

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PJM Load Parties,  
*Complainants,*

v.

PJM Interconnection, LLC,  
*Respondent.*

Docket No. EL24-104-000

**CONDITIONAL COMPLAINT AND REQUEST FOR FAST TRACK  
PROCESSING AND SHORTENED RESPONSE TIME OF PJM  
LOAD PARTIES**

The PJM Load Parties<sup>1</sup> hereby file this complaint against PJM Interconnection, LLC (PJM), under Federal Power Act (FPA) sections 206, 306, and 309,<sup>2</sup> and 18 C.F.R. § 385.206, to implore the Commission to protect consumers in PJM's Delmarva Power & Light (DPL) zone from unjust and unreasonable capacity prices for the 2024-25 Delivery Year.

We file this complaint conditionally and under unusual circumstances. PJM, in response to a recent Third Circuit decision,<sup>3</sup> has filed a petition<sup>4</sup> requesting that the Commission depart from its long-standing policy against re-running auctions so that PJM

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<sup>1</sup> As used in this complaint the PJM Load Parties are: American Municipal Power, Inc., Delaware Division of the Public Advocate, Delaware Energy Users Group, Delaware Municipal Electric Corporation, Delaware Public Service Commission, Maryland Office of People's Counsel, Maryland Public Service Commission, and Old Dominion Electric Cooperative.

<sup>2</sup> 16 U.S.C. §§ 824e, 825e and 825h.

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

<sup>4</sup> Petition Under Rule 207 of PJM Interconnection, L.L.C. for Order Confirming 2024/2025 Delivery Year Capacity Commitment Rules, Request for Order by May 6, 2024, and Request for Shortened 10-Day Comment Period, Docket No. ER23-729-002 (Mar. 29, 2024), eLibrary No. 20240329-5495 (PJM Petition).

may: withdraw the just and reasonable auction results it posted more than 14 months ago; replace them with “blatantly unjust and unreasonable” new prices;<sup>5</sup> and then re-run an incremental auction to adjust the new results, or potentially relieve suppliers of the new capacity commitments—all on the eve of start of the relevant Delivery Year, which begins on June 1, 2024.

The PJM Load Parties have protested PJM’s request.<sup>6</sup> The Third Circuit did not direct the action PJM asked the Commission to take. Nothing in the court’s decision blesses the artificially inflated auction prices as just and reasonable nor compels the Commission to replace the just-and-reasonable February 2023 Base Residual Auction (BRA) results with unjust and unreasonable recalculated ones. The Commission has ample remedial discretion on remand to decline to modify the February 2023 BRA outcomes.

If the Commission denies PJM’s petition and maintains the just and reasonable BRA outcomes that PJM posted more than 14 months ago, as it should, then the relief sought in this complaint will be unnecessary.<sup>7</sup> On the other hand, if the Commission finds that the Third Circuit decision requires it to let recalculated capacity clearing prices and capacity commitments take effect, then the Commission should grant this complaint and modify those prices and commitments prospectively under FPA section 206 to ensure that

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<sup>5</sup> *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 6 (2023) (Comm’r Christie, concurring), *reh’g denied*, 183 FERC ¶ 62,040, *modified on reh’g*, 184 FERC ¶ 61,055 (2023), *vacated in part sub. nom. PJM Power Providers Grp. v. FERC*, 96 F.4th 390 (3d Cir. 2024).

<sup>6</sup> Protest of American Municipal Power Inc. et al., Docket No. ER23-729-002 (Apr. 11, 2024), eLibrary No. 20240411-5142 (PJM Load Parties’ Protest). The Maryland Public Service Commission, which is a complainant here, separately protested PJM’s petition. Maryland Public Service Commission Protest and Motion to Reopen the Record in Docket No. EL23-19 and Consolidate Proceedings, Docket Nos. ER23-729-000 and EL23-19-000 (Apr. 11, 2024), eLibrary No. 20240411-5128.

<sup>7</sup> If the Commission declines to modify the February 2023 BRA outcomes, then PJM’s further requested relief—either re-running the Third Incremental Auction or potentially excusing new commitments acquired in the recalculated BRA—will be unnecessary.

consumers will pay only a just and reasonable charge for capacity to be provided during the upcoming Delivery Year. Specifically, the Commission should find that the recalculated auction results are unjust and unreasonable and should replace them going forward with the prices and commitments that PJM posted in February 2023—the efficient market outcome that meets the region’s actual reliability needs. Doing so will not run afoul of the retroactivity concerns that animated the Third Circuit decision, as the relief sought here would not change PJM’s Tariff or auction procedures retroactively; it would modify prospectively the prices and obligations to provide capacity during the upcoming 2024-25 Delivery Year. Far from unprecedented, the Commission has long held that it retains authority under FPA section 206 to modify auction-set rates prospectively before performance is rendered.

Unless this complaint is mooted by denying PJM’s petition, expedited action will be needed to provide relief by the upcoming June 1 Delivery Year commencement date. To ensure sufficient time for the Commission to act, PJM Load Parties request that the Commission set an **April 29, 2024**, deadline for the submission of answers and comments.

## **I. BACKGROUND**

We briefly explain why PJM Load Parties are compelled to file this complaint—and how it relates to the proceedings pending on remand in Docket No. ER23-729-002.

### **A. In Docket Nos. ER23-729 and EL23-19, PJM and the Commission recognized that using an overstated reliability requirement would produce unjust and unreasonable auction outcomes.**

In the Commission proceedings leading to the Third Circuit’s decision, PJM sought authorization to address a then-looming problem with the 2024-25 capacity auction affecting the DPL South (DPL-S) locational deliverability area (LDA). PJM discovered

that the Reliability Requirement posted for the DPL-S LDA overstated the LDA's actual reliability needs. The problem resulted from PJM's use of a flawed planning assumption for the calculation of the DPL-S LDA reliability requirement. In short, PJM wrongly assumed that certain planned resources would offer into the 2024-2025 BRA and, based on this assumption, increased the DPL-S LDA reliability requirement.<sup>8</sup> Because the planned resources did not offer capacity into the auction, the resulting reliability requirement was set artificially high.<sup>9</sup> The combination of the inflated requirement and PJM's capacity auction mechanics created a non-existent capacity shortage in the DPL-S LDA.<sup>10</sup> PJM characterized the problem as a "design flaw" that resulted in a "gap" in its filed tariff.<sup>11</sup>

Recognizing that this situation would yield unjust and unreasonable auction outcomes, PJM made separate filings seeking relief under either FPA section 205 or 206. The section 205 filing was intended to allow PJM to revise the incorrect LDA Reliability Requirement before completing the auction.<sup>12</sup> Alternatively, if the section 205 filing was not accepted, PJM asked the Commission to act under section 206, "find the [unmodified] Locational Deliverability Area Reliability Requirement to be unjust and unreasonable . . . [.] and . . . establish a solution to address this issue and establish a refund effective date of

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<sup>8</sup> See Attach. A, Affidavit of Dan Klose at P 5 (Apr. 11, 2024) (Klose Aff.). A copy of Mr. Klose's affidavit also was filed as an attachment to the PJM Load Parties' Protest in Docket No. ER23-729-002.

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

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

<sup>11</sup> *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 8 ("PJM explains that it realized this flaw in the Tariff in attempting to clear the 2024/2025 BRA"); Proposed Amendment to the Locational Deliverability Area Reliability Requirement Filed Pursuant to section 205 of the Federal Power Act, Request for Waiver of Notice Requirement, and Request for an Extended Comment Period of 28 Days at 17, 18, Docket No. ER23-729-000 (Dec. 23, 2022), eLibrary No. 20221223-5161 (PJM 205 Filing).

<sup>12</sup> PJM 205 Filing at 1-2.

