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

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie, David Rosner,
Lindsay S. See and Judy W. Chang

PJM Interconnection, L.L.C. Docket No. ER24-2995-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued November 5, 2024)

1. On September 6, 2024, pursuant to section 205 of the Federal Power Act (FPA)[1] and part 35 of the Commission's regulations,[2] PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM Open Access Transmission Tariff (Tariff) and Reliability Assurance Agreement (RAA) to prospectively sunset Energy Efficiency Resource participation in PJM's wholesale capacity market, the Reliability Pricing Model (RPM).[3] In this order, we accept PJM's proposed revisions, effective November 6, 2024, as requested.

I. Background

2. In March 2009, the Commission accepted in relevant part proposed tariff revisions from PJM to incorporate energy efficiency participation in the RPM.[4] PJM's filing followed Commission approval of a comprehensive settlement in which PJM agreed to establish an additional process within the PJM region for pursuing and supporting

[1] 16 U.S.C. § 824d.

[2] 18 C.F.R. pt. 35 (2024).

[3] Transmittal at 1; PJM Interconnection, L.L.C./Intra-PJM Tariffs, ATTACHMENT DD-1, OATT ATTACHMENT DD-1 (24.0.0) (Proposed Tariff, Attachment DD-1), § L; PJM Interconnection, L.L.C./Intra-PJM Tariffs, RAA SCHEDULE 6 (23.0.0) (Proposed RAA Schedule 6), § L. PJM adds that its proposal seeks to appropriately recognize energy efficiency on the demand side of the capacity market, where it is already reflected in the load forecast in the aggregate. Transmittal at 4.

[4] *PJM Interconnection*, L.L.C., 126 FERC ¶ 61,275, at PP 131-132 (March 2009 Order), *order on clarification*, 127 FERC ¶ 61,104, *order on clarification & reh'g*, 128 FERC ¶ 61,157 (2009).

demand response and incorporating energy efficiency applications into its capacity market.[5] In the March 2009 Order, the Commission agreed with PJM that, based on the configuration of the PJM capacity market at that time, PJM's proposal corrected "a mismatch between [energy efficiency]-related load reductions and capacity requirement levels" due to the four-year lag between when an Energy Efficiency Resource is initially installed and when its load-reducing effects are reflected in PJM's load forecast and the associated installed reserve requirement for the Delivery Year.[6] The Commission noted that, "[a]s a result of not including the [energy efficiency] in the load forecast, the [Variable Resource Requirement] curve fails to move to the left, increasing the price paid and capacity acquired compared with a load forecast that correctly included [energy efficiency]."[7]

3. The PJM Tariff and RAA define an Energy Efficiency Resource as:

> a project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, exceeding then-current building codes, appliance standards, or other relevant standards, designed to achieve a continuous (during peak summer and winter periods as described herein) reduction in electric energy consumption at the end-use customer's retail site that is not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed, and that is fully implemented at all times during such Delivery Year, without any requirement of notice, dispatch, or operator intervention.[8]

4. RAA Schedule 6, section L.3 and Tariff, Attachment DD-1, section L.3 provide, in part, that an Energy Efficiency Resource may be offered with a price offer or as self-supply and, if an Energy Efficiency Resource clears the auction, it shall receive the applicable capacity resource clearing price. RAA Schedule 6, section L.4 and Tariff, Attachment DD-1, section L.4 provide that an Energy Efficiency Resource that clears an

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[5] *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 133 (2006) (December 2006 Order), *order on reh'g & clarification*, 119 FERC ¶ 61,318 (June 2007 Order), *denying reh'g*, 121 FERC ¶ 61,173 (2007).

[6] March 2009 Order, 126 FERC ¶ 61,275 at P 134.

[7] *Id.*

[8] PJM Interconnection, L.L.C./Intra-PJM Tariffs, ATTACHMENT DD-1, OATT ATTACHMENT DD-1 (23.0.0) (Tariff, Attachment DD-1), § L.1; PJM Interconnection, L.L.C./Intra-PJM Tariffs, RAA SCHEDULE 6 (22.0.0) (RAA Schedule 6), § L.1.

auction for a delivery year "may be offered in auctions for up to three additional consecutive Delivery Years, but shall not be assured of clearing in any such auction."[9]

II. PJM Filing

A. 2016 Load Forecast Methodology Revision

5. PJM states that it improved its peak load forecast in 2016 by developing an end-use intensity modeling methodology that directly captures the impact of energy efficiency projects and thereby eliminates the four-year lag between when energy efficiency projects are installed and when they are reflected in the load forecast.[10] PJM explains that its peak load forecast has been primarily based on publicly available data from the Energy Information Administration (EIA) and relies on Form EIA-861M for historic energy use data and the EIA's Annual Energy Outlook for forward-looking energy use data to forecast energy efficiency impacts on load. As a result of this change, PJM states that it now includes energy efficiency on the demand side on a forward basis (i.e., within the load forecast) for each RPM auction and that it is no longer reasonable to claim that energy efficiency is not already reflected in the load forecast.

6. PJM explains that, after its load forecasting methodology improvements, it adopted an "addback" to continue accommodating Energy Efficiency Resource capacity market participation while avoiding double-counting the impact of Energy Efficiency Resources on both the supply and demand sides of the RPM.[11] PJM asserts that improper

[9] Tariff, Attachment DD-1, § L.1; RAA Schedule 6, § L.1.

[10] Transmittal at 14-15, 23-24.

[11] *Id.* at 5, 24-30 & attach. C, Aff. of Andrew Gledhill on Behalf of PJM Interconnection, L.L.C. (Gledhill Aff.) ¶¶ 38-42. PJM asserts that, without the addback, double-counting would occur because Energy Efficiency Resources would reduce the reliability requirement—therefore counting on the demand side—and contribute to meeting the region's reliability needs—thus, counting on the supply side. To illustrate the double-counting risk, PJM describes a hypothetical scenario in which (1) PJM has an initial 1,000 megawatt (MW) reliability requirement and (2) energy efficiency projects contribute 50 MW in load reduction. Because the load forecast reflects the 50 MW reduction caused by energy efficiency projects, PJM's reliability requirement, or the amount of demand, decreases from 1,000 MW to 950 MW. On the supply side, the auction clears 900 MW of generation and demand response resources and 50 MW of energy efficiency capability, for a total of 950 MW of cleared capacity. But while the market ostensibly clears 950 MW, because the same 50 MW of energy efficiency capability that reduced the reliability requirement is also used to meet the reliability requirement, PJM only procures 900 MW of generation and demand response resources

double-counting could cause PJM to fail to procure sufficient capacity to maintain reliability. PJM states that it implements the addback by adding a MW to the reliability requirement for each MW of Energy Efficiency Resources that clears in an RPM auction. Thus, PJM explains, Energy Efficiency Resources no longer contribute to meeting the reliability requirement and may not serve as a substitute for any other capacity resource committed in the RPM auction. PJM asserts that load therefore pays capacity prices to Energy Efficiency Resources without receiving a corresponding benefit.

B. Proposed Tariff Revisions

7. PJM proposes to add a provision to its rules governing participation of Energy Efficiency Resources stating that those rules are "effective only through the 2025/2026 Delivery Year" and that "no Energy Efficiency Resources shall qualify to be offered into the RPM Auctions beginning with the 2026/2027 Delivery Year."[12] PJM states that its proposal is prospective and would not unsettle RPM auction results, including for the 2025/2026 Delivery Year Base Residual Auction (BRA), or undo any existing Energy Efficiency Resource commitments.[13]

8. PJM asserts that its proposed revisions are just and reasonable. PJM contends that its proposal is the most effective way to account for energy efficiency in the RPM while avoiding double-counting a MW of energy efficiency capability on both the supply side and demand side, which would create reliability concerns.[14] Otherwise, PJM states that it must either carve out energy efficiency impacts from the load forecast or maintain the status quo addback, each of which creates problems. PJM states that carving out energy efficiency measures from the peak load forecast would be methodologically difficult and would overstate the amount of capacity that PJM needs to procure to maintain reliability unless all energy efficiency capability offers into and clears capacity auctions for each given delivery year. PJM argues that the addback, for its part, requires load to pay capacity rates for load reductions that would naturally occur and from which load already receives benefits through the reduced load forecast.

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to meet a 950 MW reliability requirement. Transmittal at 28-29.

[12] Transmittal at 10, 31 (quoting Proposed Tariff, Attachment DD-1, § L.1; Proposed RAA Schedule 6, § L.1).

[13] PJM states that, as a result, Energy Efficiency Resources that cleared the RPM auctions for the 2025/2026 Delivery Year will need to follow through on their commitments and submit compliant post-installation measurement and verification reports in advance of that delivery year to substantiate their cleared quantities. *Id.* at 10.

[14] *Id.* at 31-35.

9. PJM contends that energy efficiency measures are proliferating, and will continue to do so, because of: (1) customers responding to market prices reflected in their retail energy bills; (2) end-use customers purchasing more electrically efficient items; (3) local and state adoption of updated and stricter energy efficiency standards, such as building codes; and (4) residential programs and utility programs carried out in accordance with applicable state agency directives.[15] PJM argues that none of these actions depend on capacity payments, that end-use customers may not even be aware of such payments, and that capacity payments to Energy Efficiency Resources therefore do not drive investment in energy efficiency projects. PJM adds that its current capacity market rules do not require a showing of a causal link between capacity payments made to Energy Efficiency Resources and energy efficiency investment, but nevertheless asserts that there is no evidence that any such causal link exists.

10. PJM maintains that intrinsically accounting for energy efficiency capability in its load forecast lowers the total amount of capacity procured through the RPM, and, all else equal, reduces the resulting wholesale capacity market prices and overall costs.[16] Thus, PJM argues, load-serving entities (LSEs) and their customers already receive the benefits of lower capacity bills resulting from lower energy consumption—which, in turn, incents load to continue adopting energy efficiency measures.[17] PJM argues that continuing

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[15] *Id.* at 2, 7-8, 38-39. PJM states that several utility members that currently offer Energy Efficiency Resources into PJM's capacity market have indicated they will continue to incentivize energy efficiency projects through state-sponsored retail programs. *Id.* at 9, 39 & n.106 (citing Alex Stern, *Exelon EE Package Proposal*, Exelon Corp. (Aug. 7, 2024), https://www.pjm.com/-/media/committees-groups/committees/mic/2024/20240807/20240807-item-02a-1---ee-resource-evaluation-exelon-proposal---presentation.ashx).

[16] *Id.* at 39-41.

