UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Joint Consumer Advocates,	)	
	)	
v.	)	**Docket No. EL24-118-000**
	)	
PJM Interconnection, L.L.C.	)	

RESPONSE OF PJM INTERCONNECTION, L.L.C.

In accordance with Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] PJM Interconnection, L.L.C. ("PJM") submits this response to certain intervenors that have filed comments in this matter.[2] This response is supplementary to PJM's July 10, 2024 Answer to the Complaint filed in this matter ("Answer").[3]

As an initial matter, the claims regarding the purpose and mechanics of the load forecast methodology demonstrate several major misconceptions:

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[1] 18 C.F.R. §§ 385.213 (2023).

[2] This Answer primarily focuses on the Comments filed by the Natural Resources Defense Council ("NRDC"), but also rebuts other comments that raise similar claims filed by the Sierra Club, Enerwise Global Technologies, LLC, d/b/a CPower ("CPower"), Affirmed Energy LLC ("Affirmed"), Advanced Energy United ("Advanced"), the PJM Power Providers Group ("P3") and the PJM Independent Market Monitor ("PJM IMM"). Many comments restated arguments made in the Complaint which PJM previously addressed in its Answer and thus do not merit a separate response here. Nonetheless, PJM's lack of response to a particular claim should not be viewed as acquiescence. PJM reserves the right to respond to all assertions made in comments at a future date. In addition, the PJM IMM's comments raise the same issues raised in its Complaint filed in Docket No. EL24-126-000. PJM will respond to the PJM IMM's claims in that proceeding.

[3] Certain assertions made by commentors are actually motions to which an answer properly lies under Rule 213. To the extent that this response is not authorized under Rule 213, PJM respectfully submits that "good cause" exists for its acceptance because it will assist the Commission in its deliberations, and PJM hereby requests that it be made part of the record. *See, e.g., PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,194, at P 12 (2023) (accepting unauthorized answers filed by various parties "because they have provided information that assisted us in our decision-making process").

- The Commission did not authorize EE to participate as supply in RPM Auctions "because the RTO cannot foresee all energy efficiency measures in their load forecast" as NRDC claims;[4] instead, the Commission recognized PJM's role in determining when EE reductions are included in the forecast and when they are not.[5]
- PJM never claimed "100% accuracy"[6] in its load forecast as NRDC claims, or that the load forecast needs to "include[] exactly the amount of EERs that clear in the market" for the addback to operate as CPower asserts,[7] or that "the addback is based on the premise that all energy efficiency measures . . . is [sic] already accounted for in PJM's load forecast," as Sierra Club asserts;[8] those assertions are false and obscure the appropriate legal standard, which is that the load forecast methodology is "just and reasonable."[9] The commenters attempt to engraft onto load forecasting a requirement for 100% perfect foresight. No load forecast would ever meet such a standard. As a result, the Commission should be reluctant

[4] *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Docket No. EL24-118-000, Comments of Natural Resources Defense Council at 3 (July 11, 2024) ("NRDC Comments").

[5] *See infra* note 18 and accompanying text.

[6] NRDC Comments at 4.

[7] *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Docket No. EL24-118-000, CPower Comments in Support of Protest of Joint Consumer Advocates at 9 (July 10, 2024) ("CPower Comments").

[8] *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Docket No. EL24-118-000, Comments of the Sierra Club in Support of Complaint Filed by Joint Consumer Advocates at 3 (July 10, 2024) ("Sierra Club Comments").

[9] *See Joint Consumer Representatives v. PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,187, n. 45 (2015) (citing *Ala. Elec. Co-Op., Inc. v. FERC*, 684 F.2d 2, 27 (D.C. Cir. 1982) & *Colo. Interstate Gas*, 324 U.S. 581, 589 (1945)); *see also, e.g.*, *Old Dominion Elec. Coop. v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,160, at P 57 (instructing that a technical conference needed to consider whether "PJM's load forecast methodology incorporates load-serving entities' peak-shaving actions in an adequate and timely manner to yield just and reasonable rates"), *reh'g denied*, 164 FERC ¶ 61,116 (2018); *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,093, at P 23 (2017) (finding that there was insufficient evidence to show that using PJM's load forecast without escalation for the assumed load reflected in a feasibility analysis was unjust and unreasonable).

to base a section 206 ruling on the unreasonable premise that the load forecast must reflect 100% of actual conditions to be utilized as a basis to avoid obvious double counting of resources.

- NRDC's claim that "there is no factual support . . . that all of the demand reduction represented by EERs is included in the load forecast,"[10] and similar claims by Sierra Club and Affirmed are also wrong;[11] the attached Supplementary Affidavit of Andrew Gledhill explains why the possibility that EE Resources might clear RPM Auctions in quantities that exceed EE levels in the load forecast is remote.
- PJM does not develop the load forecast by evaluating individual EE programs as NRDC claims;[12] nor does the adequacy of the load forecast depend upon whether PJM can determine if "specific programs are reflected" as Sierra Club maintains;[13] rather, the aggregate levels of EE are reflected in the load forecast based on statistical trends using widely accepted statistical techniques and the best available data.
- Contrary to Sierra Club's claims,[14] the load forecast reasonably captures the impacts of State and utility EE programs; the EIA data used by PJM incorporates information about many of these programs, as do the Statistically Adjusted End-Use ("SAE") models used by PJM.

[10] NRDC Comments at 7.

[11] *See* Sierra Club Comments at 3; *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Docket No. EL24-118-000, Comments of Affirmed Energy LLC in Support of Joint Consumer Advocates' Complaint at 4 n.9, 6 (July 10, 2024) ("Affirmed Comments").

[12] *See* NRDC Comments at 5.

[13] *See* Sierra Club Comments at 9.

[14] *See id.* at 3-4, 5 n.10.

The complainants' erroneous premise about the PJM load forecast methodology contributes significantly to several intervenors' erroneous claims regarding the PJM Tariff and the operation of the PJM capacity market.

