

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

PJM Interconnection, L.L.C.

)

Docket No. ER15-623-000

**MOTION FOR LEAVE TO ANSWER
AND ANSWER OF
AMERICAN MUNICIPAL POWER, INC.,
OLD DOMINION ELECTRIC COOPERATIVE, AND
SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2015), American Municipal Power, Inc., Old Dominion Electric Cooperative, and Southern Maryland Electric Cooperative, Inc. (collectively, "Joint Protesters") hereby (i) seek leave to submit this answer in the above-referenced proceeding, and (ii) respond to the Answer of PJM Interconnection, L.L.C., submitted in this proceeding on February 13, 2015 ("PJM Answer"). The PJM Answer contains new proposals and "clarifications" which were not included in PJM's December 12, 2014 filing, which proposes to amend the PJM Open Access Transmission Tariff ("Tariff") and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region ("RAA") to create a new Capacity Performance Resource and to make other substantial revisions in PJM's Reliability Pricing Model ("RPM") premised on that proposal. In almost all respects, the PJM Answer ignores or mischaracterizes the concerns raised by the Joint Protesters in their Protest filed in this proceeding on January 20, 2015.¹ Joint Protesters submit this Answer to correct those mischaracterizations and to address the new proposals and other continued deficiencies in PJM's Capacity Performance proposal. This Answer also responds to certain proposals by the Independent Market Monitor for PJM

¹ *Protest and Motion to Reject Filing or, in the Alternative, for Suspension and Hearings by American Municipal Power, Inc., Old Dominion Electric Cooperative, and Southern Maryland Electric Cooperative, Inc.*, submitted on January 20, 2015 in the above-referenced proceeding ("Joint Protest").

("IMM"), as set forth in its initial comments submitted on February 13, 2015, as well as in the IMM's answer submitted on February 25, 2014.

In support of this Answer, Joint Protesters state as follows:

I. ARGUMENT

The Joint Protest demonstrated in detail the reasons why PJM's Capacity Performance proposal is unjust, unreasonable, unduly discriminatory and preferential. In a nutshell, PJM's proposal would impose drastic changes in PJM's capacity adequacy construct at an immense cost to load-serving entities ("LSEs") and consumers, without any demonstration that the changes proposed are necessary to address any realistic reliability concern. The Joint Protesters also demonstrated that PJM's proposal was hastily developed, and that PJM's abbreviated stakeholder process did not provide any meaningful opportunity for review and input by stakeholders; as a result, critical details in PJM's new construct simply were left unaddressed.² The haste with which the proposal was developed is evident in the clarifications and revisions PJM now finds it necessary to offer in its Answer. These "patches" – as well as PJM's effort to revisit commitments that were locked in long ago for the 2016/2017 and 2017/2018 Delivery Years – should have been addressed as part of the initial filing; indeed, they could have been addressed had PJM not rushed to submit a filing just so it could begin transitioning to Capacity Performance with the May 2015 Base Residual Auction.

A fatal shortcoming in PJM's December 12 filing is that it does not demonstrate a need for such drastic changes to RPM at this time. Joint Protesters demonstrated that the experience of last winter, including the polar vortex of January 6-8, 2014, was caused primarily by operational performance issues that do not require such drastic changes as PJM's Capacity

² Joint Protest at 71-77.

Performance proposal in order to be resolved. Quite the contrary, several of these operational issues have been addressed and one – gas-electric coordination – should be addressed by the Commission in the first instance.³

In its Answer, PJM contends that its proposal is not merely a response to the weather events of last winter, but rather is necessary to address what PJM views as insufficient operational performance incentives.⁴ Yet PJM still does not demonstrate why this proposal, which will increase costs to load without any demonstration of commensurate benefit and might actually hamper reliability (as currently-viable resources will not qualify as Capacity Performance Resources) is necessary or reasonable. Without repeating all of the arguments here, Joint Protesters point out that the facts continue to refute PJM's assessment of need. To that end, Joint Protesters note that PJM recently reported on reduced forced outage rates this past January and February,⁵ which indicates yet another operational performance improvement that was accomplished without the imposition of Capacity Performance. Indeed, during the recent February 19 and 20 cold snap, PJM set a new all-time Winter peak demand without significant real time price spikes or emergency actions. Additionally, PJM reported the results of its Cold Weather Generation Resource Preparation testing to the February 10, 2015 Operating Committee. 94% of all units by unit count and 96% of all units by MW passed the test.

For the reasons detailed in the Joint Protest and by others, Joint Protesters reiterate their request that the Commission reject the filing in its entirety. Alternatively, if the Commission

³ Joint Protest at 13-16.

⁴ PJM Answer at 11-12.

⁵ See *Winter Operations* January 2015, slide 4 (available at <http://www.pjm.com/~media/committees-groups/committees/toa-ac/20150203/20150203-winter-update.ashx>) and February Cold Weather Review, February 2015 slide 4(available at <http://www.pjm.com/~media/committees-groups/subcommittees/sos/20150225/20150225-item-02a-february-2015-cold-weather-update.ashx>). Forced outage rates during the January 8 2015 event were 10.8% as opposed to the 22% experienced in January 2014. This result was recently affirmed during the extremely cold weather of February 19 and 20 where a new all-time winter peak demand was set with forced outage rates ranging from 8.2% to 12.3%.

does not reject the filing outright, Joint Protesters recommend that the Commission direct PJM to (1) focus on winter 2015/2016; (2) support ongoing operational performance initiatives; and (3) explore energy market rule changes in line with Commission initiatives.⁶ Additionally, Joint Protesters request that, if the Commission does not reject the filing, it should suspend the filing for the maximum five-month period, set it for hearing and take the following actions: (1) eliminate or delay the Transition Incremental Auctions for 2016/2017 and 2017/2018; (2) retain the existing Minimum Offer Price Rule; (3) retain the Short Term Resource Procurement Target; (4) direct support for ongoing Operational Performance initiatives; (5) direct the filing of limited changes to penalty structures; and (6) direct consideration of updated Triennial Review parameters.⁷ As discussed herein, Joint Protesters also request that if the Commission does not reject PJM's filing, then it direct PJM to address the reference technology for purposes of the Net Cost of New Entry ("CONE").

