

187 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

PJM Interconnection, L.L.C.

Docket No. ER23-729-002

ORDER ON PETITION

(Issued May 6, 2024)

1. On March 12, 2024, the United States Court of Appeals for the Third Circuit (Third Circuit) issued a decision¹ vacating a portion of Commission orders that allowed PJM Interconnection, L.L.C. (PJM) to apply amendments to its Open Access Transmission Tariff (Tariff) to the 2024/2025 Base Residual Auction (BRA) (Tariff Amendments).² The Third Circuit found that the Tariff Amendments—which allowed PJM to exclude certain Planned Generation Capacity Resources from the Locational Deliverability Area (LDA) Reliability Requirement—were impermissibly applied retroactively.³

2. On March 29, 2024, pursuant to Rule 207(a)(5) of the Commission’s Rules of Practice and Procedure,⁴ PJM filed a petition seeking confirmation as to the capacity commitment rules for the 2024/2025 delivery year. PJM requests confirmation that, as a result of the *PJM Power Providers* decision, the Tariff provisions governing the conduct of the BRA for the 2024/2025 delivery year are those that were in effect prior to the LDA Reliability Requirement Orders, and that the capacity commitments that would result from applying those Tariff provisions are binding and effective for the 2024/2025

¹ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 395 (3d Cir. 2024) (*PJM Power Providers*). On March 28, 2024, the court issued the mandate.

² *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 (2023) (Initial Order), *reh’g denied*, 184 FERC ¶ 61,055 (2023) (Rehearing Order) (LDA Reliability Requirement Orders).

³ *PJM Power Providers*, 96 F.4th at 399. Capitalized terms that are not defined in this order have the meaning specified in the Tariff.

⁴ 18 C.F.R. § 385.207(a)(5) (2023).

delivery year.⁵ PJM also requests that the Commission authorize PJM to re-run the Third Incremental Auction for the 2024/2025 delivery year. As discussed below, we grant PJM's petition and direct PJM to submit a compliance filing.

I. Background

3. The history of this case is recounted in the LDA Reliability Requirement Orders.⁶ As relevant here, PJM is responsible for ensuring reliability within its region by conducting a series of capacity auctions to procure the appropriate amount of capacity resources needed to meet PJM's resource adequacy needs in a future delivery year.⁷ These auctions include an annual BRA and three Incremental Auctions in advance of each delivery year, which runs from June 1 to May 31.⁸ Market participants submit offers in the capacity auctions that would commit resources to be available to provide capacity for a given delivery year. Market participants may also enter bilateral capacity contracts for the purchase and sale of title and rights to specified amounts of capacity from specific generating units.⁹ For the 2024/2025 delivery year, PJM conducted a BRA in December 2022 and only one Incremental Auction—the Third Incremental Auction—in February 2024.¹⁰

⁵ Petition at 1.

⁶ See *infra* note 2.

⁷ See PJM Manual 18: PJM Capacity Market, § 1.3 (Definition and Purpose of the Reliability Pricing Model), Revision 56 (Feb. 9, 2023), <https://www.pjm.com/~media/documents/manuals/m18.ashx> (PJM Capacity Market Manual) (“The RPM is a multi-auction structure designed to procure resource and [Price Responsive Demand] commitments to satisfy the region’s unforced capacity obligation through the following market mechanisms: a Base Residual Auction, Incremental Auctions and a Bilateral Market.”).

⁸ PJM, Intra-PJM Tariffs, Tariff, Attach. DD, § 5.4 (Reliability Pricing Model Auctions) (9.0.0).

⁹ PJM, Intra-PJM Tariffs, Tariff, Attach. DD, § 4, (General Provisions) (7.1.0), § 4.6 (Bilateral Capacity Transactions).

¹⁰ The First and Second Incremental Auctions for the 2024/2025 delivery year were cancelled because several capacity auctions have been delayed and are running on compressed schedules. See e.g., *Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061, at PP 337, 358 (2020) (*Calpine*).

4. On August 29, 2022, PJM posted planning parameters for the 2024/2025 BRA, including the LDA Reliability Requirement for the Delmarva Power & Light Company (“DPL”) South LDA (Initial LDA Reliability Requirement).¹¹ The BRA bidding window opened on December 7, 2022 and closed December 13, 2022. On December 23, 2022, before the results were posted, PJM filed the proposed Tariff Amendments pursuant to FPA section 205 that would allow it to exclude Planned Generation Capacity Resources from the calculation of the Initial LDA Reliability Requirement under certain conditions.¹² On December 23, 2022, pursuant to section 206 of the FPA, PJM simultaneously filed a complaint alleging that the Initial LDA Reliability Requirement, absent the changes proposed in the concurrent FPA section 205 filing, would result in an unjust and unreasonable auction outcome. PJM stated that its section 206 filing contained identical Tariff Amendments as proposed in its section 205 filing, and should the Commission accept its 205 filing, PJM would consider its 206 filing to be moot and withdrawn.¹³

5. In its concurrent filings, PJM explained that the Tariff Amendments were necessary to accurately clear the BRA because a significant amount of Planned Generation Capacity Resources that were expected to participate in the BRA in the DPL South LDA did not offer into the BRA, despite those resources being included in the Initial LDA Reliability Requirement.¹⁴ As a result, PJM explained, the Initial LDA Reliability Requirement was overstated and inaccurate.¹⁵ In the absence of its proposed Tariff Amendments, PJM estimated that load in the DPL South LDA would pay over \$100 million in excess of what would have been necessary for capacity for the 2024/2025 delivery year.¹⁶

¹¹ Rehearing Order, 184 FERC ¶ 61,055 at P 10.

