

162 FERC ¶ 61,160  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,  
and Richard Glick

Old Dominion Electric Cooperative and Direct Energy      Docket Nos. EL17-32-000  
Business, LLC on behalf of itself and its affiliate, Direct  
Energy Business Marketing, LLC and American  
Municipal Power, Inc.

v.

PJM Interconnection, L.L.C.

Advanced Energy Management Alliance      EL17-36-000

v.

PJM Interconnection, L.L.C.

ORDER ON COMPLAINTS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued February 23, 2018)

1. On December 23, 2016, Old Dominion Electric Cooperative, Direct Energy Business, LLC on behalf of itself and its affiliate, Direct Energy Business Marketing, LLC (Direct Energy), and American Municipal Power, Inc. (AMP) (collectively, ODEC) filed a complaint (ODEC Complaint) under sections 206 and 306 of the Federal Power Act (FPA) against PJM Interconnection, L.L.C. (PJM). On January 5, 2017, Advanced Energy Management Alliance (AEMA) filed a complaint (AEMA Complaint) (together, Complaints) under section 206 and 306 of the FPA against PJM. The Complaints by ODEC and AEMA (Complainants) address the procurement of capacity in PJM's Reliability Pricing Model (RPM) capacity market and the participation of certain resources in RPM auctions. In this order, we direct Commission staff to convene a technical conference to explore issues raised in the Complaints related to PJM's transition to procurement of 100 percent Capacity Performance Resources<sup>1</sup> and the methodology by which load-serving entities' peak-shaving actions are reflected in capacity procurement

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<sup>1</sup> All capitalized terms not defined herein are used consistent with the definitions in the PJM OATT at section I.1. Definitions, 0.0.0; the PJM OATT at Attachment DD.2 Definitions, 25.0.0; and the PJM RAA at Article 1 – Definitions, 19.0.0.

targets, as well as two related components of PJM's resource aggregation rules. Further, we establish a refund effective date of December 23, 2016 for the ODEC Complaint and January 5, 2017 for the AEMA Complaint.

## **I. Background**

2. In 2015, PJM proposed, and the Commission accepted, subject to certain conditions, a number of modifications to the RPM market rules.<sup>2</sup> Among these modifications was a transition from multiple capacity products, including annual and sub-annual products, to a single annual capacity product known as Capacity Performance. The transition process included two Base Residual Auctions, for delivery years 2018-2019 and 2019-2020, in which PJM would procure no less than 80 percent of its capacity needs in the form of the Capacity Performance product, but could procure up to 20 percent of a sub-annual product known as Base Capacity. Resources cleared as Base Capacity for those delivery years will be subject to the new Non-Performance Charge—a penalty applied when a capacity resource fails to deliver its share of energy and reserves during an emergency condition—only during the months of June through September, when the PJM system is most likely to experience peak loads. Beginning with the May 2017 Base Residual Auction for delivery year 2020-2021, the Base Capacity product will be eliminated, and PJM will procure 100 percent of capacity to serve the PJM region from Capacity Performance Resources.

3. In advocating for its Capacity Performance proposal, PJM acknowledged that certain resource types— Capacity Storage Resources, Intermittent Resources, Demand Resources, Energy Efficiency Resources, and Environmentally-Limited Resources (collectively, Seasonal Resources)—would likely be unable, regardless of maintenance practices and investment decisions, to meet the stringent new performance requirements of serving as a Capacity Performance Resource, and thus adequately mitigate the risk of Non-Performance Charges. To accommodate the unique position of these resource types, PJM proposed, and the Commission accepted, a “resource aggregation” mechanism whereby a capacity seller that owns or controls one or more resources of the aforementioned types located within the same modeled Locational Deliverability Area may submit a Capacity Performance sell offer representing the aggregated unforced capacity value of those resources.<sup>3</sup>

4. In November 2016, PJM submitted in Docket No. ER17-367 an FPA section 205 proposal to modify certain aspects of the resource aggregation rules to enhance the ability of Capacity Storage Resources, Intermittent Resources, Demand Resources, Energy

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<sup>2</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (Capacity Performance Order).

<sup>3</sup> Capacity Performance Order, 151 FERC ¶ 61,208 at P 101.

Efficiency Resources, and Environmentally-Limited Resources to effectively aggregate their capacity and continue to participate in the RPM market, particularly with the elimination of the sub-annual Base Capacity product beginning with the May 2017 Base Residual Auction for delivery year 2020-2021. In an order issued concurrently with this one, the Commission is accepting PJM's proposed aggregation rule enhancements.<sup>4</sup>

## II. Complaints

### A. ODEC Complaint

5. ODEC requests that the Commission take action to prevent the loss of participation by certain Seasonal Resources in the PJM Reliability Pricing Model.<sup>5</sup> ODEC requests that the Commission: (1) take immediate action to prevent an unreasonable and irreparable change that will prevent Seasonal Resources from participating in the May 2017 Base Residual Auction; (2) determine that the PJM Tariff and the Reliability Assurance Agreement are no longer just, reasonable, and not unduly discriminatory or preferential; and (3) establish a proceeding to allow Seasonal Resources to participate in the Reliability Pricing Model auctions.<sup>6</sup> ODEC argues that circumstances have changed since the Commission first approved PJM's transitional mechanism. These changes include: the impending elimination of the Base Capacity Resource product; the existence of factual evidence that capacity needs in PJM continue to vary by season; and the development of Commission policy to recognize the value of non-conventional generation sources.<sup>7</sup>

6. ODEC requests that the Commission act to extend the Base Capacity Resource product for another year, and to require PJM to submit a comprehensive program to allow for the participation of Seasonal Resources in the capacity auction.<sup>8</sup> ODEC states that they are not seeking to undo the fundamental components of PJM's CP for all resources, but rather to recognize that the "one size fits all" approach of CP does not fit with Commission policy and is detrimental to reliability and economically efficient market outcomes.<sup>9</sup>

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<sup>4</sup> *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,159 (2018).

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.* at 7-8.

<sup>9</sup> *Id.* at 8.