December 23, 2022.”<sup>13</sup> PJM observed that if the Commission accepted the section 205 filing, the section 206 complaint would be moot and should be dismissed.<sup>14</sup> But it also emphasized that the section 206 complaint would “give[] the Commission the ability to direct a different Tariff solution” than the one PJM filed under FPA section 205 “should the Commission choose to do so.”<sup>15</sup>

PJM’s section 205 and 206 filings were aimed at the same indisputable concern: absent relief, the 2024-25 auction results for the DPL-S LDA and the charges imposed on customers in the DPL zone would be unjust and unreasonable. PJM’s section 205 filing explained that, unless the Commission accepted the Tariff amendment, PJM would be forced to use a “materially inaccurate” LDA Reliability Requirement that “does not reflect the actual capacity needs of the particular LDA in question and would result in an unjust and unreasonable outcome.”<sup>16</sup> Using that “overstated”<sup>17</sup> requirement would force load-serving entities to “procure more capacity than is needed to meet the area’s actual reliability needs”<sup>18</sup> and pay “more than four times what the clearing price should be.”<sup>19</sup> PJM’s section 206 filing echoed that the DPL-S Reliability Requirement was “significantly

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<sup>13</sup> Section 206 Filing Alleging that the Locational Deliverability Area Reliability Requirement is Unjust and Unreasonable as Applied in a Particular Locational Deliverability Area in the 2024/2025 Base Residual Auction and Requesting that the Commission Establish a Refund Effective Date of December 23, 2022, and Request for an Extended Comment Period of 28 Days at 36, Docket No. EL23-19-000 (Dec. 23, 2022), eLibrary No. 20221223-5171 (PJM 206 Complaint).

<sup>14</sup> *Id.* at 2 n.4; *id.* at 6.

<sup>15</sup> *Id.* at 6 & n.11.

<sup>16</sup> PJM 205 Filing at 4. *See also id.* at 16 (explaining that a “fundamental mismatch between the actual load requirements and the resource supply stack, which ultimately yields an artificially inflated clearing price that is unjust and unreasonable”); *id.* at 22, 25, 30-31.

<sup>17</sup> *Id.* at 2, 9, 10, 31.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 2; *see also id.* at 9, 17, 29, 31.

overstated”<sup>20</sup> and would produce an “unjust and unreasonable auction outcome” (*id.* at 1) that is “inconsistent with the actual market fundamentals because [it] [does] not reflect the actual supply and demand of the LDA.”<sup>21</sup> PJM’s complaint reiterated that the mismatch would drive clearing prices to more than four times what they should be<sup>22</sup> and produce more than \$100 million of unjust and unreasonable overcharges in just one year and in one relatively smaller LDA.<sup>23</sup>

Other parties estimated that the dollar impact would be even greater:<sup>24</sup>

Absent Commission action, PJM will transfer approximately \$175 million from Delmarva ratepayers to capacity suppliers. This transfer will be purely the result of a flaw in PJM’s procedures, will serve no reliability need, and will provide no value to ratepayers. By any conceivable standard, this is unjust and unreasonable.

And they were correct. As discussed below, it was recently revealed by PJM that using an inflated reliability requirement for the DPL-S LDA drives capacity charges up by more than \$177 million. Worse, this adverse economic impact is concentrated in a relatively small, relatively low-income portion of the PJM footprint, meaning that the impacts of this unreasonable result will be especially onerous.

In response, the Commission agreed that changes were needed to “prevent[] consumers from being charged” an “exorbitant price increase” that “do[es] not reflect actual reliability needs or supply and demand fundamentals,” meaning that “there is no

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<sup>20</sup> PJM 206 Complaint at 2 (noting that the DPL-S LDA Reliability Requirement was “significantly overstated”).

<sup>21</sup> *Id.* at 2; *see also id.* at 4, 10, 17.

<sup>22</sup> *Id.* at 3, 9-10, 17, 29.

<sup>23</sup> *Id.* at 34.

<sup>24</sup> Motion for Leave to Answer and Answer of Public Interest Organizations at 12-13, Docket Nos. ER23-729-000 & EL23-19-000 (Feb. 6, 2023), eLibrary No. 20230206-5148 (PIO Answer).

economic or reliability justification for those additional costs.”<sup>25</sup> The Commission found that the section 205 Tariff revisions proposed by PJM would fix those problems by allowing it to substitute an accurate LDA Reliability Requirement for an inaccurate one before finalizing the auction results. That approach would “help ensure a competitive outcome . . . by more closely aligning the LDA Reliability Requirement with actual reliability needs”<sup>26</sup> and “send accurate long-term price signals to ensure the reliability of PJM’s system.”<sup>27</sup> Accordingly, the Commission accepted PJM’s section 205 filing and dismissed its section 206 complaint as moot.<sup>28</sup>

**B. The Third Circuit vacated the Commission’s acceptance of the section 205 filing, finding it impermissibly retroactive, but did not foreclose other relief.**

The Third Circuit vacated the Commission’s decision because it viewed PJM’s tariff revisions as impermissibly retroactive, in violation of the filed rate doctrine. The court began its analysis by identifying the rate at issue: the PJM Tariff provisions setting forth the procedures governing PJM’s capacity auctions. *PJM Power Providers Grp.*, 96 F.4<sup>th</sup> at 394. The court next defined retroactivity as a change that “attaches new legal consequences to events completed before its enactment.” *Id.* at 398, quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-70 (1994).<sup>29</sup>

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<sup>25</sup> *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 178.

<sup>26</sup> *Id.* P 149.

<sup>27</sup> Order Addressing Arguments on Rehearing, *PJM Interconnection, LLC*, 184 FERC ¶ 61,055, P 106 (2023), vacated in part sub nom. *PJM Power Providers Grp. v. FERC*, supra note 3.

<sup>28</sup> *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 181 (“Because we accept PJM’s FPA section 205 filing, we dismiss the complaint as moot and need not address any of the parties’ alternative proposals, or any of the requests regarding auction timing.”).

<sup>29</sup> The Supreme Court and Third Circuit both recognized that such a rule “will leave room for disagreement in hard cases, and is unlikely to classify the enormous variety of legal changes with perfect philosophical clarity.” *Id.*, quoting *Landgraf*, 511 U.S. at 270.

Applying these principles, the Third Circuit held that PJM’s amendment was retroactive “because it altered the legal consequence attached to a past action when it allowed PJM to use a different LDA Reliability Requirement than the one it had calculated and posted.” *Id.* at 399. When PJM posted the original, overstated LDA Reliability Requirement, the Tariff then in effect provided that the posted parameter “will be used for such . . . Auction,” *id.*, quoting Tariff, Attach. DD § 5.10(a)(vi)(A), except in “limited, enumerated circumstances,” *id.* PJM’s section 205 filing sought to add a new exception defining another circumstance in which PJM could modify an LDA Reliability Requirement after it was posted. *Id.* at 399, 400. The court concluded that the amendment was retroactive because it would have “altered the legal consequence attached to PJM’s calculation and posting of the LDA Reliability Requirement.” *Id.* at 400

The Third Circuit did not address the justness and reasonableness of either the PJM Tariff—the rate at issue in that proceeding—or the resulting capacity auction prices. To the contrary, the court recognized that its application of the filed rate doctrine could produce “a harsh result,” but emphasized that such considerations “play no role” in the doctrine, which ““does not yield, no matter how compelling the equities.”” *Id.* at 401, quoting *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 829-30 (D.C. Cir. 2021).

The court’s narrow ruling left in place PJM’s Tariff change as applied to future capacity auctions. *Id.* at 401. It vacated on retroactivity grounds “only the portion of FERC’s orders that allows PJM to apply the Tariff Amendment to the 2024/25 capacity auction.” *Id.* The opinion did not address PJM’s alternative section 206 complaint, which, as noted, FERC had dismissed as moot when it accepted the section 205 filing.