¹² PJM Interconnection, L.L.C., Transmittal, Docket No. ER23-729-000 at 1-2 (filed Dec. 23, 2022).

¹³ PJM Interconnection, L.L.C., Transmittal, Docket No. EL23-19 at 2 n.4, 36 (filed Dec. 23, 2022).

¹⁴ PJM Interconnection, L.L.C., Transmittal, Docket No. ER23-729-000 at 2 (filed Dec. 23, 2022).

¹⁵ *Id.* at 2, 9, 10, 31.

¹⁶ *Id.* at 34.

6. On February 21, 2023, the Commission accepted PJM's FPA section 205 proposal and dismissed PJM's complaint as moot.¹⁷ In relevant part, the Commission found that the filed rate doctrine did not prohibit PJM from proposing under FPA section 205 to adjust the LDA Reliability Requirement prior to the time that capacity supply obligations and the corresponding rights were awarded under the BRA.¹⁸ On February 28, 2023, PJM posted the BRA auction results using the adjusted LDA Reliability Requirement for the DPL South LDA (Adjusted LDA Reliability Requirement). PJM also conducted the Third Incremental Auction for the 2024/2025 delivery year in February 2024, and posted the results on March 11, 2024.¹⁹

II. Third Circuit Opinion

7. On appeal, the Third Circuit found that the Tariff Amendments were retroactive because they altered the legal consequence attached to a past action.²⁰ First finding the Tariff and Tariff Amendments unambiguous, the Court went on to state, "Under the Tariff, PJM calculated and posted the LDA Reliability Requirement (past action), and it was required to use it in the Auction (legal consequence). The Tariff Amendments, however, permitted PJM to use a different LDA Reliability Requirement to reflect certain resources' lack of participation."²¹ The Court found that, because the Tariff Amendments "nullified a legal consequence attached to a past action," the Commission violated the filed rate doctrine by approving them.²² The Court further "emphasize[d] that the equities play no role in our application of the filed rate doctrine" even if "this bright-line rule could potentially produce a harsh result in this case."²³ The Court vacated only the portion of the Commission's orders that allow PJM to apply the Tariff Amendments to the 2024/2025 BRA.²⁴

¹⁷ Initial Order, 182 FERC ¶ 61,109 at PP 149, 181.

¹⁸ *Id.* PP 163, 167; Rehearing Order, 184 FERC ¶ 61,055 at PP 54, 66, 70.

¹⁹ *See* PJM, Intra-PJM Tariffs, Tariff, Attach. DD, § 5.4 (Reliability Pricing Model Auctions) (9.0.0) ("[T]he Third Incremental Auction shall be conducted in the month of February that is three months prior to the start of the Delivery Year.").

²⁰ *PJM Power Providers*, 96 F.4th at 399.

²¹ *Id.* at 400.

²² *Id.* at 401.

²³ *Id.* at 401-402.

²⁴ *Id.* at 402 (citing *Bd. of Cnty. Comm'rs of Weld Cnty. v. U.S. EPA*, 72 F.4th 284,

III. Filing

8. PJM states that the Commission has broad and expansive remedial authority in correcting errors,²⁵ and the proper remedy is one that puts the parties in the position they would have been had the error not been made.²⁶ PJM states that the Commission should exercise its remedial authority to confirm that PJM should recalculate the 2024/2025 BRA results under the status quo ante rules and direct PJM to rerun the 2024/2025 Third Incremental Auction.²⁷ PJM also states that the Commission should direct PJM to submit a compliance filing that removes the previously accepted Tariff Amendments pertaining to the LDA Reliability Requirement. PJM requests Commission action by May 6, 2024 so that it may orderly conduct the Third Incremental Auction before the start of the 2024/2025 delivery year, which commences on June 1, 2024.²⁸

296 (D.C. Cir. 2023) (“[J]udicial remedies should be ‘no more burdensome to the defendant than necessary to provide complete relief’ to the plaintiffs or petitioners.” (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979))).

²⁵ Petition at 7 (citing *Verso Inc. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018) (the Commission has an “expansive range” of remedies “afforded by [the Commission’s] [FPA] Section 309 remedial power”); *TNA Merchant Projects v. FERC*, 857 F.3d 354, 359 (D.C. Cir. (2017) (quoting *Xcel Energy Servs. Inc.*, 815 F.3d 947, 956 (D.C. Cir. (2016)) (the Commission has “broad authority to ‘remedy its errors and correct unjust situations.’”))).

²⁶ *Id.* at 4 (citing *Pub. Utils. Comm’n of Cal. v. FERC*, 988 F.2d 154, 168 (D.C. Cir. 1993); see also *Panhandle E. Pipe Line Co. v. FERC*, 907 F.2d 185, 189 (D.C. Cir. 1990); *Off. of Consumers’ Couns., Ohio v. FERC*, 826 F.2d 1136, 1139 (D.C. Cir. 1987); *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,057, at P 21 (2016) (finding that the Commission has a “general policy of ensuring that the parties harmed by our legal error are put in the same position in which they would have been had the Commission not erred”))).

