UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Sierra Club, et al.,	)	
v.	)	**Docket No. EL24-148**
	)	
PJM Interconnection, L.L.C.,	)	
	)	

COMPLAINANTS' RESPONSE TO ANSWERS

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("the Commission" or "FERC") and the Commission's order regarding the briefing schedule in the above-captioned matter,[1] Sierra Club, Natural Resources Defense Council, Public Citizen, Union of Concerned Scientists, and Sustainable FERC Project (collectively "Complainants") respectfully submit this response to the Answers in this matter.

[1] 18 CFR § 385.213; Notice of Extension of Time, Docket No. EL24-148 (Oct. 4, 2024), Accession No. 20241004-3058.

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INTRODUCTION

The Answers fail to rebut Complainants' demonstration that the non-participation of generators operating under Reliability Must Run ("RMR") arrangements in the most recent capacity auction run by PJM Interconnection, LLC ("PJM") caused consumers to pay billions of dollars in excessive costs. Likewise, the Answers do not refute the fact that, if left uncorrected by the Commission, PJM's Tariff provisions allowing RMR units not to participate in the capacity market will continue to unreasonably burden consumers with billions of dollars of additional excessive costs in upcoming auctions. While PJM tries to defend its market rules, its action of supporting an auction delay so that it can rewrite those rules speaks far more loudly; effectively, PJM recognizes that its capacity market rules must be revised.[2] Complainants appreciate PJM's recognition that its capacity market rules need revision, but maintain that a prompt ruling from the Commission in this matter remains essential. Because PJM contends that the existing rules are just and reasonable—and that it was appropriate for consumers to bear billions of dollars in excessive costs—it is critical that the Commission provide a definitive finding in this case that, consistent with Commission precedent, it is not just and reasonable to force consumers to pay capacity prices that do not reflect the availability of reliability-must-run units.

Predictably, businesses that received $4 billion to $5 billion in excessive revenues in the most recent capacity auction, and their advocacy groups, would like to keep receiving such windfalls and submitted Protests, including Talen Energy Marketing ("Talen"), Vistra Corporation and Alpha Generation ("Vistra"), the NRG Companies ("NRG"), Calpine Corporation and LS Power ("Calpine"), the Electric Power Supply Association ("EPSA"), and

[2] *See* Answer of PJM Interconnection, L.L.C., at 3, Docket No. EL24-148 (Oct. 18, 2024), Accession No. 20241024-5169 ("PJM Answer").

the PJM Power Providers Group ("P3") (collectively "Generators").[3] This chorus of Generators praises the role of high capacity market prices in sending investment signals and laments that accurately accounting for RMR units' resource adequacy contributions would ostensibly cause "price suppression." However, Generators conveniently overlook the fact that, as the Complaint explained, even if RMR units had participated as price takers in the most recent auction, the market would still have cleared at a very high price and sent a very strong investment signal. Nor do the Generators explain why market revenues of over $10 billion dollars—which would be the amount if the RMR units had been accounted for in the auction, a roughly five-fold increase from recent auctions—would somehow be an insufficient price signal for investment.[4] Generators may prefer to continue receiving billions in windfalls, but they provide no persuasive basis for the Commission to fail to protect consumers in the PJM region against excessive costs any less than the Commission protects consumers in other regional markets.

Numerous other stakeholders support the Complaint, including: the Organization of PJM States ("OPSI"), the Governors of Delaware, Illinois, Maryland, New Jersey and Pennsylvania; Consumer Advocates from Illinois, Maryland, New Jersey, Ohio, and the District of Columbia; the Maryland Public Service Commission; Monitoring Analytics, the Independent Market Monitor ("IMM") for the PJM region; the Southern Maryland Electric Cooperative, Inc.; and the

[3] *See* Protest of Talen Energy Corporation, Docket No. EL24-148, (October 21, 2024) Accession No. 20241021-5206 ("Talen Protest"); Protest of Vistra Corporation and Alpha Generation, Docket No. EL24-148, (October 24, 2024) Accession No. 20241024-5146 ("Vistra Protest"); Protest of the NRG Companies, Docket No. EL24-148, (October 24, 2024) Accession No. 20241024-5133 ("NRG Protest"); Protest of Calpine Corporation and LS Power Development, L.L.C., Docket No. EL24-148, (October 25, 2024) Accession No. 20241025-5031 ("Calpine Protest"); Protest of the Electric Power Supply Association, Docket No. EL24-148, (October 24, 2024) Accession No. 20241024-5175 ("EPSA Protest"); Protest of the PJM Power Providers Group, Docket No. EL24-148, (October 24, 2024) Accession No. 20241024-5169 ("P3 Protest").

[4] As the IMM reported, overall capacity market revenues from the most recent auction were $14,687,047,358, while the fact that RMR resources did not participate resulted in an increase in the price of 4,287,256,309. *See* IMM Analysis at 2, 8. Hence, if RMR units had participated, the overall revenues would have been $10,399,791,049.

PJM Industrial Customer Coalition.[5] This broad and strong support reflects the enormous stakes in this proceeding—PJM's 65 million customers should not be required to pay capacity rates that ignore available supply that many of those same households and businesses are already paying hundreds of millions of dollars annually to keep online. We respectfully request the Commission to grant this Complaint as soon as practicable so that upcoming auctions can reflect market rules that protect consumers from excessive rates.

DISCUSSION

I. PJM's Answer Fails to Dispute Core Components of the Complaint that are Sufficient to Merit Action by the Commission.

PJM's Answer in this matter attempts to defend its existing capacity market rules while also asking the Commission to delay upcoming capacity auctions so PJM can revise those rules.[6] Before explaining why PJM's defenses of its existing capacity market rules lack merit, it is important to note the critical components of the Complaint that PJM does not dispute. The evidence and arguments in the Complaint that PJM does not dispute, and which Generators either ignore or fail to persuasively rebut, are sufficient, on their own, for the Commission to find that PJM's existing Tariff is unjust and unreasonable.

[5] Comments and Motion to Lodge of the Organization of PJM States, Docket No. EL24-148 (Oct. 8, 2024), Accession No. 20241008-5114 ("OPSI Answer"); Comments of Governors, Docket No. EL24-148 (Oct. 25, 2024), Accession No. 20241025-5163; Comments and Answer of Consumer Advocates, Docket No. EL24-148 (Oct. 17, 2024), Accession No. 20241017-5154; Maryland Public Service Commission Comments, Docket No. EL24-148 (Oct. 9, 2024), Accession No. 20241009-5136; Comments of the Independent Market Monitor for PJM, Docket No. EL24-148, (Oct. 10, 2024), Accession No. 20241010-5217; Comments in Support of Complaint of Southern Maryland Electric Cooperative, Inc., Docket No. EL24-148 (Oct. 17, 2024), Accession No. 20241017-5143; PJM Industrial Customer Coalition's Comments in Support of the Complaint of Sierra Club *et al.*, Docket No. EL24-148 (Oct. 24, 2024), Accession No. 20241024-5145.

[6] PJM Answer, *supra* note 2, at 3.

A. RMR units' non-participation in the most recent capacity auction undisputedly increased prices by billions of dollars.

Neither PJM nor Generators dispute that the failure of RMR units to participate in the most recent capacity auction increased the overall prices for consumers by $4 billion to $5 billion. Complainants provided analysis from both Monitoring Analytics, the Independent Market Monitor for the PJM region ("IMM") and from Synapse Energy Economics ("Synapse") that each used slightly different methodologies to quantify the impact from the failure of RMR units to participate in the most recent capacity auction.[7] The IMM's analysis showed that the non-participation of RMR units increased prices for consumers by $4.3 billion, an increase of 41%.[8] Using a slightly different set of assumptions, Synapse found that the non-participation of RMR units inflated prices by roughly $5 billion.[9] Remarkably, PJM says nothing about either the IMM's findings or Synapse's report.[10] Similarly, Talen, the owner of the RMR units that chose not to participate, does not dispute these findings (or even mention either the IMM's or Synapse's findings).[11] Nor do Generators dispute these findings; instead, Calpine corroborates these "'credible estimates of the total price impact of including these [RMR] units in the [capacity auction].'"[12] The undisputed proof that the non-participation of RMR resources inflated overall costs for consumers by $4 billion to $5 billion is very significant.

[7] *Sierra Club v. PJM Interconnection, L.L.C.*, Complaint of Sierra Club, Natural Resources Defense Council, Public Citizen, Sustainable FERC Project and Union of Concerned Scientists, Docket No. EL24-148 (Sept. 27, 2024), Accession No. 20240927-5073 ("Complaint"), Attachment 1 and Attachment 2.
[8] Complaint, Attachment 1 ("IMM Analysis") at 2.
[9] Complaint, Attachment 2 ("Synapse Report") at 8. The IMM assumed that RMR units would participate as price-takers, consistent with Commission precedent. In contrast, Synapse assumed that RMR units would bid into the market at no more than twice the clearing price from prior auctions. Complaint, *supra* note 7, at 20–23.
[10] PJM is likely unable to rebut either the IMM or Synapse because, as Complainants explained, PJM's own analysis reached similar conclusions. *See* Complaint, *supra* note 7, at 23 note 101.
[11] *See generally* Talen Protest, *supra* note 3.
[12] Calpine Protest, *supra* note 3, at 10 (quoting *id.* at Ming Affidavit PP 21-22).

B. The Answers do not dispute that the price impacts from RMR units' non-participation in the capacity auction fell inequitably on ratepayers who already face extreme energy burdens.

Neither PJM nor Generators dispute that the increased prices from the non-participation of RMR units will fall most heavily on ratepayers in the Baltimore Gas & Electric Locational Deliverability Area ("BGE LDA")—the same ratepayers who bear the lion's share of the cost of the RMR arrangements that PJM negotiated with the RMR units whose non-participation in the most recent auction inflated prices so dramatically. As Complainants explained, these RMR arrangements will cost consumers hundreds of millions of dollars annually, and ratepayers in the BGE LDA will have to bear 74 percent of that cost.[13] Additionally, because PJM's Tariff allows RMR units to sit out of capacity auctions, consumers are forced to buy additional capacity that the RMR units can and should provide. In the BGE LDA, the non-participation of RMR units caused the market to clear at the highest possible price—$466.35 per Megawatt-day (MW-day)—meaning that consumers not only must buy capacity twice but must also pay top dollar to do so.[14] As Complainants explained, the most recent auction alone will cause a twenty percent increase in average residents' electricity bills in the BGE LDA. With the exception of PJM's meritless argument that it cannot rely on RMR units to provide capacity,[15] PJM does not dispute any of these facts.

Indeed, PJM wholly ignores the inequitable consequences from its most recent capacity auction. As Complainants emphasized, the BGE LDA includes ratepayers who already bear

[13] Complaint, *supra* note 7, at 7 (citing Synapse Report, *supra* note 9, at 8-9).
[14] *Id.* at 20 (citing Tim Horger & Adam Keech, 2025/2026 Base Residual Auction Results, at slide 4, PJM (Aug. 21, 2024), https://pjm.com/-/media/committees-groups/committees/mrc/2024/20240821/20240821-item-08---2025-2026-baseresidual-auction---presentation.ashx).
[15] As discussed below, PJM's argument that it cannot rely on RMR units to provide capacity lacks merit. *See infra* at § III(B).

some of the highest energy burdens in the entire nation.[16] Hence, the heaviest burdens from the unjust and unreasonable outcomes of the most recent capacity auction have fallen on those who can least afford them—and similar inequitable outcomes are likely unless the Commission takes action to protect consumers. Nevertheless, neither PJM nor Generators even mention equity. Instead, they advocate for high prices, including in the BGE LDA, arguing that high prices will spur new generation—while ignoring the fact that, as Complainants showed, PJM's backlogged interconnection queue has dramatically slowed development of 1,200 MW of new resources in this area.[17] The advocacy for high prices as a signal for new generation falls flat when considering how PJM's own actions have slowed the entry of new generation, as well as how those prices affect consumers who already bear extreme energy burdens. PJM and the Generators may believe these equitable considerations are not important enough to address in their Answers, but Complainants believe that, as Chairman Phillips has emphasized, "*equity always matters*."[18]

C. PJM ignores how exempting RMR units from a must offer requirement renders the capacity market vulnerable to manipulation, and Generators have no persuasive response.

PJM does not dispute that its rules allowing RMR units to choose whether to participate in the capacity market renders the market vulnerable to manipulation. As Complainants explained, PJM's capacity market is structurally vulnerable to the exercise of market power, and competitive outcomes are possible only through the enforcement of mitigation rules such as the requirement that generators must offer into the market.[19] However, the failure to require RMR

[16] Complaint, *supra* note 7, at 24 (citing DOE, Climate and Economic Justice Screening Tool: Explore the Map, https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5 (information for census tracts 24510200200, 24510190300, and 24510200400 in Baltimore City, Maryland)).
[17] Complaint, *supra* note 7, at 41-42 (citing Synapse Report, *supra* note 9, at 32).
[18] *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,065 (May 6, 2024) (Phillips, Comm'r, concurring at P 3).
[19] Complaint, *supra* note 7, at 44 (citing Monitoring Analytics, Quarterly State of the Market Report for PJM: January through June, at 360 (Aug. 8, 2024) ("Monitoring Analytics, Quarterly State of the Market Report for

units to participate in the capacity market creates a significant loophole in the must-offer requirement and leaves the capacity market vulnerable to outcomes like those associated with physical withholding of capacity.[20] As Complainants demonstrated, the outcomes can be dramatic; for example, the non-participation of RMR units comprising just one percent of capacity in the PJM region inflated overall clearing prices by over forty percent.[21] Notably, PJM's Answer does not address this issue at all.

