

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

PJM Load Parties)	
Complainants,)	
)	
v.)	Docket No. EL24-104-000
)	
PJM Interconnection, L.L.C.)	
Respondent.)	
)	

ANSWER OF PJM INTERCONNECTION, L.L.C.

PJM Interconnection, L.L.C. (“PJM”), pursuant to 213 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure,¹ respectfully submits this answer in response to the April 22, 2024 conditional complaint (“Complaint”)² of the PJM Load Parties,³ arguing that, in the event the Commission grants PJM’s Petition⁴ to recalculate Base Residual Auction⁵ results in light of *PJM Power Providers Grp. v. FERC*,⁶ the Commission should find such recalculated capacity clearing prices unjust and

¹ 18 C.F.R. § 385.213.

² *PJM Load Parties v. PJM Interconnection, L.L.C.*, Conditional Complaint and Request for Fast Track Processing and Shortened Response Time of PJM Load Parties, Docket No. EL24-104-000 (Apr. 22, 2024) (“Complaint”).

³ For purposes of this filing, the PJM Load Parties refer to American Municipal Power, Inc., Delaware Division of the Public Advocate, Delaware Energy Users Group, Delaware Municipal Electric Corporation, Delaware Public Service Commission, Maryland Office of People’s Counsel, Maryland Public Service Commission, and Old Dominion Electric Cooperative.

⁴ Petition Under Rule 207 of PJM Interconnection, L.L.C. for Order Confirming 2024/2025 Delivery Year Capacity Commitment Rules, Request for Order by May 6, 2024, and Request for Shortened 10-Day Comment Period, Docket No. ER23-729-002 (Mar. 29, 2024) (“Petition”).

⁵ For the purpose of this filing, capitalized terms not defined herein shall have the meaning as contained in the PJM Open Access Transmission Tariff (“Tariff”), Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., or the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region.

⁶ 96 F.4th 390 (3rd Cir. 2024) (“*PJM Power Providers*”).

unreasonable under section 206 of the Federal Power Act⁷ and reinstate the capacity prices applicable prior to the appellate court's ruling.

PJM is sympathetic to the issue at the heart of the Complaint; the same concern drove PJM to submit market rule revisions with an effective date that the *PJM Power Providers* court found unlawfully retroactive. As discussed below, the United States Court of Appeals for the Third Circuit ("Third Circuit") found that PJM's proposed rule to reevaluate the Locational Delivery Area ("LDA") Reliability Requirement before the close of the auction to be prohibited by the filed rate doctrine. Likewise, changing the rates after the close of an auction is also prohibited, unless there is a specific tariff provision authorizing the change (the Tariff includes such an "error" provision,⁸ but it is not applicable here). Accordingly, the Commission should deny the Complaint.

I. ANSWER

A. *PJM Filed the Petition to Recalculate the Base Residual Auction and Rerun the Third Incremental Auction for the 2024/2025 Delivery Year Consistent with the Third Circuit's Opinion.*

Before delving into legalities, PJM acknowledges the equities and understands the concerns raised by the PJM Load Parties. Indeed, these concerns motivated PJM to prospectively avoid this situation by proposing, in an emergency filing, to update the rules for determining LDA Reliability Requirements prior to the completion and posting the results of the 2024/2025 Base Residual Auction, including capacity prices and commitments.

⁷ 16 U.S.C. § 824e.

⁸ See Tariff, Attachment DD, section 5.11(e) (allowing for corrections to the posted auction results in certain circumstances).