7. ODEC argues that PJM has long recognized that the capacity needs for its service territories vary by season, and that PJM has traditionally been a summer-peaking region.<sup>10</sup> ODEC states that this relationship persists in the load forecast for the 2020/21 delivery season, with summer peak being 13 percent higher than the projected winter peak.<sup>11</sup> ODEC argues that the PJM system has been developed acknowledging the summer-peaking nature of the system. For instance, ODEC notes that resources such as natural gas-fired combustion turbine generators were developed with the expectation that they would only be called upon in the summer months when there would be less demand for natural gas. However, given the fixed costs of such development, Demand Resources were also created that provided many of the same benefits but with lower investment costs. ODEC argues that PJM's load profile has not changed but that the requirement that resources deliver throughout the year largely ignores the summer-peaking nature of that profile.<sup>12</sup>

8. ODEC notes that the requirement that resources be capable of "sustained, predictable operation" throughout the year defies reality even for non-seasonal Capacity Performance Resources.<sup>13</sup> For instance, fossil fueled resources take regular planned outages for refurbishment. ODEC argues that such outages are a major factor in PJM's capacity planning, such as the increased reserve margin going into the winter period to account for higher planned outages. ODEC states that PJM makes accommodation to allow resources with planned outages to avoid penalties, but does not provide similar accommodation to Seasonal Resources, who also are unavailable during certain periods of the year.<sup>14</sup>

9. ODEC notes that at the introduction of Capacity Performance, PJM allowed Seasonal Resources to offer as Base Capacity Resources as a transition mechanism with lower penalties for failure to perform.<sup>15</sup> ODEC states that the May 2017 Base Residual Auction will be the first auction where there will be no Base Capacity Resource product.<sup>16</sup> ODEC states that PJM acknowledges that there will be resources unable to

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<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 15.

<sup>13</sup> *Id.* at 16.

<sup>14</sup> *Id.* at 17.

<sup>15</sup> *Id.* at 17-18.

<sup>16</sup> *Id.* at 18.

meet the Capacity Performance Resource requirements. However, ODEC argues that PJM fails to acknowledge that aggregation alone is insufficient to allow participation by Seasonal Resources, and also fails to acknowledge that differences in seasonal capacity provide an opportunity to achieve a more efficient procurement outcome.<sup>17</sup> ODEC notes that Seasonal Resources such as wind generators and voluntary demand response were critical during the polar vortex of 2014, and are under-appreciated by PJM.

10. ODEC argues that the Base Capacity Resource product has been critical for Seasonal Resources to participate in the RPM auctions, as 41 percent of the 26,999 MW cleared in the last auction as Base Capacity offered in as Base Capacity only.<sup>18</sup> ODEC argues that the results of the last two auctions show that aggregation has not led to meaningful participation by Seasonal Resources, and that there is no expectation that PJM's proposed revisions will change this outcome.<sup>19</sup> ODEC states that as a result, PJM will not have in place reasonable provisions to allow for continued participation in RPM by Seasonal Resources.<sup>20</sup> ODEC asks the Commission to require PJM to develop rules to better integrate resources such as storage, intermittent resources, demand response, energy efficiency or Environmentally Limited Resources in the capacity market.<sup>21</sup>

11. ODEC disagrees with PJM's claim that its capacity needs are identical across the entire year.<sup>22</sup> ODEC notes that PJM's conservative winter planning assumptions and operational practices assume an inefficient deployment of capacity resources and inability to control outages, neither of which are true in practice.<sup>23</sup> Although PJM cites the polar vortex as driving identical capacity needs, ODEC argues that PJM has substantially improved its operations planning since then, which allowed it to operate in 2015 without the benefit of CP resources.<sup>24</sup> ODEC also argues that Commission policy is to encourage accommodation of Seasonal Resources and refers to the Storage NOPR where the

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<sup>17</sup> *Id.* at 19.

<sup>18</sup> *Id.* at 20.

<sup>19</sup> *Id.* at 21.

<sup>20</sup> *Id.* at 22.

<sup>21</sup> *Id.* at 23.

<sup>22</sup> *Id.* at 24.

<sup>23</sup> *Id.* at 25.

<sup>24</sup> *Id.*

Commission proposed to have RTOs modify their rules to allow storage to participate in energy, ancillary service and capacity markets.<sup>25</sup>

12. ODEC states that the best solution to ensure continued participation of Seasonal Resources is to require PJM to continue the Base Capacity Resource product with an enhanced penalty structure for another year, so that it is available for the 2020/21 delivery year.<sup>26</sup> ODEC notes that PJM recently completed a stakeholder process to address seasonal capacity, but that this discussion was limited.<sup>27</sup> Limits to the discussion included: counterparty risks associated with commercial aggregation, mismatch in availability of resources between summer and winter, and partial payment between aggregated resources not reflecting actual capacity contribution.<sup>28</sup> ODEC states that Direct Energy developed a proposal to extend the Base Capacity Resource product for another year during the stakeholder process, but that PJM decided to file the aggregation modification proposal before Direct Energy was able to present its proposal to the PJM Markets and Reliability Committee.<sup>29</sup>

13. ODEC states that they have provided proposed changes to the PJM tariff. These changes include extending the Base Capacity Resource product for the next auction, but revising the penalty structure to make it comparable to the Capacity Performance Resource penalty structure.<sup>30</sup> ODEC also proposes making the stop-loss provisions comparable for the two products.<sup>31</sup> ODEC argues that these changes are *de minimis* and should be easy to implement.<sup>32</sup>

14. ODEC also recommends that the Commission require PJM to either make a filing or submit a report on their progress toward further revisions by September 30, 2017.<sup>33</sup> ODEC urges the Commission not to allow the timing of the Complaint relative to the

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<sup>25</sup> *Id.* at 27.

<sup>26</sup> *Id.* at 28.

<sup>27</sup> *Id.* at 28-29.

<sup>28</sup> *Id.* at 29-30.

<sup>29</sup> *Id.* at 31.

<sup>30</sup> *Id.* at 32.

<sup>31</sup> *Id.* at 33.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 33-34.