Of the Generators, only P3 and EPSA make any effort to address the vulnerability of PJM's capacity market to manipulation by the non-participation of RMR units, and their arguments are entirely unpersuasive. For example, P3 misses the relevant issue when asserting that an IMM review of the proposed *deactivation* of a generator—but not of an RMR units' decision not to participate in the capacity market—purportedly protects against market manipulation because "the IMM may presumably make a referral to FERC's Office of Enforcement."[22] However, as the Complaint explained, the IMM has stated that it does not "consider any market power issues that could arise in connection with any PJM determination that reliable system operations may require [a] unit to continue operating after the retirement date."[23] In other words, the evidence before the Commission shows that while the IMM reviews a proposed *deactivation*, the IMM does not consider whether an RMR unit's subsequent refusal to participate in the capacity market may be an exercise of market power. EPSA misconstrues

PJM"), at 321. https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2024.shtml ("[t]he capacity market was designed on the basis of a must buy requirement for load and a corresponding must offer requirement for capacity resources" and that "[t]he capacity market can work only if both are enforced.")).

[20] As Complainants also explained, and the IMM did not dispute, while the IMM evaluates whether a retirement decision itself reflects an exercise of market power, the IMM's analysis does not appear to extend to the decisions of RMR units as to whether to participate in capacity auctions. Complaint, *supra* note 7, at 46.

[21] *Id.* at 22.

[22] P3 Protest, *supra* note 3, at 31–34.

[23] Complaint, *supra* note 7, at 46 n. 189 (citing Deactivation Avoidable Cost Rate Informational Filing under Section 116 of the PJM Interconnection, L.L.C. Open Access Transmission Tariff, at Attachment 3, Docket No. ER17-750 (Jan. 5, 2017), Accession No. 20140105-5186).

this statement, reiterating that the IMM studies whether *a deactivation* constitutes an exercise of market power but failing to recognize that the subsequent decisions about participation in the market are evidently not subject to scrutiny.[24] Notably, the IMM itself also did not dispute the Complaint's explanation of this issue. Hence, what P3 characterizes as a "robust" system apparently contains a very significant gap in the oversight of potential exercises of market power. Moreover, while P3 observes that where the IMM finds that a deactivation may constitute an exercise of market power, there may be some enforcement action, not only does that argument fail to address the relevant issue of the exercise of market power by RMR units *after* their proposed retirement date, but it also fails to provide any reason why the Commission should not require PJM's market to proactively protect consumers from the harms associated with market manipulation.

EPSA also offers a bizarre assertion that Talen could not have benefited from increased capacity market prices associated with the non-participation of RMR units because Talen is "deactivating all of their resources in the BGE LDA and have no affiliates with generation in this LDA."[25] Notably, Talen itself neither advances this specific argument nor addresses the issue of market manipulation at all. In any event, the argument does not carry water. As discussed above, neither EPSA nor any other Generator disputes the explanations from the IMM and Synapse that the non-participation of RMR units in the recent capacity auction increased the clearing price *throughout the entire PJM region* and inflated overall capacity revenues by $4 billion to $5 billion. Talen owns a large amount of generation throughout the PJM region that stood to benefit

[24] EPSA Protest, *supra* note 3, at 30.
[25] EPSA Protest, *supra* note 3, at 32.

from these increased prices.[26] Indeed, neither EPSA nor Talen disputes the Synapse Report's finding that Talen gained $360 million more by not having its RMR units participate in the capacity market than it would have gained if those units had participated.[27] Hence, contrary to EPSA's argument, whether Talen owns, or has affiliates with, generation in the BGE LDA is not relevant to the issue of whether the capacity market as a whole is vulnerable to impacts like those from physical withholding of capacity.

Finally, EPSA claims confusion about why RMR units should be "treat[ed] any differently from any other resource that has submitted a deactivation request and that is, therefore, eligible for an exception to the Capacity must-offer requirement."[28] The reason is simple: RMR units are distinct from other deactivating resources because RMR units receive cost-of-service payments from consumers, while other deactivating resources do not.

In sum, PJM wholly ignores the vulnerability of its capacity market to manipulation. The IMM does not dispute the Complaint's explanation of the market's vulnerability or the scope of the IMM's review of proposed deactivations. And P3's and EPSA's responses are without merit. The vulnerability of the capacity market to manipulation provides another significant reason for the Commission to require reforms.

D. PJM does not dispute that RMR arrangements may become more common and thus exacerbate all the issues highlighted in the Complaint.

Finally, PJM does not dispute Complainants' explanation that RMR arrangements may become more common in this region. As Complainants showed, several factors make an increasing number of RMRs more likely, including PJM's anticipation that 40 GW of generation

[26] Aside from the Brandon Shores and Wagner facilities, Talen owns over 8,000 MW of generation in the PJM region, which is the vast majority of Talen's fleet. *See* Talen Energy, *Our Portfolio*, https://www.talenenergy.com/our-portfolio/#map.
[27] *See* Synapse Report, *supra* note 9, at 24, 27.
[28] EPSA Protest, *supra* note 3, at 31.

may retire this decade, PJM's slow and badly backlogged interconnection queue, and the difficulty of siting and constructing new transmission infrastructure in this heavily developed region.[29] Complainants also noted power flow analysis from the Union of Concerned Scientists highlighting the prospect of RMRs in Illinois associated with the retirement of fossil fuel-fired generators.[30] PJM makes no effort to dispute Complainants' concern that it is essential to ensure that the rules associated with RMR units are just and reasonable because RMR arrangements may become more likely in the PJM region.

For their part, Generators try to have it both ways, simultaneously arguing that accurately accounting for RMR units in the capacity market will make the prospect of increasingly common RMR arrangements "a self-fulfilling prophecy," while also insisting that this accurate accounting would lead retiring units to refuse to enter into RMR arrangements.[31] Setting aside the inconsistency in Generators' arguments, the fact remains that no parties dispute that numerous factors may make PJM increasingly reliant on RMR arrangements, which underscores the importance of the Commission ensuring that the rules governing RMR units in the PJM region are just and reasonable and do not needlessly inflate costs for consumers.

The arguments and evidence that PJM fails to dispute (and that Generators fail to persuasively rebut) are sufficient for the Commission to take action. Again, PJM does not dispute that: (1) the non-participation of RMR units inflated overall clearing prices for consumers by $4 billion to $5 billion; (2) these billions of dollars of increased prices fall most heavily on ratepayers who already must pay hundreds of millions of dollars annually for power plants to

[29] Complaint, *supra* note 7, at 24.
[30] *Id.* at 26-27.
[31] *E.g.* EPSA Protest, *supra* note 3, at 37 (claiming that if the Complaint succeeds, the concern about an increasing number of RMRs will be "a self-fulfilling prophecy"); *but see id.* at 35–36 (claiming that the Complaint, if successful, "will create a powerful disincentive to agreeing to remain in service" under an RMR arrangement).

remain online that PJM does not count as supply in the capacity market; (3) the inequitable outcome is that ratepayers who already bear some of the nation's highest energy burdens are forced to pay twice for capacity; (4) allowing RMR units to choose whether to participate in the capacity market renders the market vulnerable to outcomes similar to the results of physical withholding of capacity; and (5) an increasing number of RMRs in this region may exacerbate all of these issues. These facts, standing alone, provide ample reason for the Commission to find that PJM's existing Tariff is unjust and unreasonable and to require reform.

II. The Answers Fail to Distinguish Commission Precedents Establishing that it is Unjust and Unreasonable to Force Consumers to Pay Twice for Capacity.

The Complaint identified precedent in which the Commission established that it is unjust and unreasonable to force consumers to pay twice for capacity.[32] The Commission's reasoning in its precedents is quite clear: as the Commission explained, if an RMR unit "does not clear in the [capacity auction], another generator that otherwise would not have cleared will clear instead," and "[i]n this instance, ratepayers will pay twice—once for the cost of the RMR agreement, and again for the generator that otherwise would not have cleared the market."[33] Indeed, the Complaint explained that the Commission reached the same conclusion when considering this issue in New York Independent System Operator ("NYISO")[34] and ISO-New England ("ISO-NE"),[35] despite knowing that those regions have distinct capacity markets, and that the Commission reached a similar result when considering the participation of RMR units in markets

[32] Complaint, *supra* note 7, at 10-18, 29-36; *see also ISO-New England, Inc.* ("*ISO-NE*"), 165 FERC ¶ 61,202 at P 83 (emphasizing consistency with precedent regarding a requirement for RMR units to participate in capacity markets as price-takers, because "using a non-zero price may result in a reliability must-run resource not clearing the market and allowing a resource to clear that would not have otherwise cleared" and noting that "[*t]he Commission found this outcome inefficient and unreasonable because it would require ratepayers to pay twice for the same capacity need and would result in over-procuring capacity*" (emphasis added)).
[33] *New York Indep. Sys. Operator, Inc.* ("*NYISO I*"), 155 FERC ¶ 61,076 at P 82 (2016).
[34] *New York Indep. Sys. Operator, Inc.* ("*NYISO II*"), 161 FERC ¶ 61,189 at P 55 (2017); *see also NYISO I*, 155 FERC ¶ 61,076 at PP 82–83 (2016); *ISO New England, Inc.*, 165 FERC ¶ 61,202 at PP 82–83.
[35] *ISO-NE*, 165 FERC ¶ 61,202 at P 83.

run by the California Independent System Operator ("CAISO"), despite those markets taking a different approach to procuring resource adequacy.[36] Complainants also explained that the Commission reached similar conclusions in the analogous context of Minimum Offer Price Rules ("MOPR") in capacity markets.[37] As such, the Complaint established that the Commission has repeatedly emphasized the need to protect consumers against being forced to pay twice for capacity in diverse contexts, including various regions with different market structures. Hence, the Complaint demonstrated that PJM's approach of forcing consumers to pay twice for capacity by allowing RMR units to choose not to participate in the capacity market is an outlier.

The Answers provide no persuasive response and no meaningful distinction of the Commission's precedents. For example, PJM's attempt to liken its rules to those in the Midcontinent Independent System Operator ("MISO") lack merit because the broader context of MISO's Tariff makes clear that units operating under RMR arrangements in MISO are subject to rules against physical withholding. Further, the Answers devote extremely little attention to the logic underlying the Commission's decisions and instead focus on irrelevant differences between PJM's market and the markets in other regions. While Complainants recognize that capacity markets operate differently in different regions and that the Commission has approved some variation between them, the Answers disregard the importance of the fact that the Commission has reached the same substantive conclusion—that it is critical to protect consumers from having to pay twice for capacity—across diverse contexts. As detailed below, the Answers fail to provide any persuasive reason for the Commission to protect consumers in the PJM region any less against unreasonable and excessive costs.

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[36] *California Independent Sys. Operator Corp.* ("*CAISO*"), 168 FERC ¶ 61,199 at PP 72-75 (2019); *see also* Complaint, *supra* note 7, at 16–17 & note 75 (acknowledging differences between CAISO's markets and capacity markets in other regions).

[37] Complaint, *supra* note 7, at 35-38.

A. PJM misrepresents the treatment of RMR units in MISO.

PJM's Answer accuses Complainants of being "disingenuous" in explaining that PJM's treatment of RMR units in its capacity market is an outlier among RTOs, because PJM claims that its approach is similar to MISO's.[38] In doing so, PJM offers a snippet of text from MISO's standardized agreement with System Support Resources ("SSR"), which is included in several SSR arrangements.[39] However, PJM omits critical context from MISO's standardized agreement and other provisions of MISO's Tariff, which reveal that SSR arrangements in MISO do not exempt these resources from rules against withholding in MISO's capacity market.

MISO's Tariff contains a broadly applicable rule that aims to prevent manipulation of its markets through physical withholding by allowing mitigation of any effort to physically withhold resources from markets, including MISO's capacity market.[40] That rule applies to any "Planning Resource," with a few enumerated exceptions that, notably, do not include SSRs.[41] Indeed, MISO's Tariff also makes clear that an SSR ceases to be a "Planning Resource" only "as of the actual date that the status of the Planning Resource changes to Retire pursuant to Section 38.2.7."[42] The Tariff, in turn, also defines "Retire" as "[t]he permanent cessation of operation of a Generation Resource or [Synchronous Condenser Unit] after a specified date that is provided to the Transmission Provider."[43] If a generator enters an SSR arrangement, it does not "Retire" within the meaning of MISO's Tariff until the generator's "permanent cessation of operation"

[38] PJM Answer, *supra* note 2, at 40.
[39] *Id.* at 40 n. 114. System Support Resources are a type of RMR unit.
[40] MISO Tariff § 63.3(a)(i).
[41] *Id.* (noting that the rule against physical withholding applies to a "Planning Resource other than a Demand Resource, Behind the Meter Generation Resources less than or equal to ten (10) MW GVTC that are registered as a Load Modifying Resources, Energy Efficiency Resource, or External Resource").
[42] *Id.* at § 69A.3.1.h.
[43] *Id.* at § 71.0.0 (Module A, Definitions).

once the SSR arrangement ends. Indeed, the Tariff's description of SSR arrangements makes this clear by specifying that SSR arrangements:

> provide a mechanism for the Transmission Provider to enter into agreements with Market Participants that own or operate Generation Resources or Synchronous Condenser Units (SCUs) that are required by the Transmission Provider to maintain reliability of the Transmission System, if all or a specified portion of the capacity of such Generation Resources or SCUs *would otherwise Retire* or Suspend.[44]

Because SSR arrangements apply to units that "would otherwise Retire," a unit in an SSR arrangement has not "Retired" and remains a "Planning Resource" subject to the MISO Tariff's rules against physical withholding.