**C. PJM erred in asking for authorization to rerun the 2024-25 BRA using the inflated reliability requirement and to replace the just-and-reasonable February 2023 results with excessive prices it previously said were unjust and unreasonable.**

After the Third Circuit decision, PJM abandoned the consumer-protective positions it had correctly taken. Previously, PJM (joined on brief by numerous other parties, including state commissions, consumer advocates and load serving entities) had told the Third Circuit that “[i]f the Court were to overturn the Commission’s Section 205 decision . . . , the remedy would be to reinstate PJM’s Section 206 complaint.”<sup>30</sup> But after the court acted, PJM made no such request. Instead, PJM asked the Commission for authorization to override the just and reasonable auction results it announced in February 2023 and to make “binding and effective” the drastically inflated prices that it previously characterized as “aberrant,”<sup>31</sup> “unjust and unreasonable,”<sup>32</sup> and “inconsistent with . . . market fundamentals.”<sup>33</sup> PJM’s proposal is antithetical to the central aim of PJM’s capacity market: “to procure the least-cost, competitively-priced combination of resources necessary to meet the region’s reliability objectives.”<sup>34</sup>

The PJM Load Parties’ Protest explains why the Commission should not grant that relief. The Third Circuit partially vacated the Commission’s orders but has no authority to modify the underlying Tariff sheets—much less the auction prices and commitments that

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<sup>30</sup> Joint Brief of Intervenor-Respondents PJM Interconnection, L.L.C.; American Municipal Power, Inc.; Delaware Division of the Public Advocate; Delaware Municipal Electric Corporation, Inc.; Delaware Public Service Commission; Maryland Office of People’s Counsel; Maryland Public Service Commission; the Independent Market Monitor for PJM (Monitoring Analytics, LLC); and Old Dominion Electric Cooperative at 42 n.3, Nos. 23-1778 *et al.* (3d Cir. Dec. 18, 2023).

<sup>31</sup> PJM 206 Complaint at 3

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

<sup>33</sup> *Id.* at 2; *see also id.* at 10, 17, 24.

<sup>34</sup> *N. J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 101 (3d Cir. 2014).

resulted from the February 2023 auction using those rules. *Burlington N., Inc. v. United States*, 459 U.S. 131, 144 (1982).<sup>35</sup> The Commission’s discretion with respect to fashioning relief on remand is at its zenith. *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967).<sup>36</sup> And in exercising that discretion the Commission’s longstanding policy is *not* to rerun an auction, even when a court later finds that the Commission erred in setting the rules by which the auction was conducted.<sup>37</sup> The wisdom of that policy applies with extra force here, where rerunning the auction would replace just-and-reasonable rates with unjust and unreasonable ones. Thus, we explained, the Commission should deny PJM’s petition and exercise its remedial authority to direct PJM to maintain the existing auction results and deny PJM’s request to rerun the 2024-25 BRA and IA. If the Commission does so, then nothing further is required. But if the Commission grants the Petition, then it should take further, prospective action under FPA section 206 to ensure that capacity prices and commitments for Delivery Year 2024-25 will be just and reasonable.

## **II. SUMMARY OF COMPLAINT**

Should the Commission deem it necessary to re-do the 2024-25 auctions using the inaccurate, posted LDA Reliability Requirement, that should not be the end of the story. PJM Load Parties submit this Complaint to give the Commission another vehicle through which to ensure just and reasonable rates.

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<sup>35</sup> PJM Petition at 3.

<sup>36</sup> *E.g.*, PJM Petition at 4 (citing *La. Pub. Serv. Comm’n v. FERC*, 522 F.3d 378, 393 (D.C. Cir. 2008)).

<sup>37</sup> *See, e.g., Indep. Mkt. Monitor for PJM v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,137, P 77 (2021); *ISO New England Inc.*, 170 FERC ¶ 61,187, P 21 (2020); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252, PP 42, 53-60 (2017), *order on reh’g*, 169 FERC ¶ 61,237, PP 25-26 (2019); *Midwest Indep. Transmission Sys. Operator, Inc.*, 162 FERC ¶ 61,173, PP 19-20 (2018).

As PJM explained before and as we review herein, the use of an overstated LDA Reliability Requirement, driven by a Tariff “design flaw,”<sup>38</sup> produces auction results that are unquestionably unjust and unreasonable.<sup>39</sup> The FPA declares all such rates to be unlawful<sup>40</sup> and obligates the Commission to remedy them.<sup>41</sup> Importantly, that obligation is an ongoing one. It applies when a rate is filed initially and persists as long as the rate is in effect.<sup>42</sup> Even where a rate has been accepted, the Commission is not precluded from modifying it later upon a finding that the rate no longer is just and reasonable.<sup>43</sup> Under the FPA, the Commission has paramount authority to modify the prices and other terms governing future performance under any FERC-jurisdictional rate,<sup>44</sup> including auction prices for capacity yet to be delivered.<sup>45</sup> The Commission has entertained requests to modify forward capacity auction prices before performance has begun.<sup>46</sup> And in a case

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<sup>38</sup> PJM 205 Filing at 17; *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 8.

<sup>39</sup> Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. at 2, Docket Nos. ER23-729-000 & EL23-19-000 (Feb. 2, 2023), eLibrary No. 20230202-5138 (PJM 205 Answer) (“[N]ot a single protester attempts to justify that the previously posted [LDA Reliability Requirement for DPL-S] is an accurate input that should be used for the 2024/2025 BRA.”).

<sup>40</sup> 16 U.S.C. § 824d(a); *FPC v. Texaco, Inc.*, 417 U.S. 380, 399 (1974).

<sup>41</sup> 16 U.S.C. § 824e(a); *N.Y. v. FERC*, 535 U.S. 1, 27 (2002) (Where FERC finds undue discrimination, section 206 “would require FERC to provide a remedy”).

<sup>42</sup> *United Gas Co. v. Mobile Gas Corp.*, 350 U.S. 332, 341 (1956) (*Mobile*) (Natural Gas Act sections 4 and 5, the counterparts to FPA sections 205 and 206 together constitute a “single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by the Commission upon a finding that they are unlawful.”).

<sup>43</sup> *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956) (“The Commission has undoubted power under § 206(a) to prescribe a change in contract rates whenever it determines such rates to be unlawful.”).

<sup>44</sup> *Id.*; *Mobile*, 350 U.S. at 344 (Even contract rates remain “fully subject to the paramount power of the Commission to modify them when necessary in the public interest.”).

<sup>45</sup> PJM 205 Answer at 2 (noting that the prices for capacity supplied during the 2024-25 Delivery Year “do[] not even go into effect until June 1, 2024”).

<sup>46</sup> *E.g.*, *Pub. Citizen Inc. v. FERC*, 839 F.3d 1165, 1168 (D.C. Cir. 2016) (describing challenges that were denied by operation of law due to deadlock of sitting Commissioners); *ISO New England, Inc.*, 151 FERC ¶ 61,226 (2015); *ISO New England, Inc.*, 155 FERC ¶ 61,273, *reh’g denied*, 157 FERC ¶ 61,060 (2016), *pet. for review dismissed sub nom. Util. Workers Union of Am. Local 464 v. FERC*, 896 F.3d 573 (D.C. Cir. 2018). *Cf. ISO New England, Inc.*, 161 FERC ¶ 61,061, P 17 (2017) (“[A]fter the next FCA is conducted . . . the

similar to this one, the D.C. Circuit vacated a Commission decision not to revisit seemingly tainted auction results.<sup>47</sup>

The Third Circuit’s decision does not foreclose the prospective modification of unjust and unreasonable auction prices. The decision proscribed mid-auction changes to auction procedures, but that does not mean the auction results are set in stone. Like an executory contract, auctions set prices and terms for future performance. If FERC finds such rates to be unjust and unreasonable, it must modify them before performance occurs. Doing so does not run afoul of the rule against retroactive ratemaking. That rule does not ensure that rates will remain as originally set. *See PJM Power Providers Group*, 96 F.4th at 401.<sup>48</sup>

And while PJM is focused on the need for “certainty” with respect to auction outcomes, that concern can best be met by maintaining the previously announced and correctly determined auction prices and capacity commitments. PJM’s alternative—replaying the base auction to impose plainly excessive rates and rerunning the “Third Incremental” auction (or letting market participants escape obligations)—would produce the very market disruption that PJM seeks to avoid, with no countervailing benefit.