A. PJM's Answer Fails to Rebut Proof That Its Proposal is Unjust and Unreasonable.

Joint Protesters demonstrated that PJM's proposal is unjust and unreasonable because, among other things, PJM's proposal to force all resources into its new strictly limited and unrealistic Capacity Performance product will cause load to incur excessive costs without any demonstration of commensurate benefits.⁸ In reply, PJM simply argues that the "Commission generally does not require a cost-benefit analysis in order to consider or approve market rule changes."⁹ PJM missed the point. Our contention is not that the Commission has a formal requirement for a cost-benefit analysis for market rule changes; indeed, no such argument was made by the Joint Protesters. Instead, the point is that, given the immense costs of Capacity

⁶ Joint Protest at 11-12.

⁷ *Id.* at 12-13.

⁸ Joint Protest at 18-20.

⁹ PJM Answer at 15.

Performance and the dearth of commensurate or even nearly-commensurate economic, reliability, or other benefits, PJM's proposal is *per se* unjust and unreasonable. PJM's Answer does nothing to refute this demonstration. Specifically, PJM makes no effort to show that the benefits of its proposal approach or outweigh the cost – which, based on an analysis of an earlier iteration of Capacity Performance, PJM estimated at as high as \$4.0 billion between 2015 and 2018, and as much as \$700 million each year thereafter, even taking into account purported energy cost savings.¹⁰ PJM's failure to even take this level of costs into account in representing to the Commission that the Capacity Performance proposal will provide sufficient benefits renders the proposal unjust and unreasonable.

B. PJM's New Proposal to Reopen and Revise the Minimum Offer Price Rule Through Capacity Performance is Unjust and Unreasonable.

The PJM Minimum Offer Price Rule ("MOPR") has been the subject of extensive dispute and litigation before the Commission and the courts.¹¹ In its current form, the MOPR generally applies to a new Capacity Resource or an uprate to an existing Capacity Resource in excess of 20 MW or more, that is a combustion turbine ("CT"), combined cycle ("CC"), or integrated gasification combined cycle ("IGCC") generating plant.¹² The December 12 Filing did not propose any revisions to the MOPR.

¹⁰ See Joint Protest at 18, citing the joint PJM-Independent Market Monitor ("IMM") cost-benefit analysis titled "Capacity Performance Initiative" posted at www.pjm.com/~media/committees-groups/committees/elc/postings/capacity-performance-cost-benefit-analysis.ashx (hereinafter "PJM Cost-Benefit Analysis"), at 2; see also *Protest of the Transition Coalition* filed in this proceeding on January 20, 2015, at 7 estimating that the cost of Capacity Performance for the 2016/2017 Delivery Year to be up to \$2.8 billion and the cost for the 2017/2018 IA proposal to be "as high as \$3.6 billion").

¹¹ See, e.g., *PJM Interconnection, L.L.C.* 135 FERC ¶ 61,022 (2011); *order on reh'g*, 137 FERC ¶ 61,145 (2011); *New Jersey Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).

¹² See PJM Tariff Attachment DD, Section 5.14(h)(2).

In its Comments, the Independent Market Monitor for PJM ("IMM") supported PJM's proposal to allow offers at up to Net CONE without cost review.¹³ However, the IMM argued that "offers at any other level should be limited based on review of unit specific costs."¹⁴ The IMM asserted that PJM's proposal to address market power concerns for offers that might be too high are sufficient, but that PJM had not addressed "the potential exercise of market power and manipulation" that could result from offers that are too low.¹⁵ Therefore, the IMM recommended that "approval of the December 12th Filings should be conditioned on implementation of a defined mechanism to detect and deter the potential to exercise market power associated with offers significantly below net CONE and below net ACR."¹⁶

In its Answer, PJM observes that it has in place a MOPR to prevent artificial price suppression. PJM agrees with the IMM, however, that because the existing MOPR would not apply to Capacity Performance Resources that have previously cleared an RPM Auction and that are not adding incremental capacity, there should be a new "procedure for identification and review of such offers."¹⁷ PJM analogizes that Capacity Performance resources are similar to planned resources in that they "... entail substantial new costs and risks, from capital and operating improvements to enhance performance and from the financial risks posed by non-performance charges". PJM thus offers its support for a compliance requirement to develop rules for a revised MOPR to apply to offers for Capacity Performance Resources. In addition to affecting planned resources, this proposed expansion in the scope of the PJM MOPR has the

¹³ On February 25, 2015, the IMM submitted an answer reiterating its desire to effectively reopen and revise the MOPR. Additionally, despite having initially commented in support of PJM's proposed use of Net CONE as the offer cap for Capacity Performance Resources, the IMM's February 25 answer includes a new suggestion that the default offer cap for Capacity Performance Resources is lower than net CONE.

¹⁴ *Comments of the Independent Market Monitor for PJM*, filed in Docket Nos. ER15-623 and EL15-29 on January 20, 2015 at 5 ("IMM Comments").

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ PJM Answer at 86.

potential to apply to existing resources that are exempt from being MOPR-screened resources (by virtue, for example, of having cleared a previous RPM auction).

Elevating such sell offers for being too low directly impedes the ability of Load Serving Entities to self-supply or others to submit a zero price sell offer for existing resources. It puts the PJM IMM in the position of fashioning a sell offer for any or all resources in the PJM generating fleet. Further, efforts to artificially raise offers for existing previously cleared resources would reduce the risk faced by a large fleet owner that engages in economic withholding. That is so because, if sell offers are forced up, a large fleet owner does not face as much volumetric risk in how much capacity must be withheld to achieve the desired price increase.