²⁷ PJM states that it would not need to redo any must-offer exceptions, unit-specific offer caps, or other pre-auction activities for the Third Incremental Auction because re-calculating the BRA would not affect any of those determinations. Petition at 8. PJM also states that it will post for informational purposes the results of the recalculated BRA and that, upon Commission confirmation, those results will be finalized and become the effective capacity commitments. *Id.* at 9.

²⁸ *Id.* at 10.

9. PJM states that, given the unique facts of this case, simply recalculating the BRA alone is not a reasonable or complete remedy.²⁹ Rather, PJM states that rerunning the Third Incremental Auction is also necessary because recalculating the BRA under the status quo ante rules will alter the committed capacity level for a number of resources, either increasing or decreasing their megawatts of committed capacity. PJM explains that holding a new Third Incremental Auction for the 2024/2025 delivery year would allow sellers to adjust their newly established capacity commitments to account for any change in circumstances. For example, PJM explains that some market participants may have sold uncommitted capacity through bilateral transactions, and some of that capacity may now clear under the recalculated BRA results and thus become committed capacity. PJM states that market participants should be afforded the opportunity to submit new buy bids and/or sell offers in the Third Incremental Auction to adjust their capacity commitments in response to the updated BRA auction results. PJM states that rerunning the Third Incremental Auction would be a just and reasonable component of an appropriate remedy in this circumstance.³⁰

10. As an alternative option, PJM states that, in the event the Commission is unable to issue an order by May 6, 2024, PJM requests that the Commission *not* direct PJM to rerun the Third Incremental Auction because running an auction so close to the start of the delivery year would present too much uncertainty about unsettled capacity commitments.³¹ Instead, in that situation, PJM requests Commission authorization to relieve sellers of any capacity commitments in excess of the level the seller reasonably believes that its Capacity Resources can meet—but only to the extent that the updated BRA results increased a Capacity Resource’s capacity commitment.

IV. Notice of Filing and Response Pleadings

11. Notice of PJM’s filing was issued on April 1, 2024 with interventions and protests due on or before April 11, 2023.³² A timely motion to intervene was filed by Delaware

²⁹ *Id.* at 5-6.

³⁰ *Id.* at 7 (citing 16 U.S.C. § 825h; *see, e.g., Ark. Pub. Serv. Comm’n v. FERC*, 891 F.3d 377, 383-384 (D.C. Cir. 2018) (“The filed rate doctrine has never been construed as requiring FERC to close its eyes to changes in circumstances that render a rate that was once just and reasonable but no longer comports with the new reality. FERC has ‘broad authority to fashion equitable remedies in a variety of settings.’” (quoting *Columbia Gas Transmission Corp. v. FERC*, 750 F.2d 105, 109 (D.C. Cir. 1984))).

³¹ *Id.* at 11.

³² PJM Interconnection, L.L.C., Notice of Filing (issued Apr. 1, 2024).

Energy Users Group (DEUG).³³ Hartree Partners, L.P. (Hartree) and Easton Utilities Commission (Easton Commission) each filed an out-of-time motion to intervene. Comments were filed by Constellation Energy Generation, LLC (Constellation) and PJM Power Providers Group and the Electric Power Supply Association (P3 and EPSA). Protests were filed by the Maryland Public Service Commission (Maryland Commission) and American Municipal Power, Inc., Delaware Division of the Public Advocate, DEUG, Delaware Municipal Electric Corporation, Delaware Public Service Commission, Maryland Office of People's Counsel, and Old Dominion Electric Cooperative (PJM Load Parties). EPSA, P3, and the NRG Companies³⁴ filed an answer. PJM Load Parties also filed an answer. The Commission received correspondence from U.S. Congressman John Sarbanes.

V. Comments, Protests, and Answers

12. Constellation supports PJM's requested relief.³⁵ Constellation states that a key purpose of the incremental auctions is to give PJM an opportunity to adjust its capacity purchases to reflect demand changes since the underlying BRA, so PJM has sufficient capacity to ensure reliability.³⁶ Constellation contends that, if the 2024/2025 BRA results are recalculated, but the Third Incremental Auction for the 2024/2025 delivery year is not rerun, there will be a disconnect between the quantity of capacity procured in the BRA and the quantity needed in the Third Incremental Auction.³⁷ Constellation further argues that recalculating the BRA necessarily requires a rerun of the Third Incremental Auction because PJM's Tariff explicitly requires that the optimization algorithm for an incremental auction "shall consider" any "Updated VRR Curve Increment," which in turn is a function of "the net Unforced Capacity committed to the PJM Region as a result of all prior auctions conducted for such Delivery Year."³⁸ Constellation argues that a

³³ DEUG is an association of large industrial energy customers of DPL located in Delaware.

³⁴ The NRG Companies are NRG Business Marketing LLC (f/k/a Direct Energy Business Marketing, LLC) and Midwest Generation, LLC.

³⁵ Constellation Comments at 1.

³⁶ *Id.* at 4 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 261 (2015) (Incremental Auctions allow PJM to adjust the type and amount of resources needed to ensure reliability in the appropriate delivery year and also to ensure that those resources are fairly compensated)).

³⁷ *Id.* at 2.