May 2017 Base Residual Auction to dictate the outcome, as implementing a just and reasonable outcome is possible in this matter and more important than timing.<sup>34</sup> ODEC requests fast-track processing to allow for participation of Seasonal Resources in the May 2017 Base Residual Auction.<sup>35</sup>

**B. AEMA Complaint**

15. AEMA asserts that since the Commission's acceptance of PJM's Capacity Performance proposal in Docket Nos. ER15-623 and EL15-29, new evidence and changed circumstances demonstrate fatal flaws in the case for elimination of Seasonal Resources, and that the result of moving to a 100 percent annual Capacity Performance requirement will be rates that are unjust, unreasonable, and unduly discriminatory. AEMA requests that the Commission direct PJM to continue to permit Base Capacity Resources to participate in the RPM market until such time as PJM develops—in conjunction with stakeholders—and the Commission approves an RPM market participation model that fully and beneficially accommodates participation by Seasonal Resources.<sup>36</sup>

16. AEMA states that since the Commission accepted Capacity Performance in 2015, PJM has presented to stakeholders the results of multiple studies that better establish the PJM system's summer and winter capacity needs and the actual benefits of additional winter capacity. AEMA asserts that these results support a finding that procurement of 100 percent Capacity Performance Resources is unnecessarily costly for consumers compared with retaining a sub-annual capacity product. AEMA specifically points to several studies analyzing reserve requirements and winter preparedness for delivery years for which a portion of capacity is comprised of sub-annual resources: Reserve Requirement Studies for 2015 and 2016 that AEMA states concluded that all resource adequacy risk lies in the summer; Winter Operations Assessments for 2015 and 2016 that AEMA states concluded that there was sufficient surplus capacity to allow generators to schedule planned and maintenance outages during the winter peak seasons; and a 2016-2017 Winter Readiness Study that AEMA states concluded that the system had sufficient resources to remain reliable even in the face of worst-case scenarios such as large-scale failures of the natural gas system or Polar Vortex levels of generator failure.<sup>37</sup>

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<sup>34</sup> *Id.* at 34.

<sup>35</sup> *Id.* at 37.

<sup>36</sup> AEMA Complaint at 7-8.

<sup>37</sup> *Id.* at 13-14.

17. AEMA states that to calculate how much capacity is needed to meet the 1-in-10 loss of load expectation (LOLE) target, PJM's reliability planning procedures estimate the probability of a loss of load each week during the delivery year based on weather patterns, amount of capacity procured, characteristics of the generation fleet, and other factors. AEMA explains that the sum of those weekly probabilities of outages over the year is the annual LOLE, and that the target capacity requirement is set such that this model predicts a total 10 percent chance of outage during the delivery year. AEMA asserts that historically PJM has run this model using a fixed amount of capacity during each of the 52 weeks of the year, and that this has always resulted in a roughly 9.99 percent chance of loss of load during 10 weeks between June and August, and a 0.01 percent or less chance of loss of load during the remaining 42 weeks of the year—probabilities that sum to satisfy the 1-in-10 reliability target.<sup>38</sup>

18. AEMA states that during the course of recent stakeholder discussions on this topic, stakeholders became concerned that maintaining close to zero risk during 42 weeks of the year might be an inefficient approach to maintaining reliability on a summer-peaking system. That is, the full Capacity Performance approach of carrying a fixed amount of capacity year-round appears to over-procure capacity in low-risk periods for the sake of maintaining adequate reserve margins in peak periods. AEMA states that, to explore alternatives, stakeholders requested analysis of various seasonal capacity mixes that would still meet the 1-in-10 target. AEMA explains that stakeholders asked whether it would be possible to procure extra capacity during the summer to decrease the total LOLE during peak summer weeks down to, for example, 9 percent if that would allow capacity requirements for the rest of the year to be relaxed from near 0 percent LOLE to 1 percent LOLE. AEMA states that in response PJM produced an analysis showing how much extra summer capacity would be needed to decrease the summer LOLE to various lower levels—i.e., 9 percent, 8 percent, etc.—and how much less non-summer capacity could be procured to maintain a non-summer LOLE such that the total LOLE continues to satisfy the 1-in-10 reliability target.<sup>39</sup>

19. AEMA states that these data PJM provided indicate that PJM could increase its summer requirements by roughly 500 MW to allow over 17,000 MW of annual capacity to be replaced by less expensive summer-only resources, and that an additional unit of summer-only capacity has 97 percent of the reliability value of an additional unit of year-round capacity. AEMA asserts that these data also illustrate the cost of the planned transition to 100 percent annual resources: once Base Capacity Resources are eliminated, customers will need to pay for tens of thousands of MWs of unnecessary capacity in non-summer weeks to compensate for the loss of Base Capacity Resources during the peak summer period. AEMA argues that treating summer and winter MWs as if they have equal value sends an incorrect signal for investment in additional winter capacity even

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<sup>38</sup> *Id.* at 20.

<sup>39</sup> *Id.* at 20-22.

though additional winter capacity has near-zero reliability value. AEMA asserts that knowledge of the relative value of summer and winter capacity was not available when the Commission rendered its decision on the transition process in the Capacity Performance proceeding, and that therefore the Commission should revisit the transition to 100 percent annual resources to avoid imposing unjust and unreasonable rates on consumers.<sup>40</sup>

20. AEMA's second major argument is that new information provided by PJM suggests that one of the two purported benefits to load of demand response—reduced future capacity charges from peak shaving—is far smaller than previously understood and is not a viable alternative to demand response's participation as supply in the capacity market.<sup>41</sup> AEMA states that capacity charges to PJM load-serving entities are determined by a load-serving entity's contribution to its zone's load during the five hours of peak coincident demand each summer. AEMA explains that peak shaving is the practice of reducing demand during those hours in order to (i) lower the load-serving entity's proportion of zonal load and (ii) lower total zonal load, and thus minimize capacity charges. AEMA states that peak shaving has thus been proposed as an alternative path for Demand Resources to offset capacity costs if they are unable to meet Capacity Performance requirements and participate as supply in the capacity market.