The IMM's proposal and PJM's endorsement thereof represent an unreasonable attempt to revisit and revise the existing MOPR provisions. The IMM's proposal to chip away at the MOPR currently on file and already approved by the Commission is, in substance, an impermissible Federal Power Act Section 206 complaint since it seeks to change part of the Tariff that would not be modified by PJM's §205 filing. Commission precedent has long prohibited including a complaint in a protest/comments/intervention.¹⁸ Moreover, the fact that the MOPR does not apply to Capacity Performance Resources that have previously cleared an RPM Auction and those that are not adding incremental capacity is not cause to revise the MOPR; these limitations are part of the current, FERC-approved MOPR. PJM's Capacity Performance product, which PJM argues is "similar to planned resources", does not establish that changes to a fundamental aspect of the MOPR – the resources to which applies – is just and

¹⁸ See, e.g., *ISO New England Inc.*, 135 FERC ¶ 61, 252, at P 25 (2011) (finding concerns as to a rate are appropriately raised in a complaint filed pursuant to section 206 of the FPA); *Midwest Indep. Transmission Sys Operator, Inc.*, 108 FERC ¶ 61,248 at P 5 (2004) (noting that the Commission has consistently rejected efforts to combine complaints with other types of filings); *Consolidated Edison Co. of N.Y.*, 97 FERC ¶ 61,241 at p. 62,092 & n.14 (2001) (citing *Louisiana Power and Light Co.*, 50 FERC ¶ 61,040 at p. 61,062-63 (1990)); *Entergy Services, Inc.*, 52 FERC ¶ 61,317 at p. 62,270 (1990) (noting that complaints must be filed separately from motions to intervene and protests).

reasonable. An existing resource with significant previously invested capital faced with a potential modest incremental investment is not “similar to planned resources.” Moreover, the Commission should not revisit the level of discretion afforded the IMM in the review of offers. Quite the contrary, a return to unit-specific review of offers to determine whether they are anti-competitively low, at the IMM's discretion or even at PJM's discretion, is a step *backwards* to the sort of unworkable and ill-defined unit-specific review process that has been mitigated in the current MOPR through the addition of certain express exemptions.

In more detail, in Docket No. ER13-535, PJM submitted MOPR revisions to replace the unit-specific process for an exemption from the MOPR, with the current Self-Supply Exemption and Competitive Entry Exemption. In discussing the need to do away with unit-specific review process, PJM recounted problems with the unit-specific process over the previous two Base Residual Auctions, including "significant differences between PJM and the IMM concerning how to interpret and apply the considerable discretion afforded under the unit-specific exemption process"¹⁹ which created "controversy over the MOPR exception process." PJM summarized its view of the unit-specific review process as follows:

Based on its experiences, PJM has concluded that the unit-specific MOPR exception process is not serving the long-term interests of the capacity market and should be replaced as soon as possible. Because setting minimum process for a new entrant involves reviewing all aspects of its expected costs and revenues, the calculation is significantly more complicated, with significantly more opportunities for the exercise of discretion, than avoidable cost or marginal cost determinations PJM and the IMM routinely make in mitigation efforts for other products. Moreover, the financial consequences of the minimum capacity price determinations are far greater than the mitigation determinations PJM and the IMM make for other markets, given the value of the capacity cleared in each year's annual RPM auctions. Notwithstanding the gravity of the financial consequences associated with the unit-specific process, this process by its nature demanded that PJM and the IMM make their exception determinations in a non-transparent environment. Accordingly, the analysis and ultimate outcome of this

¹⁹ PJM December 7, 2012 Filing, at 8.

opaque process failed to inspire the necessary confidence in RPM among those investing or supporting investment in capacity in PJM.

PJM December 7, 2012 Filing at 9. In its order on PJM's December 7, 2012 filing, the Commission approved PJM's proposal for the Self-Supply Exemption and the Competitive Entry Exemption, but also directed PJM to retain the unit-specific review process. Thus, while there is still the opportunity for unit-specific review,²⁰ the associated problems are mitigated by the availability of the Self-Supply Exemption and the Competitive Entry Exemption.

Although the proceeding in Docket No. ER13-535 addressed the unit-specific review for exemption from the MOPR as opposed to the initial review of offers in order to determine whether they appear too low, the same concerns apply to PJM's new proposal in this proceeding to develop a MOPR for Capacity Performance Resources. The current MOPR provisions were developed through years of multiple and contentious proceedings, some of which remain pending before the Commission.²¹ The provisions regarding resource types subject to the MOPR as well as the exemptions, particularly the Self-Supply Exemption, are critical to Joint Protesters as LSEs who must have some assurance that their investments in new capacity will be used to satisfy their capacity obligations.²² The Self-Supply Exemption allows LSEs some assurance that their legitimate, owned resources can be used to satisfy their capacity obligations, because the Self-Supply Exemption allows them to submit offers below the MOPR Offer Floor, including an offer of zero.²³ The IMM's recommendation for a process that would permit review of sell offers to determine if they are too low would likely undermine or eliminate the existing Self-

²⁰ PJM Tariff Attachment DD, Section 5.14(h)(8).

²¹ The Commission's May 2, 2013 Order in Docket No. ER13-535 remains pending on rehearing.

²² See *Comments of PJM Load Group in Support of Filing*, submitted in Docket No. ER13-535 on December 28, 2012; *Protest and Request for Rejection or, in the Alternative, Request for Suspension and Further Procedures of the PJM Load Group*, submitted in Docket No. EL11-20 on March 4, 2011.

²³ PJM Tariff Attachment DD, Section 5.14(h)(5).

Supply Exemption and Competitive Energy Exemption – an outcome which is unreasonable in and of itself given the reliance by LSEs and others on these exemptions.

The Commission must not allow PJM and the IMM to reopen the MOPR and make such critical revisions as the resources to which the MOPR will apply and the adoption of a new unit-specific offer review process, based on PJM's apparent afterthought to support the IMM's attempt to inject into the MOPR new applications and discretion that will eviscerate the existing provisions that were adopted in an attempt to balance prevention of artificial price suppression with the need to permit legitimate, cost-based sell offers in the RPM auctions. Therefore, Joint Protesters urge the Commission to reject the IMM's unilateral proposal, and to decline PJM's suggestion that the Commission order PJM to address the MOPR in a "compliance" filing.

C. PJM's Answer Confirms that Its Capacity Performance Proposal is Unjust, Unreasonable, Unduly Discriminatory and Preferential

1. The Combination of Unrealistic Requirements, Extremely Limited Excuses for Non-Performance, and Lack of Criteria Render Capacity Performance Unjust and Unreasonable.