Ultimately, however, the Third Circuit found that the application of the revised rule for refining the LDA Reliability Requirement was retroactive and in violation of the filed rate doctrine.⁹ As such, the Third Circuit vacated “the portion of FERC’s orders that allows PJM to apply the Tariff Amendment to the 2024/25 [Base Residual Auction].”¹⁰ In light of the Third Circuit’s opinion, the clearest path forward is as provided in PJM’s Petition.¹¹

Specifically, PJM proposed that the Commission effectuate the Third Circuit’s order by recalculating the results (clearing prices and commitments) of the 2024/2025 Base Residual Auction based on the originally posted LDA Reliability Requirement. If the Petition is granted, PJM would apply the Tariff provisions governing the conduct of the Base Residual Auction for the 2024/2025 Delivery Year that were in effect prior to Commission’s orders¹² reviewed by the court,¹³ and the recalculated clearing prices and capacity commitments would be binding and effective for the 2024/2025 Delivery Year. PJM also requested that, depending on the timing of the Commission’s grant of the Petition, the Commission should authorize PJM to rerun the Third Incremental Auction for the 2024/2025 Delivery Year.¹⁴ Reconducting this Third Incremental Auction is critical to allow: (1) PJM to adjust each applicable Reliability Requirement (to that used to recalculate the 2024/2025 Base Residual Auction) and to correspondingly procure or sell

⁹ 96 F.4th at 401-402.

¹⁰ 96 F.4th at 402.

¹¹ PJM filed the Petition with the Commission on March 29, 2024, to confirm the appropriate course of action for determining the applicable capacity prices and commitments for the 2024/2025 Delivery Year.

¹² See *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109, *reh’g denied*, 184 FERC ¶ 61,055 (2023), *vacated in part*, *PJM Power Providers*, 96 F.4th 390.

¹³ That is, PJM would apply the auction rules without the change allowing the exclusion of Planned Generation Capacity Resources from the LDA Reliability Requirement if the addition of such resources would materially increase the reliability requirement and such resources do not participate in the RPM Auction (the “revised LDA Reliability Requirement”).

¹⁴ Petition at 5-8.

capacity so that an appropriate amount of capacity is committed for the upcoming Delivery Year; and (2) Capacity Market Sellers to adjust their Buy Bids and Sell Offers to align their newly determined capacity commitments with their respective capacity capabilities and obligations.¹⁵

Expedient Commission action on PJM's Petition is required because, while a federal court may vacate a Commission tariff order, doing so “‘leave[s] in effect the [tariff revisions] filed under the Commission's authority pending the Commission's redetermination of a reasonable rate' on remand from the court.”¹⁶ Thus, consistent with the *PJM Power Providers* decision, the Commission should confirm that PJM should update the Base Residual Auction results by applying the Tariff provisions that were in effect in December 2022. Such an order would clearly be compliant with the Third Circuit's opinion. Thus, given that the 2024/2025 Delivery Year commences on June 1, 2024, the Commission should act swiftly in granting PJM's Petition. Such action would provide the necessary market certainty and finality prior to the start of the Delivery Year, i.e., providing clarity on which resources have capacity commitments that can be relied upon (or be subject to potential Non-Performance Charges for underperformance) during capacity emergencies during the Delivery Year.

B. The Complaint's Proposal to Alter Clearing Prices Under Federal Power Act Section 206 Authority Would Inject Untenable Uncertainty into Market Outcomes.

The Complaint requests that, should the Commission grant PJM's Petition to recalculate the 2024/2025 Base Residual Auction and rerun the Third Incremental Auction,

¹⁵ Petition at 2.

¹⁶ *ISO New England Inc. v. Bangor Hydro-Electric Co.*, 161 FERC ¶ 61,031, at P 26 (2017) (quoting *Burlington Northern, Inc. v. United States*, 459 U.S. 131, 144 (1982)).

the Commission should subsequently use its section 206 authority to immediately declare the auction prices resulting from grant of the Petition to be unjust and unreasonable. The Complaint argues that this approach avoids running afoul of the filed rate doctrine because the Commission can “modify [the auction results] before performance occurs.”¹⁷ Not so. It would be arbitrary and capricious for the Commission, after having accepted PJM’s Petition, to simply turn around and declare the outcome of granting that Petition to be unjust and unreasonable. This is especially true in a case such as this where there is no claim (or evidence) of market manipulation or that PJM erred in recalculating the auction results. In any event, the Third Circuit made clear that, notwithstanding any equity issues, the applicable “filed rate” is the set of auction rules set forth in PJM’s Tariff, including the methodology for determining LDA Reliability Requirements.¹⁸ As such, a party cannot successfully challenge the clearing prices that result from application of the auction rules when the calculation of such auction results are consistent with the Tariff rules.¹⁹