I. RESPONSE[15]

A. Certain Intervenors Misunderstand How the PJM Load Forecast is Developed

The comments contain numerous misstatements regarding the development of the PJM load forecast and unsuccessfully attempt to cast doubt as to whether the load forecast captures load reductions that can be reasonably expected from EE projects within the PJM footprint. These claims are contrary to the record evidence submitted by PJM and recognized by the Commission in past reviews of PJM's load forecasting methodology.

1. NRDC Mischaracterizes The Reasons for Allowing EE Resources to Participate in RPM

NRDC mischaracterizes the Commission's rationale for approving PJM's proposal in 2009 to authorize the participation of EE Resources in RPM. NRDC claims that the Commission authorized EE Resource participation in RPM "because the RTO cannot foresee all energy efficiency measures in their load forecast."[16] That is not correct. The Commission accepted PJM's justification that EE should be allowed to participate in RPM because "there [was] a 'gap' between when the EE resource is online, but not recognized in the load forecast used in the RPM auctions, and when the EE resource is recognized in the load forecast."[17] But the Commission also

[15] PJM's Answer includes an extensive section describing the addback mechanism's background. It is equally applicable here but, in the interest of brevity, will not be repeated.

[16] NRDC Comments at 3.

[17] *PJM Interconnection, L.L.C.*, Docket No. ER09-412-000, Transmittal Letter at 29 (Dec. 12, 2008) (footnote omitted).

recognized that PJM could have prepared "a load forecast that correctly included EE."[18] The Commission thus never found that PJM was incapable of estimating EE impacts in the load forecast as NRDC claims, only that PJM had not developed a process for making those estimates *at that time*. NRDC's attempt to obfuscate the Commission's holding in the order approving EE's participation in RPM Auctions reflects the general theme of its comments intimating that PJM cannot forecast EE with sufficient accuracy to satisfy FPA requirements.

2. PJM Never Claimed "100% Accuracy" in its Load Forecast

NRDC claims that, in 2015, "PJM asserted that the new load forecast methodology fully predicted all energy efficiency measures that would be in place during the forecast year with 100% accuracy."[19] CPower similarly claims that the operation of the addback is premised upon the expectation that the load forecast "includes exactly the amount of EERs that clear in the market."[20] And Sierra Club states that "the addback is based on the premise that all energy efficiency measures that a utility or energy efficiency aggregator may bring forward is already accounted for in PJM's load forecast."[21] Those statements are inaccurate. PJM never made any such claims.

NRDC cites a presentation given by a PJM staff member to the Markets and Reliability Committee on October 22, 2015.[22] Specifically, a bullet point in that presentation states that "[u]nlike [the] current model, [the] new peak load forecast model does reflect energy efficiency

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[18] *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at P 131 (2009). The Commission also explained the consequences of choosing a load forecast that did not include EE, observing that, "[a]s a result of not including the EE in the load forecast, the VRR curve fails to move to the left, increasing the price paid and capacity acquired compared with a load forecast that correctly included EE." *Id.*

[19] NRDC Comments at 4 n.12.

[20] CPower Comments at 9.

[21] Sierra Club Comments at 3.

[22] NRDC Comments at 4 n.12.

measures in the peak load forecast."[23] The word "reflect" is hardly a claim of perfect accuracy. In fact, the presentation makes no representations regarding the accuracy of the load forecast let alone that PJM would achieve "100% accuracy." Similarly, PJM never made the claims asserted by CPower or Sierra Club. CPower provides no support for its statement and Sierra Club just refers vaguely to the Joint Consumers Complaint to which PJM has already responded.

The load forecast for the RPM Auctions covers 13 states and the District of Columbia for four years into the future and takes a multitude of factors into account. Given its complexity and scope, perfect clairvoyance for such a prediction cannot be claimed. That is why load forecasts are by definition predictions or estimates of future loads. Moreover, as discussed below, the well-established standard for evaluating the adequacy of the load forecast is the familiar FPA "just and reasonable" standard,[24] which PJM's load forecasting practices easily achieve.[25]

3. The Likelihood that the Level of EE Resources Could Exceed the EE Reflected in the Load Forecast is Remote

NRDC states that "there is no factual support . . . that all of the demand reduction represented by EERs is included in the load forecast."[26] Sierra Club similarly claims that "PJM assumes there is no incremental EERs,"[27] while CPower argues that "[t]he notion the forecast

[23] PJM, *M18 and M18B Revisions to Accommodate EE Resource Participation in RPM When EE is Reflected in the Peak Load forecast* at 3 (Oct. 22, 2015), https://www.pjm.com/-/media/committees-groups/committees/mrc/20151022/20151022-item-10b-draft-m18-and-m18b-revisions-presentation.ashx.

[24] *See supra* note 9.

[25] *See id.*

[26] NRDC Comments at 7.

[27] Sierra Club Comments at 7.

model captures all or some EER activity in PJM or even accurately depicts what is actually happening is at best an article of faith."[28] These allegations are not valid.

First, these claims ignore that the appropriate standard for evaluating the load forecast, as discussed below, is the "just and reasonable" standard,[29] which appropriately recognizes that absolute perfection is not expected. Further, as Mr. Gledhill explains in his attached Supplementary Affidavit, it is unlikely that the capacity value accorded to EE Resources participating in RPM would ever exceed the EE MW value reflected in the load forecast. That is, the EE that is reflected in PJM's load forecast includes all EE that is expected to be installed for a Delivery Year based on rigorous statistical techniques and data from reliable sources to complete the load forecast studies.[30] PJM's load forecasting process recognizes all sources of EE, including EE activities that are pursued outside the context of PJM's capacity markets, which is likely greater than the amount of EE that is actually offered in PJM's RPM Auction because many forms of EE activity are not qualified to be EE Resources within RPM.[31] Thus, as Mr. Gledhill explains, "there would need to be a significant bias in the process that goes undetected for an extended period" in order for EE Resources offered into RPM Auctions to exceed EE embedded in the forecast by a material amount.[32] In short, "the possibility that EE Resources offered into RPM Auctions would exceed EE embedded in the forecast by a material amount is remote."[33]

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[28] CPower Comments at 6.