PJM proposes that Capacity Performance Resources will be the sole type of Capacity Resource beginning with Delivery Year 2020/2021.²⁴ Joint Protesters and others previously demonstrated that the lack of fundamental details regarding aspects of the proposal, including the criteria for eligibility as a Capacity Resource, makes it impossible to determine whether the proposal is just and reasonable.²⁵ PJM has described its intent as a requirement that Capacity Resources must be available "to provide energy and reserves whenever PJM determines an

²⁴ December 12 Filing at 33.

²⁵ See Joint Protest at 39-42.

emergency condition exists", and has proposed unreasonably vague criteria.²⁶ With this explicit and unachievable requirement that Capacity Resources must be available 8,760 hours per year, PJM also proposes unreasonably limited excuses for non-performance and unduly harsh penalties for non-performance.²⁷ This combination of factors alone renders the Capacity Performance proposal unjust and unreasonable. PJM's proposal is particularly unreasonable taking into account the costs that will be borne by load without any demonstration of commensurate reliability need or benefit.

PJM's Answer confirms that Capacity Performance will remain ill-defined, and will subject reliable resources to the risk of not qualifying as Capacity Performance Resources and/or incurring excessive penalties as a result of extremely narrow excuses for non-performance. PJM insists that greater detail on eligibility requirements cannot be provided because that might hinder innovation.²⁸ In response to concerns over PJM's proposal that both PJM and the IMM have an unlimited ability to request and review information regarding a sell offer, and their unlimited and unilateral discretion to reject qualification as a Capacity Performance Resource if the seller "does not demonstrate to the satisfaction of PJM that the resource meets the necessary requirements",²⁹ PJM represents that it "does not plan to wait until the last minute to work with Capacity Market Sellers in understanding their circumstances and obtaining additional information regarding the basis for a particular offer."³⁰ According to PJM, it "has already begun having such conversations with market participants and with the IMM."³¹ PJM's pledge of its

²⁶ Proposed Tariff Section 5.5A(a)(i) requiring, among other things, that Capacity Market Sellers submitting a Sell Offer for a Capacity Performance Resource must represent that they have "made, or is capable of demonstrating that it will make, the necessary investment to ensure the Capacity Resource has the capability for the entire such Delivery Year to provide energy at any time when called upon by the Office of the Interconnection."

²⁷ See Joint Protest at 39-40.

²⁸ PJM Answer at 30.

²⁹ Filing Letter at 25; see also proposed Tariff, Attachment DD, section 5.5A(a)(ii)(B).

³⁰ *Id.* at 36.

³¹ *Id.*

intent with regard to the timing for exercise of the authority to seek additional information and determine whether resources indeed pass muster does nothing to address the core concern that resources are left with an untenable risk that, even when a seller meets the few stated criteria, its offer could nevertheless be rejected based on a non-transparent and overly subjective review by PJM and the IMM. Having experienced the challenges of convincing the IMM that its subjective criteria and judgment have been met in other circumstances, Joint Protesters have serious concerns against PJM's proposal. The fate of LSEs being able to continue using their resources as intended and permitted under the RPM market design should not be left to the subjective and undefined judgment of the IMM and PJM.

2. "Coupled" Offers and Resource Aggregation

In recognition of the fact that its Capacity Performance proposal threatens at least *some* types of resources, PJM proposes to allow Intermittent Resources, Capacity Storage Resources, Demand Resources and/or Energy Efficiency Resources ("Non-Traditional Resources") to submit coupled offers as both Capacity Performance and Base Capacity, during the transition Delivery Years 2018/2019 and 2019/2020.³² Thereafter, once Capacity Performance is the only Capacity Resource in PJM beginning in the 2020/2021 Delivery Year, PJM proposes to allow these Non-Traditional Resources to aggregate into one offer.³³

Joint Protesters explained that PJM's Capacity Performance proposal is unduly discriminatory for several reasons, including the co-location and co-ownership requirements for coupled offers and aggregated offers, that will (1) impose undue burdens on single-plant capacity owners that do not apply to owners with multiple units,³⁴ and (2) unduly discriminate against

³² See December 12 Filing at 33-34.

³³ *Id.*

³⁴ Joint Protest at 20-22.

traditional resources and renewable resources, as well as perhaps demand response.³⁵ In its Answer, PJM responds to these and similar concerns by reiterating that during the two-year transition period, Non-Traditional Resources can submit "coupled" offers, and that such resources can submit "aggregated" offers with other Non-Traditional Resources. PJM has now decided, in response to protests, that it can remove the proposed restriction whereby aggregation would be limited to resources within the same Locational Deliverability Area ("LDA").³⁶ PJM proposes to revise its Capacity Performance provisions per a compliance filing, if the Commission orders it to do so.³⁷

Even with this offer to remove the same-location requirement, PJM's proposal remains unjust and unreasonable for at least the following reasons. First, the ability to submit coupled offers is limited to the two-Delivery Year transition period. After that, PJM's "coupled offer" proposal is of no use to even Non-Traditional resources, because it will not exist. PJM has said nothing in its Answer to address the concern that Non-Traditional resources will not be viable under the Capacity Performance regime, a possibility which even PJM acknowledges by virtue of its transition mechanisms. Second, PJM continues to refuse to make either the transitional coupled offer option or the aggregated offer option available to conventional resources, such as gas-fired generators. In its Answer, PJM notes that it is "not philosophically opposed to providing additional opportunities for aggregating Intermittent/Storage/DR/EE resources and traditional generation", yet says that rules need to be developed.³⁸ PJM also acknowledges that traditional generators will have to undertake additional investments in order to qualify as

³⁵ *Id.* at 20-25.

³⁶ PJM Answer at 25.

³⁷ *Id.*

³⁸ PJM Answer at 26, note 37.