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results . . . will be filed with the Commission under section 205, and parties may raise objections regarding the justness and reasonableness of those auction results at that time.”).

<sup>47</sup> *Pub. Citizen Inc. v. FERC*, 7 F.4th 1177 (D.C. Cir. 2021) (remanding for FERC to consider challenges to 2015 MISO auction results).

<sup>48</sup> The Third Circuit expressly declined to consider whether FERC’s acceptance of PJM’s section 205 filing was retroactive because it “allowed PJM to disregard the Auction results.” *Id.* n.8.

### III. COMPLAINT

#### A. **Rerunning the auctions with an overstated LDA Reliability Requirement would cause an artificial shortage driving grossly inflated prices.**

The February 2023 BRA results (reflecting the Commission's acceptance of PJM's section 205 filing) were based on an LDA Reliability Requirement that accurately reflected the zone's reliability needs. In contrast, PJM's April 2024 informational posting<sup>49</sup> shows the consequences of using the inaccurate, posted LDA Reliability Requirement.

If implemented, the April 2024 Recalculation would require consumers to pay grossly inflated prices with no reliability justification or basis in market fundamentals. As PJM explained, and as detailed above, the posted LDA Reliability Requirement overstated the DPL-S zone's actual reliability needs, as it was premised on assumed participation by new resources whose size or intermittent characteristics would have required the zone to carry more total capacity. That assumption increased the apparent need for capacity in DPL-S by roughly 360 MW or 12%.<sup>50</sup> Because the posited resources did not participate in the auction, the extra capacity is not needed.

Simply put, using the inflated LDA Reliability Requirement would create an artificial shortage.<sup>51</sup> Although that posted parameter (falsely) indicated a need for an additional 361 MW in the DPL-S LDA (above what the LDA actually needs), using that parameter to re-run the BRA procures only 26.5 MW of additional capacity in in that sub-

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<sup>49</sup> 2024/25 BRA Recalculated Results and Parameters (Apr. 4, 2024), <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-bra-recalculated-results-and-parameters.ashx> (April 2024 Recalculation).

<sup>50</sup> Klose Aff. at P 9.

<sup>51</sup> *Id.*

zone.<sup>52</sup> The reason is that insufficient sell offers were submitted in the DPL-S LDA to satisfy the inflated demand driven by an inaccurate LDA Reliability Requirement.<sup>53</sup> Consequently, using that inflated demand would cause an artificial shortage that would drive prices to the cap. For DPL-S in the 2024-25 auction, that cap was \$426.17/MW-Day,<sup>54</sup> the same price at which PJM’s April 2024 Recalculation says that DPL-S would clear using the posted LDA Reliability Requirement.<sup>55</sup> That is an increase of more than **370%** above the just and reasonable clearing price of \$90.64/MW-Day, which reflects the DPL-S LDA’s actual reliability needs, as computed in the February 2023 BRA.<sup>56</sup>

Artificially driving prices to the cap for all cleared MW in DPL-S would produce a massive, consumer-funded windfall to sellers. The unjustified wealth transfer of nearly \$178 million<sup>57</sup> is an amount even greater than the estimated amounts that Commissioner Christie derided as “blatantly unjust and unreasonable.”<sup>58</sup> Although the excess cost would be spread among all customers in the DPL zone (not just DPL-S), it still would impose a severe and unjustified toll. DPL Zone prices would increase from \$65.84/MW-Day to

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<sup>52</sup> *Id.*; compare April 2024 Recalculation, “Summary” worksheet, cell B30 (1,448.5 MW cleared) with 2024-25 Base Residual Auction Report at 7, Table 3 (Feb. 28, 2023) (1,422 MW cleared), <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-base-residual-auction-report.ashx>.

<sup>53</sup> 2024-25 Base Residual Auction Report at 7 (Feb. 28, 2023), <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-base-residual-auction-report.ashx> (In the February 2023 BRA, “DPL-South had only 26.9 MW of additional supply that did not clear.”).

<sup>54</sup> 2024-25 Planning Parameters for Base Residual Auction, “Planning Parameters” worksheet, cell H20 (Feb. 28, 2023), <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-planning-period-parameters-for-base-residual-auction.ashx>.

<sup>55</sup> April 2024 Recalculation, “Summary” worksheet, cell B11.

<sup>56</sup> See Klose Aff. at P 10.

<sup>57</sup> *Id.* P 11.

<sup>58</sup> *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 178; *id.* P 6 (Comm’r Christie, concurring).

\$171.49/MW-Day, an increase of \$105.65/MW-Day or 160%.<sup>59</sup> Re-running the auction with parameters that cause an artificial shortage would increase the 2024-25 charges to one load serving entity, Old Dominion Electric Cooperative, by \$36 million.<sup>60</sup>

**B. A \$177+ million wealth transfer, caused solely by an overstated LDA Reliability Requirement driving an artificial shortage, is unquestionably unjust and unreasonable.**

A massive cost increase driven solely by a flawed tariff and an inaccurate parameter, not market fundamentals, is unjust and unreasonable. PJM certainly thought so.<sup>61</sup> As did the Independent Market Monitor.<sup>62</sup> And the Commission effectively agreed. While accepting PJM's section 205 filing instead of acting under FPA section 206,<sup>63</sup> the Commission explained that it sought to “prevent[] consumers from being charged unnecessarily high capacity prices that do not reflect actual reliability needs or supply and demand fundamentals.”<sup>64</sup>

The Third Circuit vacated the rule change as to the 2024-25 auction but left it in place for the future. The vacatur neither blesses the artificially inflated 2024-25 auction

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<sup>59</sup> Klose Aff. at P 8.

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

<sup>61</sup> *E.g.*, *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 14 (“PJM notes that, absent this change, PJM would be forced to use a ‘materially inaccurate’ LDA Reliability Requirement in clearing the 2024/2025 BRA. PJM contends that this would result in an unjust and unreasonable outcome inconsistent with the Commission’s statutory duty to ensure just and reasonable rates.”) (footnote omitted).

<sup>62</sup> *E.g.*, *id.* P 26 (noting the Market Monitor’s agreement with PJM that, absent modification to the posted LDA Reliability Requirement, “capacity prices in Delmarva would be significantly greater than the efficient and competitive level because the supply and demand fundamentals in the model do not reflect reality”).

<sup>63</sup> *E.g.*, *id.* P 178 (“[T]hat exorbitant price increase would not be the result of supply and demand fundamentals—or an actual reliability need—meaning that there is no economic or reliability justification for those additional costs.”); *id.* P 153 (“As the Market Monitor notes, the prices resulting from PJM’s proposal will accurately reflect supply and demand and, if the prices are accurate, the market incentives will be correct and consistent with reliability needs.”).