[17] In addition, PJM claims that energy efficiency projects provide the following other cascading benefits: (1) the capacity market sets a lower reliability requirement by accounting for the permanent reduction in energy consumption in the load forecast than it would absent energy efficiency projects; (2) the lower reliability requirement results in the market procuring less capacity to maintain reliability, which also means that the PJM region will need fewer resources to accommodate the energy transition while maintaining reliability; (3) load pays lower capacity rates because the market procures less capacity; (4) fewer resources interconnect to the grid, which reduces queue congestion, complexity, and interconnection and transmission buildout costs; (5) consumers implementing energy efficiency projects pay lower capacity costs due to a reduced load forecast for their zone; (6) end-use customers realize lower peak load contributions from their respective LSEs, which, in turn, reduces those customers' specific capacity costs; and (7) individual end-use customers who install energy efficiency measures pay reduced energy costs.

capacity payments to Energy Efficiency Resources through the addback mechanism would thwart these savings by charging customers for efficiency measures that are already, and will continue to be, adopted independent of receiving wholesale capacity market revenues.

11. PJM states that it regularly seeks stakeholder feedback on its load forecasting methodology and that it has continued to enhance its methodology through an iterative process to make the forecast as accurate as possible.[18] PJM also states that it has engaged outside consultants to validate its approach, promote transparency, and identify potential enhancements to the load forecast process. PJM further supports its claim that the peak load forecast accurately accounts for energy efficiency projects by noting that the weather normal peak load[19] for the 2023/2024 and 2024/2025 Delivery Years exceeded PJM's forecasted peak loads for those delivery years, which, holding all else equal, PJM claims would not have occurred if the PJM load forecast had failed to account for significant energy efficiency reduction to load.

12. PJM contends that energy efficiency need not participate as a supply-side resource for a capacity market to be just and reasonable.[20] PJM states that the Commission accepted PJM's RPM market design without requiring energy efficiency to participate and rejected a request for rehearing on this issue.[21] PJM also notes that the Commission rejected requests that it require the New York Independent System Operator, Inc. (NYISO) to allow energy efficiency to participate as supply-side resources in its capacity market as part of distributed energy resource aggregations.[22]

13. Rather, PJM argues that compensating Energy Efficiency Resources at the capacity market clearing price violates the beneficiary pays cost causation principle,

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Id. at 40.

[18] *Id.* at 15-16, 19-20 & Gledhill Aff. ¶¶ 33-34.

[19] Weather normalization is a process that adjusts actual energy or peak outcomes, which can vary from year to year, to what would have happened under normal (i.e., typical) weather conditions. *See* Eric Fox et al., *2022 PJM Model Review* 47-49 (Sept. 6, 2022), https://www.pjm.com/-/media/planning/res-adeq/load-forecast/pjm-model-review-final-report-from-itron.ashx.

[20] Transmittal at 36.

[21] *Id.* at 36 (citing June 2007 Order, 119 FERC ¶ 61,318 at PP 198-204).

[22] *Id.* (citing *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,198, at P 112 (*NYISO*), *order on reh'g*, 181 FERC ¶ 61,054 (2022)).

which requires that customers only pay for facilities or services from which they benefit, because Energy Efficiency Resources do not provide capacity nor do capacity payments result in additional energy efficiency adoption.[23]

14. Further, PJM argues that energy efficiency is no longer a nascent industry warranting capacity revenues.[24] Rather, PJM notes that energy efficiency standards have become more stringent at the federal, state, and local levels since 2010, including all states in the PJM region and the District of Columbia. PJM argues that these standards naturally result in the adoption of energy efficiency actions without the need for capacity revenues. PJM also notes that these constantly evolving standards make it increasingly difficult to conclude that Energy Efficiency Resources being offered into RPM auctions reflect energy efficiency projects that "exceed[] then-current building codes, appliance standards, or other relevant standards," as required by the Energy Efficiency Resource RAA definition.[25]

15. PJM also argues that acceptance of its proposal would promote regulatory efficiency, allowing the Commission to dispose of pending complaints filed by the Independent Market Monitor for PJM (IMM) and various consumer advocates in Docket Nos. EL24-126-000 and EL24-118-000, respectively, that also concern elimination of the addback.[26]

16. PJM states that its proposal resulted from a stakeholder-initiated holistic review of Energy Efficiency Resource participation in PJM's RPM auctions that began in November 2023. PJM states that a sector-weighted majority of PJM stakeholders at the Markets and Reliability Committee and Members Committee endorsed the instant proposal on August 21, 2024, and the PJM board subsequently approved the proposal on August 26, 2024.[27] PJM requests a November 6, 2024 effective date for its proposed Tariff and RAA revisions.

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[23] *Id.* at 37-38.

[24] *Id.* at 3, 17-18.

[25] *Id.* at 18 (citing RAA Schedule 6, § L.1).

[26] *Id.* at 10.

[27] *Id.* at 41-42.

III. Notice and Responsive Pleadings

17. Notice of PJM's filing was published in the *Federal Register*, 89 Fed. Reg. 74,937 (Sept. 13, 2024), with interventions and protests due on or before September 27, 2024.

18. Timely motions to intervene were filed by: Advanced Energy Management Alliance (AEMA); Advanced Energy United; Affirmed Energy LLC; American Electric Power Service Corporation; Buckeye Power, Inc.; Calpine Corporation; Constellation Energy Generation, LLC; Delaware Division of the Public Advocate; Dominion Energy Services, Inc.; Electric Power Supply Association; Enerwise Global Technologies, LLC; Environmental Law & Policy Center; Exelon Corporation; Illinois Attorney General's Office; Illinois Citizens Utility Board; Illinois Municipal Electric Agency; Maryland Office of People's Counsel; Monitoring Analytics, LLC, acting in its capacity as the IMM; Natural Resources Defense Council and Sustainable FERC Project; New Jersey Division of Rate Counsel; NRG Curtailment Solutions, Inc.; Ohio Federal Energy Advocate; Old Dominion Electric Cooperative; PJM Power Providers Group (P3); PPL Electric Utilities Corporation; PSEG Companies; Public Citizen, Inc.; Recurve Analytics, Inc. (Recurve Analytics); Rockland Electric Company; Southern Maryland Electric Cooperative, Inc.; and Vistra Corp. New Jersey Board of Public Utilities filed a notice of intervention.

19. IMM and P3 filed comments supporting PJM's proposal. Protests were filed by AEMA; Advanced Energy United; Affirmed Energy; Environmental Law & Policy Center, Natural Resources Defense Council and Sustainable FERC Project (together, Public Interest Organizations); New Jersey Division of Rate Counsel, Maryland Office of People's Counsel, Illinois Citizens Utility Board, Illinois Attorney General's Office, Delaware Division of The Public Advocate, and the District of Columbia Office of People's Counsel (together, Consumer Advocates); PJM Cities and Communities Coalition;[28] and Recurve Analytics.

20. Maryland Public Service Commission filed a motion to intervene out-of-time on October 7, 2024.

21. PJM filed a motion for leave to answer and answer to the protests on October 11, 2024. IMM filed a motion for leave to answer and answer to the protests on October 15, 2024. Public Interest Organizations and AEMA each filed a motion for leave to answer and answer to PJM's answer on October 22, 2024. Affirmed Energy filed a motion for

[28] PJM Cities and Communities Coalition are: Alexandria, VA; Arlington County, VA; Charlottesville, VA; Chicago, IL; Cincinnati, OH; Columbus, OH; Dayton, OH; Delaware County, PA; Montgomery County, MD; Newark, NJ; Philadelphia, PA; Pittsburgh, PA; Richmond, VA; Sustainable Ohio Public Energy Council; and Washington, DC.

leave to answer and answer to PJM's answer on October 28, 2024. PJM filed a motion for leave to answer and answer to Affirmed Energy's Answer on October 29, 2024.

A. Protests

22. Several protesters argue that PJM has not satisfied its burden under FPA section 205 to demonstrate that its proposal is just and reasonable and not unduly discriminatory or preferential.[29] Protesters argue that the Commission should reject PJM's proposal[30] for the reasons discussed below.

1. PJM's Proposal Conflicts with Commission Precedent

23. Several protesters argue that PJM's proposal conflicts with the March 2009 Order accepting PJM's energy efficiency proposal.[31] These protesters contest PJM's assertion that PJM's initial proposal was needed only to address the four-year lag before energy efficiency was reflected in the demand curve.[32] Rather, they note that the Commission also stated that energy efficiency is a critical part of efficient energy markets in PJM and should be treated on equal footing with other resources[33] and that the owners of Energy Efficiency Resources should have the ability to obtain the full economic benefits of their investments.[34]

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[29] Advanced Energy United Protest at 3; AEMA Protest at 3; Affirmed Energy Protest at 2; Consumer Advocates Protest at 1; Public Interest Organizations Protest at 11.

[30] Advanced Energy United Protest at 16; Affirmed Energy Protest at 1, 11-12, 14-15; Consumer Advocates Protest at 2; Public Interest Organizations Protest at 21; Recurve Analytics Protest at 2.

[31] Advanced Energy United Protest at 1; AEMA Protest at 9; Consumer Advocates Protest at 2.

[32] Advanced Energy United Protest at 4 (citing Transmittal at 4); AEMA Protest at 9.

[33] Advanced Energy United Protest at 4-5 (citing March 2009 Order, 126 FERC ¶ 61,275 at PP 130, 134); Consumer Advocates Protest at 2.

[34] Advanced Energy United Protest at 4-5 (citing March 2009 Order, 126 FERC ¶ 61,275 at PP 130, 134); AEMA Protest at 7-10 (citing March 2009 Order, 126 FERC ¶ 61,275 at PP 133, 137).

24. Advanced Energy United argues that Commission precedent does not support excluding energy efficiency from the capacity market.[35] Advanced Energy United disputes PJM's characterization of the June 2007 Order rejecting a rehearing request regarding the Commission's acceptance of PJM's RPM market design without energy efficiency participation. Instead, Advanced Energy United argues that the Commission agreed with the underlying logic of the New Jersey Board of Public Utilities' rehearing request, but rejected it because it found that the New Jersey Board of Public Utilities had not proposed a workable plan for including energy efficiency in the RPM.[36] Advanced Energy United also argues that the Commission's rejection of a request to require NYISO to allow energy efficiency resources to participate in its capacity market is irrelevant because NYISO's capacity market never included those resources, whereas PJM must justify its proposal to *remove* energy efficiency resources from its capacity market. According to Advanced Energy United, the fact that energy efficiency need not participate as a supply-side resource for a capacity market to be just and reasonable does not mean that PJM's filing is just and reasonable.

25. Recurve Analytics and AEMA further argue that PJM's proposal erects a barrier to energy efficiency participation and therefore violates Order No. 2222's[37] requirement to allow technology-neutral distributed energy resource aggregations.[38] These parties argue that because Order No. 2222 stated that distributed energy resources "may include," but are not limited to, energy efficiency resources, prohibiting one category of distributed energy resources from participating directly in PJM's Capacity Market contravenes Order No. 2222.[39] AEMA argues that PJM's citation to the Commission's finding in *NYISO* ignores fundamental differences between the two Regional Transmission Organizations (RTOs) and that NYISO specifically sought an exemption from Order No. 2222's requirements.[40]

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[35] Advanced Energy United Protest at 10-11.