³⁸ *Id.* at 5-6 (citing PJM, Intra-PJM Tariffs, Tariff, Attach. DD, § 5.12 (Conduct of RPM Auctions) (24.0.0), § 5.12(b); PJM, Intra-PJM Tariffs, Tariff, Definitions – T-U-V

recalculation of the BRA results will require an adjustment to the Updated VRR Curve Increment, which must be used in the Third Incremental Auction. Otherwise, Constellation contends, PJM's conduct of the Third Incremental Auction would no longer have followed the Tariff because it was conducted using parameters different from those specified by the Tariff.

13. P3 and EPSA also support PJM's petition.³⁹ While P3 and EPSA state that they are comfortable with PJM rerunning the Third Incremental Auction as proposed, they would prefer PJM's alternative proposal to relieve over-committed capacity for affected resources. They argue there may be unintended consequences of allowing all market participants to adjust bids and offers for an auction where results previously have been published and where only a small number of participants were impacted by the recalculated BRA results.⁴⁰

14. Maryland Commission protests PJM's petition.⁴¹ Maryland Commission requests that the Commission reopen PJM's section 206 proceeding in Docket No. EL23-19-000, consolidate it with this proceeding, and direct PJM to retain the results of the BRA and the Third Incremental Auction for the 2024/25 delivery year.⁴² Maryland Commission states that the Commission has discretion to reopen a hearing "for good cause" if it has reason to believe that reopening is warranted by a change in conditions of fact or law or is in the public interest.⁴³ Maryland Commission states that good cause exists to reopen the complaint because the *PJM Power Providers* decision makes the complaint proceeding highly relevant and would allow the Commission to put into effect a just and reasonable rate in order to ensure that customers will not be harmed by having to pay for reliability at inflated prices with no economic or reliability justification.⁴⁴ Maryland Commission also states that rerunning the BRA has profound and troubling implications

21.0.0)).

³⁹ P3 and EPSA Comments at 2.

⁴⁰ *Id.* at 3-4.

⁴¹ Maryland Commission Protest at 2.

⁴² *Id.* at 5.

⁴³ *Id.* (citing *Cities of Anaheim v. FERC*, 941 F.2d 1234 (D.C. Cir. 1991); *N. Ind. Pub. Serv. Co. v. FERC*, 782 F.2d 730 (7th Cir. 1986)).

⁴⁴ *Id.* at 5-6.

for Maryland's Standard Offer Service program, which applies a proxy price mechanism based on recent BRA clearing prices.⁴⁵

15. PJM Load Parties argue that the Commission must weigh the equities and exercise its remedial discretion to deny PJM's petition and direct PJM to retain the results of the BRA and Third Incremental Auction for the 2024/25 delivery year.⁴⁶ PJM Load Parties state that information recently posted by PJM indicates that recalculating the BRA will more than quadruple the clearing price in the DPL-South LDA and will increase the cost to consumers by \$177.7 million.⁴⁷ PJM Load Parties further contend that recalculating the BRA will upset expectations of load-serving entities and customer interests that relied on the February 2023 BRA results and now have no viable options to hedge against the much higher BRA clearing prices.⁴⁸ PJM Load Parties and Congressman John Sarbanes argue that allowing this result to stand is contrary to the Commission's statutory obligation to ensure just and reasonable rates and is contrary to the Commission's policy against rerunning auctions.⁴⁹ PJM Load Parties further contend that the Commission has already balanced the equities in the LDA Reliability Requirement Orders, in which the Commission found that the equities weigh in favor of setting capacity rates at just and reasonable levels reflecting actual reliability needs.⁵⁰

16. PJM Load Parties also protest PJM's proposal to rerun the Third Incremental Auction.⁵¹ PJM Load Parties state that PJM's request to rerun the Third Incremental

⁴⁵ *Id.* at 3.

⁴⁶ PJM Load Parties Protest at 1-2, 5. On April 22, 2024, PJM Load Parties separately filed a complaint pursuant to FPA section 206 in Docket No. EL24-104. We will address the complaint in a separate order.

⁴⁷ *Id.* at 3 (citing Klose Aff. ¶ 8).

⁴⁸ *Id.* at 11-13.

⁴⁹ *Id.* at 3-5, 9 (citing *Indep. Mkt. Monitor for PJM v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,137, at P 77 (2021); *ISO New England Inc.*, 170 FERC ¶ 61,187, at P 21 (2020); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252, at PP 42, 53-60 (2017), *order on reh'g*, 169 FERC ¶ 61,237, at PP 25-26 (2019); *Midwest Indep. Transmission Sys. Operator, Inc.*, 162 FERC ¶ 61,173, at PP 19-20 (2018); Correspondence of Congressman John Sarbanes at 1.

⁵⁰ *Id.* at 5 (citing Initial Order, 182 FERC ¶ 61,109 at PP 173-179; Rehearing Order, 184 FERC ¶ 61,055 at PP 85-90).

⁵¹ *Id.* at 16.