Capacity Resources.³⁹ However, PJM refuses to allow aggregating by traditional resources out of unqualified and hypothetical concern over undercutting the “individual unit” approach to RPM. Given the expense of the Capacity Performance proposal, and PJM's stated desire to ensure that resources actually can qualify as Capacity Resources, such an unproven and premature concern is far from sufficient to justify the unduly prejudicial nature of PJM's proposal for aggregated offers. Instead, PJM's Answer confirms the unreasonable and unduly discriminatory nature of its proposal. The distinction between Non-Traditional Resources and traditional resources offered by PJM does not warrant or justify the disparate treatment, particularly against single-unit resources as discussed in the Joint Protest.⁴⁰

PJM also failed to justify the unreasonable nature of its proposal with respect to Non-Traditional Resources. Joint Protesters previously explained that PJM's proposal to burden Non-Traditional Resources with the requirements of Capacity Performance is contrary to national environmental policy, reliability concerns, and threatens legitimate investments by entities such as AMP.⁴¹ In its Answer, PJM does not answer or remedy these concerns. Instead, it offers yet another "clarification"; that PJM is willing to consider resources for which a Capacity Market Seller is not the owner but has a marketing responsibility through some bilateral agreement as performance from the "same company" if the arrangements are "reflected in PJM's systems

³⁹ *Id.* at 27 ("PJM anticipates that most traditional generators are or will be able to offer as Capacity Performance Resources, albeit sometimes only after making project investments to ensure performance during the winter and summer peak.")

⁴⁰ Joint Protest at 20-22. *See id.* at 26-29, where PJM attempts to defend its refusal to allow aggregation of traditional resources on the notion that (1) doing so could undermine the unit-specific nature of RPM; (2) it expects most traditional generators will be able to qualify as Capacity Resources, after making project investments; and (3) since there are other options for traditional generators, such as *perhaps* PJM *considering* allowing environmentally limited traditional resources to aggregate with Non-Traditional Resources. None of these justifies treating traditional resources different than Non-Traditional Resources. *See Sebring Utils. Comm'n v. FERC*, 591 F.2d 1003, 1009 n. 24 (5th Cir. 1979)(the "essence of the principle" against undue discrimination is so that "those who are similarly entitled must be treated equally."); *see also Transwestern Pipeline Co.*, 38 FERC ¶ 61,175 at 61,433 (1986) ("undue discrimination is in essence an unjustified difference in treatment of similarly situated customers.")

⁴¹ Joint Protest at 22-24 (discussing, among other things, AMP's construction of the largest new hydroelectric generation deployment of its kind, which could be undermined or threatened by Capacity Performance).

through the recording of these bilateral transactions."⁴² This clarification most certainly is not reflected in the proposed tariff provisions, nor is it clear how such "arrangements" will be deemed "reflected in PJM's systems" sufficient to qualify for coupled offers. Moreover, even this clarification does not remedy the concern, expressed by Joint Protesters and others, that PJM's proposal injects an unreasonable level of uncertainty, because PJM would be in the position of deciding whether the "control" afforded by contractual arrangements is sufficient to meet the requirement that coupled offers must be from resources which the Capacity Market Seller "owns or controls."⁴³

3. Use of Net CONE Based on a CT Has Become Unreasonable.

PJM proposes to use Net CONE as the revised offer cap for Capacity Performance Resources. In its Answer, PJM makes clear that Net CONE is the target market clearing price. According to PJM, "[o]ver time the marginal offer needed to clear the market will be priced at Net CONE, and all other resources that clear the market will be compensated at that Net CONE price."⁴⁴ CONE and Net CONE have traditionally been based on a simple-cycle gas-fired CT.⁴⁵ The continued use of a CT as the basis for CONE and Net CONE has become unreasonable given market rule changes and increasing reliance on other types of generator technology. For example, according to the IMM's report of the Base Residual Auction for the 2017/2018 Delivery Year, new CTs are outnumbered by other technologies.⁴⁶ The IMM reports as follows: "[t]he 32 new Generation Capacity Resources consisted of 15 solar resources (27.0 MW), nine

⁴² PJM Answer at 28.

⁴³ See proposed Section 5.6.1(h) of Attachment DD of the PJM Tariff.

⁴⁴ PJM Answer at 81.

⁴⁵ The MOPR Floor Offer Price uses CONE for a CT, a CC and an IGCC. PJM Tariff Attachment DD, Section 5.14(h)(3).

⁴⁶ *Analysis of 2017/2018 Base Residual Auction*, published by Monitoring Analytics, L.L.C., available at http://www.monitoringanalytics.com/reports/Reports/2014/IMM_Analysis_of_the_2017_2018_RPM_Base_Residual_Auction_20141006.pdf

diesel resources (122.5 MW), six combined cycle resources (4,825.4 MW), one CT resource (122.7 MW), and one hydro resource (5.7 MW).⁴⁷

Given changes in market design and the types of technology representing new entry, continued use of a CT as the reference technology may not be just and reasonable. Therefore, if the Commission does not reject Capacity Performance outright, then it should direct PJM to consider whether the continued use of a CT as the basis for CONE and Net CONE remains reasonable and submit a compliance filing within a specified period (*e.g.*, 90 days) either proposing a revision or explaining why it remains just and reasonable.

4. PJM Has Failed to Justify Eliminating the 2.5 Percent Capacity Procurement Holdback.

In its December 12, 2014 filing, PJM proposes to eliminate the Short-Term Resource Procurement Target, pursuant to which 2.5 percent of the reliability requirement for a given Delivery Year is “held back” from the BRA, and the required resources instead are procured in the incremental auctions for that same Delivery Year. Along with a number of other stakeholders, Joint Protestors vigorously oppose elimination of the 2.5 percent holdback for the reasons stated in detail in their January 20, 2015 Protest.⁴⁸ In its Answer, PJM defends its proposal to eliminate the holdback on three grounds – the same three grounds on which PJM relied in its December 12 filing. First, PJM contends that the 2.5 percent holdback was adopted as a mechanism to accommodate short lead-time resources, but that the quantities of short-term

⁴⁷ *Id.* at 24; *see also*, *Cost of New Entry Estimates for Combustion Turbine and Combined Cycle Plants in PJM With June 1, 2018 Online Date*, prepared by the Brattle Group and Sargent & Lundy, dated May 15, 2014, at 1 (“PJM has traditionally estimated CONE and Net CONE based on a gas-fired simple-cycle combustion turbine (CT) as the reference technology. However, as we explain in the concurrently-released 2014 VRR Report, we recommend defining the VRR curve based on the average Net CONE of a CT and a gas-fired combined-cycle gas turbine (CC).” The report is available online here: <http://www.pjm.com/~media/documents/reports/20140515-brattle-2014-pjm-cone-study.ashx>)

⁴⁸ Joint Protest at 59-63.