[36] *Id.* at 11 (citing June 2007 Order, 119 FERC ¶ 61,318 at P 202).

[37] *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021)).

[38] AEMA Protest at 21; Recurve Analytics Protest at 6.

[39] AEMA Protest at 20-21; Recurve Analytics Protest at 6.

[40] AEMA Protest at n.71 (referencing *NYISO*, 179 FERC ¶ 61,198).

2. Energy Efficiency Resources Provide Capacity Value

26. Several protesters also contest PJM's filing for treating Energy Efficiency Resources differently than other capacity resources. Public Interest Organizations appeal to the Commission's statements in Order Nos. 841 and 2222 to suggest that the Commission has established a general rule that market operators should enable resources that are "technically capable of providing services" to participate in wholesale markets for those services.[41] Several protesters argue that Energy Efficiency Resources are similar to generation resources because they provide capacity value toward reliability, avoiding the need for expensive generation alternatives.[42] Public Interest Organizations add that energy efficiency resources deployed in PJM over the past 15 years have provided significant load reductions, reducing the amount of generation that LSEs must procure through the RPM, lowering capacity costs for customers and producing rates that are just and reasonable.[43]

27. Public Interest Organizations and Recurve Analytics assert that PJM's proposal is unduly discriminatory. Recurve Analytics argues PJM's proposal is unjust, unreasonable, and unduly discriminatory because it makes a technology-specific bar to wholesale capacity market eligibility.[44] Recurve Analytics contends that there is no basis for eliminating energy efficiency measured with meter data and properly attributed to the hour(s) relevant to capacity needs from the capacity market. Public Interest Organizations and AEMA, for their part, argue that PJM's proposal unduly discriminates against Energy Efficiency Resources by selectively applying a novel strict causation standard to them only.[45] Public Interest Organizations also suggest that capacity market

[41] Public Interest Organizations Protest at 8-10 (citing *Elec. Storage Participation in Mkts. Operated by Reg'l Transmission Organs. & Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018); Order No. 2222, 172 FERC ¶ 61,247).

[42] Advanced Energy United Protest at 2; PJM Cities and Communities Coalition Protest at 1-2; Public Interest Organizations Protest at 5; Recurve Analytics Protest at 6; *see also* Consumer Advocates Protest at 2 (arguing that PJM's proposal lacks evidence demonstrating that Energy Efficiency Resources are technically incapable of providing capacity); Recurve Analytics Protest at 7 (asserting that energy efficiency is technically capable of providing additional wholesale services to reduce all customers' costs when measured hourly at the meter with comparison groups "to parse out incrementality and net out exogenous effects").

[43] Public Interest Organizations Protest at 7-8.

[44] Recurve Analytics Protest at 5-6.

[45] AEMA Protest at 19-20; Public Interest Organizations Protest at 15, 19.

eligibility typically focuses on whether a resource can effectively provide reliability service rather than on whether market payments will affect deployment of that resource.[46] Further, Public Interest Organizations and Consumer Advocates note that the Commission has recognized in the buyer-side mitigation rules context that ignoring resources despite lack of causation would distort the market and risk over-procuring capacity.[47] Public Interest Organizations assert that non-discriminatory application of a causation requirement would perversely penalize the most cost-effective resources that can provide a service for no cost by relying on other revenue sources and eliminate capacity payments to over half of PJM's generation fleet.[48]

3. Excluding Energy Efficiency Resources Will Result in Unjust and Unreasonable Rates

28. In addition, several protesters argue that supply-side participation for Energy Efficiency Resources is needed in PJM's capacity market to produce just and reasonable rates.

29. Several protesters contest PJM's suggestion that supply-side energy efficiency participation is no longer necessary because PJM's load forecast methodology now reflects the impact of energy efficiency measures—thereby producing just and reasonable capacity market auction results. These protesters argue that several alleged features of PJM's load forecast cause it to underestimate the impact of energy efficiency measures, therefore resulting in rates that are not just and reasonable,[49] including by: (1) excluding significant categories of energy efficiency measures, including higher efficiency equipment sold with midstream/upstream rebates, commercial outdoor lighting and

[46] Public Interest Organizations Protest at 16-17.

[47] Consumer Advocates Protest at 6 (citing *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102, at P 39 (2022)); Public Interest Organizations Protest at 7 (citing *PJM*, Filing, Docket No. ER21-2582-000, at 8 (filed July 30, 2021) ("[I]f the resource is installed (or remains in service) and effectively provides a reliability service notwithstanding denial of capacity revenues, the auction presents an incorrect view of both the price and quantity of providing reliability service in PJM.")).

[48] Public Interest Organizations Protest at 16-18.

[49] AEMA at 15; Affirmed Energy Protest at 7-9; Public Interest Organizations Protest at 4, 12-13. Advanced Energy United, Affirmed Energy, and Consumer Advocates also assert that PJM has not demonstrated that its load forecast accurately reflects the impacts of energy efficiency measures. Advanced Energy United Protest at 8; Affirmed Energy Protest at 6-7, 9-10, 11; Consumer Advocates Protest at 4.

chillers, and those supported by certain rebate programs in the PJM footprint;[50] (2) using EIA data that EIA has acknowledged overestimates energy intensity, thereby underestimating energy efficiency;[51] and (3) using forward-looking data that by nature is based on projections and is stale before the delivery year, because the load forecast takes place several years in advance, and therefore cannot account for intervening policy developments like the Inflation Reduction Act.[52] Advanced Energy United also asserts that PJM's load forecast will not incorporate new energy efficiency technology innovations.[53] In addition, several protesters contest PJM's claim that forecasted peak load exceeding the weather normal peak loads for the 2023/2024 and 2024/2025 Delivery Years shows that PJM's load forecast accounted for significant energy efficiency reduction to load[54] because (1) that claim assumes all else will be taken equal, which is unreasonable given the extraordinary complexity of the load forecast methodology,[55] and (2) PJM cherry-picks data, while a more systematic review of the comparison between the load forecast and actual load establishes multiple facts consistent with under-forecasting energy efficiency.[56]

30. Public Interest Organizations also state that PJM has admitted that its load forecast may not reflect all energy efficiency investments in the PJM region, and

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[50] Public Interest Organizations Protest at 12 & Ex. A at 4-5.

[51] Affirmed Energy Protest at 7.

[52] *Id.* at 8-9, 11; Advanced Energy United Protest at 9; Public Interest Organizations at 15.

[53] Advanced Energy United Protest at 10.

[54] *See* Transmittal at 19-20 & Gledhill Aff. ¶¶ 33-34.

[55] Advanced Energy United Protest at 9; Affirmed Energy Protest at 9-10.

[56] Public Interest Organizations Protest at 13. Public Interest Organizations note that: (1) PJM's load was only in the 60th percentile of forecasts for the summer of 2024, despite being in the 98th percentile for heat; (2) PJM's load model very consistently forecasts load 1-3% higher than actual when tested with actual weather; and (3) load on every peak day in the summer of 2024 was lower than the model forecast when tested with actual weather conditions. *Id.* (citing Molly Mooney, *Review of Preliminary Summer 2024 Loads* 2, 8, 9 (Sept. 19, 2024), https://www.pjm.com/-/media/committees-groups/subcommittees/las/2024/20240919/20240919-item-03---review-preliminary-summer-2024-loads.ashx). *See also* AEMA Protest at 15 (noting that PJM's most recent review of preliminary summer 2024 Loads demonstrates that peak loads were as much as 2% lower (about 3,000 MW) than expected, given actual weather conditions).

argued that expecting perfect accuracy is not reasonable.[57] Nevertheless, Public Interest Organization and Consumer Advocates claim that PJM has not attempted to quantify the extent of energy efficiency absences from the load forecast.[58] In light of this undercounting risk, Public Interest Organizations claim that supply-side energy efficiency participation serves to mobilize merchant energy efficiency providers to document savings that PJM does not model in its load forecast and commit to delivering those savings.[59] According to AEMA, despite the addback provisions in PJM's manual, PJM has never identified any amount of Energy Efficiency Resources that are both in the load forecast and offered in the capacity auction for a delivery year (i.e., double-counted).[60] AEMA contends that PJM's top-down load forecast methodology cannot capture any specific double-counting of Energy Efficiency Resources because PJM does not actually reduce forecasted demand based upon Energy Efficiency Resources offering into the capacity market.

31. In addition, protesters suggest that allowing energy efficiency measures to participate in the capacity market as supply importantly aligns market signals.[61] Advanced Energy United contends that PJM's proposal is unjust and unreasonable because energy efficiency providers will not "obtain[] the full economic benefit of their investment."[62] That is because, according to Advanced Energy United, under PJM's proposal, the customer will bear the cost of installing Energy Efficiency Resources while the entire zone benefits from the customer's investment.[63] Advanced Energy United argues that this will lead to lower deployment of energy efficiency, to the detriment of all customers in that zone. Advanced Energy United contends that the proper way to

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[57] Public Interest Organizations Protest at 13-14 (citing *PJM*, July 29, 2024 Answer, Docket No. EL24-118-000, at 2-3 (filed July 29, 2024)).

[58] Consumer Advocates Protest at 4; Public Interest Organizations Protest at 4, 14.

[59] Public Interest Organizations Protest at 4 (citing Kathleen Spees et al., *The Benefits of Energy Efficiency Participation in Capacity Markets* 1 (Apr. 1, 2021), https://www.aee.net/hubfs/The%20Benefits%20of%20Energy%20Efficiency%20Participation%20in%20Capacity%20Markets1.pdf).

[60] AEMA Protest at 15-16.

[61] Advanced Energy United Protest at 7-8; Public Interest Organizations Protest at 21.

[62] Advanced Energy United Protest at 7 (citing March 2009 Order, 126 FERC ¶ 61,275 at P 137).

[63] *Id.* at 2-3, 7-8.

compensate energy efficiency providers who provide benefits for the entire zone is through capacity market revenues. Advanced Energy United also adds that energy efficiency aggregators undertake risk and expend substantial effort and capital to enable the efficient and cost-effective deployment of energy efficiency measures, but, unlike customers, do not save money from their investment in energy efficiency and instead must be compensated for the value that energy efficiency provides through energy and/or capacity cost savings. Therefore, Advanced Energy United claims that energy efficiency is undervalued when participating on the demand-side only, and allowing energy efficiency aggregators to earn capacity market revenues by participating as supply-side resources in the capacity market bridges the gap between the low marginal price that consumers pay for capacity and the higher marginal value of that capacity on the system, leading to a more efficient market outcome. Public Interest Organizations similarly argue that retail rates typically do not provide any economic benefit to customers who reduce their peak load contributions and that capacity market payments provide market signals to a broader cross-section of energy efficiency providers.[64] Otherwise, according to Public Interest Organizations, only LSEs that can pass capacity costs on to end-users and therefore have little incentive to attempt to reduce peak load will receive a direct market signal in the form of their reduced capacity obligation. Public Interest Organizations argue that failure to recognize the capacity value that energy efficiency measure load reductions represent increases capacity prices unnecessarily, resulting in unjust and unreasonable rates.