21. AEMA states that to assess the efficacy of peak shaving in reducing capacity costs, stakeholders requested that PJM provide quantitative information on how peak hour load reductions affect future capacity purchases, and thus overall capacity costs, because exactly how this process works has long been unclear. AEMA explains that PJM staff provided an analysis showing how much forecast peak load would drop if loads were reduced in the peak ten hours of each year. AEMA states that the information PJM provided reveals that peak shaving has virtually no impact on the amount of generation procured to meet a zone's load. More specifically, AEMA asserts that load-serving entities who peak shave may reduce their own bills relative to other load-serving entities in their zone but have very little effect on the current or future total capacity bill for their zone.<sup>42</sup>

22. AEMA argues that many states have developed extensive peak-shaving programs with the goal of reducing capacity costs, but that this new information about PJM's load forecasting indicates these programs will be rendered near-worthless if summer-period demand response is not able to participate fully as supply in the RPM market after the

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<sup>40</sup> *Id.* at 21-23.

<sup>41</sup> *Id.* at 34-39.

<sup>42</sup> *Id.* at 34-35.

move to 100 percent Capacity Performance Resource procurement. AEMA states that when demand response is able to participate as supply in the capacity market, it can produce a nearly 1:1 offset in capacity needs—i.e., each MW reduction in peak load displaces approximately 1 MW of generation. However, AEMA explains, when participating only as a means to peak shave, demand response has virtually no impact on PJM's load forecasts and subsequent capacity purchases. AEMA concludes that any demand response that is forced out of the capacity market will therefore produce close to zero net capacity cost savings.<sup>43</sup>

23. AEMA also argues that PJM's resource aggregation rules available to Demand Resources, even as modified by PJM's proposal in Docket No. ER17-367, will, at best, allow only a limited quantity of summer-period demand response to participate—at greatly reduced compensation—because there will be an insufficient quantity of winter-period resources available to pair with them. AEMA asserts that at most roughly 2,000 MW of excess winter wind resources will be available for aggregation, so only 2,000 MW out of a total of nearly 11,000 MW of summer-period resources that previously served as Base Capacity Resources will be able to clear PJM's capacity auction.

### **III. Notice of Filings and Responsive Pleadings**

24. Notice of ODEC's complaint was published in the Federal Register, 82 Fed. Reg. 1332 (2017), with interventions and protests due on or before January 18, 2017. Notice of AWEA's complaint was published in the Federal Register, 82 Fed. Reg. 3790 (2017), with interventions and protests due on or before January 25, 2017. On January 17, 2017, the Commission granted an extension of time for response to ODEC's complaint to January 25, 2017.

25. Timely motions to intervene were filed by American Electric Power Service Corporation, the Independent Market Monitor for PJM (Market Monitor), Buckeye Power, Inc., LS Power Associates, L.P., Dayton Power and Light Company, PJM Industrial Customer Coalition, FirstEnergy Service Company, Advanced Energy Management Alliance, East Kentucky Power Cooperative, Inc., Apex Clean Energy Management, LLC, Rockland Electric Company, Calpine Corporation, Enerwise Global Technologies Inc. d/b/a CPower, the PJM Power Providers Group, American Public Power Association, Electric Power Supply Association, Panda Power Funds, Public Power Association of New Jersey (PPANJ), Exelon Corporation, Duke Energy Corporation, NRG Power Marketing LLC and GenOn Energy Management, CPV Power Holdings, LP, the PSEG Companies, Southern Maryland Electric Cooperative, Inc., North Carolina Electric Membership Corporation, E.ON Climate & Renewables North America, LLC, EDF Renewable, Inc., BP Wind Energy North America Inc., Delaware Division of the Public Advocate, Sierra Club, Union of Concerned Scientists, EnerNOC,

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<sup>43</sup> *Id.* at 36.

Inc., Wabash Valley Power Association, Inc., Dominion Resources Services, Inc., Sustainable FERC Project, Nucor and Steel Dynamics (Steel Producers). Notices of Intervention were filed by the Maryland Public Service Commission, Delaware Public Service Commission, Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

26. PJM filed an Answer to the Complaints. Comments and Protests to the Complaints were filed by the PJM Utilities Coalition, Exelon Corporation, the Complainant-Aligned Parties,<sup>44</sup> the PJM Power Providers Group, the NRG Companies, the American Petroleum Institute, the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities. The American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition (together, AWEA) filed a motion to intervene out-of-time and comments. ODEC and AEMA filed answers to the Answer and comments. The Market Monitor filed an answer to ODEC and AEMA's answers. PJM and Exelon filed responses to AEMA's answer.

27. On November 20, 2017, AEMA filed a motion for leave to supplement the record. On December 4, 2017, a separate group of intervenors (the Indicated Parties<sup>45</sup>) also filed a motion for leave to supplement the record. Both motions sought to introduce information into the record on the results of the May 2017 Base Residual Auction and a study by PJM staff evaluating PJM's seasonal reliability needs. An Answer to AEMA's motion was filed by AWEA. Answers to the Indicated Parties' motion were filed by the PJM Utilities Coalition, PJM, and the PJM Power Providers Group.

#### **A. PJM's Answer to Complaints**

28. In its answer to the ODEC and AEMA Complaints, PJM argues that the Complaints represent a collateral attack on the Commission's earlier orders on PJM's capacity market that the Commission is currently defending in federal appellate court.<sup>46</sup> PJM argues that Complainants point to little if any changed circumstances, as Seasonal

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<sup>44</sup> The Complainant-Aligned Parties consist of the PJM Industrial Customer Coalition, the Public Power Association of New Jersey, the American Public Power Association, the National Rural Electric Cooperative Association, Rockland Electric Company, the Union of Concerned Scientists, the Sierra Club, and the Natural Resources Defense Council.

<sup>45</sup> The Indicated Parties include American Public Power Association, Old Dominion Electric Cooperative, Environmental Law & Policy Center, Union of Concerned Scientists, Sierra Club, Rockland Electric Company, PJM Industrial Customer Coalition, and NRDC/Sustainable FERC Project.

<sup>46</sup> PJM Answer to Complaints at 2.