<sup>64</sup> *Id.*

prices as just and reasonable<sup>65</sup> nor requires the Commission to replace the just and reasonable February 2023 results with unjust and unreasonable recalculated ones.<sup>66</sup>

To the contrary, Commission precedent compels a conclusion that the recalculated auction prices are unjust and unreasonable. “[T]he Commission’s statutory mandate under the FPA entails protecting consumer interests, which includes protecting consumers and the market from excessive capacity prices, sudden, significant capacity price increases, and the impacts of rate shock.”<sup>67</sup> Here, the prices are not just high but artificially so, and the Commission has long rejected market rules and prices that depart from a genuine interplay of supply and demand.<sup>68</sup> Purported market prices that “do not reflect legitimate market forces . . . fall outside the zone of reasonableness.”<sup>69</sup>

The recalculated results also are unjust and unreasonable because they impose a massive price increase without any commensurate consumer benefit. In *PJM Interconnection, LLC*, 178 FERC ¶ 61,104, *reh’g denied*, 179 FERC ¶ 61,161 (2022), *aff’d sub nom. Citadel FNGE Ltd. v. FERC*, 77 F.4th 842 (D.C. Cir 2023), FERC granted PJM’s

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<sup>65</sup> *PJM Power Providers Grp.*, 96 F.4th at 401 & n.7 (applying filed-rate doctrine “regardless of the equities” and despite “harsh result”).

<sup>66</sup> *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d at 159 (discussing scope of FERC’s remedial discretion); *Towns of Concord, et al. v. FERC*, 955 F.2d 67, 73 (D.C. Cir. 1992) (affirming exercise of remedial discretion not to award refunds for violation of filed rate).

<sup>67</sup> *ISO New England Inc.*, 146 FERC ¶ 61,038, P 26 (2014) (footnotes omitted).

<sup>68</sup> *E.g.*, *Cal. Indep. Sys. Operator Corp.*, 171 FERC ¶ 61,220, PP 17-18 (2020) (rejecting, as not just and reasonable, tariff changes that “create an artificial constraint which raises prices for load and generation”); *Investigation of Terms & Conditions of Pub. Util. Mkt.-Based Rate Authorizations*, 105 FERC ¶ 61,218, PP 37-38 (2003) (actions creating artificial shortages are not consistent with just-and-reasonable rates); *PJM Interconnection, LLC*, 186 FERC ¶ 61,080, P 266 (2024) (noting importance of “aligning the LDA Reliability Requirement with actual reliability needs”); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 93 FERC ¶ 61,294, at 61,998 (2000) (“While high prices in and of themselves do not make a rate unjust and unreasonable (because, for instance, underlying production prices may be high), if over time rates do not behave as expected in a competitive market, the Commission must step in to correct the situation.”).

<sup>69</sup> *Investigation of Terms & Conditions of Pub. Util. Mkt.-Based Rate Authorizations*, 103 FERC ¶ 61,349, P 22 (2003).

section 206 complaint to protect consumers in the Northern Neck peninsula from unjust and unreasonable rates. The rates resulted from application of the PJM Tariff Transmission Constraint Penalty Factor, which was intended to provide a market price signal to incentivize investments to relieve constraints.<sup>70</sup> In that case, however, application of the penalty factor created “anomalous price signals that [were] not warranted or actionable” and thus did not accomplish the purpose.<sup>71</sup> Because continued application of the penalty factor would “not produce the intended short-term or long-term responses and, instead, will only result in higher costs to ratepayers without a commensurate benefit,” the Commission found it unjust and unreasonable.<sup>72</sup>

The D.C. Circuit endorsed that view wholeheartedly. It explained that “application of the Penalty Factor was unjust and unreasonable not just because of how much it increased the wholesale rate, but because it caused that increase for no justifiable purpose” and “without any commensurate [consumer] benefit.”<sup>73</sup> That “comfortably fits the definition of unjust and unreasonable.”<sup>74</sup> Where a price increase “serv[es] no good purpose,” the absence of a reasoned justification for it makes it “unjust and unreasonable in its own right.” *Id.* at 857.

The same is true here. It would serve no good purpose to recalculate auction results on the eve of the Delivery Year, using an “overstated”<sup>75</sup> and “material[ly] inaccurate”<sup>76</sup>

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<sup>70</sup> *PJM Interconnection, LLC*, 178 FERC ¶ 61,104, P 60.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at PP 60-62.

<sup>73</sup> *Citadel FNGE, Ltd. v. FERC*, 77 F.4th at 856.

<sup>74</sup> *Id.*

<sup>75</sup> FPA 205 Filing at 2, 9, 10, 31.

<sup>76</sup> *Id.* at 4.

LDA Reliability Requirement to set grossly inflated prices that are neither “warranted [n]or actionable.”<sup>77</sup> The increase in the Reliability Requirement represents a fictitious need, and the excessive prices will spur no meaningful investment in either the short or long term. Little (except prices) will change in the short run, as offers for the 2024-25 BRA were submitted long ago. Increasing the Reliability Requirement clears only 26.5 MW of additional capacity in the BRA, which are not needed for reliability. And little will change in the long run, as the market knows that the apparent shortage driven by the inflated Reliability Requirement is artificial and short-lived. The absence of any salutary effect—except on the generators’ pocketbooks—means that this rate increase would be, like the one in *Citadel*, “all pain and no gain” and therefore unjust and unreasonable. 77 F.4th at 855. In contrast, if the relief sought here is granted, then “the prices resulting from [the February 2023 BRA] will accurately reflect supply and demand, creating market incentives that are correct and consistent with reliability needs.”<sup>78</sup>

That PJM and FERC recognized the Tariff flaw and fixed it prospectively obligates the Commission to consider whether an auction without that fix would yield unjust and unreasonable prices. *Pub. Citizen, Inc. v. FERC*, 7 F.4th 1177, 1196 (D.C. Cir. 2021). In *Public Citizen*, a 2015 auction produced an anomalous, ninefold price increase for capacity in Illinois. *Id.* at 1182. The price spike increased the anticipated capacity charges in that zone by \$102 million, *id.* at 1188, about 58% of the increase at issue here. When parties complained, FERC opened an investigation into potential market manipulation. The

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<sup>77</sup> *PJM Interconnection, LLC*, 178 FERC ¶ 61,104, P 60.

<sup>78</sup> *PJM Interconnection L.L.C.*, 184 FERC ¶ 61,055, P 91 n.333 (citing *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,104, P 153 and Market Monitor Feb. 6, 2023 Answer at 4).

investigation also identified flaws in the existing auction rules, which the Commission changed prospectively to prevent unjust and unreasonable price spikes in future auctions. *Id.* at 1182. One of the flaws was that the Midcontinent Independent System Operator (MISO) Tariff “miscalculated the amount of capacity that needed to be procured from power plants located within each MISO zone (that is, the local clearing requirement).” *Id.* at 1190. The Commission determined that MISO’s methodology was unjust and unreasonable and changed it prospectively but deferred acting on the challenges to the 2015 auction results. *Id.*

The Commission eventually denied the challenges, but the D.C. Circuit vacated that decision. FERC, the court said, “failed to reconcile its prospective holding” that the tariff could no longer ensure just and reasonable rates “with its conclusion that the conspicuously uneven 2015 results—obtained under the same flawed tariff terms—were not similarly infected.” *Id.* at 1196. Among other things, the court faulted the Commission for failing to explain “why the changes to MISO’s local clearing requirements dictated in the 2015 Order . . . did not equally implicate the justness and reasonableness of the 2015 Auction results.” *Id.* at 1198.

Again, the same is true here. The Commission accepted PJM’s section 205 filing to fix a Tariff flaw (PJM 205 Filing at 17) that would cause consumers to be charged an “exorbitant price increase” with “no economic or reliability justification.” *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 178. While the Third Circuit found PJM’s tariff changes to be impermissibly retroactive, it never questioned the Commission’s factual findings about the problems caused by using an inaccurate LDA Reliability Requirement or the need to address those problems. Here, as in *Public Citizen*, those

findings compel the Commission to consider whether an auction using those admittedly flawed rules produces prices that are unjust and unreasonable. If so, then the Commission must modify them and set the just and reasonable replacement rate to be observed from the complaint's refund effective date.<sup>79</sup>

**C. The massive, unjustified wealth transfer in this case is not subject to a *Mobile-Sierra* presumption but would be unjust and unreasonable even if it were.**

Some parties may oppose this complaint by claiming that the recalculated auction prices—if made effective by the Commission in response to PJM's petition—are protected by a *Mobile-Sierra*-like presumption of justness and reasonableness. Not so. The presumption does not apply because capacity auction prices, while forward-looking like an executory contract, are not freely negotiated contract rates to which the presumption applies by default.<sup>80</sup> And the recalculated auction prices here lack the indicia of consistency with market fundamentals and competitive outcomes on which the Commission has relied in other cases to apply *Mobile-Sierra* as a matter of discretion.