The broader context of MISO's standard SSR arrangement also reinforces that SSR units are subject to rules against withholding from the capacity market. To begin with, the full sentence from which PJM selectively quotes actually states that a "Participant may also offer, from the SSR Unit(s), Zonal Resource Credits into the Planning Resource Auction or include the SSR Unit(s) in a Fixed Resource Adequacy Plan pursuant to the terms of the Tariff."[45] Because the Tariff makes clear that SSR units are subject to restrictions on physical withholding, Complainants believe that this sentence does not mean that SSR units always have the option of sitting out of the capacity market, as PJM suggests. Instead, Complainants read this sentence as providing SSR units two options for participation if necessary to prevent withholding, either by providing Zonal Resource Credits in the capacity market or by participating in a Fixed Resource Adequacy Plan. The broader context of the standard SSR arrangement further reinforces this reading by making clear that SSR units are subject to "Capacity Tests for SSR Reliability."[46] The fact that MISO reserves the right to test SSR units for their ability to reliably provide capacity is

[44] *Id.* at § 38.2.7 (emphasis added).
[45] MISO Tariff Attachment Y-1 at § 8(c)(4)
[46] *Id.* at § 7.

another indication that in MISO, some form of participation in the capacity market is expected for SSR resources if their non-participation would constitute withholding.

Additionally, it is unpersuasive for PJM to liken its treatment of RMR units to MISO's practices while simultaneously highlighting its retirement rules that differ fundamentally from MISO's retirement rules. For example, PJM argues that it cannot rely on RMR units to provide capacity because it cannot require retiring generators to enter into RMR arrangements, lacks any standardized approach to RMR arrangements, and cannot compel RMR units to agree to provide capacity when called.[47] Below, Complainants explain why this argument lacks merit even in PJM.[48] Contrary to PJM's effort to liken its RMR rules to MISO's rules, the shortcomings that PJM identifies in own retirement rules are not present in MISO; for example, MISO can require retiring generators to enter into SSR arrangements, which are standardized, where MISO determines those are necessary.[49]

The Complaint in this matter did not initially highlight MISO's Tariff for the simple reason that, to Complainants' knowledge, the Commission has not considered the question of whether MISO's Tariff harms consumers by forcing them to pay twice for capacity. While EPSA argues that the Commission has sustained a MISO approach of allowing RMR units to choose whether to participate in its capacity auctions, its citation is misleading and stripped of important context.[50] In the cited case, the Commission found that it did not need to address the question of whether a particular SSR unit should be exempt from the rule against economic or physical

[47] PJM Answer, *supra* note 2, at 17–20.
[48] *Infra* § III(B).
[49] *See* MISO Tariff § 38.2.7(c) (noting that if MISO "determines that SSR Unit status is justified . . . then the Transmission Provider and Market Participant of such Generation Resource or SCU *shall enter* into an SSR Agreement" (emphasis added)).
[50] *See* EPSA Protest, *supra* note 3, at 28 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057 at P 218 (2014)).

withholding.[51] While the Commission did find that the particular unit's operational limitations meant that it could not serve as a capacity resource in a single year, the Commission did not make any finding that SSR resources are exempt from the rules preventing withholding.[52] Additionally, that case makes clear that the prior year's SSR agreement for the same unit *did* require participation in the capacity market.[53] Indeed, the filing from MISO on which the Commission relied in that case explained that the SSR agreement at issue did "not contain any statement regarding physical or economic withholding, primarily because such determinations are largely made by the IMM."[54] Hence, nothing in the case that EPSA cites indicates that MISO fails to protect consumers against withholding by SSR units in the capacity market. To the contrary, the Tariff provisions discussed above suggest why the Commission has not been presented with the question of whether MISO protects consumers against paying twice for capacity: contrary to PJM's argument, MISO's Tariff appears to prevent withholding of SSR units' capacity from MISO's capacity market.[55] Hence, contrary to PJM's Answer, MISO's Tariff provisions do not make PJM any less of an outlier when it comes to its rules that allow RMR units to choose not to participate in the capacity market and thus force consumers to pay twice for capacity.

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[51] *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057 at P 218 ("As to Illinois Power's request that the Commission confirm that its failure to participate in the capacity auction does not constitute economic or physical withholding, we find that we need not address the matter.").

[52] *Id.*

[53] *Id.* at P 185.

[54] Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator at 8, Docket No. ER14-1210 (March 7, 2014), Accession No. 20140307-5171.

[55] Additionally, the Commission may not have had to address this issue because the vertically integrated nature of that states in MISO may insulate consumers in that region from harms associated with high capacity market prices in a manner that is not possible in PJM. *See*, *e.g.*, Potomac Economics, *2018 State of the Market Report for the MISO Electricity Markets*, at 78–79 (June 2019), https://cdn.misoenergy.org/2018%20State%20of%20the%20Market%20Report364567.pdf (noting that "vertically-integrated [load serving entities'] exposure to the [capacity auction] price is limited" because "they tend to self-supply most of their requirements through owned generation or bilateral purchase," which meant that the effects of a market design change on those vertically integrated entities was "very small").

B. The Answers identify no relevant distinctions from Commission precedent that justify PJM's practice of charging consumers twice for capacity.

As the Complaint explained, the Commission has used consistent reasoning in requiring RMR units to participate in markets in various regions, even where markets operate differently. For example, when considering NYISO's treatment of RMRs in its capacity market, the Commission found that "[i]f NYISO imposes a higher than $0.00/kW-month offer price on an RMR generator and the generator does not clear in the ICAP spot market auction, another generator that otherwise would not have cleared will clear instead," and that "[i]n this instance, ratepayers will pay twice—once for the cost of the RMR agreement, and again for the generator that otherwise would not have cleared the market."[56] The Commission also emphasized that it had "previously found that it is efficient for units retained under . . . a form of RMR agreement, to clear in the [capacity] market, and that any mitigation imposed on such units which would prevent them from clearing in the [capacity] market *would be unreasonable*."[57]

In considering similar issues in ISO-NE, the Commission likewise found that "that the year-round resource adequacy contributions of resources retained for fuel security should be counted in the capacity market and therefore [found] that such resources should be entered into the [capacity market] as price-takers to ensure that they clear."[58] The Commission further emphasized the consistency between its decision in ISO-NE and its precedent regarding NYISO's capacity market, making a similar finding that "[i]f resources needed for fuel security are not entered into the FCA as price takers, they risk not clearing in the FCA and their resource adequacy contributions to the system would not be counted," which "would result in a higher clearing price and a higher procurement quantity" and "create an inefficient *and unreasonable*

[56] *NYISO II*, 155 FERC ¶ 61,076 at P 82.
[57] *Id.* at P 83 (emphasis added).
[58] *ISO-NE*, 165 FERC ¶ 61,202 at P 83.

market outcome."[59] Notably, the Commission emphasized the consistency of its decisions in ISO-NE and NYISO despite being familiar with the distinctions between how the capacity markets operate in those two regions.[60]

Finally, the Commission also approved a requirement for RMR units to offer into CAISO's markets, which CAISO explained was necessary because "less than full participation of RMR resources in the markets could lead to unnecessary over-procurement and deprive ratepayers of receiving the full value of the RMR resources for which they are paying."[61] The Commission approved this approach as "just and reasonable because it will align RMR obligations with those of resource adequacy resources and CPM resources to help support grid reliability and resilience."[62] Again, the Commission's decision approved similar reasoning as in *ISO-NE* and *NYISO*—namely, that consumers who already pay for RMR units to remain online should get the full benefit of those resources, rather than having those resources excluded from markets and forcing consumers to pay again to procure similar services from other resources.

The Answers' efforts to distinguish the Commission's precedents are unavailing. Contrary to PJM's Answer, the point of the Complaint is not that PJM must have market rules identical to other RTOs' rules.[63] Instead, the Complaint highlights how the Commission has

[59] *Id.* at P 85 (emphasis added).
[60] Several generators misconstrue the Commission's *ISO-NE* decision as finding that "it may be appropriate" for RMR units to "not [be] offered into the [capacity market] at all." *E.g.* Vistra Protest, *supra* note 3, at 3-4 (citing *ISO-NE*, 165 FERC 61,202 at P 58). However, while the Commission noted that it had made that finding *as an initial matter*, the Commission then considered and agreed with ISO-NE's reasons for rejecting that position, finding that an arrangement that fails to clear RMR units in the capacity market would be "an *inefficient and unreasonable market outcome.*" *ISO-NE*, 165 FERC 61,202, at P 83 (emphasis added).
[61] *CAISO*, 168 FERC ¶ 61,199 at P 63.
[62] *Id.* at P 72.
[63] *See* PJM Answer, *supra* note 2, at 42 (suggesting that "[t]he Complaint asserts that because NYISO and ISO-NE have rules in place requiring their RMR resources to participate in their respective capacity markets, PJM must too"); *see also, e.g.*, Vistra Protest, *supra* note 3, at 3.

applied consistent reasoning in cases regarding various regions—despite knowing the differences between their markets. The Commission's reasoning applies with equal force to PJM.[64]

The Answers fail to grapple seriously with the reasoning animating the Commission's decisions. For example, PJM misleadingly asserts that none of the Commission's decisions actually require RMR units to participate in capacity markets.[65] PJM is incorrect; for example, the Commission agreed with ISO-NE that "retaining a resource outside the [capacity market] would not account for its contribution to meeting ISO-NE's resource adequacy needs, would result in procuring excess capacity, and would distort the capacity price."[66] Similarly, the Commission's finding in *NYISO* that "it is efficient for units retained under . . . a form of RMR agreement, to clear in the ICAP market" and that "any mitigation imposed on [RMR] units which would prevent them from clearing in the [capacity] market would be unreasonable" is effectively a requirement for RMR units to participate in the market.[67]

PJM also offers a potpourri of purported distinctions between its capacity market and markets in other regions that are simply not relevant to the Commission's reasoning that it is unjust and unreasonable to force consumers to pay twice for capacity. Of course, when it is convenient, PJM cites Commission precedent regarding NYISO in support of its capacity market reforms.[68] However, now that it finds the Commission's precedent in NYISO inconvenient, PJM tries to distinguish the markets by observing that NYISO's capacity market has a shorter period between auctions and delivery years, that NYISO serves only a single state, that PJM has a

[64] *See* Reply Affidavit of James Wilson at PP 18, 21 (noting that the Answers' "various witnesses, including former FERC staffer Sotkiewicz, are generally silent about the Commission's policy with regard to RMR units in organized capacity markets" and that "[n]othing in the various protests chances my conclusion that the Commission's policy calling for RMR units to participate in organized capacity markets is correct and applicable to PJM").
[65] PJM Answer, *supra* note 2, at 41.
[66] *ISO-NE*¸165 FERC ¶ 61,202 at P 87.
[67] *NYISO I*, 155 FERC ¶ 61,076, at P 83.
[68] *See PJM Interconnection, LLC*, Capacity Market Reforms to Accommodate the Energy Transition While Maintaining Resource Adequacy, at 31–33, Docket No. ER24-99 (Oct. 13, 2023), Accession No. 20231013-5157.

higher peak demand, and that NYISO relies more heavily on bilateral contracting.[69] None of these factors provides any justification for why the Commission should protect consumers less in PJM against having to pay twice for capacity than the Commission has done in NYISO. To the contrary, PJM's observation that its region is more reliant on the capacity market, while NYISO relies more on bilateral contracts—as well as the fact that PJM's practices affect more consumers in more states—underscore why the Commission should ensure that PJM's capacity market rules are just and reasonable.

PJM's efforts to distinguish ISO-NE's capacity market are equally unpersuasive. To begin with, PJM conveniently ignores that ISO-NE's capacity market shares features with PJM's market that PJM notes are absent in NYISO, such as a three-year forward structure and a region that includes multiple states. The regions also share similar penalty schemes for resources that fail to provide capacity when called. Indeed, PJM itself has relied on similarities to ISO-NE when proposing changes to its own capacity market.[70] Again, now that PJM finds the Commission's precedent from ISO-NE inconvenient, PJM strains to distinguish the two markets.[71]

In particular, PJM misleadingly cites a Commission decision from 2010—roughly eight years before the Commission's decision in *ISO-NE* that the Complaint identified—to claim that unlike in PJM, generators in ISO-NE have a greater ability to control their level of risk by

[69] PJM Answer, *supra* note 2, at 44-45.

[70] *See*, *e.g.*, *PJM Interconnection, LLC*, Proposed Enhancements to PJM's Capacity Market Rules—Market Seller Offer Cap, Performance Payment Eligibility, and Forward Energy and Ancillary Service Revenues, at 25, Docket No. ER24-98 (Oct. 13, 2023), Accession No. 20231013-5141 (arguing that "the Commission should accept" PJM's reforms to its capacity market because "the proposed PJM approach is entirely consistent with ISO-NE's approved methodology").