Resources have known since at least June 2015 that they would have to perform on an annual basis.<sup>47</sup> PJM states that nothing in the prior auctions warrants reversal; in the prior auction, 72 percent of the offers for Base Capacity Resources were also offered as Capacity Performance Resources (using coupled offers).<sup>48</sup> Additionally, PJM argues that those resources that were offered only as Base Capacity Resources in the last two auctions will likely be offered as Capacity Performance Resources in the next auction, based on the existence of enhanced aggregation, and the fact that a disincentive to aggregate existed in the prior auctions based on the availability of the Base Capacity product itself.<sup>49</sup> PJM argues that the Commission should allow the Capacity Performance product to become effective so that lessons can be taken from its experience.<sup>50</sup> PJM argues that the citation by Complainants to the Commission's NOPR on electric storage resources is not new, must be read in conjunction with the Commission's strong support of year-round performance by capacity resources in the PJM and ISO-NE capacity markets, and is fully compatible with PJM's development of an accommodative participation model for Seasonal Resources.<sup>51</sup>

29. PJM also notes that the fact that it has a summer-peaking system is also not a new fact, and has been part of PJM's planning process for years.<sup>52</sup> PJM states that it has used the same probabilistic model to determine its Installed Reserve Margin for the last 30 years based on reducing its Loss of Load Expectation (LOLE) risk to acceptable levels. PJM states that it uses a "1 in 10" LOLE standard, where virtually all of the annual LOLE risk occurs in the summer study period. However, PJM argues that recent history shows that risk can and does occur in the winter, which should inform reliability determinations.<sup>53</sup> Although AEMA argues that PJM could make a trivial change to its Installed Reserve Margin study to shift LOLE risk to the winter, PJM argues that it deserves deference on such an administrative determination.<sup>54</sup>

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<sup>47</sup> *Id.* at 3, 14.

<sup>48</sup> *Id.* at 16.

<sup>49</sup> *Id.* at 4, 17-18.

<sup>50</sup> *Id.* at 4.

<sup>51</sup> *Id.* at 5, 19-20.

<sup>52</sup> *Id.* at 6, 22.

<sup>53</sup> *Id.* at 24.

<sup>54</sup> *Id.* at 25.

30. PJM states that AEMA's claims on the reliability benefit of summer-only resources are demonstrably false and look only at the impact of changes at the margins. PJM states that it is unremarkable that summer resources would have a larger marginal benefit than a winter resource in a summer-peaking system, but that this argument ignores the benefit of the vast majority of resources that are needed year-round to maintain reliability.<sup>55</sup> PJM states that shifting 0.01 LOLE risk to the winter would create a market for summer-only resources that does not presently exist, but would exert significant downward pressure on the value of winter capacity, which would have adverse implications for PJM's procurement of year-round capacity.<sup>56</sup> PJM also questions AEMA's argument that summer-only resources have 97 percent of the reliability benefit of annual resources, arguing that the marginal reliability benefit of an additional summer and winter resource is dependent on the allocation of risk between each season.<sup>57</sup> Generally, PJM argues that AEMA misinterprets the data that it relies on from PJM's studies, such as a sensitivity study intended by PJM to be backward-looking that AEMA relies upon to estimate future conditions.<sup>58</sup>

31. PJM argues that Complainants also ignore the many challenges and adverse consequences associated with delaying implementation of Capacity Performance Resources. These include costs for participants from delay including the continuance of an allowance for a higher loss of load expectation for sub-annual resources, a rebuke to the Commission's objective in ensuring that capacity resources deliver when needed, and the potentially severe practical consequences of a shift from a single requirement to different summer and winter-based requirements.<sup>59</sup> These severe consequences include possible premature resource retirement based upon the transition to a fleet of Seasonal Resources.<sup>60</sup> PJM argues that the Complainants claim that summer-based single annual capacity obligations are *per se* unjust and unreasonable goes beyond any announced Commission policy or precedent and should be rejected.<sup>61</sup> PJM argues that seasonal capacity markets would undermine the price signals needed to incentivize development

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<sup>55</sup> *Id.* at 26.

<sup>56</sup> *Id.* at 27.

<sup>57</sup> *Id.* at 28.

<sup>58</sup> *Id.* at 30.

<sup>59</sup> *Id.* at 7-8.

<sup>60</sup> *Id.* at 8.

<sup>61</sup> *Id.* at 9.

of capacity resources over the long-term.<sup>62</sup> In addition, PJM argues that seasonal capacity markets could spill over into PJM's energy markets by resulting in reduced energy market participation by conventional resources, perhaps by units that clear in one season shutting down in the other season.<sup>63</sup> For these reasons, PJM argues that the Commission should reject the Complaints.

## **B. Comments**

32. Several protestors argue that the Commission should dismiss the complaints because Complainants have presented no new evidence or new circumstances that would justify relitigation of the claims.<sup>64</sup> Protestors argue that the complaints are simply collateral attacks on prior Commission orders.<sup>65</sup> Protestors argue that all of the issues and claims raised by Complainants have previously been raised, argued, considered, and decided upon within the context of the CP Order and the subsequent orders on rehearing.<sup>66</sup>

33. Protestors argue that new circumstances do not exist to justify the Complaints. Protestors argue that the past two years of experience with the implementation of CP is not "new," it was contemplated as part of the transition mechanism.<sup>67</sup> PJM Power Providers Group argues that even if the PJM stakeholder process was unable to reach consensus, this also does not amount to new circumstances. PJM Power Providers Group argues that these issues are already being raised in the docket for PJM's capacity market aggregation filing.<sup>68</sup> PJM Power Providers Group also states that PJM's sensitivity

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<sup>62</sup> *Id.* at 34.

<sup>63</sup> *Id.* at 35-36.

<sup>64</sup> *See* American Petroleum Institute Protest at 3; Exelon Protest at 3; NRG Companies Protest at 2; PJM Power Providers Protest at 10-11; PJM Utilities Coalition at 8-14.

<sup>65</sup> *See, e.g.* Exelon Protest at 3.

<sup>66</sup> American Petroleum Institute Protest at 4.

<sup>67</sup> American Petroleum Institute Protest at 5; PJM Power Providers Group Protest at 16.