[29] *See supra* note 9.

[30] Gledhill Suppl. Aff. ¶ 6.

[31] *See id.* ¶ 9.

[32] *Id.*

[33] *Id.* ¶ 8.

4. Claims That the Load Forecast Fails to Account for Specific State-Sponsored EE Projects Demonstrate a Misunderstanding About How the Load Forecast is Developed

Certain commenters allege that PJM's load forecasting methodology is unable to account for "state energy efficiency programs [that] can be instituted in the roughly 42 month interval between preparation of the load forecast and the capacity delivery year that could be built in less than 42 months."[34] According to NRDC, "[f]or the load forecast to account for such programs, either PJM would have to have a prescient knowledge of future state actions, or all state energy efficiency programs would have to be entirely ineffective."[35] Sierra Club similarly claims that "PJM believes [its load forecast model] does not allow it to determine whether specific programs are reflected."[36] Specifically, Sierra Club claims that PJM's load forecast does not capture the impacts of State and utility EE programs.[37]

These criticisms demonstrate the commenters' lack of understanding about how the load forecast is actually developed. PJM does not develop the load forecast by attempting to identify individual EE programs that appear to be on the horizon over the next 42 months as NRDC apparently believes. Nor does the addback require PJM to be able to determine whether the load forecast reflects "specific programs" as Sierra Club maintains. As Mr. Gledhill explains, EE is reflected in the load forecast based on statistical trends using widely accepted statistical techniques and reliable data sources.[38] Whether a particular program might be added or cancelled for a particular Delivery Year is immaterial because the PJM methodology does not need this

[34] NRDC Comments at 5, n. 17.

[35] *Id.*

[36] Sierra Club Comments at 9.

[37] *Id.* at 3-4.

[38] *See* Gledhill Suppl. Aff. at PP 6-7.

information to create the load forecast.[39] Further, NRDC seeks to impose a level of precision in the year-over-year load forecasts that the Commission has recognized is neither feasible nor expected.

Sierra Club's claims that PJM's load forecast does not capture the impacts of State or utility EE programs are unsupported and inaccurate. As explained in Mr. Gledhill's Supplemental Affidavit, the EIA data used by PJM incorporates information about many of these programs.[40] In addition, the SAE models used by the PJM also provide valuable inputs regarding the impact of these programs.[41]

B. PJM's Load Forecasting Methodology Does Not Conflict with the Tariff

NRDC claims that PJM's load forecasting methodology does not comply with the Tariff because it fails "to reconcile PJM's top-down load forecast with accreditation of individual EERs."[42] According to NRDC, this is necessary because "PJM's RAA is unambiguous that energy efficiency is defined as reductions 'not reflected in the peak load forecast.'"[43]

NRDC misinterprets the RAA and Commission precedent. The word "reflects" used in the RAA does not mean that each and every MW of each and every EE project must be traceable to a specific line item in the load forecast. Such a narrow reading—particularly a reading that excludes statistical analysis—is inappropriate.

Further, consistent with well-established legal precedent, load forecasts are evaluated as to whether they are "just and reasonable," not whether they are perfect. For example, in rejecting

[39] *See id.* P 9.

[40] *Id.*

[41] *Id.*

[42] NRDC Comments at 5.

[43] *Id.* at 4 (citing RAA Sched. 6, § L.1).

challenges to PJM's load forecast determinations in 2015 made by a group of self-styled "Joint Consumer Representatives," the Commission stated "[l]oad forecasting is not unlike rate design" in respect of the "just and reasonable" standard, citing *Alabama Electric. Co-Op., Inc. v. FERC*,[44] and *Colorado Interstate Gas Co. v. FPC* in support of its finding.[45] As the cited authorities demonstrate, achieving exact precision in a load forecast determination is neither feasible nor expected. That is why load forecasts are by definition *predictions or estimates* of future loads. Further, as shown in the affidavit filed by Mr. Gledhill in support of PJM's Answer ("First Affidavit"), PJM uses rigorous and widely-accepted forecasting practices in preparing its load forecasts.[46] The PJM Load Forecast methodology thus easily complies with the Commission's requirements.

C. PJM Properly Created the Addback in 2015 to Preserve EE Resources' Ability to Participate in RPM Auctions, There is Still a Need to Prevent Double-Counting of EE Resources, and the Rationale for the Addback is Still Valid

NRDC claims that PJM erred when the addback was created in 2015. According to NRDC, the 2015 change in the load forecast methodology obligated PJM to "update EER accreditation to reflect the new load forecast, [but] PJM instead instituted the Addback."[47] This claim is simply unfounded.

As shown in PJM's Answer, PJM introduced the addback in 2015 to *preserve* the ability of EE Resources to participate in RPM consistent with the parameters under which EE

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[44] 684 F.2d at 27 ("[R]atemaking is, of course, much less a science than an art.").

[45] *Joint Consumer Representatives*, 153 FERC ¶ 61,187, n. 45; *see id.* P 32 ("Joint Consumers have failed to demonstrate that PJM's current forecasting methodology as applied by PJM is unjust and unreasonable.") (citing *Colo. Interstate Gas*, 324 U.S. at 589 ("[A]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.")).

[46] *See* First Affidavit at PP 4-9.

[47] NRDC Comments at 4.

participation was authorized in 2009. This required new measures to prevent double-counting of EE Resources. The addback, which was widely supported by the PJM stakeholders, was the "update" that accomplished this goal. This approach allowed PJM to retain the existing accreditation process and continue to allow EE Resources to participate in RPM Auctions. Thus, the addback preserved as much as possible the elements of the EE program approved by the Commission in 2009. Even NRDC concedes that the elimination of the addback while clearing EE that is in the load forecast would create an adverse effect on reliability.[48]

Commenters appear to prefer some other methodology for addressing the double-counting issue. However, no alternative "update" to address the load forecast methodology changes was proposed in 2015 and nothing constructive is being offered now.[49] Even if some other alternative could have been developed to accommodate the 2015 changes in the load forecast methodology, commenters fail to show that the original adoption of the addback was unwarranted or to propose a constructive alternative to prevent double-counting now. While acknowledging that the addback plays a necessary reliability function,[50] they would prefer some other approach but they do not explain how reliability would be preserved.