32. AEMA argues that PJM fails to explain why, given that other RTOs like the California Independent System Operator and ISO New England successfully incorporate energy efficiency measures into their capacity market rules, PJM must remove Energy Efficiency Resource participation from its Tariff and RAA.[65]

4. Capacity Market Payments Cause Adoption of Energy Efficiency Measures

33. Several protesters also contest PJM's claim that energy efficiency adoption is naturally occurring and will continue absent capacity market revenues as conclusory and not supported.[66] To the contrary, Public Interest Organizations and Advanced Energy United maintain that Energy Efficiency Resources are responsive to financial incentives, and that providers react to price signals just like any other market participant to maximize

[64] Public Interest Organizations Protest at 15, 20-21.

[65] AEMA Protest at 17.

[66] Advanced Energy United Protest at 6; AEMA Protest at 6; Affirmed Energy Protest at 2-4, 6, 11; Public Interest Organizations Protest at 15-16.

return on investments.[67] Advanced Energy United states that capacity market payments provide an additional revenue stream to offset the costs of energy efficiency investments, thereby incenting further investment. Affirmed Energy adds that capacity market payments provide an incentive for retailers to boost adoption of energy efficient products—including through lower prices, product placement, signage, or other sales efforts.[68] Further, Advanced Energy United disputes PJM's claim that RPM payments provide no incremental value in light of state energy efficiency programs, arguing that RPM payments incent investment: (1) above that would occur through state programs; (2) in states that no longer have state energy efficiency standards; and (3) spurred by merchant providers.[69]

34. AEMA also notes, agreeing with PJM, that PJM's existing Tariff does not require Energy Efficiency Resource providers to demonstrate that RPM payments nor the Energy Efficiency Resource provider "caused" an end-use customer to purchase the Energy Efficiency Resource product.[70]

5. Filed Rate Doctrine & Request for Transition Period

35. Advanced Energy United further argues that PJM's proposal to sunset Energy Efficiency Resource participation starting with the BRA for the 2026/2027 Delivery Year violates the filed rate doctrine because it would retroactively eliminate the right of resources that cleared in recent BRAs to participate and earn revenue in subsequent auctions.[71] Advanced Energy United and Affirmed Energy add that Energy Efficiency Resources participate in the RPM under the expectation that they will be able to participate in four consecutive BRAs.[72] Affirmed Energy therefore argues that PJM's failure to provide a mechanism for an orderly transition out of the market while PJM

[67] Advanced Energy United Protest at 6; Public Interest Organizations Protest at 16.

[68] Affirmed Energy Protest at 3.

[69] Advanced Energy United Protest at 6.

[70] AEMA Protest at 18.

[71] Advanced Energy United Protest at 14-15.

[72] *Id.* at 15; Affirmed Energy Protest at 12-14. Affirmed Energy states that its assets, purchased during the 2024/2025 Delivery Year, are currently eligible for the 2027/2028 and 2028/2029 Delivery Year BRAs under existing rules. Affirmed Energy Protest at 13.

continues to benefit from the energy savings that Affirmed Energy's assets provide is unfair, unjust, and unreasonable.[73]

6. Sunsetting Energy Efficiency Will Harm Consumers

36. Protesters also argue that PJM's proposal will not benefit consumers. Advanced Energy United asserts that supply-side participation benefits consumers by: (1) yielding binding capacity market commitments from Energy Efficiency Resources; (2) supporting improved load forecasts; (3) reducing barriers for energy efficiency, especially for merchants; (4) yielding more cost-effective capacity markets by enabling less expensive Energy Efficiency Resources to participate and avoiding inflated load forecasts; and (5) providing additional incentives for investment in energy efficiency and ensuring that individual customers reap the full benefit of energy efficiency savings that are otherwise spread across the load zone.[74] Consumer Advocates argue that maintaining supply-side Energy Efficiency Resource participation will help to manage capacity prices and ensure affordability for ratepayers.[75] PJM Cities and Communities Coalition agrees, adding that energy efficiency programs assist local governments, reduce demand, and increase grid resilience, which will be important given PJM's forecasted 2.3% annual load growth over the next 10 years.[76] Affirmed Energy and Public Interest Organizations similarly assert that eliminating Energy Efficiency Resource participation in the capacity market at a time of rising demand will not lead to lower prices and could cause dramatic price increases given the potential for small variations to cause large price swings in times of tight regional capacity.[77] Conversely, Advanced Energy United argues that the cost of Energy Efficiency Resource participation is marginal, amounting to roughly 1% of total cost of capacity cleared in the 2025/2026 Delivery Year—and that, if the same quantity of

[73] Affirmed Energy Protest at 12-14.

[74] Advanced Energy United Protest at 12-13.

[75] Consumer Advocates Protest at 4.

[76] PJM Cities and Communities Coalition Protest at 2 (citing PJM Resource Adequacy Planning Department, *2024 PJM Load Forecast Report* at 2 (Jan. 2004), https://www.pjm.com/-/media/library/reports-notices/load-forecast/2024-load-report.ashx).

[77] Affirmed Energy Protest at 4 (citing Kathleen Spees et al., *Enabling Cost-Effective Energy Efficiency in PJM's Capacity Market: The Advantages of a Supply-Side, Gross Accounting Framework* 5 (July 2021); Johannes Pfeifenberger et al., *Review of PJM's Reliability Pricing Model (RPM)* 116 (June 30, 2008)); Public Interest Organizations Protest at 15.

energy efficiency that cleared the 2025/2026 BRA had received 2024/2025 Delivery Year prices, consumers would have paid only $15.4 million.[78]

7. Other Concerns

37. In addition, Advanced Energy United and Affirmed Energy contest PJM's suggestion that capacity market eligibility should depend in part on the nascency of a resource.[79]

38. AEMA and Consumer Advocates also make several arguments about PJM's addback. Consumer Advocates argue that the addback inflates the auction clearing price and capacity procurement to the detriment of ratepayers.[80] AEMA argues that the addback provisions in PJM's manuals are unenforceable, and that PJM is not entitled to rely upon such manual provisions to justify its treatment of Energy Efficiency Resources.[81] AEMA posits that PJM decided in 2015 not to make an FPA section 205 filing with the addback provisions because PJM only intended to address a load forecasting issue, not to substantively impact the number of years that an Energy Efficiency Resource could participate in a capacity auction. AEMA states that if the addback language had actually resulted in the elimination of Energy Efficiency Resources as a supply-side capacity resource, such a modification would have required a filing to amend Attachment DD-1 to the PJM Tariff, Procedures for Demand Resources and Energy Efficiency, pursuant to the filed-rate doctrine.

39. Lastly, Advanced Energy United argues that PJM's stakeholder process was insufficiently rigorous and rushed, meaning that various stakeholders were unable to provide valuable perspective on the proposal.[82]

8. Requested Disposition

40. Protesters therefore ask the Commission to reject PJM's proposal.[83] If the Commission does not reject PJM's filing, Affirmed Energy argues that the Commission

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[78] Advanced Energy United Protest at 14; Affirmed Energy Protest at 6.

[79] Affirmed Energy Protest at 6.

[80] Consumer Advocates Protest at 4.

[81] AEMA Protest at 12-14 (citing *Advanced Energy Econ.*, 167 FERC ¶ 61,032 (2019)).

[82] Advanced Energy United Protest at 15-16.

[83] *Id.* at 16; Affirmed Energy Protest at 1, 11-12, 14-15; Consumer Advocates

should set it for hearing to resolve material issues of fact, including: (1) whether the PJM load forecast fully captures all energy efficiency savings in the market such that energy efficiency participation in the capacity market should end; (2) whether the load forecast uses outdated data; (3) whether anecdotal statements about energy efficiency's impacts are enough to remove energy efficiency from the capacity market; and (4) whether there is evidence to support PJM's claim that eliminating all payments to energy efficiency will have no impact on market efficiency or the load forecast.[84] Several protesters also argue that the Commission should hold a technical conference[85] to: (1) develop a model that allows energy efficiency in the RPM while addressing reliability and double-counting issues;[86] (2) explore opportunities to effectively value energy efficiency in the capacity market;[87] (3) understand the impacts of removing energy efficiency from the capacity market;[88] (4) address proper measurement methodologies for participation in wholesale electricity markets;[89] (5) identify which types of energy efficiency measures the PJM load forecast captures so that resources not reflected can continue to participate in the capacity market; (6) consider whether it is more efficient to compensate energy efficiency as supply-side resources or to include them in the load forecast; and (7) evaluate comparative models from MISO and ISO-NE.[90]

41. Several protesters also argue that PJM should develop a more targeted proposal to address the problems it identifies. Consumer Advocates suggest rejecting PJM's proposal and requiring PJM to develop a mechanism that ensures that Energy Efficiency Resources are incremental to the load forecast.[91] Recurve Analytics also argues that,

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Protest at 2; Public Interest Organizations Protest at 21; Recurve Analytics Protest at 2.

[84] Affirmed Energy Protest at 11.

[85] Advanced Energy United Protest at 16; Consumer Advocates Protest at 2; PJM Cities and Communities Coalition Comments at 1-2; Public Interest Organizations Protest at 4-5, 22; Recurve Analytics Protest at 7.

[86] Consumer Advocates Protest at 7.

[87] PJM Cities and Communities Coalition Protest at 1-2.

[88] *Id.*

[89] *Id.*; Recurve Analytics Protest at 6-7.

[90] PJM Cities and Communities Coalition Protest at 1-2; Public Interest Organizations Protest at 22.

[91] Consumer Advocates Protest at 4.

given PJM's concerns about causation, PJM should have proposed to require a causation showing rather than prohibiting all energy efficiency.[92] Recurve Analytics argues that it is unduly discriminatory to eliminate from the capacity market energy efficiency measured with meter data and properly attributed to the hour(s) relevant to capacity needs. Recurve Analytics states that hourly consumption data from the meter can be used to accurately measure energy efficiency with respect to both energy savings and the hour in which energy savings occur. According to Recurve Analytics, PJM's proposal is unduly discriminatory because it prohibits such a causal showing from ever being made by prohibiting all energy efficiency regardless of how it is measured, even those that can demonstrate a causal link with rigorous measurement. PJM Cities and Communities Coalition suggests that the Commission and PJM should work with stakeholders to bring more value from energy efficiency to the capacity market while acknowledging that it may be possible for energy efficiency to be utilized and valued more effectively than provided for in the current Tariff rules.[93]

B. Comments in Support

42. Several commenters support PJM's proposal. P3 argues that: energy efficiency's value is most appropriately reflected as a demand-side reduction.[94] P3 and IMM argue that PJM's ability to accurately reflect energy efficiency in the load forecast has improved since the Commission last reviewed participation of energy efficiency in PJM's capacity market fifteen years ago, negating the original rationale for inclusion.[95] P3 notes that IMM has long recommended that PJM remove Energy Efficiency Resources from the capacity market and contends that acceptance of PJM's proposed revisions would moot two pending complaints before the Commission regarding energy efficiency participation in the capacity market.[96] IMM argues that PJM's proposal clarifies market rules and protects efficient market operations by correcting a longstanding market design flaw.[97] P3 notes that PJM's revisions were endorsed by a sector-weighted majority of PJM stakeholders at the August 21, 2024, Markets and Reliability Committee and the

[92] Recurve Analytics Protest at 5.