Auction is premised on the Commission confirming that it would be appropriate for PJM to recalculate the BRA price, which PJM Load Parties argue should be rejected.⁵² PJM Load Parties further argue that rerunning the Third Incremental Auction would result in the types of complications the Commission has cited in declining to rerun past capacity auctions. PJM Load Parties also contend that rerunning the Third Incremental Auction would itself be unlawful retroactive ratemaking.⁵³

17. In their answer to protests, EPSA, P3, and NRG Companies argue that recalculating the 2024/2025 BRA results is compelled by the Court's decision.⁵⁴ They assert that the Court's decision leaves no room for the Commission to take any action other than to remedy the filed rate doctrine violation by reinstating the clearing price determined in accordance with the filed rate. EPSA, P3, and NRG Companies further state that reinstating the 2024/2025 BRA clearing price calculated in accordance with the filed rate in no way conflicts with the Commission's policy of not rerunning auctions because all that PJM would be doing here is reinstating the clearing price calculated under the correct rules.⁵⁵

18. In response to the answer of EPSA, P3, and NRG Companies, PJM Load Parties reiterate their arguments that the Commission must balance the equities and that PJM's petition implicates the concerns that underlie the Commission's policy against rerunning markets.⁵⁶

VI. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the timely, unopposed motion to intervene serves to make DEUG a party to this proceeding.

20. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant the late-filed motions to intervene filed by Hartree and

⁵² *Id.* at 17.

⁵³ *Id.* at 18.

⁵⁴ EPSA, P3, and NRG Companies Answer at 2-3.

⁵⁵ *Id.* at 4-5.

⁵⁶ PJM Load Parties Answer at 4-5.

Easton Commission given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2023), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

22. We grant PJM's petition. On appeal, the Court found the Tariff unambiguous and vacated the portions of the Commission's orders allowing the Tariff Amendments to apply to the 2024/2025 BRA.⁵⁷ In addition, the Court held that PJM was required to use the Initial LDA Reliability Requirement in the 2024/2025 BRA.⁵⁸ Although the Court did not remand any particular matter to the Commission, the Commission nevertheless retains authority to implement the requirements of the Court's opinion.⁵⁹ Therefore, in order to implement the Court's holding, we grant PJM's petition and direct PJM to recalculate the 2024/2025 BRA results under the status quo ante auction rules and parameters.

23. Given that recalculating the 2024/2025 BRA using the Initial LDA Reliability Requirement will alter capacity commitments, we further grant PJM's petition and direct PJM to rerun the Third Incremental Auction. The BRA and the incremental auctions work in concert to align capacity commitments to reliability requirements in advance of the delivery year. The incremental auctions provide opportunities for capacity market participants to sell available capacity and purchase replacement capacity⁶⁰ and for PJM to

⁵⁷ *PJM Power Providers*, 96 F.4th at 400.

⁵⁸ *Id.*

⁵⁹ *Burlington N., Inc. v. U.S.*, 459 U.S. 131, 141 (1982) ("federal court authority to reject Commission rate orders for whatever reason extends to the orders alone, and not to the rates themselves"). *See also Koch Gateway Pipeline Co. v. FERC*, 136 F.3d 810 (D.C. Cir. 1998) ("any assessment of the Commission's remedial actions must be 'based upon a considered analysis of the facts of [the] case and the precise purposes of the filed rate doctrine.'" (citing *Towns of Concord, Norwood & Wellesley, Mass. v. FERC*, 955 F.2d 67, 75 (D.C. Cir. 1992)).

⁶⁰ As the Tariff acknowledges, the need to purchase replacement capacity may arise for any number of reasons, including, for example, resource retirement, resource cancellation or construction delay, resource derating, or EFORd increase. PJM, Intra-PJM Tariffs, Tariff, Attach. DD § 5.4 (Reliability Pricing Model Auctions) (9.0.0),

secure additional capacity commitments or relieve sellers from prior capacity commitments based on updated reliability requirements.⁶¹ The Third Incremental Auction is of particular importance because it reflects the final load forecast and Equivalent Demand Forced Outage Rates for the upcoming delivery year.⁶² In this particular case, rerunning the Third Incremental Auction will complement the Court's requirement that PJM recalculate the BRA results by allowing market participants who obtain revised capacity commitments to make adjustments to these commitments.

24. We decline Maryland Commission's request to reopen PJM's section 206 proceeding. As discussed, we find that recalculating the 2024/2025 BRA is required by the Court's unequivocal ruling vacating the portion of the Commission's orders allowing PJM's Tariff Amendments submitted under FPA section 205 to apply to the 2024/2025 BRA, and rerunning the Third Incremental Auction accordingly is consistent with that ruling. Reopening the complaint proceeding under FPA section 206 would not allow the Commission to arrive at a different outcome.

25. PJM Load Parties argue that the equities favor the use of the Commission's remedial authority to not rerun the auction and to retain the results of the BRA as determined and posted by PJM. As discussed above, however, we find that the Court's opinion vacating the portion of the Commission's orders allowing PJM to apply the Tariff Amendments to the 2024/2025 BRA indicates that PJM "was required to use" the Initial LDA Reliability Requirement.⁶³ In particular we note that, in reaching that result, the Court reiterated that "the equities play no role in [its] application of the filed rate

§ 5.4(d).

⁶¹ PJM is required to recalculate the PJM Region Reliability Requirement and each LDA Reliability Requirement based on an updated peak load forecast, updated Installed Reserve Margin, and an updated Capacity Emergency Transfer Objective, and update such reliability requirements for the Third Incremental Auction to reflect any changes. PJM, Intra-PJM Tariffs, Tariff, Attach. DD § 5.4, (Reliability Pricing Model Auctions) (9.0.0), § 5.4(c).