[71] For its part, P3 mistakenly argues that the Commission's precedent in *ISO-NE* is inapposite because it claims that ISO-NE retains RMR units solely for fuel security. P3 Protest, *supra* note 3, at 36. This assertion is incorrect; ISO-NE retains RMR units for various transmission-related purposes as well. *See* ISO New England Inc. Transmission, Markets and Services Tariff, § III.13.2.5.2.5.

submitting a "de-list bid" and that generators can ostensibly leave ISO-NE's capacity market even if they are needed to maintain reliability.[72] However, just as PJM omitted important context about MISO's RMR arrangements, PJM omits important context about that decision as well. In that decision, the Commission sustained on rehearing its approval of ISO-NE's requirement that a resource must fulfill its three-year capacity commitment even if that resource chooses to retire after entering into the capacity commitment.[73] In sustaining this requirement, the Commission distinguished ISO-NE's requirement for a generator to fulfill its existing, time-limited capacity obligation from a proposal in PJM that would have enabled PJM "simply to direct the owner of a plant to continue operating for an 'indeterminate period,'" but which the Commission rejected as unjust and unreasonable.[74] In doing so, the Commission explained that ISO-NE's de-list bid process, along with other options for generators seeking to retire, distinguished ISO-NE's proposal to require capacity resources to honor their time-limited commitments from PJM's unreasonable and indeterminate proposal.[75] That decision, which emphasizes the reasonableness of ISO-NE's requirement for generators to follow through on capacity commitments because they have a clear understanding of the commitment before undertaking it,[76] simply does not support PJM's effort to justify rules that require consumers to pay twice for capacity.

Additionally, the more recent *ISO-NE* decision discussed in the Complaint—which does find that it is unreasonable to require consumers to pay twice for capacity[77]—further undermines PJM's argument in its Answer. As ISO-NE explained in the more recent case, a generator "that is being retained will have a capacity supply obligation or short-term cost-of-service agreement that

[72] PJM Answer, *supra* note 2, at 47-48 (citing *ISO-New England, Inc. and New England Power Pool*, 130 FERC ¶ 61,089 (2010)).
[73] *ISO-New England, Inc. and New England Power Pool*, 130 FERC ¶ 61,089, at PP 24-34.
[74] *Id.* at PP 32-34.
[75] *Id.*
[76] *Id.* at P 34.
[77] *ISO-NE*, 165 FERC ¶ 61,202 at P 83.

effectively requires that it is available to provide resource adequacy, *and this requirement is not dependent on its De-List Bid* price or how it compares to the auction clearing price."[78] As ISO-NE further explained, "[t]hus, it is appropriate to treat the resource's capacity as a price taker in the auction to ensure it is counted for purposes of clearing the FCA and setting the auction clearing price paid for resource adequacy."[79] The Commission agreed.[80] Hence, this more recent decision, which clarifies that RMR units must be included in ISO-NE's capacity market regardless of their de-list bids, undermines PJM's argument that the presence of a de-list bid process in ISO-NE somehow distinguishes ISO-NE in a manner that could justify PJM charging consumers twice for capacity.

Finally, the Answers' efforts to dismiss the *CAISO* decision is unpersuasive. To be clear, Complainants recognize that CAISO uses a distinct market structure to address resource adequacy.[81] However, the distinctions between CAISO's markets and the capacity market in PJM cannot sweep away the important logic underlying the *CAISO* decision. In that case, CAISO explained that requiring RMR units to participate in its markets was important to "help ensure that ratepayers get the full benefit of paying the full cost of service of an RMR resource,"[82] and the Commission approved the must-offer requirement for RMR units.[83] None of the distinctions between CAISO's markets and PJM's markets suggest that it is somehow more appropriate for ratepayers in PJM to be deprived of the full benefit of their payments to RMR units.

[78] *Id.* at P 72 (emphasis added).
[79] *Id.*
[80] *Id.* at P 82 ("We agree that the year-round resource adequacy contributions of resources retained for fuel security should be counted in the capacity market and therefore find that such resources should be entered into the FCA as price-takers to ensure that they clear.").
[81] Complaint, *supra* note 7, at 16–17 & note 75.
[82] *CAISO*, 168 FERC ¶ 61,199 at PP 62, 68.
[83] *Id.* at P 72.

The Commission's reasoning in its precedents applies with equal force to PJM. PJM's capacity market is sufficiently similar to those in ISO-NE and NYISO that the Commission's reasoning for why excluding RMR units from supply forces consumers to pay twice for capacity—i.e. consumers will have to pay "once for the cost of the RMR agreement, and again for the generator that otherwise would not have cleared the market"[84]—is applicable to PJM. Indeed, as the Complaint explained, the very harms that the Commission foresaw and prevented in *ISO-NE* and *NYISO* have already happened in PJM. There is no reason for the Commission to fail to apply its consistent reasoning to PJM's capacity market.

III. The Answers Fail to Show that PJM's Rules Governing the Treatment of RMR Units in the Capacity Market, or the Record High Prices from the Recent Capacity Auction, are Just and Reasonable.

Because they can neither dispute the underlying facts nor distinguish the Commission's precedents, PJM and Generators instead engage in mental gymnastics to attempt to justify PJM's Tariff. Though they span hundreds of pages, the Answers boil down to several meritless arguments. First, several Generators try to flip the Commission's reasoning on its head to argue that excluding RMR units from the capacity market does not force consumers to pay twice for capacity, because RMR units purportedly provide only other services than capacity—disregarding that RMR units do, in fact, have resource adequacy value for which consumers are forced to pay.[85]

Second, PJM and various Generators argue that other provisions in PJM's Tariff governing power plant deactivations—which make the negotiation of RMR arrangements a bespoke process—make it impossible to protect consumers through a "one-size-fits-all"

[84] *NYISO I*, 155 FERC ¶ 61,076 at P 82. The Commission sustained this finding on rehearing. *See NYISO II*, 161 FERC ¶ 61,189 at P 62 (denying requests for rehearing on this issue).
[85] *See* Reply Affidavit of James Wilson at PP 9–10 (explaining that "various commenters generally turn the frame of reference upside down").

approach. However, this argument ignores the fundamental point that a prospective Tariff provision can reasonably provide guidance for the negotiation of future RMR arrangements.

Third, PJM and Generators provide general praise for high prices as a signal for investment in new generation and for existing resources to remain online, and inaccurately criticize the Complaint as an effort to undermine the capacity market's price signals. However, this argument disregards the fact that—as the Complaint explained—even if RMR units had participated in the most recent capacity auction as price-takers, the auction would still have cleared at one of the highest prices in its history, sending a historically strong investment signal. PJM and Generators provide no reason to believe that a $10 billion price tag is not a sufficient signal for investment.

A. Failing to account for the resource adequacy contributions of RMR units forces consumers to pay twice for capacity.

As described, the Commission has clearly and repeatedly explained how excluding RMR units from capacity markets forces consumers to pay twice for capacity. The Commission's logic bears repeating here to set the stage to explain how the Answers try to flip that logic upside down. For example, in *NYISO I*, the Commission made the following finding:

> If NYISO imposes a higher than $0.00/kW-month offer price on an RMR generator and the generator does not clear in the ICAP spot market auction, another generator that otherwise would not have cleared will clear instead. In this instance, *ratepayers will pay twice—once for the cost of the RMR agreement, and again for the generator that otherwise would not have cleared the market*.[86]

In *ISO-NE*, the Commission explicitly relied on this reasoning, finding once again that RMR units should be required to participate in capacity markets as price takers. Stressing that "[t]his determination is consistent with our precedent,"[87] the Commission again explained as follows:

[86] *NYISO I*, 155 FERC ¶ 61,076 at P 82. The Commission sustained this finding on rehearing. *See NYISO II*, 161 FERC ¶ 61,189 at P 62 (denying requests for rehearing on this issue).
[87] *ISO-NE*, 165 FERC ¶ 61,202 at P 83.

> If resources needed for fuel security are not entered into the [Forward Capacity Auction] as price-takers, they risk not clearing in the [Forward Capacity Auction] and their resource adequacy contributions to the system would not be counted. As the Commission stated in the 2017 NYISO Order, such an outcome would result in a higher clearing price and a higher procurement quantity, which would create an inefficient and unreasonable market outcome. Even putting aside the price impact, *this would result in consumers paying twice for capacity—"once for the cost of the RMR agreement, and again for the generator that otherwise would not have cleared the market*."[88]

Hence, the Commission has painstakingly explained not only *that* excluding RMR units from capacity markets forces consumers to pay twice for capacity, but exactly *how* that is the case.

Disregarding the Commission's clear and repeated logic, Generators attempt to argue that PJM's rules do not require consumers to pay twice for capacity but instead require consumers to pay for capacity and transmission services as separate products. Notably, PJM itself does not advance this argument. In Generators' view, because RMR units are retained due to transmission-related reliability issues, RMR units are strictly and solely transmission assets and provide no capacity (resource adequacy) value. Generators' argument fails on both the law and the facts.

The Commission's precedents clearly establish that RMR units provide resource adequacy regardless of the reason they are retained, and regardless of whether the often-enormous payments they receive are specifically for capacity service. For example, in *ISO-NE*, the Commission found that "there is no meaningful distinction between resources retained for reliability and resources retained for fuel security."[89] In doing so, the Commission disagreed with arguments based on "differences between resources retained for fuel security and resources retained for transmission security purposes," finding that those differences are not "at all relevant

[88] *Id.* at P 85 (quoting *NYISO I,* 155 FERC ¶ 61,076 at P 82).
[89] *ISO-NE*, 165 FERC ¶ 61,202 at P 85.

to the pricing of capacity market offers" and "provide no basis to depart from our precedent."[90] Instead, the Commission agreed with ISO-NE's explanation that "regardless of whether a resource is retained for transmission security or fuel security, the resource will have a capacity supply obligation or short-term cost-of-service agreement that effectively requires that it is available to provide resource adequacy."[91] Similarly, in *NYISO II*, the Commission rejected a proposal to treat RMR units retained for transmission reliability differently from RMR units retained for resource adequacy.[92] Hence, in sustaining price-taker treatment for RMR units retained for various purposes in various markets, the Commission has effectively already rejected Generators' arguments.

The facts also do not support Generators' argument that excluding RMR units from the capacity market somehow does not force consumers to pay twice for capacity because RMR units are ostensibly solely transmission assets. Most fundamentally, the argument that RMR units are merely transmission assets disregards the fact that RMR units are actually power plants for which consumers must pay the full cost of service and which contribute to the region's resource adequacy as long as they remain online.[93] Consumers who pay for those resource adequacy contributions through the cost-of-service arrangements that sustain RMR units deserve to get what they pay for.[94] This same fact also refutes Generators' efforts to liken RMR units to

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[90] *Id.*

[91] *Id.* at P 78; *see also id.* at P 82 ("We agree that the year-round resource adequacy contributions of resources retained for fuel security should be counted in the capacity market and therefore find that such resources should be entered into the [capacity auction] as price-takers to ensure that they clear."); *see also* Reply Affidavit of James Wilson at P 11 ("RMR units should participate in PJM's RPM capacity construct as price takers, to accurately and efficiently represent their contribution to resource adequacy and avoid the inefficiency and harm that result from misrepresenting true resource adequacy within RPM. Consumers should not have to pay twice for the RMR capacity.").

[92] *NYISO II*, 161 FERC ¶ 61,189 at PP 62–63.

[93] Even if an RMR were solely a transmission asset, it is not unprecedented for transmission assets to offer into the capacity auction. *See* PJM Business Practice Manual 18, Section 4.5 (describing Qualifying Transmission Upgrade qualification as RPM supply).

[94] *See* Reply Affidavit of James Wilson at P 11 ("Consumers should not have to pay twice for the RMR capacity").

generators that may provide resource adequacy but do not participate in the capacity market, such as energy-only resources; unlike energy-only resources, RMR units receive full cost-of-service payments in exchange for their continued operation—including during various system emergencies such as capacity emergencies.[95] Generators confuse the limited purpose for which resources are retained as RMR assets for the sum total of the value that they end up providing the system, which includes resource adequacy.

Generators' argument that RMR units are mere transmission assets also defies the fact that the vast majority of RMR arrangements in PJM specifically authorize PJM to dispatch these units during "capacity emergencies," as documented in the Complaint. EPSA's protest asserts that Complainants' only support for the proposition that RMR units are expected to perform during capacity emergencies is a citation to a 2024 PJM presentation stating as much.[96] But EPSA overlooks an entire attachment to the Complaint detailing the broad performance requirements of RMR resources under past and current arrangements, including in "capacity emergencies."[97] If RMR units are not "expected to perform" under conditions in which PJM may call them pursuant to their respective RMR arrangements, then PJM's Tariff is even more flawed than described in the original Complaint. Dr. Sotkiewicz attempts to cast doubt on the meaning of the "capacity emergencies" provision,[98] but its plain meaning is that PJM may dispatch RMR units to generate electricity during an emergency in which capacity resources would be expected to respond. PJM Manual 13 includes an entire section on Capacity Emergencies, specifying the steps that PJM will take in various levels of emergencies that may arise from, among other

[95] Additionally, RMR units retain their Capacity Interconnection Rights, whereas energy-only resources lack those rights.
[96] EPSA Protest, *supra* note 3, at 9-10.
[97] See Complaint, *supra* note 7, at Attachment 6.
[98] EPSA Protest, *supra* note 3, at Sotkiewicz Aff. PP 22-27.

situations, capacity shortages. Contrary to Dr. Sotkiewicz's suggestion that the provision authorizing PJM to dispatch RMR units during capacity emergencies is somehow limited to dispatching RMR units to provide transmission-related services, in fact RMR arrangements list this authority to dispatch RMR units during "capacity emergencies" *in addition to* also authorizing PJM to call the RMR units to provide transmission services.[99] Additionally, PJM incorporates RMR units into its Capacity Emergency Transfer Limit calculations because it expects RMR units to perform during capacity emergencies.