[93] PJM Cities and Communities Coalition Protest at 1-2.

[94] P3 Comments at 2.

[95] *Id.* at 2-4; IMM Comments at 1-2.

[96] P3 Comments at 3 (referencing *IMM*, Complaint, Docket No. EL24-126-000 (filed July 11, 2024); *Joint Consumer Advocates*, Complaint, Docket No. EL24-118-000 (filed June 20, 2024)).

[97] IMM Comments at 2.

Members Committee after nearly a year of consideration and deliberation.[98] P3 and IMM assert that PJM's proposal is necessary because PJM's current rules have skewed prices by providing Energy Efficiency Resources capacity market payments that amount to a subsidy paid by consumers without contributing to reliability.[99]

43. However, IMM disagrees with PJM's characterization of Energy Efficiency Resources' participation under the current Tariff rules. IMM states that under PJM's Tariff, Energy Efficiency Resources are not capacity resources and have been treated accordingly since 2017.[100] IMM asserts that PJM's market rules only allow Energy Efficiency Resources that are not already reflected in the peak load forecast to participate in the capacity market and argues that once PJM began incorporating energy efficiency into its forecasts in 2016, energy efficiency no longer qualified as a capacity resource. IMM states that, despite this, PJM has continued to apply the addback rules from PJM Manual 18, requiring customers to pay the capacity market clearing price to Energy Efficiency Resources that do not meet the definition of a capacity resource. IMM recommends that PJM make a future filing to remove all references to energy efficiency as a capacity resource for greater clarity.

C. Answers

44. In its October 11, 2024 answer, PJM argues that nothing in the Commission's approval of PJM's original energy efficiency tariff provisions restrains PJM or the Commission from modifying Energy Efficiency Resource participation in the capacity market.[101] Rather, PJM and IMM assert that the driving force behind the Commission's determination to permit the conditional participation of energy efficiency projects in RPM auctions was the lag in recognizing the load reduction value of energy efficiency projects in PJM's load forecast.[102] PJM and IMM state that that rationale was no longer relevant after PJM changed its load forecast methodology to capture projected energy efficiency projects.[103] Further, PJM notes that, before it proposed the energy efficiency rules accepted in the March 2009 Order, the Commission directed PJM to convene a stakeholder process to consider incorporating the value of energy efficiency initiatives

[98] P3 Comments at 4.

[99] *Id.* at 2-4; IMM Comments at 1-2.

[100] IMM Comments at 2-3.

[101] PJM October 11, 2024 Answer at 4.

[102] *Id.* at 7; IMM Answer at 4-5.

[103] IMM Answer at 4-5; PJM October 11, 2024 Answer at 7.

either through updated and proactive adjustments to its load forecast or by allowing direct participation as a capacity resource in RPM auctions.[104] PJM asserts that including energy efficiency projects in the load forecast was an available and sufficient alternative to participation as a supplier in RPM auctions.[105]

45. PJM alleges that the Commission held in *NYISO* that Order No. 2222 does not require energy efficiency to be a supply-side resource in capacity markets.[106] PJM contends that the fact that PJM has previously allowed Energy Efficiency Resources to participate as supply-side resources does not prevent PJM from changing its Tariff or render inapplicable the Commission's *NYISO* holding.[107] IMM argues that Order No. 2222 is not relevant to PJM's proposal because the current PJM rules do not treat Energy Efficiency Resources as supply.[108]

46. PJM also maintains that its proposal does not violate the filed rate doctrine or rule against retroactive ratemaking because: (1) it only affects future RPM auctions, and therefore does not affect the legal consequences of commitments made by Energy Efficiency Resource providers in past auctions; (2) the existing Tariff provided conditional participation rights that Energy Efficiency Resources that clear an auction for a delivery year "*may* be offered . . . but *shall not be assured* of clearing" in three additional delivery year auctions but did not guarantee future participation;[109] (3) the Commission has approved several capacity market reforms as prospective notwithstanding that they changed the obligations of capacity resources for a delivery year even after the completion of the relevant RPM auctions;[110] and (4) IMM's arguments

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[104] PJM October 11, 2024 Answer at 5 (citing *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272, at P 115, *order on clarification*, 125 FERC ¶ 61,222 (2008)).

[105] *Id.* at 7-8.

[106] *Id.* at 8 (citing *NYISO*, 179 FERC ¶ 61,198).

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

[108] IMM Answer at 12.

[109] PJM October 11, 2024 Answer at 14 (citing Tariff, Attachment DD-1, § L.4; RAA Schedule 6, § L.4 (emphasis added)).

[110] *Id.* at 14-15 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 6 (2015), *order on reh'g*, 155 FERC ¶ 61,157 (2016); *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000, Notice of Filing Taking Effect by Operation of Law (Sept. 29, 2021), *reh'g denied*, 177 FERC ¶ 62,105 (Nov. 29, 2021), *pet. for review denied*, *PJM Power Providers Grp. v. FERC*, 88 F.4th 250 (3rd Cir. 2023), *cert. denied sub nom. Pub. Utils. Comm'n of Ohio v. FERC*, No. No. 23-1069 (Oct. 7, 2024); *PJM Interconnection,*

over several years and PJM's ongoing stakeholder process since October 2023 make it difficult to accept protesters' suggestion that Energy Efficiency Resources reasonably relied on their continued participation in the RPM.[111]

47. IMM adds that PJM's proposal does not violate the rule against retroactive ratemaking because the rules that pay what IMM characterizes as a subsidy to Energy Efficiency Resources—i.e., the addback—are not in the filed tariff.[112] Therefore, IMM argues that PJM's instant proposal does not change any filed tariff rule. IMM also maintains that PJM's proposal is explicitly forward looking, and that, through operation of the addback, no Energy Efficiency Resource has cleared in a capacity auction since 2016, as Tariff, Attachment DD-1 and RAA Schedule 6 require for an Energy Efficiency Resource to be eligible to offer in up to three additional consecutive delivery year auctions.

48. PJM and IMM also oppose arguments for a transition period. PJM and IMM argue that an additional transition period is neither required nor appropriate because they allege that: (1) PJM's proposal already incorporates a transition period by honoring existing capacity commitments that are currently in place for Energy Efficiency Resources; (2) PJM's proposal allows energy efficiency providers to continue offering Energy Efficiency Resources into the RPM auctions through the 2025/2026 Delivery Year;[113] (3) continued participation since PJM's 2016 load forecast methodology improvements has also provided a transition process given the fact that IMM asserts that Energy Efficiency Resources are not capacity resources;[114] (4) customers would benefit from acceptance of PJM's proposal, and would not benefit in any meaningful way from a transition,[115] which would impose significant and unjustified costs on PJM customers;[116] and (5) a proposal with an additional transition

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L.L.C., 186 FERC ¶ 61,080 at P 36, *reh'g denied*, 186 FERC ¶ 62,168 (2024); *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056, *reh'g denied*, 176 FERC ¶ 62,159 (2021)).

[111] *Id.* at 15.

[112] IMM Answer at 2, 6-7.

[113] *Id.* at 11; PJM October 11, 2024 Answer at 31-32.

[114] IMM Answer at 11.

[115] PJM October 11, 2024 Answer at 31-32 (citing *Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92 (2d Cir. 2015)).

[116] IMM Answer at 11.

period is not before the Commission and therefore need not be considered in this proceeding.[117]

49. In addition, PJM argues that its load forecast methodology is just and reasonable. PJM asserts that Commission precedent requires load forecast methodologies to be just and reasonable, not perfect.[118] According to PJM, EIA data is a widely used source that both governments and utilities use—and that load forecasting without using EIA data would be questionable given existing industry standards and practices. PJM also explains that energy intensities are but one component in its top-down load forecast methodology that also incorporates economics, weather, distributed solar generation, and electric vehicles. PJM adds that it is not possible for its load forecast to underestimate energy efficiency load reductions in the 2023/2024 Delivery Year or the 2024/2025 Delivery Year, especially to the magnitude alleged by protesters, because the weather normal peak load in 2023 for the 2023/2024 Delivery Year exceeded the forecasted peak load and the most recent load forecasts for 2024/2025 Delivery Year used for the third incremental RPM auction were actually 1,510 MW higher than the older forecast for 2024/2025 Delivery Year used for the BRA.[119] Conversely, PJM argues that if it were to rely exclusively on market-cleared energy efficiency for its load forecast modeling, it would almost certainly overestimate load.

50. PJM also contests protesters' opposition to its claims about lack of a causal link between capacity market payments and deployment of energy efficiency projects. PJM asserts that it focused on lack of causation not to set a new standard for capacity market participation but rather to explain the unique challenges that Energy Efficiency Resources face in demonstrating why their purported energy reduction benefits necessitate receiving capacity payments from PJM customers.[120] PJM argues that its observation about those challenges acknowledged that Energy Efficiency Resources are not similarly situated to other capacity resources and that therefore its proposal is not unduly discriminatory. In response to Public Interest Organization's protest, PJM argues that the fact that a generation plant's projected energy and ancillary services revenues might exceed its avoidable costs does not prove that the plant would have been constructed without the opportunity to receive capacity payments—which it asserts is the relevant question raised

[117] PJM October 11, 2024 Answer at 32.

[118] *Id.* at 17-18, 21 (citing *Joint Consumer Representatives v. PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,187, P 32 n. 45 (2015) (citing *Ala. Elec. Co-Op., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982) & *Colo. Interstate Gas v. FPC*, 324 U.S. 581, 589 (1945)).

[119] *Id.* at 20 (citing Gledhill Aff. ¶¶ 33-34).