<sup>68</sup> PJM Power Providers Group Protest at 17.

results are not new information, but have been well known and understood and public for years, according to the affidavit it presents from Dr. Roy Shanker.<sup>69</sup>

34. Protestors also argue that Complainants have failed to meet their burden under section 206 to show that the current PJM tariff is unjust and unreasonable.<sup>70</sup> PJM Power Providers Group notes that PJM has gone to enormous lengths to provide compensation opportunities for Seasonal Resources based on the value they provide to the grid. These include opportunities in the original CP filing to aggregate within a single Locational Deliverability Area, or in the recent filing to further facilitate participation.<sup>71</sup> PJM Power Providers Group points out that arguments that there has been little aggregation to this point ignore the fact that there is little incentive for a Seasonal Resource to aggregate as long as the Base Capacity Resource product remains.<sup>72</sup> Additionally, protestors argue that the revisions proposed by PJM to aggregation rules will address many of the concerns raised in the Complaints.<sup>73</sup> PJM Utilities Coalition point to evidence provided by PJM which argues that aggregation rules have proven to be an effective mechanism to support substantial demand response participation in other RTOs.<sup>74</sup>

35. The Pennsylvania Public Utility Commission asserts that PJM's elimination of the Base Capacity product will produce unjust and unreasonable results. The Pennsylvania Public Utility Commission endorses AEMA's concerns that early elimination of PJM's Base Capacity product will decrease reliability, increase customer costs, and threaten summer Seasonal Resources' contributions to reliability.<sup>75</sup> The Pennsylvania Public Utility Commission argues that PJM's insufficient load forecasting methodologies will lead PJM to over-procure capacity and eliminate market signals for valuable peak shaving programs.<sup>76</sup> The Pennsylvania Public Utility Commission argues that it agrees with AEMA's concerns regarding inequitable cost allocation impacts of PJM's Capacity Performance construct since it neglects to correct fundamental deficiencies in cost

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<sup>69</sup> *Id.* at 18.

<sup>70</sup> *See* NRG Companies Protest at 2; PJM Power Providers Group Protest at 20.

<sup>71</sup> PJM Power Providers Group Protest at 25.

<sup>72</sup> *Id.* at 25.

<sup>73</sup> *See, e.g.* Exelon Protest at 6.

<sup>74</sup> PJM Utilities Coalition Protest at 15 referencing pleadings in the ER17-367-000 docket.

<sup>75</sup> Pennsylvania Public Utility Commission Comments at 6.

<sup>76</sup> *Id.* at 6-7.

allocation.<sup>77</sup> The Pennsylvania Public Utility Commission argues that the Commission should grant AEMA's Complaint and should require PJM to delay Capacity Performance implementation until a model for Seasonal Resource participation can pass through the stakeholder process.<sup>78</sup> The NJBPU states that PJM's argument for the elimination of Base Capacity Resources, that there should only be one capacity product, is unsubstantiated. The NJBPU agrees with the ODEC Complaint that the elimination of Base Capacity Resources will be detrimental to resource diversity, reliability, economically efficient market outcomes, and other benefits.<sup>79</sup>

36. Complainant-Aligned Parties state that the Commission should grant the Complaints and require PJM to retain Base Capacity Resources while it develops a long-term solution that enables the participation of a diverse set of resources.<sup>80</sup> Complainant-Aligned Parties state that the elimination of Base Capacity will increase capacity costs inside PJM by \$1.2 to \$5.2 billion. Complainant-Aligned Parties argue that improvements made subsequent to the Polar Vortex have proven that PJM can reliably operate its system while retaining Base Capacity Resources. These improvements include the timing of energy markets to better facilitate electric-gas coordination, communication protocols with gas distribution companies, and a communication tool designed to allow generators to report current operational abilities.<sup>81</sup>

37. AWEA asserts it generally agrees with the Complainants that PJM's proposal is not just or reasonable in its treatment of Seasonal Capacity Performance Resources, however, AWEA also claims it does not take a position on any of the proposed remedies the Complainants offer.<sup>82</sup> AWEA argues that PJM's prior or pending revisions go far enough to guarantee that cost-effective, reliable Seasonal capacity Performance Resource will actually participate in PJM's RPM.<sup>83</sup> AWEA asserts that PJM's Seasonal Capacity product should feature terms and conditions reflective of variable resources' operational

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<sup>77</sup> *Id.* at 8-9.

<sup>78</sup> *Id.* at 10.

<sup>79</sup> NJBPU Comments at 2-3.

<sup>80</sup> Complainant-Aligned Parties Comments at 11.

<sup>81</sup> *Id.* at 9.

<sup>82</sup> AWEA Comments at 5.

<sup>83</sup> *Id.*

characteristics.<sup>84</sup> AWEA contends that PJM's proposed construct outweighs compensation for performance in favor of financial penalties thus preventing variable resources from hedging against risks due to operational characteristics.<sup>85</sup> AWEA argues the Commission should establish proceedings to determine just, reasonable, and not unduly discriminatory or preferential provisions for Seasonal Capacity Performance Resources in PJM's RPM.<sup>86</sup>

### C. Answers to Comments/Answers

#### 1. ODEC

38. In its answer, ODEC asserts that the complaint is not an impermissible collateral attack on prior orders because changes in circumstances warrant reopening the issue.<sup>87</sup> ODEC states that at the time the Commission approved PJM's aggregation mechanism for Seasonal Capacity Performance Resources, it had no experience or evidence on whether and to what extent aggregation would achieve Seasonal Capacity Performance Resources meaningfully participating in RPM auctions.<sup>88</sup> ODEC claims that there is evidence from the past two years that PJM has made accommodations for the availability characteristics of certain types of resources, but not Seasonal Capacity Performance Resources; and that the Base Capacity product has been critical in order for Seasonal Capacity Performance Resources to participate in RPM auctions.<sup>89</sup> ODEC also states that the Commission's recent Notice of Proposed Rulemaking (NOPR) regarding participation by electric storage resources in organized markets and distributed energy resource aggregation supports revisiting the treatment of Seasonal Capacity Performance Resources in RPM.<sup>90</sup>

39. ODEC claims that several parties have appeared to confuse and conflate the relief requested in its complaint with that requested by AEMA.<sup>91</sup> ODEC clarifies that it does

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<sup>84</sup> *Id.* at 6.

<sup>85</sup> *Id.* at 6.