In *Devon Power LLC*, 134 FERC ¶ 61,208, P 19, the Commission determined that it could choose to apply a *Mobile-Sierra*-style presumption to auction-set prices as a matter of discretion because, typically, auctions “share with freely-negotiated contracts certain market-based features that tend to assure just and reasonable rates.” That premise fails here,

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<sup>79</sup> In *Public Citizen*, the complaint was filed and a refund effective date established after the 2015 auction was run but before the associated capacity was to be delivered. Potential changes to the prices and terms of future performance are fair game under FPA section 206. If the filed rate doctrine precluded such changes, then the injuries suffered by *Public Citizen* petitioners would not have been redressable and the petitioners would not have had standing to seek review.

<sup>80</sup> See *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165, 176 (2010) (auction-set rates “are not themselves contract rates to which the Commission was required to apply *Mobile-Sierra*”) (quoting Brief for FERC 15); *Devon Power LLC*, 134 FERC ¶ 61,208, P 13, *reh'g denied*, 137 FERC ¶ 61,073 (2011), *pet. for review denied sub nom. New England Power Generators Ass'n v. FERC*, 707 F.3d 370 (D.C. Cir. 2013).

where the recalculated auction prices result from an artificial shortage created by inflated LDA Reliability Requiring that drives prices to an administrative price cap. Where the considerations underlying *Devon Power* are not present, the Commission has declined to apply a *Mobile-Sierra* presumption. *E.g.*, *High Island Offshore Sys. LLC*, 135 FERC ¶ 61,105, P 24 (2011).

Yet even if a presumption applied, it would be rebutted in this case and the Commission would still be obligated to provide the requested relief. Applying *Mobile-Sierra* “does not mean the Commission is unable to review the rate.” *Devon Power*, 134 FERC ¶ 61,208, P 25.

The Commission’s hands are not tied. The “public interest” standard respects the settled expectations of parties, but still allows the Commission to respond as necessary to the threat of serious harm to the public interest. The Commission has taken such action in the past, and we retain the ability to do so in the future.

*Id.* (footnote omitted). As the Supreme Court has explained, the *Mobile-Sierra* doctrine “does not overlook third-party interests; it is framed with a view to their protection” and “directs the Commission to reject a contract rate that ‘seriously harms the consuming public.’” *NRG Power Mktg. LLC*, 558 U.S. at 175.<sup>81</sup>

The recalculated auction prices unquestionably would inflict such harm. The Commission already concluded as much when it agreed that PJM had satisfied the Tariff section 9.2(b) requirement to show “imminent severe economic harm to electric consumers.” *PJM Interconnection, LLC*, 184 FERC ¶ 61,055, P 121. And that conclusion

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<sup>81</sup> See also *Morgan Stanley Cap. Grp. Inc. v. Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 553 (2008) (“[I]f [an] increase is so great that, even taking into account the desirability of fostering market-stabilizing long-term contracts, the rates impose an excessive burden on consumers or otherwise seriously harm the public interest, the rates must be disallowed.”).

is well supported in the record. There is no question that the recalculated auction’s artificial shortage would cause DPL-S prices nearly to quadruple.<sup>82</sup> The resulting cost impact exceeds \$177 million. While that impact will be felt throughout the DPL Zone, prices there would nearly triple. *See supra* at pages 14-15.

These costs would be concentrated in a relatively small zone. According to the Delmarva Economic Dashboard,<sup>83</sup> the total 2020 population of the Delmarva Peninsula included fewer than 909,500 people. On a per capita basis, the \$177 million increase for the 2024-25 delivery year amounts to nearly \$200 for every *person*—not household or ratepayer—in the region.

And the region appears ill-equipped to shoulder those burdens. The Dashboard reports that Delmarva’s 2020 median household income (\$63,000) was less than the corresponding figure for Delaware (\$69,000), Maryland (\$87,000), Virginia (\$76,000), and the United States (\$65,000). The region includes eight counties with median 2020 household incomes of \$60,000 or less, including two counties in which the median was roughly \$45,000. A 2023, county-level analysis of socioeconomic status<sup>84</sup> tells a similar story. In Northampton County, for example, median household after-tax income is \$43,764 per year, with each worker earning just \$765 per week on average.<sup>85</sup> In Accomack County,

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<sup>82</sup> In *Morgan Stanley Capital Group Inc.*, 554 U.S. at 541, the Supreme Court remanded for consideration whether long-term contract prices four to five times the historical average were contrary to the public interest, despite their role in hedging against and stabilizing a dysfunctional spot market. Here, there is a similarly large price increase driven by a forecasting error, with no correlative stabilizing benefit.

<sup>83</sup> <https://delmarvaindex.org/economicDashboard>.

<sup>84</sup> Esri data development, 2023/2028 Esri Updated Demographics | Esri Methodology Statement (June 2023), <https://storymaps.arcgis.com/stories/aa1ae395af2047fcb14a68ab338464b9> (Esri Methodology Statement).

<sup>85</sup> *Id.*; Workforce Overview, Northampton County, <https://apps.esrgc.org/DynamicInfographics/County/pdf/Northampton.pdf> (last visited April 12, 2024).

the median household after-tax income is even less: \$40,058.<sup>86</sup> Before the Commission in Docket Nos. ER23-729 and EL23-19, Sierra Club and the Natural Resources Defense Council (NRDC) produced similar data:

Sierra/NRDC state that average wages for workers in the Delmarva Peninsula, where Delmarva is located, are significantly lower than the U.S. average and that the five-year average poverty rate increased by 0.8% from 2006 to 2019, while the national rate decreased. Sierra/NRDC further argues that low-income populations have disproportionately high energy burdens, twice that of average income households and three times greater than higher income households, because they often use less-efficient appliances or live in older dwellings in need of repair. Sierra/NRDC explain that high energy burdens and costs can force choices between energy, health, food, and housing which can lead to a wide range of adverse outcomes.

*PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 92 (footnotes omitted).

By any reckoning, the imposition of an unjustified \$177 million burden on customers in the DPL Zone is a paradigmatic example of serious harm to the consuming public against which the Commission is bound to protect.

#### **IV. RULE 206 REQUIREMENTS**

The Complainants hereby provide the further information required by Rule 206.<sup>87</sup>

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<sup>86</sup> Workforce Overview, Accomack County, <https://apps.esrgc.org/DynamicInfographics/County/pdf/Accomack.pdf> (last visited April 12, 2024).

<sup>87</sup> 18 C.F.R. § 385.206.

**A. Good faith estimate of financial impact or harm (Rule 206(b)(4))**

Based on a comparison of PJM’s April 2024 posting with its February 2023 BRA results, complainants estimate that the April 2024 Recalculation would increase charges to consumers by more than \$177 million with no economic or reliability justification.<sup>88</sup>

**B. Practical, operational, or nonfinancial impacts (Rule 206(b)(5))**

Adoption of the April 2024 Recalculation could lead to situations in which a seller had capacity that did not clear in February 2023, sold the capacity bilaterally, and now finds that the capacity clears in the recalculated 2024-25 BRA. PJM proposes to address such situations by re-running the Third Incremental Auction (an auction that was not at issue before the Third Circuit), so that sellers may trade out of their newly acquired commitments to PJM.<sup>89</sup> Alternatively, PJM proposes to excuse performance under the newly acquired commitments.<sup>90</sup> Both “solutions” are obviously disruptive—and necessary only if the Commission countenances recalculation of the 2024-25 BRA. Those who support the recalculation cannot agree on which “solution” is better.<sup>91</sup>

Recalculation of the 2024-25 auction results also could create serious difficulties for customers who entered into commercial arrangements in reliance on the February 2023

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<sup>88</sup> Klose Aff. P 8; *PJM Interconnection, LLC*, 182 FERC ¶ 61,109, P 178.