[120] *Id.* at 22-23, 26-28.

by its proposal. PJM adds that, while Affirmed Energy claims that capacity payments to energy efficiency providers that pay retailers to claim energy efficiency savings may encourage actions to increase sales, there is no evidence that retailers actually change, or are required to change, product placement as a result of contracts with providers, nor that such a change would demonstrate that capacity revenues would cause any given purchase. PJM argues that the unique challenges related to Energy Efficiency Resource valuation do not create disputed issues of material fact that require a trial-type hearing.[121]

51. PJM also argues that Energy Efficiency Resources are not similarly situated to other capacity resources because: (1) unlike thermal generation resources, Energy Efficiency Resources are installed in diffuse locations, and their installation and load reduction performance is not well documented; (2) the investments that other capacity resources make to sell energy and capacity expose those suppliers to greater performance risk in the face of vigorously price-sensitive competition than faced by installers of energy efficiency measures; and (3) capacity resources that actually produce energy and create capacity are subject to a robust system of oversight to determine whether their capacity offers are justified.[122] In addition, contrary to PJM's claim that its capacity market rules do not explicitly require a showing that capacity payments to Energy Efficiency Resources effectuate reductions in energy consumption,[123] IMM argues that Energy Efficiency Resources are required under PJM's Tariff to cause decreases in energy consumption at an end-use customer's location.[124] IMM further adds that Energy Efficiency Resources are not capacity resources, cannot be used to replace capacity resources, and do not contribute to PJM system reliability as defined by the capacity market.[125]

52. PJM reiterates that incorporating energy efficiency load reductions into the load forecast provides superior benefits to customers. PJM disputes arguments that the availability of capacity payments allow energy efficiency installers to capture the capacity benefit of the resources they install because a large share of capacity payments

[121] PJM argues that exhibits attached to Affirmed Energy's protest do not justify a hearing and should be disregarded because neither letter is sworn, both letters are from persons or entities that appear to benefit from PJM capacity payments, and one letter is vague and conclusory while the other does not mention PJM nor capacity payments specifically. *Id.* at 28.

[122] PJM October 11, 2024 Answer at 25-26.

[123] *See* Transmittal at 38.

[124] IMM Answer at 7.

[125] *Id.* at 3.

currently go to midstream and upstream energy efficiency aggregators.[126] PJM therefore asserts that, on net, more benefits will be realized by end-use customers when these aggregators are removed. PJM further argues that including energy efficiency in the load forecast as a demand reducer provides additional benefits to customers because it also reduces the reserve margin that would be associated with the incrementally higher load forecast that did not include energy efficiency reductions.

53. Lastly, PJM argues that the Commission is under no obligation to consider alternatives to PJM's proposal in this proceeding despite requests from protesters.[127] PJM notes that stakeholders may continue to explore the development of other programs more narrowly focused on emerging technologies and with more prescriptive requirements, but that opportunity does not provide grounds to reject PJM's instant proposal. Rather, according to PJM, the only question properly before the Commission is whether PJM's proposal is just and reasonable. Further, IMM argues that no technical conference is warranted because PJM stakeholders have discussed issues related to Energy Efficiency Resource participation in PJM markets at length, culminating in endorsement of the substance of PJM's proposal by a sector-weighted super-majority of PJM's stakeholders.[128]

54. In its answer, Public Interest Organizations argue that PJM's proposal does not constitute a targeted effort to address double counting of energy efficiency and instead, Public Interest Organizations assert that PJM's proposal will exclude some energy efficiency measures from both the supply and demand sides of PJM's capacity market because PJM's load forecast does not reflect the effects of certain energy efficiency measures.[129] Public Interest Organizations contend that energy efficiency measures not reflected in the load forecast should continue to have the opportunity to sell into the capacity market on the supply side. In addition, Public Interest Organizations and Affirmed Energy again suggest that numerous factors aside from energy efficiency could explain why PJM's load forecast underestimated actual load in the 2023/2024 Delivery

[126] PJM October 11, 2024 Answer at 29-30.

[127] *Id.* at 1, 32-33 (citing *N.Y. State Pub. Serv. Comm'n v. FERC*, 104 F.4th 886, 891 (D.C. Cir. 2024); *Indep. Power Producers of N.Y., Inc. v. FERC*, No. 21-1166, 2022 WL 3210362, at *2 (D.C. Cir. Aug. 9, 2022) (per curiam) (unpublished); *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,215, at P 81 & n.165 (2020); *OXY USA Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995); *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009)).

[128] IMM Answer at 12.

[129] Public Interest Organizations Answer at 2-5 (citing Public Interest Organization Protest Ex. A at 6-7).

Year—including that PJM could have underestimated load growth unrelated to energy efficiency,[130] and that, when applying the actual conditions to the load forecast model, PJM found that the model consistently overestimated load by 1-3%, consistent with a significant underestimate of energy efficiency.[131]

55. AEMA contests PJM's claim that load reductions from energy efficiency measures naturally occur independent from capacity market payments to Energy Efficiency Resources because Energy Efficiency Resources by definition must exceed relevant building codes and energy efficiency standards.[132] Rather, AEMA asserts that development of Energy Efficiency Resources requires years of planning, investment, and coordination by an energy efficiency provider so that an end-use customer purchases a device or appliance that is more efficient than the default choice available to them. For that reason, AEMA also contests PJM's claim that other capacity resources' significant capital investment to construct, operate, and maintain their facilities distinguishes those resources from Energy Efficiency Resources. In addition, AEMA argues that the fact that creation, measurement, and verification of Energy Efficiency Resources may be less capital-intensive than for other capacity resources does not warrant the removal of Energy Efficiency Resources from PJM's capacity market.

56. Affirmed Energy reiterates that the lack of a transition mechanism allowing Energy Efficiency Resources that have cleared an auction to be eligible to offer into three additional consecutive years—causing providers of already-installed energy efficiency assets to be denied the capacity payments they reasonably expected to receive—warrants rejecting PJM's proposal.[133] In addition, Affirmed Energy argues that PJM's proposal is a departure from PJM's position in stakeholder discussions and letters to government officials, and whether PJM's proposal was expected does not bear on the proposal's justness and reasonableness. Affirmed Energy further asserts that PJM's claim that its proposal will have no impact on state energy efficiency programs is conclusory and unsupported. Lastly, Affirmed Energy argues that no Commission precedent supports PJM's proposal to exclude an entire resource class from the market, nor that energy efficiency is not similarly situated to other capacity resources.

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[130] Affirmed Energy Answer at 4.

[131] Public Interest Organizations Answer at 5 (citing Molly Mooney, *Review of Preliminary Summer 2024 Loads* at 9 (Sept. 19, 2024), https://www.pjm.com/-/media/committees-groups/subcommittees/las/2024/20240919/20240919-item-03---review-preliminary-summer-2024-loads.ashx).

[132] AEMA Answer at 2-6.

[133] Affirmed Energy Answer at 2-3, 5, 7-8.

57. In its October 29, 2024 answer, PJM asserts that, contrary to Affirmed Energy's suggestion, PJM accurately described its energy efficiency package considered by stakeholders.[134] PJM claims that Affirmed Energy neglects to mention, however, that the ultimate proposal endorsed by a sector-weighted super majority of PJM's stakeholders and filed here was originally proposed by IMM on April 11, 2024, putting stakeholders on notice.

IV. Commission Determination

A. Procedural Matters

58. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), New Jersey Board of Public Utilities' notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

59. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2024), we grant Maryland Public Service Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

60. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept PJM's, IMM's, Public Interest Organizations', AEMA's and Affirmed Energy's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

61. We find that PJM's proposed Tariff and RAA revisions to sunset Energy Efficiency Resources' participation in capacity market auctions starting with the 2026/2027 Delivery Year are just and reasonable and not unduly discriminatory or preferential, and we accept them effective November 6, 2024, as requested.

62. In the March 2009 Order, the Commission accepted PJM's proposal to include Energy Efficiency Resources in PJM's capacity market largely because of the structure of PJM's load forecast methodology at that time. As the Commission explained in the March 2009 Order, PJM's proposal corrected for a four-year lag between when an Energy Efficiency Resource was initially installed and when its load-reducing effects were reflected in PJM's load forecast and the associated installed reserve requirement.[135]

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[134] PJM October 29, 2024 Answer at 2-3.

[135] March 2009 Order, 126 FERC ¶ 61,275 at P 132 ("PJM's proposal corrects a

Since 2016, however, PJM has used an end-use intensity modeling methodology to forecast load that better captures the expected impact of energy efficiency measures.[136] Because PJM's current load forecasting methodology reasonably accounts for energy efficiency measures on the demand side, and for the further reasons discussed below, we find that, contrary to protesters' assertions, it is not necessary for PJM to also include Energy Efficiency Resources in the capacity market on the supply side to achieve just and reasonable rates. The Commission has never required RTOs/Independent System Operators (ISOs) to allow the participation of energy efficiency measures in the supply-side of their capacity markets.[137]

63. Based on the record before us, we find that sunsetting Energy Efficiency Resources' participation in PJM's capacity market auctions is just and reasonable because it will benefit consumers by reducing capacity payments without adversely affecting resource adequacy or undermining the demand-side benefits that energy efficiency measures can provide to load. Under PJM's proposal, load will no longer make capacity payments to Energy Efficiency Resources, which all else being equal will reduce resulting wholesale capacity market costs, without any effect on the total amount of capacity that PJM must procure to meet its resource adequacy requirement.[138] Specifically, to avoid double-counting Energy Efficiency Resources as both supply and

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mismatch between [energy efficiency]-related load reductions and capacity requirement levels. As PJM has explained, there is a four-year lag after an [energy efficiency] resource is initially installed before its load-reducing effects are reflected in PJM's load forecast and the associated installed reserve requirement for the Delivery Year.").

[136] Transmittal at 15-16.

[137] *See, e.g.*, *NYISO*, 179 FERC ¶ 61,198 at P 112 (noting that energy efficiency resources were not capable of meeting the operational requirements to provide resource adequacy in NYISO). Advanced Energy United argues that neither the Commission's June 2007 Order rejecting the New Jersey Board of Public Utilities' RPM rehearing request nor its 2022 *NYISO* order accepting NYISO's Order No. 2222 compliance proposal should be read definitively to allow market operators to exclude energy efficiency participation on the supply side of capacity markets. Advanced Energy United Protest at 11 (referencing June 2007 Order, 119 FERC ¶ 61,318; *NYISO*, 179 FERC ¶ 61,198). But these orders establish that the Commission does not require such participation. Indeed, in the *NYISO* order, the Commission found that Order No. 2222 did not require NYISO to allow energy efficiency resources to participate in its capacity market as part of a distributed energy resource aggregation. *NYISO*, 179 FERC ¶ 61,198 at P 112.