D. The Tariff Specifically Directs PJM to Make Adjustments to the VRR Curve Through the PJM Manuals, and the Addback Methodology Does Not Conflict With Any Term in the Tariff or RAA

NRDC claims that inclusion of the addback in the PJM Manuals "violates the Tariff definition of the VRR Curve."[51] First, NRDC claims that nothing in the PJM Tariff authorizes

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[48] *See id*. at 10 ([E]liminating the Addback would create a reliability shortfall of unknown size, . . .").

[49] *See id.* at 2 ("[T]here does not appear to be a ready solution to determine the value of EERs relative to the load forecast.").

[50] *See, e.g.*, Affirmed Comments at 6; CPower Comments at 10.

[51] NRDC Comments at 6.

PJM to make adjustments to the VRR Curve that are documented in the PJM Manuals.[52] Second, NRDC claims the addback constitutes an unauthorized change to the "Reliability Requirement" and the "PJM Region Installed Reserve Margin" as defined in the RAA.[53] These arguments ignore and contradict the plain language of the Tariff.

First, the Tariff specifically grants PJM the ability to shift the VRR Curve "in accordance with the methodology specified in the PJM Manuals"[54] The addback is accomplished by shifting the VRR curve, and the inclusion of this methodology "in the PJM Manuals" is expressly authorized by the Tariff. Moreover, as PJM detailed in its Answer to the Complaint, the inclusion of the addback in the Manuals would be consistent with the "rule of reason" even in the absence of the Tariff's express delegation.[55]

NRDC's other claim is that the addback is inconsistent with the definitions of the Reliability Requirement, which NRDC states is a function of the PJM Region Installed Reserve Margin.[56] NRDC states that the addback modifies the Reliability Requirement, which is "one of the auction parameters that PJM publishes prior to an auction."[57] NRDC's basic claim seems to be that the addback results in a different value for the Reliability Requirement than PJM announced prior to the auction and that this action violates the Tariff. NDRC's theory fails on several fronts.

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[52] *Id.*

[53] *Id.*

[54] Tariff, Attach. DD § 5.10(a).

[55] PJM Answer at 12-13.

[56] NRDC refers to the "Reliability Requirement," which appears to mean the "PJM Region Reliability Requirement." To avoid confusion, PJM uses NRDC's nomenclature.

[57] NRDC Comments at 6.

First, the addback is designed to *retain* the reliability target level determined prior to the Base Residual Auction.[58] If the addback did not exist, allowing EE Resources to participate in RPM Auctions would effectively decrease the reliability target. Given the magnitude of the cleared EE Resources in recent RPM Auctions, the adverse impact on reliability associated with eliminating the addback would be significant: the Reliability Requirement used to position the VRR Curve in RPM would be too low and would shift the curve too far to the left. The quantity procured and the prices realized thus would be less than needed for PJM to achieve its reliability goals, escalating the risk that PJM might fail to achieve the PJM Region Installed Reserve Margin and the NERC one-day-in-ten years loss of load probability standard.[59] In short, the conflict that NRDC claims between the Tariff definitions and the impact of the addback is non-existent.

Second, there is no conflict between the addback methodology and the Tariff definitions for Reliability Requirement and PJM Region Installed Reserve Margin. "In construing a tariff, it is appropriate to look at the four corners of the tariff and consider the instrument as a whole."[60] As discussed above, the Tariff explicitly authorizes PJM to document the addback in the PJM Manuals and the Tariff definition of EE Resource justifies the documentation of the addback in the PJM Manual under a "rule of reason" analysis. Construing these Tariff provisions together, it is clear that NRDC's cramped reading of the definitions for Reliability Requirement and PJM

[58] *See* PJM Answer at 16.

[59] *See* First Affidavit at P 16.

[60] *S. Nat. Gas Co. v. FERC*, 780 F.2d 1552, 1558 (11th Cir. 1986); *see Nw. Pipeline Corp. v. FERC*, 61 F.3d 1479, 1486 (10th Cir. 1995). ("Where the language used is clear and unambiguous, its interpretation needs no extrinsic evidence as to intent...."); *Columbia Gas Trans. Corp.*, 27 FERC ¶ 61,089, at 61,166 (1984) ("Only where an ambiguity is established under the foregoing analysis do extrinsic factors come into play.").

Region Installed Reserve Margin could not stand even if those definitions were ambiguous, which they are not.

E. The Addback is Consistent with the Filed Rate Doctrine

NRDC asserts that the addback is inconsistent with the filed rate doctrine analysis in *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 395 (3d Cir. 2024). According to NRDC, the addback is proscribed because PJM "may not modify auction parameters during the auction clearing process in ways not specified in the tariff."[61] However, the holding in *PJM Power Providers* in no way supports NRDC's claim that the addback violates the filed rate doctrine because the Tariff authorizes PJM to modify the VRR Curve through the addback methodology established in the PJM Manuals more than eight years ago, and all market participants have notice of this methodology before RPM Auctions occur. Indeed, *PJM Power Providers* stands for the proposition that the addback cannot be modified for any auction that is already complete, or for any RPM Auction in which the parameters have already been set, including the ongoing auction process for the 2025/2026 Delivery Year.[62]

The fact pattern in *PJM Power Providers* was that PJM discovered an error in the LDA Reliability Requirement for the Delmarva-South LDA while running the auction for the 2024/2025 Delivery Year. The Commission subsequently accepted a Tariff amendment allowing PJM to correct the error. The Court reversed FERC's acceptance of the amendment as applied to the 2024/2025 Delivery Year, finding that allowing PJM to change the LDA Reliability Requirement during the auction would be inconsistent with the filed rate because "PJM did not 'use' the

[61] NRDC Comments at 6-7.