<sup>86</sup> *Id.* at 7.

<sup>87</sup> ODEC Answer at 3-4.

<sup>88</sup> *Id.* at 4.

<sup>89</sup> *Id.* at 4-5.

<sup>90</sup> *Id.* at 5.

<sup>91</sup> *Id.* at 6-7.

not seek to force seasonal products, an open-ended extension of the Base Capacity Resource product, or preferential treatment for Seasonal Capacity Performance Resources, as claimed by other parties.<sup>92</sup>

40. With regard to PJM's assertion that the Complaint could lead to adverse consequences, such as impacts on market participants' RPM expectations and the loss of load expectation (LOLE), ODEC asserts that the market participants' reliance on the transition mechanism cannot prevent the Commission from fulfilling its statutory obligation to ensure just and reasonable rates.<sup>93</sup> ODEC also states that PJM developed the LOLE, and can resolve its concern by calculating the Base Capacity Resource constraints relative to meeting the 1 day in 10 LOLE standard.<sup>94</sup>

41. In its answer, ODEC repeats its assertion that PJM's proposed aggregation mechanism does not render PJM's Tariff and RAA just and reasonable with respect to Seasonal Capacity Performance Resources.<sup>95</sup> ODEC states that PJM mischaracterizes the Complaint as expressing concern that the Commission would not approve PJM's aggregation filing.<sup>96</sup> ODEC clarifies that it believes the modifications proposed cannot substitute or make up for the loss of the Base Capacity Resource product.<sup>97</sup>

## 2. AEMA

42. AEMA argues that its Complaint and the Capacity Performance Order address distinct subject matter because they request different relief and therefore the Complaint does not constitute a collateral attack.<sup>98</sup> Further, AEMA cites a Commission order<sup>99</sup> in 2013 stating that "[t]he issuance of an order in an FPA section 205 proceeding does not bar a future, appropriately supported challenge to the accepted tariff provisions pursuant

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<sup>92</sup> *Id.* at 8.

<sup>93</sup> *Id.* at 8.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 9.

<sup>96</sup> *Id.* at 9-10.

<sup>97</sup> *Id.* at 10.

<sup>98</sup> AEMA Answer at 4-5.

<sup>99</sup> *E.ON Climate & Renewables N. Am., LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,048, at P 33 (2013)

to FPA section 206.”<sup>100</sup> AEMA lists seven distinct developments since the conditional approval of CP as appropriate support for granting the Complaint and argues that doing so would not contradict the policy established in the CP order.<sup>101</sup>

43. In response to PJM’s answer and protests from Exelon, AEMA states that both pleadings present and attack “strawman” arguments that mischaracterize AEMA’s proposal and requested relief. AEMA states that there is no inherent link between the need for CP resources to meet their obligations and a requirement that PJM acquire capacity that is committed 24 hours per day, 365 days per year.<sup>102</sup> AEMA states that it has no grievance with the CP requirement for “no excuses” delivery, but rather takes issue with the exclusion of seasonally available resources. AEMA argues that moving to a 100 percent CP requirement without Seasonal Resources will serve to salvage uneconomic resources by restricting competition.<sup>103</sup> Moreover, AEMA states it is not proposing the discrete seasonal capacity markets that PJM argues against and instead seeks only to temporarily preserve the current market-based valuation of both annual resources and summer resources.<sup>104</sup>

44. AEMA argues that PJM’s answer and Exelon’s protest are avoiding the central issue of the Complaint, which is that a 100 percent CP requirement is not a reasonable match to the region’s actual resource adequacy needs and forces consumers to buy winter capacity that provides little or no reliability benefit.<sup>105</sup> AEMA states that PJM has insisted requiring annual-only resources is necessary to address increased winter operational risks, but has also published IRM studies since the conditional acceptance of CP indicating that there is in fact no increased winter reliability risk.<sup>106</sup> AEMA asserts that rather than defending its stated need for additional winter capacity, PJM’s discussion of the role price signals play in incentivizing development of capacity resources indicates that it has pre-supposed what resource owners’ optimal entry and exit decisions should be, and seeks to drive toward its own preferred resource mix by forcing consumers to

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<sup>100</sup> AEMA Answer at 5.

<sup>101</sup> *Id.* at 6-8.

<sup>102</sup> *Id.* at 10.

<sup>103</sup> *Id.* at 9.

<sup>104</sup> *Id.* at 19.

<sup>105</sup> *Id.* at 11.

<sup>106</sup> *Id.* at 21.

purchase unneeded capacity.<sup>107</sup> AEMA states that nothing in the Complaint challenges the basic market tenet that prices are set by the marginal resource and that PJM's claim that procuring a mix of annual and seasonal capacity would somehow undercompensate annual resources fails.<sup>108</sup>

45. Furthermore, AEMA argues that PJM and Exelon have failed to offer evidence supporting the viability of aggregation for Seasonal Resources. AEMA cites Exelon's discussion of how CP is affecting BGE's summer-only DR Resources as evidence that CP is negatively affecting seasonal DR participation in RPM and states that Exelon's protest confirms AEMA's description of how "moving DR to the load side" is an inadequate replacement for supply-side Demand Resources.<sup>109</sup> AEMA disagrees with Exelon's assertion that ISO-NE's FCM constitutes supporting evidence for the effectiveness of aggregation and argues that the FCM results actually affirm that FCM is deterring summer-only DR.<sup>110</sup> Moreover, AEMA cites comments from AWEA and MAREC to support their conclusion that wind resources are not a viable winter-only resource and states that Exelon's solicitations for up to 1,600 MW of winter season capacity resources is not a guarantee of success.<sup>111</sup> Given this lack of a viable pathway for Seasonal Resource participation, AEMA states that CP, as currently designed, will likely deliver less reliability at higher cost – an outcome that the Commission should find unjust and unreasonable.