⁶² See PJM Interconnection, L.L.C., Transmittal, Docket Nos. EL16-49; ER18-1314-003; EL18-178 at 89 (filed Mar. 18, 2020) (stating that "PJM should always conduct a Third IA for each Delivery Year, to take account of the final load forecast and Equivalent Demand Forced Outage Rates for that Delivery Year."); *Calpine*, 173 FERC ¶ 61,061 at PP 337, 358 (granting PJM's request for waiver of Tariff provisions to allow PJM to cancel the First and Second Incremental Auctions—but not the Third Incremental Auction—for the 2024/2025 delivery year).

⁶³ *PJM Power Providers*, 96 F.4th at 400.

doctrine.”⁶⁴ Accordingly, while we acknowledge PJM Load Parties’ concerns about rerunning auctions and the equities implicated by this proceeding, we find that they cannot change the outcome here.⁶⁵

26. Accordingly, we direct PJM to submit, within 15 days of the date of issuance of this order, a compliance filing that removes the Tariff Amendments accepted in the LDA Reliability Requirement Orders that allowed PJM to exclude certain Planned Generation Capacity Resources from the LDA Reliability Requirement in the 2024/2025 delivery year BRA.⁶⁶ We further direct PJM to rerun the Third Incremental Auction for the reasons discussed above.

The Commission orders:

(A) PJM’s petition is hereby granted, as discussed in the body of this order.

(B) PJM is hereby directed to recalculate the 2024/2025 BRA auction price and rerun the Third Incremental Auction, as discussed in the body of this order.

⁶⁴ *Id.* at 401.

⁶⁵ While the Commission has previously acknowledged the technical difficulties in rerunning auctions, we note that here PJM can recalculate the BRA results by using the original offers and the Initial LDA Reliability Requirement. *Cf. Midwest Indep. Transmission Sys. Operator, Inc.*, 162 FERC ¶ 61,173, at P 22 (2018) (“It would be highly difficult, if not impossible, for the Commission or MISO to reasonably provide retroactive relief, by rerunning the Auction for the 2013/14 Planning Year through the present.”); *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237, at P 28 (2019) (“rerunning the market here simply cannot approximate the results that would have occurred had the auction been run according to PJM’s Tariff in place”).

⁶⁶ PJM is reminded to use an eTariff Record Effective Priority Order number higher than used in Docket No. ER23-729-000 to ensure the tariff records it submits in compliance with this order become the effective rate.

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(C) PJM is hereby directed to submit a compliance filing, within 15 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Chairman Phillips is concurring with a separate statement attached.
Commissioner Clements is concurring with a separate statement attached.
Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER23-729-002

(Issued May 6, 2024)

PHILLIPS, Chairman, *concurring*:

1. I concur in today's order. I write separately to make two points.
2. First, in its decision applying the filed rate doctrine, the U.S. Court of Appeals for the Third Circuit “emphasize[d] that the equities play no role” in its determination.¹ The Court has spoken and, as always, the Commission will adhere to that ruling.
3. But I must equally emphasize that, for me, *equity always matters*. In this case, a “faulty assumption”² (the Court's words) caused a more than four-fold increase in the market-clearing price that will, because of the Court's order, cost customers in a small, rural area of Delaware more than \$100 million³ for which they will receive no appreciable benefit. I did not join this Commission in order to rubber stamp such patently inequitable outcomes. Congress created the Commission for the primary purpose of protecting consumers,⁴ and I will continue to do everything that I can as Chairman to see to it that we fulfill that critically important mission.

¹ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 401 (3d Cir. 2024) (*PJM Power Providers*).

² *Id.* at 396.

³ PJM Load Parties contend that, based on recent data published by PJM, the cost impact could be \$177.7 million. *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,065, at P 15 (2024). In the initial order accepting PJM's proposed tariff amendment, we noted that the Maryland Office of People's Counsel estimated that the average electric customer in the DPL-South Locational Deliverability Area could experience a bill increase of \$24 per month for the 2024/2025 delivery year. *See PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109, at PP 100, 178.

⁴ *E.g., Towns of Alexandria, Minn. v. FPC*, 555 F.2d 1020, 1028 (D.C. Cir. 1977) (explaining that the Federal Power Act's “primary aim is the protection of consumers from excessive rates and charges”) (quoting *Mun. Light Bds. v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971)); *see also Elec. Dist. No. 1 v. FERC*, 774 F.2d 490, 492 (D.C. Cir. 1985) (recognizing that the benefits of rate predictability, which are the “whole purpose” of the filed rate doctrine, ought to be considered in light of the “Federal Power Act's

4. Second, this proceeding should lead all stakeholders, including both PJM and the generators that will reap the more-than-\$100-million windfall due to the Court's decision, to take all necessary steps to ensure that we never find ourselves in this position again. That includes putting in place controls to ensure that a similar error does not reoccur and, should it somehow happen again, that PJM or the Commission has the authority to correct that error and protect customers from such a manifestly inequitable result. Basic equity, and the public interest, demand nothing less.