[138] Transmittal at 35, 39.

demand, PJM developed an "addback" mechanism through which Energy Efficiency Resources receive the auction clearing price as an uplift payment but (1) are not counted toward meeting the reliability requirement and (2) cannot be substituted for other committed capacity resources.[139] Given PJM's addback mechanism, Energy Efficiency Resources participating on the supply side in the RPM cannot lower the clearing price or costs paid by load; instead, these resources receive capacity payments despite the fact that they do not reduce or otherwise contribute towards meeting the region's resource adequacy requirement. Therefore, sunsetting their participation in PJM's capacity market auctions will lower total capacity payments without changing the amount of capacity resources that PJM must procure to satisfy its resource adequacy requirement. At the same time, we agree with PJM that load will continue to realize the demand-side benefits that energy efficiency measures provide, including by reducing the amount of capacity that needs to be procured to maintain resource adequacy, lowering capacity prices and costs paid by load, and otherwise reducing end-use customers' energy consumption and therefore retail electricity bills.[140]

64. We disagree with protesters' claims that PJM's proposal conflicts with the Commission's statement in the March 2009 Order that energy efficiency is a critical part of efficient energy markets.[141] As PJM explains, "[a]cceptance of this filing does not mean that energy efficiency will have no place in the PJM Region."[142] Rather, as discussed above, we find that PJM's proposal continues to recognize the importance of energy efficiency by appropriately reflecting it in the load forecast, which reduces costs to load and ultimately benefits consumers by decreasing the demand in the capacity market, and in turn reducing the amount of capacity procured.

65. Moreover, contrary to protesters' assertions, we do not find any conflict between PJM's proposal and the Commission's acceptance of PJM's energy efficiency proposal in the March 2009 Order. PJM first proposed to incorporate Energy Efficiency Resources into the RPM in order to "provid[e] a mechanism to fill the 'gap' between the time the

[139] *Id.* at 5-6.

[140] *See id.* at 40.

[141] Advanced Energy United Protest at 4-5 (citing March 2009 Order, 126 FERC ¶ 61,275 at PP 130, 134); Consumer Advocates Protest at 2.

[142] Transmittal at 9 ("PJM's stakeholders made clear that utilities within the PJM footprint will continue to incentivize energy efficiency projects based on various state-mandated programs irrespective of whether Energy Efficiency Resources continue to receive wholesale market revenues from PJM. PJM's peak load forecast is developed through a top-down load analysis that accounts for the adoption of energy efficiency in aggregate in the PJM Region.").

[Energy Efficiency] Resource comes online, and the time its contribution to reducing loads is recognized in the load forecast used for the RPM auctions."[143] However, as previously noted, PJM's load forecast methodology improvements addressed this forecasting deficiency by incorporating the impacts of energy efficiency measures into PJM's load forecast.[144] As a result, continued supply-side participation by Energy Efficiency Resources is no longer needed to serve this original purpose. In addition, contrary to the protests, the Commission's initial acceptance of PJM's Energy Efficiency Resource participation rules do not preclude PJM from proposing, or the Commission from accepting, a different just and reasonable proposal, particularly as PJM has pointed to changed circumstances rendering such a change reasonable.

66. We also find that PJM's proposal is not unduly discriminatory because Energy Efficiency Resources are not similarly situated to other capacity resources in the RPM.[145] The Commission has found that undue discrimination occurs when there is a difference in rates or services among similarly situated customers that is not justified by a legitimate factor.[146] In PJM, currently, "Energy Efficiency Resources cannot be counted toward meeting the Reliability Requirement and cannot be substituted for any other committed Capacity Resource."[147] This distinguishes Energy Efficiency Resources' supply-side participation in PJM's capacity market from that of other capacity resources, including

[143] *PJM*, Transmittal, Docket No. ER09-412-000, at 30 (filed Dec. 12, 2008).

[144] Transmittal at 15 & Gledhill Aff. ¶¶ 28-35.

[145] *Cf.* AEMA Protest at 19-20; Consumer Advocates Protest at 6; Public Interest Organizations Protest at 7, 15-19; Recurve Analytics Protest at 5-6.

[146] *El Paso Nat. Gas Co*., 104 FERC ¶ 61,045, at P 115 (2003), *reh'g denied*, 106 FERC ¶ 61,233 (2004); *see also Ark. Elec. Energy Consumers v. FERC*, 290 F.3d 362, 367 (D.C. Cir. 2002) ("A rate is not 'unduly' preferential or 'unreasonably' discriminatory if the utility can justify the disparate effect."); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir. 1984) ("Rate differences may be justified and rendered lawful by facts-cost of service or otherwise." (quotation marks omitted)); *Pub. Serv. Co. of Ind., Inc. v. FERC*, 575 F.2d 1204, 1211 (4th Cir. 1978) (differences may be justified when predicated upon individual characteristics and market impacts).

[147] Transmittal at 5-6.

demand response resources,[148] which provides a reasonable basis for different treatment.[149]

67. Nor is PJM's proposal, as argued by some protestors, inconsistent with any findings by the Commission related to removing barriers to the participation of certain resources that are technically capable of providing services in an RTO/ISO market from participating in the market.[150] In Order Nos. 841 and 2222, the Commission found that barriers to entry can preclude resources that are technically capable of providing services from competing with resources that are already participating in the RTO/ISO markets, thereby reducing the efficiency of the RTO/ISO markets and increasing costs to load.[151]

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[148] Load reductions from demand response resources are not reflected in the load forecast because they are not continuous and passive reductions, but rather the result of customer choices at specific points in time in response to instructions from PJM operators as well as price signals in the capacity and/or energy markets. For that reason, in part, demand response resources can contribute to meeting the reliability requirement. In addition, while Energy Efficiency Resources could theoretically reduce electricity consumption and thus demand continuously, they also differ from demand response resources in PJM in that they are not required to operate under the direction of the Office of the Interconnection. *See* Tariff, Attachment DD-1, §§ A, A.5, & L.1.

[149] Several protesters argue that PJM's proposal is unduly discriminatory for applying a novel strict causation requirement to Energy Efficiency Resources alone, which should not form the basis for capacity market eligibility. *See* AEMA Protest at 19-20; Public Interest Organizations Protest at 7, 15-19. However, our acceptance of PJM's filing does not depend on its assertions related to the link between capacity market payments and Energy Efficiency Resource investments. For that reason, we are unpersuaded that the proposal should be rejected based on these arguments.

[150] *Cf.* Public Interest Organizations Protest at 8-10 (arguing that PJM's proposal would contravene an alleged general rule established by Order Nos. 841 and 2222 that market operators should enable resources that are "technically capable of providing services" to participate in wholesale markets for those services).

[151] Order No. 841, 162 FERC ¶ 61,127 at P 2; *see also* Order No. 2222, 172 FERC ¶ 61,247 at P 3 ("Where such barriers exist, resources that are technically capable of providing some services on their own or through aggregation are precluded from competing with resources that are already participating in the RTO/ISO markets. These restrictions on competition can reduce the efficiency of the RTO/ISO markets, potentially leading an RTO/ISO to dispatch more expensive resources to meet its system needs. By removing barriers to the participation of distributed energy resource aggregations in the RTO/ISO markets, this final rule will enhance competition and, in turn, help to ensure

Energy Efficiency Resources participating in the PJM markets, however, are not technically capable of meeting all of the requirements of the PJM capacity market because they do not contribute to meeting PJM's reliability requirement and PJM cannot direct or require them to operate to address a capacity deficiency. Therefore, we find that the Commission's concerns in Order Nos. 841 and 2222 about barriers to entry for resources that are technically capable of providing services do not apply to Energy Efficiency Resources participating as supply-side resources in the capacity market in PJM.

68. Relatedly, we are also unpersuaded by arguments that PJM's proposal violates Order Nos. 2222 and 2222-A.[152] Order No. 2222 requires RTOs/ISOs to allow distributed energy resource aggregations to participate in wholesale energy markets[153] and defined distributed energy resource in order to "ensur[e] that any resource that is technically capable of providing wholesale services through aggregation is eligible to do so."[154] In *NYISO*,[155] the Commission found that Order No. 2222 did not require the inclusion of energy efficiency resources when "these resources are not capable of meeting all of the current operational requirements to provide resource adequacy in NYISO."[156] The record indicates that Energy Efficiency Resources in PJM are not technically capable of providing capacity in PJM as Energy Efficiency Resources, do not contribute to meeting PJM's reliability requirement, and are not required to operate under the direction of PJM.[157] Therefore, we find that Order No. 2222 does not require

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that the RTO/ISO markets produce just and reasonable rates." (citations omitted)).

[152] *Cf.* Recurve Analytics Protest at 6-7.

[153] Order No. 2222, 172 FERC ¶ 61,247 at P 129.

[154] *Id.* at P 114. *See also id.* P 117 ("[W]e clarify that distributed energy resource aggregations must be able to meet the qualification and performance requirements to provide the service that they are offering into RTO/ISO markets."); *NYISO*, 179 FERC ¶ 61,198 at P 112 (holding, in NYISO's Order No. 2222 compliance proceeding, that NYISO was not required under Order No. 2222 to change its capacity market qualification requirements to enable energy efficiency resources (or any other resource type that currently does not qualify) to participate in NYISO's capacity market)).

[155] 179 FERC ¶ 61,198.

[156] *Id.* at P 112.

[157] The fact that PJM previously found Energy Efficiency Resources could participate in the market because they were not reflected in the load forecast, and the Commission accepted that proposal, does not foreclose the Commission from changing its position once such resources are reflected. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc.*

PJM to allow Energy Efficiency Resources to participate as a supply-side resource in its capacity market.

69. Several protesters allege that PJM's load forecast methodology underestimates the effects of energy efficiency[158] and note that PJM itself has acknowledged that its load forecast is not 100% accurate.[159] We find that these protesters have failed to demonstrate that use of PJM's load forecast methodology will produce unjust and unreasonable results in PJM's RPM auctions absent the supply-side participation of Energy Efficiency Resources.[160] While there inevitably will be some difference between PJM's load forecast and the amount of capacity that PJM ultimately needs in a given delivery year given the uncertainty inherent in any load forecast,[161] the record indicates that PJM has taken steps to ensure the reasonableness of its load forecast. PJM explains that its load forecast methodology incorporates several inputs, including energy intensity and other publicly available data that is widely used by governments and utilities, which

v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983) ("[W]e fully recognize that regulatory agencies do not establish rules of conduct to last forever.") (internal quotations omitted); *Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (an agency may change its course as long as it "suppl[ies] a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.").

[158] *See* Advanced Energy United Protest at 9-10; AEMA at 15; Affirmed Energy Protest at 7-9; Public Interest Organizations Protest at 4, 12-13, 15 & Ex. A at 4-5; Public Interest Organizations Answer at 2-5.

[159] *See* Public Interest Organizations Protest at 13-14 (citing *PJM*, July 29, 2024 Answer, Docket No. EL24-118-000, at 2-3 (filed July 29, 2024)).

[160] No party contends that PJM's load forecast methodology contravenes its Tariff. *See* PJM Interconnection, L.L.C./Intra-PJM Tariffs, OATT ATT DD.5.10, OATT ATTACHMENT DD.5.10 Auction Clearing Requirements (33.0.1), § (d) (PJM "shall establish the Preliminary PJM Region Load Forecast for the Delivery Year in accordance with the PJM Manuals by February 1, prior to the conduct of the Base Residual Auction for such Delivery Year.")).