Tellingly, PJM itself does not assert that its authority to dispatch RMR units during "capacity emergencies" is limited to calling for transmission services. Instead, PJM offers a milder—but still misleading—argument that RMR units cannot "necessarily" be relied on to provide capacity despite being dispatchable during "capacity emergencies." To support this argument, PJM observes that under its Tariff, there is no standardized RMR arrangement and all RMR arrangements must be individually negotiated; PJM then cherry picks an RMR arrangement that does not authorize dispatch during "capacity emergencies" as an example.[100] However, PJM's argument disregards how the vast majority of RMR arrangements in PJM have in fact provided PJM with authority to dispatch RMR units during capacity emergencies. Moreover, the prospective relief requested in this Complaint would provide the certainty that PJM currently claims to lack, as discussed below.

Taking a different approach, Vistra argues that rather than forcing consumers to pay twice for capacity, excluding RMR units from the capacity market instead leads consumers to

[99] The excerpt in Dr. Sotkiewicz's testimony of Complainants' recitation of the dispatch provisions in the Brandon Shores and Wagner RMR agreements misleadingly omits the final subpart stating that PJM has authority to call these resources for capacity emergencies. *Id.* at Sotkiewicz Aff. P 17.
[100] PJM Answer, *supra* note 7, at 10.

buy less capacity.[101] This argument is without merit. First, Vistra's own affiant undermines this argument by conceding that "[e]xcluding the RMR resources resulted in procurement of only a small amount of additional capacity that otherwise would not have cleared in the [capacity auction],"[102] and that consumers bought this extra increment at higher prices.[103] Second, the theory behind Vistra's argument is based on the downward-sloping demand curve that PJM uses in its capacity auctions[104]—but Vistra conveniently overlooks the fact that the Commission already found that excluding RMR units from capacity markets forces consumers to pay twice for capacity *in multiple markets that also use downward-sloping demand curves*.[105] Hence, this argument from Vistra represents just another attempt to argue against the Commission's precedents.

B. PJM's flawed deactivation rules do not excuse unjust and unreasonable treatment of RMR resources in the capacity market.

PJM devotes a good deal of its Answer to arguing that its Tariff provisions regarding the deactivation of power plants prevent PJM from ensuring that RMR units can reliably provide capacity. PJM observes that under its current Tariff, generators can deactivate by providing PJM with only 90 days notice, that PJM lacks authority to compel generators to remain operational past their proposed deactivation date, and that because PJM lacks any standardized or mandatory RMR arrangements, each RMR arrangement must be individually negotiated.[106] PJM argues that

[101] Vistra Protest, *supra* note 3, at 4; *id.* at Niemann Affidavit PP 26–27.
[102] Vistra Protest, *supra* note 3, at Niemann Aff. P 26.
[103] *See id.* at P 27 (recognizing that "[e]xcluding the RMR capacity from BRA supply would still have a price impact" with a "resulting higher price").
[104] *See id.* at P 26 Figure 1 (depicting the demand curve and estimated supply curves)
[105] *See* NYISO, *ICAP Demand Curve*, at slides 4–5 https://www.nyiso.com/documents/20142/3036383/ICAP-Demand-Curves.pdf/a16634ed-20c8-0f50-5912-4dd92793cef8 (noting that NYISO has used a sloped demand curve since 2003); ISO-NE, *FCM Sloped Demand Curve Key Project*, https://www.iso-ne.com/committees/key-projects/implemented/fcm-sloped-demand-curve (noting that ISO-NE has used a downward-sloped demand curve since 2015).
[106] PJM Answer, *supra* note 2, at 17–20.

this bespoke process for developing RMR arrangements means that a prospective Tariff provision requiring RMR units to participate in the capacity market would be unworkable and could deter retiring generators from agreeing to enter into RMR arrangements.[107]

PJM's argument is significantly overstated. To begin with, as the Complaint demonstrated, the vast majority of RMR arrangements have authorized PJM to dispatch RMR units during capacity emergencies.[108] Because such provisions are the common practice for RMR arrangements in PJM, a Tariff provision establishing that the capacity market must accurately account for RMR units' resource adequacy contributions would merely make clear that this common practice is the default requirement.

PJM's argument that it cannot rely on RMR units to provide capacity when dispatched during capacity emergencies is similarly overstated for several reasons. First, RMR arrangements authorize the dispatch of RMR units for numerous types of services, including services that may be required during a significantly larger number of hours than capacity emergencies. Indeed, as the Complaint demonstrated,[109] RMR arrangements typically list PJM's ability to dispatch RMR units during capacity emergencies *in addition to* the ability to dispatch those units to meet other needs, which of course may arise outside of the limited number of hours that constitute capacity emergencies. Importantly, many of the other services for which RMR units are retained and dispatched also require RMR units to generate electricity reliably—just like during a capacity emergency. For example, where RMR units are expected to assist with thermal issues on the transmission system—as is the case for the Brandon Shores facility[110]—the RMR unit does so by

[107] *Id.* at 29–30,
[108] Complaint, *supra* note 7, at Attachment 6.
[109] *Id.*
[110] Complaint, *supra* note 7, at Attachment 6, ATT6-7 (allowing PJM to dispatch the Brandon Shores units to address "an identified transmission reliability need in support of the requirement to operate such transmission facilities within established thermal, voltage and stability limits").

generating electricity within an LDA to prevent thermal overload of the transmission lines that would otherwise be caused by importing more power into that area than the transmission system can reliably handle.[111] Similarly, providing voltage support or reactive power—as again is the case for the Brandon Shores facility[112]—often requires generators (particularly steam-based plants such as coal-fired power plants) to operate, generating real and reactive power.[113] Further, Generators' arguments that RMR units are not "available for economic dispatch" misses the point[114]; under an RMR arrangement, PJM may dispatch an RMR unit *regardless of its lack of economic merit* in order to meet a transmission-related need—and rely on the RMR unit to generate real power to do so. If PJM cannot rely on RMR units to operate during capacity emergencies, there is little reason to believe that the RMR units are any more reliable for the other services for which they are retained or dispatched. In other words, PJM cannot have it both ways, simultaneously arguing that RMR units can be relied on for transmission services (and may be paid handsomely for this service through a noncompetitive process), but not for generating electricity during capacity emergencies.

Second, the notion that RMR units cannot be relied on to operate when dispatched is at odds with the fact that consumers are forced to pay the full costs of service for RMR units,

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[111] *See*, *e.g.* PJM, *Illinois Climate and Equitable Jobs Act: PJM Reliability Guidance*, at 6 (July 2022) https://www.pjm.com/-/media/committees-groups/committees/oc/postings/illinois-ceja-reliability-guidance.ashx (explaining that "[o]ne of the ways PJM controls the loading on facilities is by adjusting generation energy (megawatts) output via redispatch," which "generally involves reducing generation in one part of the system while turning on or increasing generation in another part of the system").

[112] Complaint, *supra* note 7, at Attachment 6, ATT6-7, 6-9.

[113] *See*, *e.g.*, PJM, *Illustrative Examples of Reactive Capability (D-Curves) and Corresponding Compensation under Packages G and E*, at slides 2, 15 (Nov. 29, 2022), https://www.pjm.com/-/media/committees-groups/task-forces/rpctf/2022/20221129/item-03---pjm-illustrative-examples-of-reactive-capability---d-curves.ashx (explaining that a "generator's D-Curve shows the maximum reactive capability . . . *as a function of real power* and depicting an "Illustrative Example of a 100 MW steam Generator" that shows that in order to provide voltage support, the steam generator must generate 50% to 100% of the power it is capable of generating); *see also* PJM, *Illinois Climate and Equitable Jobs Act: PJM Reliability Guidance*, *supra* note 111, at 6 (explaining that "PJM controls the voltages on facilities in several ways including by adjusting generator reactive power (MVAR) output and by adjusting generation output via the redispatch process").

[114] *E.g.* EPSA Protest, *supra* note 7, at Sotkiewicz Aff. P 19.

including their maintenance.[115] Third, the notion that RMR units cannot be relied on to provide capacity is in tension with PJM's practice of allowing RMR units to retain their Capacity Interconnection Rights ("CIR"), which are a limited resource that entitle RMR units to deliver capacity.[116] If PJM cannot rely on RMR units to deliver capacity, it makes little sense for those units to retain the right to do so.[117]

PJM's argument that retiring units may refuse to enter into RMR arrangements is also overstated. PJM does not point to any situation in which any retiring unit has ever refused to enter into an RMR arrangement. A few Generators suggest that they might refuse an RMR arrangement if PJM's Tariff were to require that the capacity market more accurately account for RMR units' resource adequacy contributions, but the Commission must weigh those assertions against the fact that those same Generators are defending a practice that recently delivered their market sector a windfall of billions of dollars. The core concern of generation owners prospectively refusing an RMR arrangement appears to be exposure to capacity performance penalties. Notwithstanding that those penalties will be $0 for many parts of PJM in the 2026/2027 delivery year,[118] this argument unreasonably assumes that the replacement rate the Commission develops to address this Complaint would not mitigate the capacity performance risk that an RMR unit assumes.

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[115] Complaint, *supra* note 7, at Att. 3 Wilson Aff. P 40 ("RMR agreements typically allow necessary investments to remain in operation over the required period, so it would be reasonable to assume future performance would be consistent with historical performance."); *see also* Brandon Shores Transmittal Letter, at 10, Docket No. ER24-1790 (April 18, 2024), Accession No. 20240418-5176 (stating that "Talen, Brandon Shores, and Wagner should not be asked [to remain online] without fully recovering . . . *the investments needed to maintain the plants*" and proposing "a cost reimbursement mechanism that recovers [the RMR units'] variable operations *and maintenance costs* (emphases added)).

[116] *See* PJM Tariff, Part VI § 230.1

[117] *See* IMM Analysis, *supra* note 8, at 5 ("If a resource has CIRs but fails to use them by not offering in the capacity market, the resource is withholding and is also denying the opportunity to offer to other resources that would use the CIRs.").

[118] Calpine Protest, *supra* note 3, at 3.

For all these reasons, PJM's arguments that its existing Tariff provisions governing generator deactivations are an obstacle to relief in this matter are unpersuasive. However, to the extent the Commission believes that PJM's Tariff provisions regarding deactivations are an obstacle to just and reasonable rates in PJM's capacity market, the reform of those deactivation-related Tariff provisions is in-scope in this docket. The FPA clearly states that "[w]henever the Commission" finds "that any rate" or "any rule, regulation, practice, or contract affecting such rate . . . is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate."[119] PJM's own arguments make its view clear: its Tariff provisions regarding generator deactivations contribute to the unjust and unreasonable outcomes identified in the Complaint. Hence, PJM's deactivation rules are within scope for reform by the Commission as a "rule, regulation, practice, or contract affecting such rate" that the Commission determines to be unjust and unreasonable. Although PJM notes that the Commission rejected a PJM proposal for different rules nearly twenty years ago,[120] circumstances have changed significantly. For example, because the decisions cited by PJM pre-date the capacity market in its current form, the Commission has not had the opportunity to consider whether PJM's deactivation rules are unjust and unreasonable because of their impact on capacity market rates. Similarly, when it considered PJM's existing deactivation practices nearly twenty years ago, the Commission did not have the opportunity to consider how other regions have subsequently developed more sophisticated approaches to this issue.[121] Given that revising PJM's deactivation rules would be a more complex undertaking than the relatively simple changes Complainants

[119] 16 U.S.C. § 824e(a).
[120] PJM Answer, *supra* note 2, at 18–19 (citing *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053 (2005); *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,031, at P 19 (2005)).
[121] *See*, *e.g.*, *ISO-New England, Inc. and New England Power Pool*, 130 FERC ¶ 61,089, at PP 32–34 (distinguishing PJM's existing practices, and the Commission's decision regarding those practices, from retirement rules in ISO-NE that the Commission determined to be just and reasonable).

have advocated to avoid unnecessary capacity market prices, a structured but staged approach to revising PJM's Tariff subject to the Commission's oversight may be appropriate to minimize further auction delay.

Underwhelming developments in PJM's stakeholder process reinforce that it would be appropriate for the Commission to require reforms to PJM's deactivation rules as part of this docket. On October 30, 2024, PJM posted the results of voting in the Deactivation Enhancements Senior Task Force on competing proposals to reform the current deactivation process and treatment of RMR resources in the capacity market.[122] The only proposal that passed, and which will advance to consideration at the Markets and Reliability Committee, was PJM's proposed Package D. Relevant to deactivation rules more broadly, this proposal would extend the deactivation notice period from 90 days to 12 months, and make some changes to the Deactivation Avoidable Cost Rate contained in PJM's tariff.[123] While these changes may be beneficial, they fall far short of addressing the deeper problems with PJM's deactivation process that PJM's Answer acknowledges. Most relevant to the subject matter of this Complaint, the Independent Market Monitor's proposal, which would have implemented the requirement the IMM proposed in this proceeding to include RMR units in the supply stack at a zero price, did not pass and will not be considered further by PJM stakeholders.[124] These voting results demonstrate what PIOs articulated in the Complaint—that the PJM stakeholder process is

[122] Deactivation Enhancements Senior Task Force, Vote Results, https://www.pjm.com/-/media/committees-groups/task-forces/destf/2024/20241017/20241017-destf-vote-results.ashx (posted Oct. 30, 2024). Contrary to the statement by P3 in their protest filed on October 24, this vote did not happen on October 2, P3 Protest at 54, but instead following the October 17 meeting.
[123] *See* DESTF Executive Summary Comparison Table, https://www.pjm.com/-/media/committees-groups/task-forces/destf/2024/20241017/20241017-item-03---destf-executive-summary-table.ashx (posted Oct. 14, 2024); *see also* Lisa Morelli, PJM Package D Overview, Oct. 2, 2024, https://www.pjm.com/-/media/committees-groups/task-forces/destf/2024/20241002/20241002-item-03d---pjm-package-d-overview.ashx.
[124] *See* DESTF Executive Summary Comparison Table, *supra* note 123 at Modeling Impacts row.

unlikely produce reforms on the treatment of RMR units in the capacity auction[125]—and that action by the Commission on this Complaint is therefore essential to avoid extreme harm to consumers.