resources offered into the BRAs shows that the holdback is no longer needed for that purpose.⁴⁹ Second, PJM argues that, insofar as the hold-back was meant to provide a buffer against over-procurement resulting from load forecasting error, a recent change in PJM's load forecasting technique has rendered that buffer unnecessary.⁵⁰ Finally, PJM claims that the holdback artificially depresses clearing prices in the BRA and that this purported effect undermines RPM's "primary objective" of sending accurate price signals regarding the need for capacity investment.⁵¹

As detailed below, PJM's arguments for eliminating the holdback are without merit. Indeed, the Commission should view PJM's current arguments with deep skepticism, given that fewer than 10 months ago PJM rejected the very same arguments (then advanced by the PJM IMM) in staunchly defending the holdback.⁵² In the end, eliminating the holdback would serve only to amplify the already immense capacity price increases that will result if PJM's Capacity Performance proposal is allowed to take effect. In any case, because the PJM Answer essentially restates PJM's original arguments for eliminating the holdback, and because Joint Protestors already debunked those arguments in their Protest, a lengthy response to this part of the Answer is unnecessary. Taking PJM's arguments in turn, Joint Protestors briefly point out the following.

As for PJM's contention that the holdback is no longer needed to accommodate short lead-time resources,⁵³ PJM transparently attempts to shift the burden of proof in arguing (Answer

⁴⁹ PJM Answer at 102-03.

⁵⁰ *Id.* at 103-04.

⁵¹ *Id.* at 104-05.

⁵² See Joint Protest at 60-61, citing *PJM's Response to the 2013 State of the Market Report* dated May 7, 2014 (posted online at <http://www.pjm.com/~media/documents/reports/20140507-pjm-response-to-the-2013-state-of-the-market.ashx>) at 12, and the additional discussion *infra*.

⁵³ PJM filed the 2.5 percent holdback provision in late 2008 as part of a package of "important enhancements to the Reliability Pricing Model." FERC Docket No. ER09-412-000, Filing Letter dated December 12, 2008 (available on eLibrary at Accession No. 0081216-0132), at 1. PJM there stated that the purpose of the holdback is to "appropriately recognize that some share of the capacity needed to satisfy the region's requirements will be supplied

at 102) that “[t]he parties that contend the 2.5 percent holdback remains justified as a means of accommodating short lead-time resources uniformly fail to provide any evidence to support that claim.” As the proponent of the tariff change, however, it is PJM that bears the burden of demonstrating that it is just and reasonable to *eliminate* the holdback. To support its claim that the holdback is no longer needed to accommodate short lead-time resources, PJM points to robust participation in the BRAs by Demand Response. *Id.* at 102-03. PJM’s “evidence” proves nothing, however. It is the height of illogic for PJM to argue that the success of the holdback in fostering Demand Response requires its elimination. Moreover, Demand Response is but one of the four types of short lead-time resources the Commission had in mind when it approved the holdback. Thus, in its order approving the holdback, the Commission observed that “[s]hort lead time resources can include demand response and energy efficiency resources, upgrades to existing generation units, and imports of capacity from areas outside of PJM.”⁵⁴ PJM’s Answer says nothing, though, about the robustness of BRA participation by the types of short lead-time resources *other than Demand Response*; and, even if it did, a given level of BRA participation by any class of short-lead time resources says nothing about how many *additional* MWs from similar resources might become available only through the incremental auctions. In short, the historical level of participation by one category of short lead-time resources (Demand Response) in one set of auctions (the BRAs) proves nothing about the continuing usefulness of the holdback in bringing all types of short lead-time resources into the incremental auctions. To be sure, the evidence presented in the PJM Answer does not come close to “demonstrat[ing] unequivocally” (Answer at 102) that the holdback has become wholly unnecessary after only a few short years of effectiveness.

in the incremental auctions, by resources that can better commit one or two years in advance, as opposed to three years in advance.” *Id.* at 41.

⁵⁴ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at n. 42 (2009).

Equally unpersuasive is PJM's argument that a recent change in its load forecasting model has eliminated the need for any buffer against over-procurement, as the holdback also was meant to provide.⁵⁵ As support for the claim, PJM points to a single adjustment – the introduction of a “binary variable” into the load forecast model – that was implemented for the first time in the 2015 Load Forecast Report. *See* PJM Answer at 103-04. According to PJM, this new variable will “adjust the starting point of the forecast downward by the approximate amount that has been over-forecasted over the last two summers.” *Id.* at 104. But while PJM asserts in its Answer (at 104) that “[t]his adjustment will carry forward to all future RPM Auctions,” the 2015 Load Forecast Report describes the adjustment as merely “a short-term solution” to be used while PJM works to incorporate energy efficiency and load-side generation in the forecast model.⁵⁶ Either way, it is premature for PJM to conclude that this new and so far untested adjustment in the forecast model will correct the model's tendency toward over-procurement. Indeed, in responding to the IMM's *2013 State of the Market Report*, PJM itself recognized that a period of analysis is needed before determining whether any particular model adjustment obviates the need for the holdback. Thus, in rejecting the IMM's recommendation that the holdback be eliminated, PJM stated:

While PJM does not believe the historic performance justifies elimination of the 2.5 percent holdback at this time, it is important to note the load forecast mechanism was recently changed and *more analysis will be needed in the future to determine the impacts of these changes on forward load forecasting*. Therefore *PJM will evaluate the performance of the 2.5 percent holdback on an ongoing*

⁵⁵ *See PJM's Response to the 2013 State of the Market Report*, *supra* note 5, at 12, noting that the 2.5 percent holdback “was also justified as an offset to forward load forecast uncertainty which was created as a result of transitioning the capacity market from a short term market to a longer term forward market.”

⁵⁶ *See* 2015 Load Forecast Report (available online at <http://www.pjm.com/~media/documents/reports/2015-load-forecast-report.ashx>) at 1:

The introduction of a binary variable into the load forecast model for years 2013 and 2014 resulted in generally lower peak and energy forecasts in this year's report, compared to the same year in last year's report. PJM introduced this change as a short-term solution as it pursues its announced intention to better reflect usage trends such as adoption of more energy efficient end uses and behind the meter generation which are not currently captured in the forecast model.

basis to ensure it is still performing in a manner consistent with resource adequacy requirements.⁵⁷

Rather than conducting the analysis it so recently recommended – an analysis that necessarily would require comparison between actual loads and the output of the newly tweaked forecast model over at least a couple of years – PJM instead now simply asserts that the forecast model has been purged of any high-side bias. But without the analysis PJM itself recommended, any assurances in this regard are premature and unsupported. The Commission therefore should reject PJM’s claim that a single adjustment in its load forecast model has eliminated the need for the holdback as a buffer against over-procurement.