5. The court's broad reading of the filed rate doctrine, and its endorsement of "predictability" as a higher virtue than equity,⁵ is beyond troubling, and does not represent my views, or that of the other two sitting FERC Commissioners, both of whom voted as I did to approve what the court undid in March. One must ask: if the over \$100 million result of a "faulty assumption" (and no one in this case argues that it's not a faulty assumption) is somehow okay, what about a \$1 billion faulty assumption, or a \$1 trillion faulty assumption? Can we still conclude those are just and reasonable rates?

6. In several recent orders,⁶ I and some of my colleagues have urged the RTOs/ISOs to take a hard look at their tariffs to develop cure periods or other corrective mechanisms to avoid the types of inequitable outcome ordained by the Third Circuit's decision. I redouble that advice today. And as Chairman, I commit to fostering this and other efforts to seek to avoid the painful and unacceptable result we grapple with in today's order.

primary purpose of protecting the utility's customers").

⁵ *PJM Power Providers*, 96 F.4th at 402.

⁶ See e.g. *Moscow Dev. Co.*, 187 FERC ¶ 61,040 (Phillips and Clements, Comm'rs, concurring at P 5) (2024); *Bear Ridge Solar LLC*, 186 FERC ¶ 61,182 (Phillips and Clements, Comm'rs, concurring at P 5) (2024); *Scioto Farms Solar Project, LLC*, 186 FERC ¶ 61,096 (2024) (Phillips and Clements, Comm'rs, concurring at P 5); *Hecate Grid Clermont I LLC*, 183 FERC ¶ 61,011, at n.20 (2023); *Sw. Power Pool, Inc.*, 174 FERC ¶ 61,205, at n.17 (2021), *on reh'g*, 181 FERC ¶ 61,077 (2022); see also *Sw. Power Pool, Inc.*, 166 FERC ¶ 61,160 (Glick, Comm'r, concurring at P 3) (2019).

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For these reasons, I respectfully concur.

Willie Phillips
Chairman

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER23-729-002

(Issued May 6, 2024)

CLEMENTS, Commissioner, *concurring*:

1. I believe it was right for the Commission to attempt to protect consumers by allowing PJM's Tariff amendments to apply to the 2024/2025 BRA, but the Court of Appeals for the Third Circuit determined otherwise,¹ and we are now compelled to follow that decision.

2. I emphasize that while the impacts to consumers of the court's decision in this specific case relate to the operation of PJM's capacity market, the court's interpretation of the filed rate doctrine creates a potential for inequitable results in a much broader array of contexts. The risk of harm occurring where after-the-fact adjustments are impossible stems not from the unique rules of capacity markets, but from human fallibility more generally. And while today's decision is the most significant in my time at the Commission in which the filed rate doctrine has driven an inequitable result, it is only the latest in a string of unjust outcomes stemming from the courts' narrow view of that doctrine.²

3. The courts have taken a rigid view of filed rates, but they have also been clear that the ultimate purpose of the rule against retroactive ratemaking is to ensure that there is adequate notice of the rate that customers will be charged.³ Utilities may provide notice to affected parties that rates may be adjusted, which "changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and

¹ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390 (3d Cir. 2024).

² *See, e.g., Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821 (D.C. Cir. 2021).

³ *See, e.g., NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 801 (D.C. Cir. 2007) ("[T]he filed rate doctrine and bar on retroactive ratemaking are satisfied, in keeping with their functions, when parties have notice that a rate is tentative and may be later adjusted with retroactive effect, or where they have agreed to make a rate effective retroactively.") (internal citations and quotes)

subject to later revision.”⁴ I join the Chair in urging PJM and other public utilities to take steps, such as including appropriate notice provisions in their tariffs, to ensure that similar inequitable results do not occur again.

4. Indeed, as the Chair suggests, existing tariffs, when considered in light of the court’s broad reading of the filed rate doctrine, create the potential for trillion dollar mistakes that would be uncurable.⁵ In my view, exposing consumers to such potential unredressable harms is very likely unjust and unreasonable. Should PJM and other public utilities fail to affirmatively update their tariffs to provide notice that adjustments can be made, where appropriate, to prevent inequitable outcomes, then it will fall to the Commission to cure this failure pursuant to its authority under section 206 of the Federal Power Act.

For these reasons, I respectfully concur.

Allison Clements
Commissioner

⁴ *Id.*

⁵ See *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,065 (2024) (Phillips, Chairman, *concurring*, at P 5).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER23-729-002

(Issued May 6, 2024)

CHRISTIE, Commissioner, *concurring*:

1. In the initial February 2023 order,¹ I said that the estimated rates to be paid by consumers under the tariff which PJM proposed to revise would “[i]n no universe...be considered just and reasonable.”² The Third Circuit, however, vacated the portion of the Commission’s LDA Reliability Requirement Orders that allowed PJM to apply the tariff amendments to the 2024/2025 BRA. The Third Circuit found that the amendments were in violation of the filed rate doctrine.³ Under the circumstances, I agree that this order approving PJM’s petition is the only realistic alternative at this point in the process.⁴ As

¹ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 (2023) (Christie, Comm’r, concurring) (Initial Order), *reh’g denied*, 184 FERC ¶ 61,055 (2023) (Christie, Comm’r, concurring) (Rehearing Order) (LDA Reliability Requirement Orders)

² Initial Order, (Christie, Comm’r, concurring at P 1) (Initial LDARR Christie Concurrence) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-order-accepting-pjm-capacity-market-tariff>). See Initial LDARR Christie Concurrence at P 1 (citing PJM EL23-19 Transmittal at 34 (“The effect of the auction results would require the load in the particular LDA at issue to be responsible for paying over one hundred million dollars in excess of what is necessary for capacity associated with the 2024/2025 Delivery Year.”)); *id.* at PP 2-3 (addressing Old Dominion Electric Cooperative’s and Maryland Office of People’s Counsel’s estimates of cost increases in the Delmarva Zone).