C. PJM and Generators fail to justify the inconsistent treatment of RMR units.

As the Complaint explained, PJM's existing practices treat RMR units inconsistently. On the one hand, PJM accounts for RMR units' continued operation when determining how much capacity can be transferred into constrained LDAs through Capacity Emergency Transfer Objective ("CETO") and Capacity Emergency Transfer Limit ("CETL") calculations. But on the other hand, PJM fails to account for RMR units' continued operations when considering the available supply in capacity auctions.[126] As the IMM has explained, "[t]his approach is internally inconsistent."[127] PJM's and Generators' efforts to explain this inconsistency lack merit.

PJM and Generators argue that it is appropriate to include RMR units in the calculation of how much energy can be transferred into LDAs because "such analysis is based on local risks, and therefore must include *all* physical resources expected to operate in the LDA," regardless of "whether or not resources in an area are Capacity Resources."[128] That broader category of resources that are included in the calculation of transfer capability includes "energy only resources and all Generation Capacity Resources (regardless of whether they clear the auction)."[129] PJM argues that because the transfer capability calculation includes this broader set of resources, it is distinct from the question of supply in the capacity market. P3 and EPSA make similar arguments.[130]

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[125] Complaint, *supra* note 7, at 28.
[126] *Id.* at 9–10.
[127] IMM Analysis, *supra* note 8, at 6.
[128] PJM Answer, *supra* note 2, at 36.
[129] *Id.* at 37.
[130] P3 Protest, *supra* note 3, at 43–45; EPSA Protest, *supra* note 3, at 9–15.

These arguments lack merit because they ignore basic facts that distinguish RMR units from other resources that are included in the calculation of energy transfer capabilities into an LDA but are not necessarily reflected as supply in capacity auctions. Contrary to the argument that it is reasonable to include RMR units in the transfer capability calculation but exclude them from capacity auctions because they are akin to energy-only resources or capacity resources that fail to clear the auction, RMR units are meaningfully distinct from both of those types of generators. Energy-only resources are distinct from RMR units because energy-only resources do not have Capacity Interconnection Rights, i.e. the right to deliver capacity to the grid, while RMR units do. Energy-only resources are currently excluded from supplying the capacity market because they lack the rights that guarantee deliverability of their energy output. Additionally, capacity resources that have qualified for the capacity market but have failed to clear the capacity market auction had and continue to have an obligation to bid into the capacity market, while RMR units do not. Consumers are protected against price increases caused by withholding because these capacity resources that fail to clear the auction are obligated to bid into future capacity auctions, which is not the case for RMR units.

Most fundamentally, none of the other generators to which PJM points—neither energy-only resources nor capacity resources that fail to clear the market—receive cost-of-service payments from consumers to ensure their ongoing operation. RMR units do. By paying the cost of service of RMR units, consumers procure those units' ongoing operations, including their resource adequacy contributions. And indeed, PJM itself reasonably expects that in light of consumers' payments to RMR units, those units will "be operating and impacting power flows

on the system during times of reliability need"—i.e. providing resource adequacy.[131] That out-of-market compensation for RMR units is a fundamental distinction from other resources that rely on markets for compensation. Neither PJM nor Generators provide any persuasive reason why it is reasonable to treat resource adequacy that consumers have already paid for as an input in transfer limits but to exclude that same already-purchased resource adequacy from the capacity auction, which is designed to procure resource adequacy.

D. Artificially inflated prices are not necessary for the capacity market to send robust investment signals.

PJM and the Generators spill a great deal of ink explaining how the capacity market is designed to send investment signals by raising prices when resource adequacy is scarce, and arguing that various factors—which are not at issue here—contributed to increased prices from the most recent capacity auction.[132] However, generalized arguments about the design of the capacity market's price signals and explanations about unrelated factors that contributed to rising prices are not relevant to the resolution of this Complaint.[133] This Complaint is limited to the issue of how the non-participation of RMR units in the capacity market causes an unjust and unreasonable inflation of capacity market prices. As discussed above, neither PJM nor Generators dispute that the incremental increase in capacity market prices associated with the non-participation of RMR units was between $4 billion and $5 billion. As the Complaint

[131] PJM, PJM Response to the 2023 State of the Market Report, at 4 (Aug. 2024), https://www.pjm.com/-/media/library/reports-notices/state-of-the-market/20240822-pjm-response-to-the-2023-state-of-the-market-report.ashx.

[132] *E.g.* PJM Answer, *supra* note 2, at 5–7, 28–29; P3 Protest, *supra* note 3, at 13–22 and Shanker Aff. PP 18–48; EPSA Protest, *supra* note 3, at 15–21 and Sotkiewicz Aff. PP 39–57.

[133] *See* Reply Affidavit of James Wilson at PP 5–6 (describing observations about the design of the capacity market and factors that contribute to prices "that are not at issue in this proceeding" and noting that those points are not "relevant to the main issue the Commission faces in this proceeding."); *see also id.* at P 14 ("The issue in this proceeding is only: once a generator that is needed for reliability is retained under an RMR contract and consumers are bearing the full cost of the resource, how should its resource adequacy contribution be accounted for.").

explained, similar costs are likely in future auctions unless the Commission takes action.[134] Indeed, as OPSI explained, the non-participation of RMR units in upcoming auctions could even incrementally increase prices more dramatically by up to $14.5 billion.[135] That is the price inflation at issue in this Complaint—and generalized arguments about price signals from the capacity market, or about other factors increasing prices, are not relevant to the core issues in this case.

However, to the extent that arguments about the capacity market's role in sending investment signals in response to increasing scarcity of resource adequacy have merit, it is critical to note that, as the Complaint explained, even if RMR units had participated in the most recent capacity auction, the market would still have cleared at a very high price and sent very strong price signals.[136] For example, the IMM found that the "the fact that the RMR resources in the BGE LDA were not included in the supply curve at $0 per MW-day" drove prices up by roughly $4.2 billion,[137] while total market revenues were roughly $14.7 billion.[138] Hence, if RMR units had participated in the most recent capacity auction as price-takers, the overall revenues from the auction would have been roughly $10.4 billion.[139] Similarly, the Synapse Report calculated that even if RMR units had bid into the market at a non-zero price (roughly

[134] Complaint, *supra* note 7, at 1–3.
[135] OPSI Answer, *supra* note 5, at 3.
[136] Complaint, *supra* note 7, at Att. 3 Wilson Aff. P 32 ("While including the RMRs in RPM would have saved consumers billions, it would still have resulted in a very high RTO level capacity price, sending one of the strongest signals ever sent by RPM"); Reply Affidavit of James Wilson at P 7 (explaining that even if RMR units had been treated as supply in the most recent auction, "according to various estimates, the auction would still have strongly signaled a need for new capacity, setting one of the highest RPM clearing prices in RPM's 18 delivery year history.").
[137] IMM Analysis, *supra* note 8, at 2 ("[H]olding everything else constant, the fact that the RMR resources in the BGE LDA were not included in the supply curve at $0 per MW-day resulted in a 41.2 percent increase in RPM revenues, $4,287,256,309, for the 2025/2026 RPM Base Residual Auction compared to what RPM revenues would have been had the capacity of those RMR resources been included in the supply curve at $0 per MW-day").
[138] *Id.* at 8 ("Based on actual auction clearing prices and quantities and uplift MW, total RPM market revenues for the 2025/2026 RPM Base Residual Auction were $14,687,047,358.").
[139] The exact figure is $14,687,047,358 - $4,287,256,309 = $10,399,791,049.

double the clearing price of the prior auction), the market would have cleared at a price of $163.46/MW-day.[140] Again, neither PJM nor Generators dispute these computations. Indeed, one of the Generators' affiants supports these calculations, arriving at a similar conclusion that if RMR units had participated in the most recent auction, overall revenues would have been roughly $11 billion.[141] As such, even if the Commission grants the relief requested in this Complaint, the capacity market will remain capable of sending robust price signals.

While PJM and the Generators generally maintain that high prices send signals for investment in new generation, they make no serious effort to explain why $10 billion to $11 billion in auction revenues could fail to adequately send that signal. Nor would such an argument be plausible. As James Wilson has explained, high prices in the capacity market have historically been quite successful in attracting new capacity in subsequent auctions.[142] For example, Mr. Wilson documents that, prior to the most recent capacity auction, "there had been four RPM base residual auction outcomes over $126/MW-day, and the average price in the subsequent auctions was $80/MW-day."[143] As the Synapse Report documented (and neither PJM nor Generators dispute), the clearing price if RMR units had participated would have been even higher, at $163/MW-day.[144] Indeed, both Dr. Shanker's affidavit and Dr. Sotkiewicz's affidavit include charts documenting the clearing prices of each auction since 2006,[145] which corroborate Mr. Wilson's explanation that the clearing price that would have occurred with RMR units

[140] Complaint, *supra* note 7, at 21.
[141] Calpine Protest, *supra* note 3, at 10.
[142] *See* Complaint, *supra* note 7, at Att. 3 Wilson Aff. P 32 (noting that "it is not necessary or appropriate to distort the supply-demand balance to send a stronger signal"); *see also* Reply Affidavit of James Wilson at P 8 (explaining that "[t]he market reactions to relatively extreme price outcomes are quite strong and generally return prices beyond average levels in the very next auction" because "high RPM clearing prices lead to increases in the offered capacity and other responses in the next auction").
[143] Reply Affidavit of James Wilson at P 8.
[144] Synapse Report, *supra* note 9, at 2.
[145] EPSA Protest, *supra* note 3 at Sotkiewicz Aff. P 51 Table 1; P3 Protest, *supra* note 3, at Shanker Aff. P 50 Tbl. 1

participating in the capacity market would have been among the highest in the capacity market's history.[146] The history of PJM's capacity market shows that similar price signals have effectively attracted new capacity in the past, and neither PJM nor Generators offer any reason to believe that it is somehow necessary to inflate the price signal from the capacity market by excluding RMR resources now. As Mr. Wilson puts it, "[t]here is no evidence of a need to place thumbs on the RPM scale."[147]

Similarly, PJM and the Generators fail to present any credible evidence that $10 billion to $11 billion in capacity market revenues could somehow fail to prevent retirements. Instead, the Generators' own evidence shows that capacity market revenues—even with RMR units included as price-takers—would effectively prevent retirements. For example, Joseph Cavicchi, Talen's affiant, cites an IMM report noting that "a doubling of market revenues could reduce the quantity of resources at risk of retirement from 33,774 MW to 18,957 MW, a reduction of 14,817 MW, or 44 percent."[148] What Mr. Cavicchi omits is the fact that the IMM made that observation in the context of a clearing price of only $28.92/MW-day, with overall market revenues of roughly $2.2 billion.[149] Again, if RMR units had participated as price-takers, the overall market revenues would have been between $10 billion and $11 billion—roughly 4 to 5 times higher than the prior auction and far greater than the doubling that would have, according to the IMM, reduced the risk of retirement by 44 percent. Hence, the evidence cited by Mr. Cavicchi shows that even if

[146] Complaint, *supra* note 7, at Att. 3 Wilson Aff. P 32 ("While including the RMRs in RPM [in the most recent auction] would have saved consumers billions, it would still have resulted in a very high RTO level capacity price, sending one of the strongest price signals ever sent by RPM"); *see also* Reply Affidavit of James Wilson at P 7 (explaining that even if RMR units had been included as supply in the most recent capacity auction, "according to various estimates, the auction would still have strongly signaled a need for new capacity, setting one of the highest RPM clearing prices in RPM's 18 delivery year history").
[147] Replay Affidavit of James Wilson at P 8.
[148] Talen Protest, *supra* note 3, at Cavicchi Aff P 25.
[149] Synapse Report, *supra* note 9, at 25–26.

RMR units had participated in the recent capacity auction as price takers, the reduction of resources at risk of retirement would still have been profound.

Dr. Sotkiewicz also provides evidence that even if RMR units are included as price-takers in the capacity market, the market would still send potent signals for the retention of existing resources. Dr. Sotkiewicz notes that historically, higher prices in the capacity market have provided revenues that allowed existing resources to comply with environmental regulations and thus remain online rather than retire.[150] As he puts it, "[w]ith the EPA coal power plant enforcement actions and the Maryland Healthy Air Act, RPM was extremely successful in retaining those existing resources that could have easily retired in response to these environmental policies."[151] He further explains that "[t]he situation in PJM today is no different," because "policy-driven retirements need not happen if the RPM Capacity Market can provide price signals to retain existing generation resources that could opt for making the necessary retrofits to comply with environmental policies."[152] However, like Mr. Cavicchi, Dr. Sotkiewicz omits the critical fact that even with RMR units participating in the capacity market as price takers, revenues from the recent auction would still have been at historic highs—as high as the prices that Dr. Sotkiewicz maintains were sufficient to motivate generators to pursue retrofits to comply with environmental policies rather than retire.

