changes prior to accepting these revisions.

E. **The Requirement to Provide a Plan is Limited to Resources that Request an Exception to the Must Offer Requirement on the Basis that it is Not CP-Capable.**

Contrary to the Joint Protesters assertion, the proposed provisions of Tariff, Attachment DD, section 6.6A only apply to exception requests for Capacity Resources that are not CP-capable. Thus, the proposed requirement to include a plan, which is provided in Tariff, Attachment DD, section 6.6A, clearly applies only to exception requests on the basis that a resource is not CP-capable. Accordingly, PJM confirms that the proposed requirement to include a plan for a resource to become CP-capable only applies to those resources that seek an exception to the RPM must offer requirement on the basis that the resource is not CP-capable. Notwithstanding, to the extent the Commission believes additional clarity is needed in the proposed Tariff language, PJM agrees to include additional clarifying language in Tariff, Attachment DD, section 6.6A(c) that the requirement to include such a plan is limited only to exception requests for resources that are not CP-capable.

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18 Joint Protest at pp. 11-12.

19 See Tariff, Attachment DD, section 6.6A(a).
III. CONCLUSION

For the foregoing reasons, the Commission should consider PJM’s answer and accept the proposed Tariff changes.

Respectfully submitted,

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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 Audubon, Pennsylvania, this 23rd day of August, 2019.

/s/ Chen Lu
Chenqiao Lu
Attorney for
PJM Interconnection, L.L.C.