[62] *PJM Power Providers Grp.*, 96 F.4th at 399-400 ("The Tariff Amendment is retroactive because it altered the legal consequence attached to a past action when it allowed PJM to use a different LDA Reliability Requirement than the one it had calculated and posted.").

calculated and posted LDA Reliability Requirement as the Tariff required."[63] The Court determined that the correction was unlawfully retroactive because it was not among the "enumerated circumstances listed in the Tariff" for which an adjustment could be made.[64] The court held that this was a violation of the filed rate doctrine because it "altered the legal consequence attached to a past action."[65]

The situation with respect to the addback is easily distinguishable because, contrary to NRDC's claim, the addback is among the "enumerated circumstances listed in the Tariff" that allow PJM to adjust specific elements of the auction process. As explained above, the Tariff plainly authorizes PJM to modify the VRR Curve "in accordance with the methodology specified in the PJM Manuals,"[66] which eliminates objections that the addback violates the filed rate doctrine or the "rule of reason." Moreover, even absent the Tariff's directive that PJM make these changes in its Manuals, it would still be necessary to include the addback in the PJM Manuals under the "rule of reason" in order to implement the Tariff definition of EE Resource. The Tariff, as appropriately supplemented by the PJM Manuals, places all Market Participants on notice that the addback process will be used prior to the commencement of an RPM Auction and even prior to the posting of any auction parameters.

In short, the recent decision in *PJM Power Providers* does not support NRDC's argument. Rather, that case stands for the proposition that it is not lawful to modify the parameters that have

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[63] *Id.* at 400.

[64] *Id.* at 399.

[65] *Id.* ("The Tariff Amendment is retroactive because it altered the legal consequence attached to a past action when it allowed PJM to use a different LDA Reliability Requirement than the one it had calculated and posted.").

[66] Tariff, Attach. DD, § 5.10(a).

already been set for any ongoing RPM Auction. As the Third Circuit explained, NRDC may not request relief that "alters the legal consequences attached to past actions."[67]

F. The Addback is Necessary For RPM Auctions to Operate as Designed

NRDC claims that the addback causes RPM to clear "excess capacity" that "artificially inflate[es] capacity prices."[68] According to NRDC, this occurs because EE Resources are "overaccredited to some degree."[69] NRDC then leaps from that unsupported and unquantified claim to contend that RPM sensitivity studies presented as proxies for undercounting EE MW in the load forecast of 3,000 MW to 6,000 MW provide a valid indication of potential impacts. NRDC states that customers would realize savings of "most likely . . . many tens of millions of dollars, and possibly by as much as a few hundred million dollars."[70] Neither of NRDC's assertions is valid.

1. NRDC Presented No Evidence that EE Resources have been "Overaccredited"

NRDC's claim that EE Resources are "overaccredited to some degree" apparently means that, according to NRDC, some EE projects that qualify as EE Resources in RPM are not represented in the PJM Load Forecast. According to NRDC, RPM sensitivity studies for the 2023/2024 capacity auction that calculate the impact of 3,000 MW to 6,000 MW of additional capacity at the bottom of the supply curve are indicative of the level of EE Resources not currently reflected in the load forecast. NRDC thus apparently believes that the addback as applied

[67] *PJM Power Providers Grp.*, 96 F.4th 390 at 400.

[68] NRDC Comments at 8.

[69] *Id.*

[70] *Id.* at 8-9.

according to the PJM Manuals shifts the VRR Curve more than necessary to prevent EE MW from being double-counted. NRDC's claims have no merit.

One of NRDC's faulty premises is its erroneous belief that PJM estimates the impact of EE reductions in the load forecast by surveying and tallying the quantity of MW reductions expected from near term EE projects.[71] But as explained above and in the Answer, PJM's process for developing the load forecast relies upon statistical analysis addressing EE trends and does not assess individual EE projects.[72] To inquire whether a particular EE Resource is included in the load forecast has no purpose. NRDC never explains why PJM's "top down" methodology for preparing the load forecast would be expected to yield inaccurate results—let alone the spectacularly inaccurate result NRDC posits. In fact, the PJM load forecast development process is rigorous and uses updated data when possible.[73] NRDC apparently would prefer that PJM use some other method, although NRDC has been unable to explain what that method would be or why it would be more rigorous.

Finally, even if NRDC were contending that the *aggregate* level of EE Resources exceeds the *aggregate* level of EE reductions assumed in the load forecast, its arguments would still fail. As shown by Mr. Gledhill's affidavit, the possibility that aggregate EE MW reductions reflected in the load forecast could be materially less than the aggregate MW of EE Resources is remote.[74] Accordingly, there is not a meaningful risk that the addback causes shifts in the VRR Curve in excess of the amount of EE reductions reflected in the Load Forecast.

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[71] *See id.* at 5, n.17.

[72] *See supra* at 3; PJM Answer at 7.

[73] *See* Gledhill Suppl. Aff. at P 6.

[74] *See id.* P 8.

2. If NRDC's Hypothetical Scenarios are Treated as Proxies for the Impact of Removing the Addback, Then NRDC is Simply Seeking "Double-Counting" of EE Resources

NRDC portrays two hypothetical scenarios prepared by PJM to show the sensitivity of the RPM Auction for the 2023/2024 Delivery Year as proxies for removal of the addback when 5,471 MW cleared. These two scenarios show increases to the supply curve of 3,000 MW and 6,000 MW. According to NRDC, these show the impact "if EERs delivered 100% and 50% of their currently accredited value [for the 2024/2025 Delivery Year], respectively."[75] In other words, according to NRDC, these scenarios are roughly equivalent to the expected outcome if the addback were halved or eliminated entirely.