Finally, PJM contends that the 2.5 percent holdback should be eliminated because of its purported effect on BRA clearing prices. Once again hoping to shift the burden of proof it bears to others, PJM argues that “[t]he holdback’s supporters ... fail to come to grips with the unrefuted evidence that the 2.5 percent holdback artificially suppresses BRA clearing prices” by withholding demand.⁵⁸ Apparently blind to the irony of its argument, PJM adds that “the IMM has repeatedly documented this effect, explaining that it is a market distortion that should be removed.”⁵⁹

The irony in PJM’s argument arises from the fact that, less than a year ago, PJM expressly rejected the IMM’s contention that the holdback improperly suppresses BRA clearing prices. Specifically, in its May 2014 response to the IMM’s 2013 State of the Market Report, PJM reported that its analysis of historical RPM performance showed no such price suppression had occurred. PJM stated in this regard as follows:

⁵⁷ *PJM’s Response to the 2013 State of the Market Report*, dated May 7, 2014 (posted at <http://www.pjm.com/~media/documents/reports/20140507-pjm-response-to-the-2013-state-of-the-market.ashx>), at 12 (emphasis added).

⁵⁸ PJM Answer at 103.

⁵⁹ *Id.*

Based on analysis of RPM performance since 2007, the 2.5 percent deferred supply does not unreasonably lower capacity procurement, rather it is a mechanism to provide opportunity for short-term resource participation and to prevent systematic over procurement of capacity. Actual market performance and comparison of 3.5 year forward load forecast to actual load requirements appear to validate the deferred supply procurement mechanism. *Based on this analysis, PJM does not believe there is evidence that the 2.5 percent deferred supply artificially or inappropriately suppresses forward capacity prices.* In fact, the 2.5 percent deferred supply appears to be a conservative quantity of supply deferral that properly reflects the dynamics of forward load forecasting and prohibits over-procurement of forward capacity and overstatement of forward capacity prices.

PJM's Response to the 2013 State of the Market Report, supra, at 12 (emphasis added). PJM's statement in its May 2014 Response was in line with the view it had consistently expressed since the holdback first was proposed⁶⁰ – a view that PJM now repudiates without even acknowledging a change in position.

Rather than it being the “holdback’s supporters” who have failed to come to grips with anything, *see Answer at 103*, it is PJM that fails to come to grips with its own conflicting assertions. PJM unreservedly claims in its Answer that the holdback suppresses BRA clearing prices even though, less than a year ago, PJM informed stakeholders that its analysis of RPM performance since 2007 *showed no such effect*. Rather than explaining its reversal in position, however, PJM's strategy in its Answer is simply to ignore its prior inconsistent statements, even though Joint Protestors clearly highlighted the conflicts in objecting to the December 12 filing.⁶¹ In perhaps every formal adjudicatory setting, a failure to acknowledge (let alone reconcile) such patently conflicting assertions would be a significant factor in assessing credibility. There is no reason the Commission should hold PJM to a lesser standard here. For that reason, and because

⁶⁰ *See PJM Interconnection, L.L.C., supra* note 7 at P 77 (“In response to the generators’ arguments, PJM states that the ‘suppression’ of prices that they claim would result from a short-term resource hold-back presumably already exists from the current ILR holdback, but has not prevented Base Residual Auctions from clearing at or above Net CONE, nor has it prevented new entry.”)

⁶¹ *See Joint Protest at 60-61, 62.*

the only arguably independent analysis showed no impact on clearing prices, the Commission should reject PJM's arguments for eliminating the 2.5 percent holdback.

5. PJM's Answer Fails to Resolve Concerns that Its Treatment of External Capacity Resources is Unduly Discriminatory.

PJM's December 12, 2014 filing seeks to impose new restrictions on the ability of external capacity resources to participate in RPM auctions. Specifically, PJM would require that all such external capacity resources be pseudo-tied into the PJM Balancing Area, or represent that they expect to be pseudo-tied into the PJM Balancing Area by the relevant Delivery Year, as a precondition to submitting a sell offer. Whereas currently an external resource without a pseudo-tie is permitted to offer if it fits within the applicable Capacity Import Limit ("CIL"), PJM's proposal would eliminate the CIL safe harbor and require all such resources to be pseudo-tied in order to submit a sell offer.

Joint Protestors, as well as the Illinois Corporation Commission, oppose PJM's proposal to further burden the use of external capacity resources. In response, PJM states (Answer at 34) that it "requires external resources to be on equal footing with internal resources regarding operational flexibility and observability. PJM must be able to see what these resources are doing during the Operating Day. PJM can do so if the resource is pseudo-tied to the PJM system." That contention, however, cannot be reconciled with the CIL mechanism, which, as proposed by PJM and approved by the Commission, would have allowed thousands of MWs of external capacity to clear in the RPM auctions without being pseudo-tied.⁶² The need for PJM to "be able to see what these resources are doing during the Operating Day" apparently is a new-found need.

⁶² PJM's Auction Planning Period Parameters for the 2017/2018 Delivery Year would have allowed a total of 6,499 MW of external capacity (simultaneous) to clear without being pseudo-tied. See <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2017-2018-rpm-bra-planning-parameters-report.ashx>.

Even if the Commission were to accept PJM's claim that the pseudo-tie requirement is not unduly discriminatory because it only puts internal and external resources "on equal footing," the new requirement has practical implications for external resources that could render it *de facto* unduly discriminatory. To be specific, pseudo-tying a resource from one Balancing Area into another is not a snap-of-the-fingers proposition. In order for PJM to implement a new pseudo-tie, it may be necessary for PJM to modify its network model to provide an accurate representation of the resource and other bulk power facilities that may not otherwise be included in the model. Before undertaking those modifications, PJM has required the capacity seller to enter into an agreement to reimburse PJM for its costs to implement the pseudo-tie. In the case of one of AMP's external capacity resources, PJM estimated that its costs to modify the network model would require AMP to expend signification dollars, without even considering the costs of any changes in telemetering or communications links that might be required. Worse, PJM has refused to commit to any date certain by which it will implement the pseudo-tie, which puts any seller at considerable risk in offering an external resource into PJM's capacity auction. Should PJM fail to complete the pseudo-tie by the start of the Delivery Year, the seller could be on the hook to purchase high-priced replacement capacity or face a costly performance penalty. Parties selling capacity from resources internal to PJM face no such risk, however.