³ See, e.g., *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 394, 400-01 (3d Cir. 2024) (*PJM Power Providers*).

⁴ The 2024/2025 delivery year begins on June 1, 2024. Protestors advocate for the Commission to retain the results for the BRA and the Third Incremental Auction for the 2024/2025 delivery year. Some argue that this Commission should reinstate the Federal Power Act (FPA) section 206 proceeding PJM filed in EL23-19-000 – filed by PJM in addition to the FPA section 205 tariff amendments that this Commission granted and upheld on rehearing in the LDA Reliability Requirement Orders – and “accept the results of the auction PJM has already run effective immediately.” See, e.g., Maryland Commission Protest at 5-6. Others argue that this Commission should balance the

today's order recognizes, the Third Circuit found that “the equities play no role in our application of the filed rate doctrine’ even if ‘this bright-line rule could potentially produce a harsh result in this case.’”⁵ It did.

2. While I concur, I will again emphasize what I said in my concurrence to the Initial Order, “the elephant in the room must be addressed: Whether PJM’s capacity market construct can still ensure sufficient power supplies to deliver reliability at just and reasonable rates.”⁶ As I noted previously, the complexity of the capacity market construct is something that cannot be overstated:

Every “fix” – and there have been many since the [Reliability Pricing Model (RPM)] went into operation about 15 years ago – renders the capacity market construct more incomprehensible (and as I have said many times, it’s an administrative construct, not a market). One could even make a credible argument that its sheer complexity renders it unjust and unreasonable. I have described it before as “Rube Goldberg-esque” and as replete with “hopeless complexity.” Perhaps PJM should be required to post a warning to every reader who tries to read and comprehend a detailed

equities and direct PJM to retain the results of the BRA and Third Incremental Auction for the 2024/25 delivery year, arguing, in part, that information recently posted by PJM indicates that recalculating the BRA will more than quadruple the clearing price in the [Delmarva Power & Light Company South LDA (DPL-South LDA)] and will increase the cost to consumers by \$177.7 million and that such a result is contrary to the Commission’s statutory obligation to ensure just and reasonable rates. *See, e.g.,* PJM Load Parties Protest at 4-6, 10-16; PJM Load Parties Answer at 1-2, 4-5. In addition, protestors further argue that revising the BRA and rerunning the Third Incremental Auction will interfere with settled expectations and with other established programs. *See, e.g.,* Maryland Commission Protest at 2-3; PJM Load Parties Protest at 10-15. The Third Circuit’s opinion, however, allowed no room for equities in its application of the filed rate doctrine. Order at P 7; *see infra*, n.5.

⁵ Order at P 7 (quoting *PJM Power Providers*, 96 F.4th 390, 401-02). Indeed, the Third Circuit stated: “We emphasize that the equities play no role in our application of the filed rate doctrine. It is well established that the filed rate doctrine ‘does not yield, no matter how compelling the equities.’ . . . (quotation marks omitted). Accordingly, if FERC ‘violated the filed rate doctrine or the rule against retroactive ratemaking, we would not then invoke the Commission’s assessment of the equities to overcome those violations.’” *PJM Power Providers*, 96 F.4th 390, 401 ((quoting *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 829-30, 832 (D.C. Cir. 2021) (citations omitted))).

⁶ Initial LDARR Christie Concurrence at 6 (citing *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,073 (2023) (Christie, Comm’r, concurring at P 2)).

explanation of how the capacity market construct works (borrowing from Dante): “*Abandon all hope, ye who enter here.*”⁷

3. The tinkering and complexities here will assuredly impact consumers – who took no part in this tinkering but will surely pay for the complexities by way of what are estimated to be dramatic rate increases. This drives home my point and *should require* each and every one of us who have played some part in the tinkering (regulators, RTOs, and market participants alike) to make certain that it is not consumers who must abandon all hope.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

⁷ *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080 (2024) (Christie, Comm’r, concurring at P 7) (footnotes omitted) (emphasis in original) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-pjms-capacity-market-reform-filing-docket-no>) (citing Dante Alighieri, *The Divine Comedy*; *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,073 (2023) (Christie, Comm’r, concurring at P 2) (footnotes omitted) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-pjms-quadrennial-review-er22-2984>) (“That issue is whether the PJM capacity market itself needs to be reconsidered on a comprehensive basis to determine whether it is still fit for purpose, which is to make certain a sufficient amount of power supply is available to ensure reliability, at a cost that is just and reasonable to consumers. This proposal is only the latest example — and one of the worst in its hopeless complexity — of the endless Rube Goldberg tinkering with the minute details of the capacity market construct. Such tinkering with the rules has gone on for years and never reaches a point of stability, yet stability of market design is essential to attract the necessary capital investment in capacity resources.”)).

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