But what NRDC fails to acknowledge is that if the addback were halved or eliminated, the MW value of EE Resources permitted to participate in RPM would also have to be reduced by the same amount to avoid double-counting.[76] Because the load forecast includes projected EE reductions, quantities removed from the addback but not removed from the load forecast would be counted twice—once as a load reducer and once as a supply source.[77]

Further, as shown in the Answer, allowing double-counting of EE Resources would seriously undermine RPM's ability to perform as designed. An EE Resource cannot *simultaneously* be recognized as a load-reducer and a supply source. Indeed, if the addback were eliminated or diluted as NRDC proposes, the RAA and Tariff would require PJM to exclude EE Resources from RPM Auctions in tandem with the elimination or diminishment of the addback.

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[75] NRDC Comments at 9.

[76] *See* Gledhill Suppl. Aff. at PP 10-11.

[77] *See* First Affidavit at P 14.

G. CPower's Claim that the Rule Which Limits Available Capacity from an Uncommitted EE Resource to Be Used as Replacement Capacity Only for Another EE Resource Should be Rejected

CPower objects to the rule found in PJM Manual 18, Section 8.7, concerning EE Resources, that provides as follows:

> Available capacity from an EE Resource may be utilized to replace the commitment of only another EE Resource because such commitments are accompanied by the adjustment that is required to avoid double-counting of energy efficiency measures as described in section 2.4.5 of this manual.

CPower maintains that this provision contradicts the PJM Tariff, Attachment DD, section 4.6, addressing bilateral transactions, which does not contain this restriction.[78] According to CPower, EE Resources should be "interchangeable and tradable with other capacity resources through bilateral transactions" and that the Manual 18 limitation "discriminated against EE [Resources]."[79] CPower's claim, however, does not withstand analysis.

As a threshold matter, CPower's argument is outside the scope of the underlying complaint, which is focused on adding back cleared EE into the load forecast. Regardless, CPower fails to specify whether it believes the contradiction relates to Tariff, Attachment DD, section 4.6(a) or 4.6(b). Regardless, both of these provisions specify that transactions will be performed and reported "in accordance with this Attachment DD and pursuant to the Office of the Interconnection's rules related to its 'capacity exchange' tool."[80] This tariff language is fatal to CPower's challenge because the provision restricting EE Resources to replacement transactions

[78] *See* CPower Comments at 3.

[79] *Id.*

[80] *See* Tariff, Attach. DD §§ 4.6 (a)-(b).

with other EE Resources is implemented through the PJM Capacity Exchange tool.[81] The Tariff effectively incorporates the restriction by reference.[82]

Second, the EE replacement capacity provision is appropriately included in PJM Manual 18 under the Commission's "rule of reason." As PJM explained in its Answer, "even specifiable practices that significantly affect rates need not be included if they are clearly implied by the tariff's express terms."[83] Thus, "mere implementation details" may be included in a manual when the language found in a tariff is "detailed enough."[84] Here, the language in the definition of Energy Efficiency Resources specifies that an EE Resource is a project "that is not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed."[85] By virtue of this provision, providers of EE Resources were on notice that the defined rate would not permit a situation in which EE Resources would simultaneously be reflected both in the peak load forecasts used for RPM Auctions and as a Capacity Resource, i.e. be double-counted.[86] This is exactly the function of the EE Resources replacement limitation.

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[81] *See* PJM Manual 18 § 8.7 ("Through the 'Replacement Capacity' transaction functionality in Capacity Exchange, PJM will provide participants with a list of the available capacity for each generation or demand resource in their portfolio as well as a list of cleared buy bids from any Incremental Auction via the Capacity Exchange system and a list of resources with RPM Resource Commitments.").

[82] *See Big Sandy Peaker Plant, LLC*, 154 FERC ¶ 61,216, at P 49 (2016) (noting that the Commission accepted "specified in the PJM Manuals" language "without requiring further specificity" under the "rule of reason").

[83] *See Hecate Energy Greene Cty. 3 LLC v. FERC*, 72 F.4th 1307, 1314 (D.C. Cir. 2023) (citing *City of Cleveland*, 773 F.2d 1368, 1376 (D.C. Cir. 1985). A detailed explanation of the "rule of reason" is presented in section II.A of the Answer.

[84] *Hecate*, 72 F.4th at 1312.

[85] RAA, Sched. 6 § L.1; Tariff, Attach. DD-1 § L.1.

[86] An additional reason why Attachment DD, Section 4.6 (a) does not apply to EE Resources is that the application of that provision is limited to "installed capacity from a specific generating unit or units." Tariff, Attach. DD § 4.6 (a)(i).

The rule limiting EE Resources as replacements only for other EE Resources implements the definitional eligibility requirement specified in the Tariff. Without the replacement limitation rule, an EE Resource could replace a dispatchable Capacity Resource without being removed from the load forecast. This would invalidate the project's eligibility as an EE Resource since it would be double-counted in that circumstance both as a demand reducer in the load forecast and as a source of capacity. The rule was thus appropriately included in Manual 18.[87]

Finally, the EE Resource replacement rule does not impermissibly discriminate against EE Resources. Section 205 (b) of the Federal Power Act "requires that utility customers be treated fairly, but not necessarily equally."[88] There is no improper discrimination when there are "sufficient factual differences to justify the [rate] disparity."[89] Here, factual differences differentiate EE Resources from most other resources in that EE Resources are not dispatchable and their impacts are reflected in the load forecast. These differences justify that EE Resources cannot be replacement resources for technologies with very different characteristics.

H. The Commission Should Reject Requests For a Technical Conference and NRDC's Request For An Interim Holdback Applicable to the RPM Auction for Delivery Year 2026/2027

1. A Technical Conference is not Warranted

NRDC, Sierra Club, AEMA, Affirmed, Advanced and P3 all call for a technical conference to address EE issues. This request should be denied. The Commission can address all of the claims raised in the proceeding based on the record before it. Further, as PJM explained in its

[87] The authorities cited by CPower for the assertion that Tariff language takes precedence over manual language are inapposite because those cases involve circumstances in which the tariff and the manual differed. *See* CPower Comments n.1. Here, the PJM Manual provision supplies the "implementation details" for a Tariff requirement. *Hecate*, 72 F.4th at 1312.