PJM and the Generators offer no serious argument or meaningful evidence to show that price signals from the capacity market would be somehow insufficient to incent the entry of new generation or the retention of existing resources even if RMR units are included as price-takers. They fail to dispute the proof in the Complaint and independent analyses demonstrating that even

[150] EPSA Protest, *supra* note 3, at Sotkiewicz Aff. PP 47–57.
[151] *Id.* at P 52
[152] *Id.* at P 56.

with RMRs included as price-takers, the capacity market would still be capable of sending very robust investment signals. Hence, the arguments by PJM and the Generators based on the intended price-signaling function of the capacity market provide no persuasive reason for the Commission to deny this Complaint.

IV. Accurately Accounting for the Resource Adequacy Value of RMR Units Does Not Artificially Suppress Capacity Market Prices.

Several protesters (including P3, EPSA, and Vistra) argue that including the capacity of RMR units in the RPM, either by requiring RMR units to bid into the auction or by reflecting the units' resource adequacy contribution in the RPM reliability requirements, would "artificially" suppress capacity prices and therefore lead to capacity shortfalls by sending a "misleading" price signal to resource owners contemplating entry or retirement.[153] But the Commission has already considered, and rejected, near-identical arguments advanced (in one case by the same expert) in opposition to RTO proposals to require RMR resources to bid into the relevant capacity market as price-takers.

There is no basis for the Commission to depart from that precedent here. Generators' arguments boil down to a contention that the market price *today* must reflect the tighter supply conditions that may arise in the *future* when a unit retained under an RMR is finally able to deactivate. But they fail to advance any plausible argument as to why including an RMR unit in a capacity auction distorts price signals while including any other generation resource that plans to retire in the subsequent delivery year does not. If anything, the existence of the RMR provides greater transparency and information about eventual deactivations to help other market participants anticipate the long-term pricing trends that Generators assert are the basis for entry

[153] *See, e.g.*, P3 Protest, *supra* note 3, at 1, 7, 22-30; EPSA Protest, *supra* note 3, at 33-37; Vistra Protest, *supra* note 3, at 28-32

and exit decisions. Contrary to Generators' argument, the fact that a given tariff rule (such as the replacement rates that Complainants propose here) will reduce prices is not, in and of itself, unreasonable "price suppression."[154] What matters is whether the price signal accurately reflects supply and demand, and therefore will induce an efficient degree of resource entry and exit. As explained below, Generators offer no persuasive arguments that capacity market prices that ignore RMR units that provide resource adequacy during the delivery year are correct.

A. The Commission Has Already Found the Inefficiency of Paying for Capacity Resources Twice Outweighs Any Adverse Impact on the Market from Decreased Prices.

To quote P3, these arguments about "price suppression" due to the inclusion of RMR resources in capacity markets are "dejá vu all over again."[155] The Commission has previously overruled identical concerns with "price suppression" under closely analogous circumstances. Protesting an ISO-NE proposal to enter fuel security resources into the relevant capacity market as price takers, generators argued that "price suppressive effects [from such a policy] will result in unjust and unreasonable rates in . . . subsequent auctions . . . and will deprive non-subsidized resources of their ability to recover their costs, distorting market entry and exit."[156] The Commission rejected this argument. Although the Commission acknowledged that "it is not possible to avoid an impact on either the pricing in the [capacity auction] or the quantity of resources procured to satisfy resource adequacy," including fuel security resources as price-takers in the auction was reasonable to "protect against inefficiently over-procuring capacity resources."[157] Conversely, it would have been unreasonable to compel customers to pay for

[154] *See NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 25 (D.C. Cir. 2018) ("the Commission is not required to protect against all price suppression").
[155] *See* P3 Protest, *supra* note 3, at 1.
[156] *ISO New England Inc.*, 165 FERC ¶ 61,202 at P 70.
[157] *Id*. at PP 83, 87.

otherwise uneconomic resources that are able to clear the market because actually available capacity (*i.e.* the fuel security resource) was artificially withheld from the auction.[158]

Generators' arguments are indistinguishable from those advanced—and rejected—in that 2018 Commission decision. Indeed, Dr. Sotkiewicz, now testifying about the dangers of "price suppression" for EPSA, previously testified on behalf of the New England Power Generators Association to argue that entering fuel-security resources, namely Mystic Units 8 and 9, into the ISO-NE capacity auction as price-takers would unreasonably suppress prices in ISO-NE.[159] There, as here, Dr. Sotkiewicz argued that including reliability resources in a capacity market would displace "economic resources" and produce deadweight loss, leading to either a "death spiral" of increased fuel secure resource retirements (in his prior testimony) or a delayed and intensified price spike following resource retirements (as Dr. Sotkiewicz now predicts for PJM).[160] Even the size of the resources subject to reliability agreements in *ISO-NE* and the current proceeding are nearly identical—roughly 1,700 MW of winter generating capacity associated with Mystic Units 8 and 9,[161] and a combined 1,440.6 UCAP MW for RMR units in the 2025/2026 delivery year.[162] Notably, the reliability resources that FERC found ISO-NE properly considered as available capacity constituted a much larger percentage of overall cleared capacity in that market—1.1% of PJM[163] compared to 4.9% of cleared capacity in FCA 13.[164]

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[158] *Id*. at PP 83, 87.
[159] *Id.* at P 65.
[160] *Compare* EPSA Protest, *supra* note 3, at Sotkiewicz Affidavit ¶ 63, *with* Testimony of Paul M. Sotkiewicz, Ph.D., on behalf of the New England Power Generators Association, Inc. (NEGPA), Exhibit 1 to the Motion to Intervene and Protest of the New England Power Generators Association, Inc., ER18-2364 (Sep. 21, 2018), Accession No. 20180921-5258.
[161] *ISO New England Inc.*, 165 FERC ¶ 61,202 at P 2.
[162] IMM Analysis, *supra* note 8, at 13.
[163] *Id.*
[164] ISO-NE, *Forward Capacity Auction 18 Results Summary*, https://www.iso-ne.com/static-assets/documents/2018/05/fca-flow-diagram.pdf, at 32.

The Commission's prior finding that higher prices due to excluding reliability resources reflected inefficient over-procurement and that it was reasonable to include these resources in the capacity market should apply with equal force here. Protesters do not offer any reason to depart from the Commission's precedent on this question.[165]

B. Inclusion of RMR units in the Capacity Market Will Not "Distort" the RPM Clearing Price or Send "Misleading" Price Signals.

EPSA, P3, and Vistra are trivially correct in that any decrease in capacity market prices may, at the margin, induce fewer new entrants and result in more retirements. That is the fundamental premise of the RPM. But the argument that lower prices reflecting the currently-available physical capacity amounts to market distortion that threatens future reliability proves too much. *Any* tariff provision with the effect of decreasing capacity market prices will affect retirement and new entry at the margin. The possibility of capacity shortfalls can always be cited as a reason to adopt provisions that have the effect of raising prices and thus (in theory) inducing the construction of more generation or forestalling the retirement of otherwise economically inefficient units. The protesters fail to offer any valid reason as to why the lower prices that would result from including RMR units constitute inefficient "suppression," mislead other market actors, or lead to the selection of economically inefficient resources to meet demand.

1. RMR Units are Indistinguishable from Other Units with Planned Retirement Dates with Respect to Capacity Auction Price Signals.

First, Generators P3, EPSA, and Vistra argue that disregarding the RMR generators' capacity is necessary to send appropriate price signals. According to P3, if RMR generators are compelled to offer their capacity, "the market will price capacity under a mistaken assumption because it will do so deprived of a critical piece of information—that the generator intends to

[165] *ISO New England, Inc.*, 165 FERC ¶ 61,202 at P 85.

deactivate *as soon as the constraint is relieved*."[166] This "mistaken assumption" is that the capacity associated with the RMR generator will be available in *future* capacity markets. But there is no difference in the "market signal" of an auction that includes a unit with an announced retirement in the subsequent delivery year that has been cleared to retire by PJM and one in which an RMR unit will cease operating the following delivery year. *Any* planned retirement will only be reflected in prices the year the unit comes offline and not in the delivery year immediately beforehand. P3's suggestion that market prices should signal not just the unit's current availability, but availability into future delivery years, is untenable.[167] Generation owners and developers are accustomed to anticipating the impact that various deactivations and transmission upgrades will have on capacity prices; they do not look to a single year price in a vacuum to guide decisions involving units with physical lives of 25 years or more.[168]

Moreover, the existence of the RMR, and its anticipated end date, are public and well-known. Generators cannot be "misled" as to the RMR generator's intention with respect to future delivery years, and any reasonably well-informed generation owner or developer can anticipate the impact on prices when the RMR generator finally deactivates. Including an RMR generator's capacity in a particular delivery year's auction does not mislead market participants any more than requiring generators to participate in auctions up until they have submitted a deactivation notice, which may be a matter of months before the unit physically goes offline, and which the PJM tariff already does.[169] Ironically, despite making much of Complainants' purported short-

[166] P3 Protest, *supra* note 3, at 27.

[167] *See id.* at 60.

[168] Complaint, *supra* note 7, at Att. 3 Wilson Aff. P 33 (explaining that "[i]nvestors base their decisions to invest capital on longer-term price expectations, not short-term prices"); Reply Affidavit of James Wilson at P 17 (explaining that "investors wouldn't be fooled into additional investments by the impact of thumbs on the scale" because "[t]hey can see for themselves whether supply and demand are accurately represented in prices, and when new supply and transmission are likely coming in future years").

[169] *See* PJM Manual 14D: Generator Operational Requirements, Rev. 65, at § 9.1 (Dec. 23, 2023).

term reasoning and the need for a capacity market pricing model that contemplates the full business cycle of generators, P3's claims of "price distortion" assume a potential resource will be deterred from market entry by the price impacts of an RMR unit in a single year and ignore the fact of known retirements in future delivery years in interpreting those results for its long-term viability.

Nor do protestors establish that the clearing price that results from excluding the RMR resources (as under the status quo) sends a more accurate signal regarding the future supply-demand balance than if the RMR unit were included in the auction. As Mr. Wilson explained in his initial affidavit, the purpose of the RMR agreement is to enable a resource to serve as a bridge until additional transmission can be constructed to alleviate a constraint on importing capacity into a particular area.[170] Depending on the circumstances surrounding a particular RMR, the construction of transmission upgrades may alleviate or eliminate constraints such that new generation is not needed and the clearing price will not actually increase once the RMR unit is fully replaced and allowed to retire, even without additional new entrants into the relevant market area.[171]

2. P3's Assertion that RMR Units do Not Provide Capacity is Circular.

Second, P3 contends that the "forced inclusion of RMR generators' capacity in the auction" would artificially suppress prices because, according to P3, the RMRs "do not necessarily assume the same obligations of a Cleared Resource" and so "the capacity is not 'there.'"[172] This reasoning is circular: According to P3, an RMR unit should not be required to bid into the capacity auction because it is not a capacity resource, and it is not a capacity

[170] Complaint, *supra* note 7, at Att. 3 Wilson Aff. P 10.
[171] *See id.* at PP 33-34.
[172] P3 Protest, *supra* note 3, at 26.

resource because it has not assumed the contractual obligations associated with bidding into the capacity market. If, as P3 argues, a resource is only a capacity resource once it has assumed the contractual obligations of a capacity market bid, that just begs the question as to which resources that *could* be capacity resources upon assuming such an obligation should be compelled to do so. P3 offers no reason why RMR units, in particular, should be excused from assuming these responsibilities so long as they are receiving cost-of-service payments from consumers and are physically available.

3. Protesters' Logic Would Make the Current PJM Tariff Unjust and Unreasonable

Finally, claims that inclusion of an RMR unit in the capacity auction causes "price suppression" fail as a matter of basic counterfactual logic. If the inclusion of RMR units in the capacity auction sent "misleading" price signals or threatened reliability in the way Generators claim, then such resources should be prohibited from offering capacity into the market. Whether an RMR unit entered the market by choice or by contractual obligation, it has the same effect on the clearing price. There is no difference between a unit displaced by a voluntary RMR unit bid and a compelled one. But PJM's current tariff permits RMR units to bid into the RPM and neither PJM nor Protestors argue that tariff is unjust and unreasonable in that regard.

C. Accounting for RMR Units' Resource Adequacy Value Does Not Threaten the Reliability of the PJM Grid

EPSA and Vistra contend that the purported "price suppression" that would result from requiring RMR units to participate in the RPM will increase the rate of retirement or deter new entry, thereby threatening reliability.[173] This concern is misplaced for reasons similar to those articulated above—it is based on a false assumption of what prices should be, and an

[173] EPSA Protest, *supra* note 3, at 35; Vistra Protest, *supra* note 3, at 33-34.

oversimplified portrayal of how generation owners and investors read the market. It also ignores the actual barriers to new entry in the PJM market, which are not insufficiently high price signals but a clogged interconnection queue that prevents nearly all potential new entrants from responding to those price signals.

EPSA, relying on Dr. Sotkiewicz's affidavit, posits a "likelihood that the price suppression from requiring RMR units to offer into RPM Auctions will increase the pace of deactivations."[174] Skepticism is warranted any time a party argues that units needed for resource adequacy will retire due to lower prices, given that the capacity market is designed so that it will not clear below the price needed to retain resources that would help to meet the reliability requirement.[175] Moreover, as discussed extensively throughout the protests, generators make decisions based on multiple years of price information, including anticipated prices. If a resource fails to clear in one year due to inclusion of RMR resources, but the owner anticipates capacity prices rising when the RMR unit finally deactivates, such owners would be wise to remain in the market to capture those higher prices.[176] Thus, although a unit that fails to clear in an auction that accurately reflects the resource adequacy value of any RMR units may choose to deactivate, this would most likely occur in cases where the unit owner does not see prices rising in the long run—i.e., it anticipates a system that is relatively long on capacity. This is not an unfamiliar dynamic for generation owners, who seek to anticipate deactivations of competitors as part of their business judgment about whether to make investments to continue operating. From a reliability standpoint, the retirement decision faced by a unit owner is no different from the

[174] EPSA Protest, *supra* note 3, at 36-37.