[161] *See Joint Consumer Representatives v. PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,187 at P 32 & n. 45 ("Load forecasting is not unlike rate design." (citing *Ala. Elec. Co-Op., Inc. v. FERC*, 684 F. 2d 20, 27 (D.C. Cir. 1982) ("Ratemaking is, of course, much less a science than an art."); *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945) ("Allocation 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.")).

PJM then calibrates to validate and improve the load forecast.[162] PJM states that it also supplements its load forecast through outside consultant analysis and incorporates stakeholder feedback.[163] For these reasons, we find that PJM's load forecast methodology reasonably reflects the expected impacts of energy efficiency measures. PJM is certainly free to continue refining its forecast methodology as it deems necessary to reflect all factors impacting load growth, including energy efficiency measures.[164]

70. We are also unpersuaded by arguments suggesting that PJM's proposal will produce unjust and unreasonable rates because of alleged incentive misalignment between entities that invest in energy efficiency measures and the benefits they receive from those investments through the PJM markets.[165] Protesters have not shown how their allegations about the specific allocation of benefits and savings resulting from adoption of energy efficiency measures render the RPM construct or resulting capacity rates under PJM's proposal unjust and unreasonable. Protesters make a variety of arguments regarding the link between capacity market payments to Energy Efficiency Resources and adoption of energy efficiency measures. While we recognize that providing capacity payments to Energy Efficiency Resources may increase incentives to invest in energy efficiency measures, we do not believe that such incentives are necessary to ensure just and reasonable rates in PJM, particularly given that PJM will continue to reflect the effects of energy efficiency measures on the demand side, which could lower resource adequacy requirements and thus reduce capacity costs to loads. As noted above, the Commission has not required wholesale market operators to account for energy efficiency measures on the supply side of capacity markets, and we do not believe that doing so is necessary to ensure just and reasonable rates.

71. We also disagree with Advanced Energy United's argument that PJM's proposal violates the filed rate doctrine.[166] The fact that Tariff, Attachment DD-1 and RAA

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[162] PJM October 11, 2024 Answer at 17-18.

[163] Gledhill Aff. ¶¶ 6-11.

[164] As Affiant Gledhill explains, "[m]ethodological enhancements to the PJM Load Forecast are made frequently to acknowledge ongoing patterns and best align the forecast with actual load trends or anticipated factors. These enhancements include, for example, relying on higher frequency EIA data by, for example, transitioning to relying on Form EIA-861M data instead of Form EIA-861 data. Improving the PJM Load Forecast is an iterative process aimed at making the forecast as accurate as possible." *Id.* ¶ 8.

[165] Advanced Energy United Protest at 2-3, 7-8; Public Interest Organizations Protest at 20-21.

[166] Advanced Energy United Protest at 14-15.

Schedule 6 provide that Energy Efficiency Resources are limited to offering into only three additional subsequent auctions does not prevent PJM from proposing forward-looking revisions to Energy Efficiency Resources' eligibility more broadly.[167] We find that PJM's proposal will apply prospectively starting with the BRA for the 2026/2027 Delivery Year.[168]

72. In addition, as the Commission has previously determined, there is a difference between upsetting the expectations of market participants and violations of the filed rate doctrine.[169] As an initial matter, we note that there is always risk that tariffs and regulations can change, which is a risk that market participants take in a competitive market. And, an expectation in and of itself does not create a legal right to continue to collect revenues from customers. Where protesters have asserted that proposed tariff revisions would disrupt settled expectations mid-course and harm market participants who relied on the existing tariff in calculating prices and entering into contracts, the Commission has considered a "balancing of interests" or "balancing of equities" in determining the appropriate outcome.[170] Thus, the Commission has accepted revisions where the benefits outweighed any settled expectations, and we do so here. First, as noted above, by sunsetting Energy Efficiency Resources' eligibility for capacity

[167] PJM's Tariff contains a *Memphis* clause permitting it to make prospective changes to its tariff. PJM, Intra-PJM Tariffs, 9.2, OATT 9.2 Rights of the Transmission Provider: (1.1.0) ("PJM shall have the exclusive and unilateral right to file pursuant to Section 205 of the Federal Power Act and the FERC's rules and regulations thereunder to make changes in or relating to the terms and conditions of the PJM Tariff"). *See United Gas Co. v. Memphis Gas Div.*, 358 US 103 (1958).

[168] *See PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103, at P 62 (2014) (finding no violation of the filed rate doctrine because "PJM is not changing rates, or terms and conditions of service, relating to past performance; it is only changing the requirements applicable to future performance").

[169] *See ISO New England Inc.*, 165 FERC ¶ 61,088, at P 25 (2018), *order on reh'g*, 170 FERC ¶ 61,187 (2020); *ISO New England Inc.*, 148 FERC ¶ 61,185, at P 29 (2014), *reh'g denied*, 150 FERC ¶ 61,129 (2015).

[170] *ISO New England Inc.*, 165 FERC ¶ 61,088 at P 25; *ISO New England Inc.*, 148 FERC ¶ 61,185 at P 29 (explaining that the Commission accepted proposed tariff revisions after conducting a balancing of interests and determining that the proposal's benefits, which included preventing consumers from paying "for non-existent capacity or [the possibility of] fac[ing] a multi-year capacity shortfall," outweighed "market participants' reliance upon the existing [Forward Capacity Market] rules."); *see also ISO New England Inc.*, 145 FERC ¶ 61,095, at P 29 (2013).

payments, PJM's proposal will result in a more efficient capacity market based on an accurate load forecast and reduce capacity market costs borne by load and consumers while continuing to maintain reliability. Second, section L.4 of Tariff, Attachment DD-1 and the RAA provide a service term limiting Energy Efficiency Resources' capacity market auction eligibility; they do not create an entitlement that PJM cannot change going forward. Third, the Tariff and RAA allow Energy Efficiency Resources that have cleared an auction for a delivery year to *offer* into the auctions for up to three additional consecutive delivery years, but do not guarantee that they will *clear* those auctions, discounting Energy Efficiency Resource providers' legitimate reliance on expectations of ultimate capacity market revenues. Fourth, as PJM notes, its proposal will provide some transition period by continuing to honor existing capacity commitments, including those for 2025/2026 Delivery Year RPM auctions.[171] Fifth, although Energy Efficiency Resource sellers may have taken into account an expectation of four delivery years of potential eligibility to offer into the RPM in making investment decisions, the record does not indicate the extent to which PJM's proposal would thwart any expectations or otherwise harm certain Energy Efficiency Resources—especially in light of the fact that the Tariff and RAA do not guarantee that those Energy Efficiency Resources will clear in the auctions for those subsequent delivery years.[172] Accordingly, we find that the benefits of PJM's proposal outweigh the possible harm caused by upsetting any settled expectations.

73. Protesters raise several arguments that are not relevant to our evaluation of PJM's proposal. AEMA argues that PJM's existing Tariff does not require Energy Efficiency Resource providers to demonstrate that RPM payments or the Energy Efficiency Resource provider "caused" an end-use customer to purchase the Energy Efficiency Resource product.[173] This assertion is not relevant to the FPA section 205 application at issue in this proceeding, which proposes only prospective revisions to the Tariff and RAA, and therefore we decline to address this argument. Similarly, AEMA's relevant to the FPA section 205 application at issue in this proceeding, which proposes only prospective revisions to the Tariff and RAA. Similarly, AEMA's arguments about the effect of PJM's decision to include its addback procedures in its manuals rather than filing them with the Commission as Tariff revisions[174] are outside the scope of the instant filing. Additionally, Consumer Advocates argue that "the [a]ddback increases both the BRA clearing price and the quantity of capacity procured through the auction, to the

[171] PJM October 11, 2024 Answer at 31-32.

[172] Tariff, Attachment DD-1, § L.4; RAA Schedule 6, § L.4.

[173] *See* AEMA Protest at 18.

[174] *See id.* at 12-14.

detriment of ratepayers."[175] We decline to address Consumer Advocates' assertion because the current issue does not concern higher prices caused by the addback, but only whether PJM's proposal to sunset Energy Efficiency Resource supply-side participation in the capacity market is just and reasonable. However, we note that our acceptance of PJM's instant proposal also eliminates the use of the addback,[176] thereby also addressing Consumer Advocates' concerns. Further, while we agree that a resource's status as an emerging technology does not determine capacity market eligibility,[177] we do not find this fact relevant to our consideration of whether PJM's filing is just and reasonable.

74. Lastly, several protesters argue that PJM should develop a more targeted proposal to address the problems it identifies. However, the Commission's "authority to review rates" under FPA section 205 is "limited to an inquiry into whether the rates proposed . . . are reasonable."[178] We find that PJM has made such a demonstration here.

The Commission orders:

The proposed Tariff and RAA revisions are hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

[175] Consumer Advocates Protest at 4.

[176] Transmittal at 10.

[177] Affirmed Energy Protest at 6.

[178] *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. Docket No. ER24-2995-000

ERRATA NOTICE

(November 6, 2024)

On November 5, 2024, the Commission issued an "Order Accepting Tariff Revisions" in the above-captioned proceeding. *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,095 (2024). This errata notice corrects paragraph 73 of the Order by removing the fourth sentence, to read as follows:

> 73. Protesters raise several arguments that are not relevant to our evaluation of PJM's proposal. AEMA argues that PJM's existing Tariff does not require Energy Efficiency Resource providers to demonstrate that RPM payments or the Energy Efficiency Resource provider "caused" an end-use customer to purchase the Energy Efficiency Resource product.[173] This assertion is not relevant to the FPA section 205 application at issue in this proceeding, which proposes only prospective revisions to the Tariff and RAA, and therefore we decline to address this argument. Similarly, AEMA's arguments about the effect of PJM's decision to include its addback procedures in its manuals rather than filing them with the Commission as Tariff revisions[174] are outside the scope of the instant filing. Additionally, Consumer Advocates argue that "the [a]ddback increases both the BRA clearing price and the quantity of capacity procured through the auction, to the detriment of ratepayers."[175] We decline to address Consumer Advocates' assertion because the current issue does not concern higher prices caused by the addback, but only whether PJM's proposal to sunset Energy Efficiency Resource supply-side participation in the capacity market is just and reasonable. However, we note that our acceptance of PJM's instant proposal also eliminates the use of the addback,[176] thereby also addressing Consumer Advocates' concerns. Further,

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[173] *See* AEMA Protest at 18.

[174] *See id.* at 12-14.

[175] Consumer Advocates Protest at 4.

[176] Transmittal at 10.

while we agree that a resource's status as an emerging technology does not determine capacity market eligibility,[177] we do not find this fact relevant to our consideration of whether PJM's filing is just and reasonable.

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[177] Affirmed Energy Protest at 6.

Debbie-Anne A. Reese,
Secretary.