[88] *City of Frankfort*, 678 F.2d at 704.

[89] *Id.* at 708.

Answer, an ongoing stakeholder process at PJM is addressing EE Resource issues at this time. That process provides the most appropriate venue for review of the matters at issue, i.e., market design issues or technical considerations involving the preparation of the load forecast.

2. NRDC's Request for a Holdback Should Be Denied

NRDC proposes, an interim measure, to "buy[] time [to address EE issues] without disrupting auction schedules" to reduce the amount of capacity procured in the Base Residual Auction for Delivery Year 2026/2027 by the amount of offered EE Resources and to not clear any EE Resources in that auction.[90] Thereafter, new accreditation rules would be used to clear the held-back EE Resources that would have cleared in the Base Residual Auction at the Base Residual Auction clearing prices. Any EE Resources still remaining could then participate in the Third Incremental Auction of Delivery Year 2026/2027.[91] This request should also be denied.

NRDC's request for a holdback exceeds the relief requested in the underlying Complaint that the Commission is not required to consider.[92] Further, implementing a holdback would have an adverse impact on RPM Auction outcomes that the Commission should reject as an acceptable remedy under FPA section 206. The Commission previously found that a smaller 2.5% holdback than the one proposed by NRDC would have adverse reliability impacts and allowed PJM to remove such a holdback from the Tariff.[93] Here, the size of the holdback proposed by NRDC of

[90] NRDC Comments at 10.

[91] *Id.* at 10-11.

[92] *See, e.g.*, *La. Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062 (1990) ("a complaint cannot be submitted as an integral part of a protest and motion to intervene in an ongoing proceeding"), *cited in, e.g.*, *Entergy Servs., Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990) ("The Commission's Rules of Practice and Procedure expressly provide for the filing of complaints, and the Commission has determined that such complaints must be filed separately from motions to intervene and protests.") (footnote omitted).

[93] *See PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 394 (2015) ("PJM contends that elimination of [a 2.5 % holdback in the Base Residual Auction] will help promote reliability

about 6,000 MW would be over 5% of the reliability requirement and cause an even greater negative impact on reliability than the 2.5% holdback that was previously eliminated. Thus, the use of such a holdback would create significant reliability risks. In addition to the above, the impacts of imposing a holdback have not been explored in this docket, leaving the Commission with little record evidence to find this remedy a just and reasonable substitute.

II. CONCLUSION

For the reasons set forth above and in PJM's Answer, the Commission should deny the Complaint and reject the misguided arguments made by the various intervenors.

Respectfully submitted,

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July 29, 2024

by ensuring that PJM has obtained committed capacity and is not reliant on short-term procurement. Given the purpose and nature of PJM's Capacity Performance proposal, we concur.").

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2023).

/s/ Blake Grow

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EXHIBIT A
SUPPLEMENTAL AFFIDAVIT OF ANDREW GLEDHILL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Joint Consumer Advocates,	**)**	
	)	
v.	**)**	**Docket No. EL24-118-000**
	)	
PJM Interconnection, L.L.C.	**)**	

SUPPLEMENTAL AFFIDAVIT OF ANDREW GLEDHILL ON BEHALF OF PJM INTERCONNECTION, L.L.C.

1. My name is Andrew Gledhill. My business address is 2750 Monroe Blvd., Audubon, Pennsylvania, 19403. I am Manager of the Resource Adequacy Planning department in the System Planning division of PJM Interconnection, L.L.C. ("PJM"). I previously submitted an affidavit in this matter as part of PJM's Answer filed on July 10, 2024 ("First Affidavit"). This affidavit supplements the First Affidavit by providing additional support for certain matters addressed there and also to address certain new claims made in intervenor comments.

2. In particular, I am responding to certain claims made by National Resource Defense Council ("NRDC") and others claiming that significant levels of Energy Efficiency ("EE") reductions are not being captured in PJM's load forecast such that cleared EE Resources in RPM Auctions regularly exceed load forecast estimates, and a related claim made by Sierra Club that PJM's load forecast methodology fails to take adequate account of State EE programs. Neither of these claims is accurate. Further, I show that NRDC's claim that certain Reliability Pricing Model ("RPM") sensitivity studies that show the impact of removing the addback assume double-counting of EE Resources that could create reliability impacts.

Qualifications

2. My qualifications are provided in my First Affidavit.

Supplemental Support for First Affidavit Regarding the Load Forecast Process

3. As explained in the First Affidavit, the PJM Load Forecast is produced on an annual basis and involves methodological enhancements and input assumption updates to reflect evolving trends. Methodology and results are discussed and reviewed at various stages of the PJM Stakeholder process, primarily through the Load Analysis Subcommittee and

Planning Committee.[1] One of the points I emphasized was that "[t]he PJM Load Forecast methodology utilizes estimating practices that are widely employed within the utility industry."[2] Expanding on that point, I wish to note that certain other Independent System Operators and Regional Transmission Organizations use similar techniques as PJM. Many of PJM's techniques are broadly used in electric demand forecasting. PJM is not unique in taking advantage of statistical modeling to forecast long-term electric demand.