<sup>89</sup> PJM Petition at 1-2.

<sup>90</sup> *Id.* at 11-12.

<sup>91</sup> *Compare* Comments of Constellation Energy Generation, LLC at 4, Docket No. ER23-729-002 (Apr. 11, 2024), eLibrary No. 20240411-5066 (“[T]o the extent that PJM recalculates the results for the 2024/25 BRA, it is imperative that PJM also be permitted to rerun the Third Incremental Auction.”) *with* Comments of the PJM Power Providers Group and the Electric Power Supply Association at 4, Docket No. ER23-729-002 (Apr. 11, 2024), eLibrary No. 20240411-5112 (“P3 and EPSA prefer PJM’s proposal to relieve over committed capacity for affected resources”).

auction results.<sup>92</sup> But unlike the generators, customers cannot undo those arrangements through a PJM incremental auction or by asking the Commission to excuse performance.

**C. Whether the matters are pending in any other FERC proceeding or other forum (Rule 206(b)(6))**

Related matters are pending before the Commission in Docket No. ER23-729-002 and, potentially, Docket No. EL23-19-002.

**D. Documents supporting the complaint (Rule 206(b)(8))**

In addition to the materials cited above, this complaint is supported by the attached Affidavit of Dan Klose on Behalf of Old Dominion Elec. Coop.

**E. Use of alternative dispute resolution (Rule 206(b)(9))**

Given the procedural history of the case and the need for expeditious resolution, Complainants do not believe that alternative dispute resolution is practical under the circumstances or would be reasonably likely to resolve the dispute.

**F. Request for Fast Track Processing (Rule 206(b)(11)).**

PJM has requested Commission action on its Petition on or before May 6, 2024.<sup>93</sup> Unless the Commission denies the Petition and leaves the just and reasonable February 2023 BRA results in place, the Commission should issue a companion order finding the April 2024 Recalculation prices and capacity commitments to be unjust and unreasonable, and granting the relief sought herein before June 1, 2024. To ensure sufficient time for the Commission to act, we request an April 29, 2024, deadline for the submission of responses to the complaint.

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<sup>92</sup> PJM Load Parties Protest at 13-15.

<sup>93</sup> PJM Petition at 1.

**G. Notice (Rule 206(b)(10))**

PJM Load Parties have appended a form of notice of this filing for publication in the Federal Register in accordance with the specifications in section 385.203(d) of the Commission's rules.

**V. PARTIES AND COMMUNICATIONS**

**A. Complainants**

The complainants are: American Municipal Power, Inc., Delaware Division of the Public Advocate, Delaware Energy Users Group, Delaware Municipal Electric Corporation, Delaware Public Service Commission, Maryland Office of People's Counsel, Maryland Public Service Commission, and Old Dominion Electric Cooperative.

**B. Respondent**

The respondent is PJM Interconnection, LLC.

**C. Communications**

All correspondence and communications to the Complainants in this docket should be addressed to the following individuals, whose names should be entered on the official service list<sup>94</sup> maintained by the Secretary in connection with these proceedings:

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<sup>94</sup> The Complainants request a waiver of Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to allow the inclusion of more than two persons on the official service list on the grounds that the Complainants comprise separate parties, each represented by their own counsel.

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## **VI. SERVICE AND NOTICE**

In accordance with Rule 206(c), the Complainants have served a copy of this Complaint upon PJM, as Respondent, simultaneously with the filing of the Complaint.

## **VII. CONCLUSION**

Unless the Commission denies the PJM Petition, PJM Load Parties request that the Commission: (1) grant this complaint with a refund effective date of April 22, 2024, the date of filing; (2) find that the recalculated 2024-25 BRA prices are or would be unjust and unreasonable; (3) direct PJM to maintain the February 2023 BRA and the Third Incremental Auction results as the just and reasonable replacement rate; and, (4) take all such other actions the Commission may deem necessary and appropriate under the circumstances to protect PJM's customers from the imposition of excessive capacity charges.

Respectfully submitted,

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April 22, 2024



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

PJM Interconnection, L.L.C.

)

Docket No. ER23-729-002

**AFFIDAVIT OF DAN KLOSE  
ON BEHALF OF  
OLD DOMINION ELECTRIC COOPERATIVE**

**I. INTRODUCTION**

1. My name is Dan Klose. I am the Vice President of Power Supply for Old Dominion Electric Cooperative (“ODEC”), a generation and transmission cooperative providing the power supply requirements of its 11 distribution cooperative members throughout the Commonwealth of Virginia and the States of Maryland and Delaware. My business address is 4201 Dominion Boulevard, Glen Allen, VA 23060.

2. My current responsibilities include overseeing the participation of ODEC’s generation resources in the PJM capacity and energy markets.

3. The purpose of my affidavit is to: (1) provide background concerning ODEC as relevant to the petition of PJM Interconnection, L.L.C. (“PJM”) filed in the above-captioned proceeding on March 29, 2024;<sup>1</sup> (2) explain the flaw in PJM’s Tariff that was corrected for the already-concluded Base Residual Auction (“BRA”) for the 2024/2025 Delivery Year; and (3) provide quantifications of the artificial increase in the Local Deliverability Area (“LDA”) Reliability Requirement and massively increased capacity prices that will be experienced if PJM is permitted to recalculate the BRA results for the 2024/2025 Delivery Year.

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<sup>1</sup> *PJM Interconnection, L.L.C., Docket No. ER23-729-002, Petition Under Rule 207 of PJM Interconnection, L.L.C. for Order Confirming 2024/2025 Delivery Year Capacity Commitment Rules, Request for Order by May 6, 2024, and Request for Shortened 10-Day Comment Period (March 29, 2024) (“Petition”).*

## II. BACKGROUND

4. ODEC is a not-for-profit power supply electric cooperative, organized and operating under the laws of Virginia and subject to the Commission's jurisdiction. ODEC supplies capacity and energy to its eleven distribution cooperative members, all of which are located in the PJM control area. ODEC and its members serve load in the DPL-South LDA, and ODEC has a capacity obligation associated with this load. PJM's Petition requests permission to recalculate the posted BRA results for the 2024/2025 Delivery Year that reflected an adjustment to the LDA Reliability Requirement for DPL-South to protect against artificially high clearing prices, and to rerun the Third Incremental Auction for the 2024/2025 Delivery Year. ODEC is among the load-serving entities ("LSEs") that would pay the artificially high clearing prices that would result if PJM's Petition were granted. Based on a review of relevant documentation, and as discussed below, these increased capacity prices would be imposed on LSEs and load in the DPL-South LDA without receiving any additional benefit in return.