If the Commission accepts PJM's proposal for an across-the-board pseudo-tie requirement for external resources, PJM itself must be required to make some commitments. In that situation, the external seller should not be faced with the enormous performance penalties PJM plans to impose if, through no fault of the seller, PJM failed to implement the pseudo-tie before the start of the relevant Delivery Year. Excusing the seller from penalties in that situation

would, in turn, provide incentives to PJM to do its part to ensure that the pseudo-tie is implemented on a timely basis.

D. If PJM's Filing Is Not Rejected In Its Entirety, then It Should be Suspended for the Maximum Period and Set for Hearing and Settlement Judge Procedures

Given the lack of detail and support, coupled with the significantly shifting details of PJM's proposal even after PJM filed this proposal for Commission approval, the filing should be rejected outright. In the event the Commission does not do so, however, Joint Protesters reiterate their request that, among other things, the Commission suspend the filing for the maximum five months and establish hearing and settlement judge procedures.

PJM's response is that (1) suspension is not warranted because no party has demonstrated that the Capacity Performance proposal is unjust and unreasonable and that rates may be substantially excessive, and PJM wants Capacity Performance in place for the BRA for the 2018/2019 Delivery Year; and (2) hearing procedures are unwarranted because there are no disputed issues of material fact. PJM is wrong on both counts.

First, with respect to suspension, PJM of course has provided no information regarding the charges to be expected with its new Capacity Performance. Joint Protesters have at least provided estimates of the cost of the proposal, which are indeed "substantially excessive." However, the Commission has not required such a demonstration in setting the maximum suspension period, instead being guided by the lack of harm to PJM of continuing with its existing just and reasonable Tariff and the need to protect against implementation of changes that might be unreasonable. In an order on PJM's proposal to revise the RPM Variable Resource Requirement ("VRR") Curve, the Commission explained as follows:

The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust,

unreasonable, or that it may be inconsistent with other statutory standards. While shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results, suspension for the maximum period in this case will not lead to harsh and inequitable results because PJM's existing just and reasonable OATT includes a mechanism for adjusting Gross CONE values to reflect changes in conditions. Additionally, suspension for the maximum period is warranted for practical reasons, as it would not be possible to revise the demand curve retroactively. Accordingly, we will accept PJM's proposed Gross CONE values for filing and suspend them for five months, to become effective the earlier of June 30, 2012, or a date set by a subsequent Commission order in this proceeding.

PJM Interconnection, L.L.C., 138 FERC ¶ 61,062 (2012) at P 42.

The same reasoning applies here in connection with various protesting parties' requests for a 5-month suspension. PJM has not made any demonstration that a 5-month suspension will lead to a harsh and inequitable result. To the contrary, a rushed implementation, particularly after the inadequate "Enhanced Liaison Committee" process, will lead to harsh and inequitable results. Moreover, as with the demand curve, the Commission cannot retroactively undo Capacity Performance if it is allowed to take effect even subject to modification. Therefore, a maximum suspension is necessary, if the filing is not rejected outright.

Second, with respect to a hearing, the Commission routinely establishes hearing procedures when there is an indication that a tariff change filing may be unjust, unreasonable, unduly discriminatory or preferential, but where the Commission is unable to make the necessary determinations based on the record before it.⁶³ Here, the record is either insufficient or marred by internal inconsistencies⁶⁴ for the Commission to make the necessary determinations in a manner that accords with its own obligation to engage in rational, evidence-based decisionmaking.

⁶³ See, e.g., *PJM Interconnection, L.L.C., et al.*, 140 FERC ¶ 61,197 (2012) at P 32; *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,062 (2012) .

⁶⁴ See, e.g., the discussion in Section I.C.4, *supra*, of PJM's conflicting statements concerning the effect of the 2.5 percent capacity procurement holdback.

II. MOTION FOR LEAVE TO ANSWER

Rule 213(a) of the Commission's Rules of Practice and Procedure prohibits the filing of answers to answers. The Commission will make an exception to this prohibition in instances where the answer will assist in clarifying or explaining the dispute, or provide the Commission with a more complete record upon which to dispose of the matter. Good cause exists for the Commission to accept this Answer, because it clarifies matters addressed in PJM's Answer, corrects misstatements made by PJM, and provides the Commission with information that will assist in its decision on PJM's Capacity Performance proposal. Therefore, Joint Protesters request leave to submit this Answer.

III. CONCLUSION

WHEREFORE, for the foregoing reasons and those in the Joint Protest, Joint Protesters request that the Commission reject PJM's filing in its entirety. Alternatively, if the Commission does not reject the filing in its entirety, Joint Protesters request that that Commission direct PJM to (1) focus on winter 2015/2016; (2) support ongoing operational performance initiatives; and (3) explore energy market rule changes in line with Commission initiatives.⁶⁵ Additionally, Joint Protesters request that if the Commission does not reject the filing, then it suspend the filing for the maximum five-month period, set it for hearing and take the following actions: (1) eliminate or delay the Transition Incremental Auctions for 2016/2017 and 2017/2018; (2) retain the Short Term Resource Procurement Target; (3) direct support for ongoing Operational Performance initiatives; (4) direct the filing of limited changes to penalty structures; (5) direct consideration of

⁶⁵ Joint Protest at 11-12.

updated Triennial Review Parameters;⁶⁶ (6) retain the MOPR; and (7) direct PJM to address the reference technology for purposes of determining CONE and Net CONE.

Respectfully submitted,

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March 2, 2015

⁶⁶ *Id.* at 12-13.

CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of March, 2015, that I have caused the foregoing to be served upon each party designated on the Official Service List in this proceeding.

Adrienne E. Clair