4. In order to promote continuous improvement of its processes, PJM regularly seeks stakeholder feedback regarding the load forecast. Methodology and results are discussed and reviewed at various stages of the PJM Stakeholder process, primarily through the Load Analysis Subcommittee and Planning Committee. Further, PJM engages with outside consultants for the purpose of identifying potential enhancements of the load forecast process. For example, PJM commissioned a report issued in 2022 regarding the load forecast process from Itron, Inc. that reviewed PJM's then-current forecast models and provided recommendations for enhancements.[3] Among other matters, the Itron Report addressed issues identified by market participants regarding the process for capturing the impacts of EE programs.[4]

Whether the Load Forecast Captures the MW Reductions Associated with EE Resources That Clear in PJM

5. One of the claims made by NRDC and other intervenors is that EE Resources that clear in RPM auctions are being significantly "overaccredited" compared with the EE MW reductions that are captured in the load forecast.[5] Further, NRDC claims that RPM sensitivity studies that showed the impact of adding 3,000 MW to 6,000 MW to the bottom of the supply curve for the RPM Auction covering the 2023/2024 delivery year "provide[] an indication of the order of magnitude" on RPM clearing prices that would be associated with the elimination of the addback. I strongly disagree with the suggestion that the load forecast could systematically be missing between 3,000 MW and 6,000 MW of EE reductions.

6. My First Affidavit discussed at length how PJM prepares its load forecast. I explained that PJM uses rigorous statistical techniques and procures data from reliable sources to

[1] First Affidavit at ¶ 5.

[2] *Id.*

[3] *See* 2022 PJM Model Review, Final Report ("Itron Report"), https://www.pjm.com/-/media/planning/res-adeq/load-forecast/pjm-model-review-final-report-from-itron.ashx.

[4] *See id*. at 46-48.

[5] NRDC Comments at 8.

complete the load forecast studies[6] The suggestion that PJM is systematically missing between 3,000 MW and 6,000 MW of EE reductions occurring within its footprint is recklessly inaccurate. An error of that magnitude could only happen if PJM's processes or data sources were seriously compromised. There is no reason to believe that to be the case; nor did the Itron Report identify any such failures. Further, if PJM's processes were as flawed as NRDC contends, there would be significant reductions when comparing longer term forecasts and shorter term forecasts. However, as shown in the First Affidavit, the most recent load forecasts for Delivery Year 2024/2025 used for the Third Incremental RPM Auction are actually higher than the older forecast for Delivery Year 2024/2025 used for the Base Residual Auction.

7. Statistical analysis strongly supports the inference that the EE embedded in the forecast exceeds what clears or is offered in the Capacity Market. The Reliability Assurance Agreement defines an Energy Efficiency Resource as "more efficient devices or equipment or implementation of more efficient processes or systems…exceeding then-current building codes, appliance standards, or other relevant standards."[7] The adoption of these more-efficient devices is occurring and is reflected in historical loads, and this behavior is expected to continue. In fact, the pre-calibrated EIA data assumes that at minimum, standards will be met,[8] and the calibration of these trends in statistical models further reinforces this point.[9]

8. The possibility that the EE Resources bidding into the RPM Auctions could exceed the EE embedded in the forecast is remote. For that to occur, there would need to be a significant bias in the process that goes undetected for an extended period. In addition, not all EE measures occurring within PJM are qualified to be EE Resources within RPM. Taking all these factors into account, the possibility that EE Resources offered into RPM Auctions would exceed EE embedded in the forecast by a material amount is remote. If it ever occurred, it would be an extreme outlier. NRDC's claims, and the similar claims made by other intervenors, are simply unsustainable.

9. In addition, a related claim made by Sierra Club is that PJM does not "account for state and utility efficiency programs by mapping regional EE program expenditures to end

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[6] *See* First Affidavit at ¶¶ 4-9.

[7] RAA, Sched. 6, § L.1; *accord* Tariff, Attach. DD-1, § L.1.

[8] For instance, the EIA Annual Energy Outlook Residential Demand Module Assumptions, at 6 (https://www.eia.gov/outlooks/aeo/assumptions/pdf/RDM_Assumptions.pdf) states: "In any given year, several equipment options of varying efficiency are available: minimum standard, some intermediate or ENERGY STAR® level, and highest efficiency."

[9] *See* First Affidavit at ¶ 6 (discussing Residential, Commercial, and Industrial sector models); *see id.* at ¶ 7 (discussing hourly regression models.).

uses."[10] PJM's process does not track individual EE programs but, contrary to Sierra Club's insinuations, it does reasonably capture the impacts of state and utility EE programs. The EIA data used by PJM incorporates information about many of these programs. In addition, the Statistically Adjusted End-Use models used by PJM provide inputs that aid in grasping these impacts.

NRDC's Reliance on the RPM Sensitivity Studies as a Proxy for Demonstrating the Elimination of the Addback Assumes Double-Counting of EE Resources

10. The PJM Auction for the 2023/2024 Delivery Year cleared 5,471 MW of EE Resources. The failure of the load forecast to capture 3,000 MW to 6,000 MW of EE impact, as NRDC claims, thus would be between about 50% and more than 100% of the cleared EE MW. NRDC asserts that it would be proper to clear the market without including these quantities in an addback.

11. The only justification for not including these quantities in an addback would be if the EE-driven load reductions in the load forecast were grossly underestimated. But, as I have shown, that is not a realistic possibility. NRDC is thus simply proposing to double count 50% to 100 % of the EE Resources that cleared—once as load reducers in the load forecast and a second time as supply sources in RPM. As I showed in the First Affidavit, this could create a significant reliability issue.[11]

12. This concludes my supplemental affidavit.

[10] Sierra Club Comments at 4 (quoting Independent Market Monitor, EE Education at 16 (Jan. 10, 2024),availableathttps://pjm.com/-/media/committees-groups/committees/mic/2024/20240110/20240110-item-06a---energy-efficiency-education---imm.ashx.).

[11] First Affidavit at ¶ 16.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Joint Consumer Advocates,	)	
	)	
v.	)	**Docket No. EL24-118-000**
	)	
PJM Interconnection, L.L.C.	)	

VERIFICATION OF ANDREW GLEDHILL

Andrew Gledhill, being first duly sworn, deposes and states that he is the Andrew Gledhill referred to in the foregoing document entitled "Affidavit of Andrew Gledhill," that he has read the same and is familiar with the contents thereof, and that the testimony set forth therein is true and correct to the best of his knowledge, information, and belief.

/s/ Andrew Gledhill
Andrew Gledhill