Here, the Complaint neither questions the validity of the inputs nor the calculation of the indicative rates that would result from recalculating the 2024/2025 Base Residual Auction,²⁰ which PJM has shared with stakeholders.²¹ Therefore, the Commission should resist the Complaint’s request to review capacity market prices that are the product of a

¹⁷ Complaint at 12.

¹⁸ See *PJM Power Providers*, 96 F.4th at 395 (“PJM ran the Auction according to the rules set out in the Tariff, which again is the filed rate in this case.”).

¹⁹ See *ChevronTexaco Expl. & Prod. Co. v. FERC*, 387 F.3d 892, 895-97 (D.C. Cir. 2004) (“When the Commission finds a pipeline did calculate a rate correctly according to the rate rule in its tariff, the Commission must accept the § 4 filing despite any perceived flaws in the rate rule and may only then proceed under § 5” to change the tariff-stated rate rule.).

²⁰ See, e.g., Complaint at 15.

²¹ 2024/2025 BRA Summary of Auction Results – Recalculated, PJM Interconnection, L.L.C. (Apr. 4, 2024), <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-bra-recalculated-results-and-parameters.ashx>.

faithful application of the Tariff and to disrupt capacity market awards.²² In fact, granting such a complaint after accepting PJM's Petition would have adverse ramifications beyond these proceedings. Specifically, notwithstanding the legalities, allowing challenges to posted and final auction clearing prices right before the start of the Delivery Year, absent allegations of market manipulation or other error, would undermine the certainty of the prices sent to investors.

Moreover, as applied to the facts here, and in light of the Third Circuit's opinion vacating the Commission's order related to the Base Residual Auction results for the 2024/2025 Delivery Year, the Commission should act swiftly to provide finality as to capacity commitments and prices for the 2024/2025 Delivery Year. Such uncertainty has adverse financial and reliability consequences in the longer term from a market instability standpoint. Additionally, without finality or certainty in the capacity market clearing prices and associated capacity commitments before June 1, 2024, there may be significant uncertainty as to each resource's maximum exposure to Non-Performance Charges given that the recently amended stop-loss for Non-Performance Charges is now based on the Base Residual Auction clearing price,²³ which could influence resource performance during capacity emergencies.

For these reasons, the Commission should deny the Complaint and not inject further uncertainty into PJM's capacity auction results at this late stage less than one month before the start of the 2024/2025 Delivery Year.

²² See *Pub. Utils. Comm'n of the State of Cal. v. FERC*, 254 F.3d 250, 254 n.3 (D.C. Cir. 2001) ("[T]he court has rejected the notion that charges assessed pursuant to a formula rate violate the filed rate doctrine; rather, the formula itself is the filed rate that provides sufficient notice to ratepayers for purposes of the doctrine.").

²³ See Tariff, Attachment DD, section 10A(f-1); see *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080, at P 234 (2024).

II. ADMISSIONS AND DENIALS

Pursuant to Rule 213(c)(2) of the Commission's Rules,²⁴ except as stated in this answer, PJM admits to no facts in the form and manner stated in the Complaint. Any fact or allegation in the Complaint is not explicitly admitted in this answer is denied.

III. NOTICES AND COMMUNICATIONS

All correspondence and other communications regarding this proceeding should be directed to:

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²⁴ 18 C.F.R. § 385.213(c)(2).

IV. CONCLUSION

For the reasons provided herein, the Commission should deny the Complaint.

Respectfully submitted,

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May 1, 2024

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 1st day of May 2024.

/s/ *Ryan J. Collins*
Ryan J. Collins