### **3. Other Parties**

46. In response to AEMA's answer, Exelon states that BGE's discussions with PJM regarding load forecast modifications have taken place pursuant to PJM Manual 19 Appendix A. Exelon further notes that counsel for PJM has authorized Exelon to state that PJM will engage in similar discussions with any Electric Distribution Company (EDC) that is a Curtailment Service Provider (CSP) seeking such discussion.<sup>112</sup>

47. With regard to the Exelon utilities' solicitation of up to 1,600 MW of winter capacity resources, Exelon states that the five utilities participating in the Request for Information (RFI) have received responses in excess of the amount of winter capacity

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<sup>107</sup> *Id.* at 20.

<sup>108</sup> *Id.* at 14.

<sup>109</sup> *Id.* at 14-17.

<sup>110</sup> *Id.* at 24.

<sup>111</sup> *Id.* at 22-23.

<sup>112</sup> Exelon Answer at 3-4.

sought.<sup>113</sup> Exelon states that the largest obstacle to a successful Request for Proposals (RFP) is regulatory uncertainty associated with the seasonal aggregation rules, particularly whether cross-Locational Deliverability Area aggregation will be permitted and whether the PJM matchmaking function will be in place. Exelon accordingly encourages the Commission to allow PJM's proposed rule changes to take effect for the upcoming Base Residual Auction.<sup>114</sup>

48. In its answer, the Market Monitor agrees with PJM that the "Complaints represent a collateral attack on the Commission's 2015 and 2016 orders" and that the Complaints identify "no changed circumstances to justify their collateral attack."<sup>115</sup> The Market Monitor contends that while no new evidence exists to support granting the Complaint, new evidence does exist that supports PJM's position on why the inclusion of the Base Capacity Product should not be extended and why continued efforts to attenuate the Commission's objectives for RPM reform should be rejected. Specifically, the Market Monitor points to its analysis of the 2019/2020 Base Residual Auction, which included the results of a number of sensitivity analyses which showed the impact of various market design elements on the outcomes of the 2019/2020 Base Residual Auction.<sup>116</sup> The Market Monitor explains that its analysis demonstrates the significant price suppressive effects of the continued inclusion of the Base Capacity Product in the capacity market.<sup>117</sup> The Market Monitor states that these price suppressive effects will force the clearing price to be less than the efficient, competitive level.<sup>118</sup> The Market Monitor notes that requests for unit specific out of market subsidies in PJM are in significant part a result of price suppression in the capacity market.<sup>119</sup>

49. PJM in a February 28 reply states that it is not negotiating special treatment with BGE.<sup>120</sup> PJM explains that its discussion was simply to explain to BGE that should its Demand Resources exit from the capacity market, such resources would not be covered

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<sup>113</sup> *Id.* at 4-5.

<sup>114</sup> *Id.* at 5.

<sup>115</sup> Market Monitor Answer at 2.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 6.

<sup>118</sup> *Id.* at 7.

<sup>119</sup> *Id.* (citing Amended complaint, Docket No. EL16-49-000 (January 9, 2017); Ohio Public Utilities Commission, Cases Nos. 14-1693, 14-1297 and 16-0395).

<sup>120</sup> PJM Answer at 2.

by PJM's add-back rules.<sup>121</sup> PJM states that this result would be true for any Load-Serving Entity that is a Curtailment Service Provider whose Demand Resources exit PJM's capacity market.<sup>122</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

50. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

51. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), the Commission grants AWEA'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.

52. Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2017), the Commission grants the motions to supplement the record from AEMA and the Indicated Parties.

53. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 358.213(a)(2) (2017), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

54. Upon consideration of the Complaints and responses, we find that Complainants raise a number of issues related to the PJM capacity market that warrant further examination. Therefore, we direct Commission staff to establish a technical conference to explore these issues. A separate notice will be issued to establish dates and technical conference details. In order to inform the technical conference discussion, the Commission further directs Commission staff to issue a request for comments on these issues prior to the technical conference.

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<sup>121</sup> *Id.* at 2.

<sup>122</sup> *Id.* at 2-3.

55. We reject PJM's request that we summarily dismiss the complaints as collateral attacks on the Capacity Performance orders.

56. Section 206 of the Federal Power Act recognizes that a rate previously found just and reasonable may be found unjust and unreasonable in a later proceeding.<sup>123</sup> Capacity Performance has now been in effect for two years, and the complainants have raised important issues as to whether certain aspects of the construct are performing as well as expected. In particular, complainants present analyses prepared by PJM which call into question the assumption that permitting any stand-alone participation by Seasonal Resources would negatively impact reliability in non-summer months.

57. The technical conference should consider the issues raised by the complaints, including, but not limited to: 1) whether the exclusive use of a year-round capacity product raises customer costs unnecessarily compared to retention of a seasonal capacity product; 2) whether stand-alone participation by Seasonal Resources in non-summer months would jeopardize reliability; 3) whether alternative models, such as establishing distinct summer and winter capacity markets could assure reliability at lower costs; 4) whether, if it is true that nearly all loss of load expectation risk currently exists in 10 summer weeks of the year, there is an alternative distribution of loss of load expectation risk that could meet the 1-in-10 reliability target at a lower total cost; and 5) whether PJM's load forecast methodology incorporates load-serving entities' peak-shaving actions in an adequate and timely manner to yield just and reasonable rates for consumers.

58. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,<sup>124</sup> we set the refund effective at the earliest date possible, i.e., December 23, 2016 for the ODEC Complaint and January 5, 2017 for the AEMA Complaint.

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<sup>123</sup> *Oxy USA v. FERC*, 64 F.3d 679, 690 (D.C. Cir. 1995) ("the fact that a rate was once found reasonable does not preclude a finding of unreasonableness in a subsequent proceeding"). See *Black Oak Energy v. PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,208, at PP 26-27 (2008) (determining not to dismiss complaint as collateral attack).

<sup>124</sup> See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

59. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to Section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that the Commission should be able to render a decision within twelve months of the commencement of the technical conference.

The Commission orders:

(A) Commission staff is hereby directed to convene a technical conference to explore the issues described above, to be held at a date specified in a subsequent notice, as discussed in the body of this order.

(B) The refund effective dates established in Docket Nos. EL17-32-000 and EL17-36-000 pursuant to section 206(b) of the FPA will be December 23, 2016 and January 5, 2017, respectively, as discussed in the body of this order.

By the Commission. Chairman McIntyre and Commissioner Powelson are not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.