5. As context for my affidavit, it is helpful to understand the problem that PJM sought to remedy through the adjustment to the LDA Reliability Requirement for DPL-South that the Commission accepted in orders that has now been partially vacated by the U.S. Court of Appeals.<sup>2</sup> In summary, PJM identified a flaw in its Tariff when PJM was clearing the 2024/2025 BRA. As the Commission summarized in its orders, if Planned Generation Capacity Resources are modeled but do not offer into the auction as expected, the LDA Reliability Requirement is overstated. For the 2024/2025 BRA, if not addressed, this flaw in the Tariff would have resulted in a 12% increase

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<sup>2</sup> *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 (2023), *reh'g denied*, 184 FERC ¶ 61,055 (2023), *vacated in part*, *PJM Power Providers Grp. v. FERC*, Nos. 23-1778, et al., 2024 U.S. App. LEXIS 5963 (3d Cir. Mar. 12, 2024).

in the DPL-South LDA Reliability Requirement and a clearing price for the LDA that would be more than four times higher than if the resources that did not offer into the BRA were excluded from the LDA Reliability Requirement.<sup>3</sup> The resulting price increase would force LSEs, including ODEC, to procure more capacity than needed to meet actual reliability requirements.<sup>4</sup> Specifically, the modeling of the planned resources in the BRA parameters for the 2024/2025 Delivery Year for the DPL-South LDA that ultimately did not offer into the auction increased the LDA reliability requirement from 3,153 MW to 3,514 MW, an increase of 361 MWs.<sup>5</sup>

### **III. IMPACT OF PJM'S REQUEST TO RECALCULATE THE 2024/2025 BRA RESULTS**

6. If accepted, PJM's Petition would result in the BRA results for the 2024/2025 Delivery Year being recalculated without the correction to the flaw in its Tariff necessary to protect against an artificial increase in the LDA Reliability Requirement for the DPL-South LDA, and would lead to artificially inflated capacity prices. On April 4, 2024, PJM posted information showing the impact of this recalculation on zonal capacity assignments and zonal clearing prices.<sup>6</sup> That posting indicated an artificial capacity shortage in the DPL-South LDA that resulted in clearing only 26.5 MW of additional capacity in the DPL-South LDA. Because the planned resources elected not to offer into the capacity auction, the LDA Reliability Requirement was set artificially high and none of this additional 26.5 MWs of capacity were actually needed by the DPL-South LDA to meet its LDA Reliability Requirement.

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<sup>3</sup> See *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 at PP 8-9.

<sup>4</sup> *Id.* at 9.

<sup>5</sup> *PJM Interconnection, L.L.C.*, Docket No., EL23-19, PJM Complaint at 12 (Dec. 21, 2023).

<sup>6</sup> The informational posting is available at <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-bra-recalculated-results-and-parameters.ashx>

7. While the additional MWs would not provide any needed reliability benefit, the recalculated BRA results would have a massive impact on capacity clearing prices for the DPL-South LDA for the 2024/2025 Delivery Year. PJM's posting indicated that the resulting resource clearing price in the DPL-South LDA for the 2024/2025 Delivery Year increased to **\$426.17** per MW-Day, which is an increase in the amount of **\$335.53** per MW-Day from the \$90.64 per MW-Day resource clearing price for DPL-South from the already-conducted BRA for the 2024/2025 Delivery Year.

8. The proposed increase in the resource clearing price paid to generators located in the DPL-South LDA would increase the DPL LDA zonal capacity price, which is paid by all load within the DPL Zone LDA. PJM's April 4 informational posting shows a Preliminary Zonal Net Load Capacity Price of \$171.49/MW-day for the DPL Zone LDA for the 2024/2025 Delivery Year. This is a substantial increase above the \$65.84/MW-day Preliminary Zonal Net Load Capacity Price for the 2024/2025 Delivery Year under the Commission's orders. The product of the increase in Preliminary Zonal Net Load Capacity Price of \$105.65/MW-day, the Base Zonal UCAP Obligation of 4607 MW, and 365 days, is approximately \$177.7 million in increased capacity cost to the whole of the DPL Zone.<sup>7</sup> The increased capacity cost is calculated based on information provided by PJM, as follows:

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<sup>7</sup> In PJM's "recalculated" BRA results posted on 4.4.24, PJM did not adjust its Preliminary Zonal Net Load Price for the funding of PRD credits in the DPL zone (or any zone with PRD programs, for that matter). As such, I used an "apples to apples" comparison, comparing the Original BRA results without PRD funding of \$65.84 MW-day and the figure of \$171.49 MW-day in PJM's 4.4.24 recalculated file, that as I note does not include any PRD adjustments. If it turns out that PJM does not further adjust the \$171.49 MW-day to account for funding of PRD programs, the proper comparison of DPL Zonal Capacity Prices is \$66.15 MW-day and \$171.49 MW-day (and 4607 MW and 365 days) and the harm to the DPL zone if the Commission were to grant PJM's petition is then approximately \$177.2 million in the 24/25 DY and not \$177.7 million.

**2024/2025 Base Residual Auction**  
**Comparison of Original to Recalculated Results<sup>8</sup>**  
 Impact to DPL LDA Load Costs

	[1]	[2]	[3]=[1]-[2]
	Recalculated	Original	Delta
Base Zonal UCAP Obligation [MW]	4,607	4,607	0
Zonal Capacity Price [\$/MW-day]	\$171.49	\$65.84	\$105.65
# Days/Year	365	365	0
Annual Cost	\$288,396,554	\$110,716,288	\$177,680,285

9. For ODEC's load in the DPL Zone, this would result in an increase of approximately **\$36 million** in capacity costs for the Delivery Year June 1, 2024, through May 31, 2025. This increase will be borne by ODEC's members and their end-use customers. Here again, the increase results from a flaw in the PJM Tariff and will be imposed without any needed reliability benefit, or any other benefit.

This concludes my Affidavit.

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<sup>8</sup> Data Source:

Recalculated: <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-bra-recalculated-results-and-parameters.ashx>

Base Zonal UCAP Obligation: See worksheet "Summary", Cell B55

Zonal Capacity Price = Preliminary Zonal Net Load Price (\$/MW-day), See worksheet "Summary", Cell E55

Original: <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-base-residual-auction-results.ashx>

Base Zonal UCAP Obligation: See worksheet "BRA Load Pricing Results", Cell J50

Zonal Capacity Price = Preliminary Zonal Capacity Price: See worksheet "BRA Load Pricing Results", Cell 50

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

PJM Interconnection, L.L.C.

)

Docket No. ER23-729-002

**AFFIDAVIT OF DAN KLOSE  
ON BEHALF OF  
OLD DOMINION ELECTRIC COOPERATIVE**

Commonwealth of Virginia )

) ss:

I Dan Klose, certify that the statements contained in the foregoing affidavit are true and correct to the best of my knowledge, information and belief.

/s/ Dan Klose  
Dan Klose

Dated: April 11, 2024

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

PJM Load Parties,  
*Complainants,*

v.

PJM Interconnection, LLC,  
*Respondent.*

Docket No. EL24-\_\_\_\_-000

NOTICE OF COMPLAINT

(April \_\_, 2024)

Take notice that on April 22, 2024, pursuant to sections 206, 306, and 309 of the Federal Power Act, [16 U.S.C. 824e](#), [825e](#), and [825h](#), and Rules 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, [18 CFR 385.206](#). PJM Load Parties (Complainants) filed a formal complaint against PJM Interconnection, L.L.C. (PJM or Respondent) alleging that the relief PJM seeks pursuant to its petition filed in Docket No. ER23-729-002 if granted would result in unjust and unreasonable capacity prices for the 2024-2025 delivery year, and that if FERC were to grant that relief it should also grant PJM Load Parties' complaint and restore the result of the February 2023 Base Residual Auction outcomes to ensure just and reasonable capacity prices for the 2024-2025 delivery year, all as more fully explained in the complaint.

PJM Load Parties have requested Fast Track Processing of the complaint and a shortened response date requiring responses on or before April 29, 2024.

PJM Load Parties certify that copies of the complaint were served on the contacts for PJM as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure ([18 CFR 385.211](#), [385.214](#)). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file

electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on [April 29, 2024].

Dated: [April 22, 2024].

CERTIFICATE OF SERVICE

Pursuant to Commission Rules of Practice and Procedure Nos. 206(c) and 2010, I hereby certify that I have this 22nd day of April, 2024 caused the foregoing document to be served upon the Corporate Officials of Respondent PJM Interconnection LLC. that are identified on the Commission's list maintained pursuant to 18 C.F.R. § 385.2010(k).

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/s/ Jeffrey A. Schwarz

Jeffrey A. Schwarz

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