[175] Of course, there may be cases where the capacity market is insufficiently granular to capture more local reliability issues, which can result in reliability must run agreements. But as noted in the Complaint, relatively few retirements result in RMR arrangements. Complaint, *supra* note 7, at 6.

[176] Several of the parties expressing concern about rising deactivations are those that anticipate steep increases in prices following the eventual deactivation of RMR resources.

situation where the clearing price reflects the inclusion of a competitor unit that will retire the following year.[177]

The alternative, where a unit with costs that exceed its capacity market revenue under existing conditions fails to retire because of the short-term price increases due to RMR units' exclusion from the RPM, results in economic inefficiency. Existing units have already committed the capital expenditures associated with construction; if economically rational, these generators will retire if and when forward-going costs exceed projected revenue. The displaced units that would be at risk of retiring under a scenario in which the capacity auction results reflect the inclusion of RMR generators but would remain in operation where the RMR generators do *not* bid into the capacity market are those with forward-going costs so high that only a capacity price that already reflects the RMR unit's retirement will allow it to break even. Such a unit is only "economically viable," as EPSA claims,[178] if it can reasonably anticipate prices to remain at this level *and no new entry of more economically efficient units*, that is, units that are profitable at a lower capacity clearing price.

Vistra argues these potential new entrants will also be deterred, insisting on the "reality" that "many suppliers will reevaluate their choices" if "entry is delayed."[179] But Vistra fails to explain why a new supply resource, presumably contemplating a decades-long investment, would delay its entry based on the difference in clearing price between a capacity auction with

[177] There is, arguably, economic inefficiency inasmuch as the RMR unit may have higher costs than the resource that fails to clear in an RPM where the RMR unit acts as a price-taker, in that the lower-cost resource does not clear in the relevant delivery year but the higher-cost resource does. But, as Mr. Wilson explained in his initial affidavit, the RMR agreement itself reflects a market failure because PJM's other markets do not adequately compensate the RMR unit for the reliability attributes it provides. Complaint, *supra* note 7, at Att. 3 Wilson Aff. PP 15–16. Once compensated for those attributes through the negotiated RMR agreement, the RMR's remaining forward-going costs are zero, making it the least-cost unit with respect to the capacity market. *Id.* at 19.

[178] EPSA Protest, *supra* note 3, at 37.

[179] Vistra Protest, *supra* note 3, at 31.

the RMR generation resource and without in the limited time horizon of an RMR agreement term. Even if a resource determined it would postpone entry to assess price signals after the retirement of the RMR generator, the resource would only decide against entering the market if those subsequent prices remained lower—that is, reflected the sufficient entry of other new resources or new transmission that alleviated a previously constrained zone. And the only resources who would even consider such a delay would be those for whom entry at the clearing price *with* the RMR unit would be economically untenable, *i.e.* would be among the least economically efficient resources in PJM as a whole. Vague claims about "tempered" expectations do not explain why the marginal difference in capacity price would deter an otherwise economically efficient potential resource from entering PJM based on a one-year price signal that reflects the current availability of physical capacity.

What P3, EPSA, and Vistra all carefully ignore is that even at the relatively low prices that preceded the 2025/2026 auction PJM does not lack for potential new entrants. As of May 2024, there were 200 GW of pending projects in the PJM interconnection queue, more than the entire nameplate capacity (160 GW) of the PJM grid.[180] PJM froze this interconnection queue in May 2022.[181] For new generators to respond to price signals, they have to be able to interconnect. P3, EPSA, and Vistra all claim that the high RPM prices that result from exempting RMR units from the RPM are necessary to induce new entry and forestall retirements. To the extent generators who want to act on the price signals are prevented (or delayed) from actually coming online to relieve these shortfalls, the increased prices will not induce the entry of new capacity resources but merely increase the cost customers pay for the same amount of capacity

[180] Abraham Silverman, et al., *Outlook for Pending Generation in the PJM Interconnection Queue* at 11 (May 2024), https://www.energypolicy.columbia.edu/wp-content/uploads/2024/05/PJM-Interconnection-CGEP_Report_042924-2.pdf.
[181] *Id*.

resources and, correspondingly, the revenue received by existing resources. According to a Synapse study, the wait time for new queue entrants exceeds the usual three-year lead time for the RPM.[182] This fact renders Vistra's concern with "delay[s]" to entry due to short-term "price suppression" as a result of including to-be-retired RMR units in the RPM auction hollow. Interconnection queue delays already preclude most potential new entrants from responding to price signals in the delivery year to which they correspond. Artificially inflating these prices to anticipate future retirements—as Generators ask the Commission to do—will only effectuate an economically inefficient, and thus unjust and unreasonable, transfer from customers to generators. As long as the interconnection queue remains stalled, higher prices cannot serve to incentivize substantial new entry of more economic resources and so cannot accomplish the medium- and long-term benefits Generators argue are worth the billions in additional cost to ratepayers of ignoring the capacity of RMR units.

V. The Specific Terms of Any Single RMR Arrangement Are Not Relevant to This Complaint.

The Commission should not allow PJM or Generators to distract its attention away from PJM's unreasonable Tariff provisions by focusing attention on a single agreement between two parties. The Complaint in this case seeks prospective relief that is generally applicable to all RMR arrangements that may arise in PJM. PJM's attempt to distract attention away from the Complaint's merits by focusing on a single RMR agreement (Brandon Shores) demonstrates the weakness of PJM's argument that its Tariff is just and reasonable. The Commission does not need to dive into the details of the causal history of a single RMR to resolve this complaint,

[182] Synapse Report, *supra* note 9, at 33.

which is about the justness and reasonableness of PJM's Tariff as it applies to all RMRs, not just the Brandon Shores RMR.

A. To the extent the Commission believes the history of Brandon Shores RMR is relevant to this case, it should consider a full record.

PJM's summary of the history of the Brandon Shores and Wagner RMR arrangements is incomplete, inaccurate, and misleading. First, PJM mischaracterizes Sierra Club's role in Talen's profit-based decision to retire the Brandon Shores and Wagner facilities. Second, PJM suggests that Sierra Club is to blame for the fact that PJM's system lacks the resilience to withstand the retiring of two generators in one of the most densely populated areas of its footprint. Third, PJM omits the fact that Sierra Club has worked and continues to work to find alternatives to the Brandon Shores RMR. Fourth, PJM provides confusing and contradictory positions on whether or not the Sierra Club-Talen agreement should impact PJM's expectation that Brandon Shores will provide capacity. The more complete record presented below refutes the misleading narrative presented by PJM and various Generators, which wrongly suggest that Sierra Club's advocacy somehow undercuts reliability. Instead, as discussed below, Sierra Club has consistently worked to ensure that the energy transition remains swift, reliable, and equitable. The current Complaint, which aims to ensure that PJM's treatment of retiring resources in the capacity market is just and reasonable, is consistent with that broader advocacy. Contrary to the hyperbolic narrative that some Generators offer, there is nothing inconsistent or even surprising about an organization that advocates for a transition away from reliance on fossil fuels also advocating for just and reasonable market treatment of retiring resources.

B. PJM mischaracterizes Sierra Club's role in Talen's decision to retire Brandon Shores.

PJM asserts that the retirement of Brandon Shores and Wagner "likely has its genesis" in the Sierra Club-Talen agreement.[183] But the Sierra Club-Talen agreement does not and has never required Talen to retire the Brandon Shores or Wagner facilities. Instead, Talen itself has stated clearly in filings to the Commission that it is retiring the Brandon Shores and Wagner facilities because continuing to operate the plants was no longer profitable enough.[184]

The Sierra Club-Talen agreement states that Sierra Club will forgo litigation against Talen for environmental violations if Talen ceases to burn coal at the Montour, Wagner, and Brandon Shores facilities by the end of 2025.[185] The agreement does not require Talen to retire Brandon Shores or any other facility, and it explicitly contemplates Talen taking good faith steps to convert the Brandon Shores and Wagner facilities to oil.[186] In the case of Brandon Shores, the conversion is intended to "enable the Brandon Shores Facility to operate as a capacity resource."[187] In other words, not only does the agreement *not* require the retirement of Brandon Shores, but it also indicates that both Sierra Club and Talen anticipated that the Brandon Shores and Wagner facilities would continue providing capacity services indefinitely. Talen completed the conversion of the Wagner facility to oil and took many steps toward converting the Brandon

[183] PJM Answer, *supra* note 3, at 21.
[184] *See* Brandon Shores Transmittal Letter, at 3, Docket No. ER24-1790 (April 18, 2024), Accession No. 20240418-5176 ("Originally, Talen planned to convert Brandon Shores to oil-fired combustion. But that turned out to be uneconomic, as structural market economics around Brandon Shores' planned fuel conversion were impacted substantially by a large drop in PJM capacity prices, higher than anticipated project costs, and higher risk of significant capacity performance penalties like those experienced with Winter Storm Elliott."; Wagner Transmittal Letter, at 3, Docket No. ER24-1787 (April 18, 2024), Accession No. 20240418-5128 ("Wagner was dispatched by PJM in 2023 much more often than anticipated. The plant's air permits allow operation on oil only at certain low capacity factors. As a result, Talen is at risk of incurring significant Capacity Performance penalties if H.A. Wagner's environmental permits at any point prevent the plant from responding to a PJM dispatch. The economic problem is compounded by the prices at which Wagner has been capped in the energy market when called."
[185] PJM Answer, *supra* note 3, Attachment A, Sierra Club-Talen Agreement at PP 1–2 ("Sierra Club-Talen Agreement").
[186] *Id.* at P 1.
[187] *Id.* at P 1.

Shores facility before ultimately deciding not to complete the conversion and instead retire the Brandon Shores facility.[188] Sierra Club has never had control over whether or not Talen retires any facility.

PJM wrongly asserts that the 2023 amendment to the Sierra Club-Talen agreement, in which Sierra Club agreed to forgo enforcement of environmental claims if Talen burned coal at the Brandon Shores facility under a Federal Power Act section 202(c) order so long as Talen provided notice of deactivation prior to the Base Residual Auction for the 2025/2026 delivery year, means that "Sierra Club contractually required Brandon Shores to deactivate."[189] Yet the amendment does nothing of the sort. As noted above, Talen remained free to convert Brandon Shores to oil or another fuel source. The amendment merely ensured that Talen would need to inform PJM of its intent to deactivate 2.5 years before deactivation rather than three months required by the PJM deactivation process.[190] Talen chose to retire the Brandon Shores facility because it was no longer profitable, not because Sierra Club "contractually obligated" it to do so.

1. Sierra Club is not responsible for PJM's inability to maintain reliability without paying hundreds of millions of dollars to two unprofitable generating facilities.

PJM attempts to shift blame for its lack of transmission planning or ability to replace retiring generation by noting that neither Talen nor Sierra Club "consulted with PJM as to the ramifications of the potential retirement of [Brandon Shores and Wagner]."[191] As discussed below, PJM's statement obfuscates the significant amount of work Sierra Club has done—including many consultations with PJM—to avoid the need for an RMR arrangement for the

[188] Brandon Shores Transmittal Letter, *supra* note 184, at 3.
[189] PJM Answer at 23.
[190] Sierra Club and Talen executed the 2023 amendment in early April 2023, at a time when the Base Residual Auction for the 2025/26 delivery year was still scheduled for June 2023. *See PJM Interconnection LLC*, 183 FERC ¶ 61,172 (Apr. 11, 2023) (accepting PJM proposal to delay the auction from June 2023 to June 2024).
[191] PJM Answer, *supra* note 2, at 21-22.

Brandon Shores facility. Setting this extensive work and consultation aside, however, Sierra Club is under no obligation to consult with PJM about whether a generating unit that Sierra Club does not control might retire. Further, when Sierra Club entered into its agreement with Talen, there was simply no expectation that Talen would not complete the conversion of the Brandon Shores facility to oil. As the agreement clearly states, the expectation was that Talen seek to convert Brandon Shores to oil "to operate as a capacity resource."[192] While Sierra Club and the other Complainants would welcome a transparent process through which parties can request that PJM study the reliability impacts of potential deactivations and share those results publicly, such a process does not exist in PJM.

2. PJM omits the fact that Sierra Club has worked to find alternatives to the Brandon Shores RMR.

Though it is PJM's responsibility to ensure that its system can sustain the retirement of generating facilities, Sierra Club nevertheless took what steps it could toward ensuring that the Brandon Shores transition away from coal would not create reliability problems. In addition to the Sierra Club-Talen Agreement anticipating Talen converting the Brandon Shores facility to oil to provide ongoing capacity, in April, 2023, Sierra Club and Talen amended their agreement to allow the Brandon Shores facility to continue burning coal pursuant to the Department of Energy issuing an order under section 202(c) of the Federal Power Act.[193] As explained below, utilization of section 202(c) orders is not uncommon, and PJM has relied on them to provide emergency capacity.

Additionally, following Talen's decision to file a deactivation notice for Brandon Shores, Sierra Club spent months working closely with technical experts at GridLab and Telos Energy to

[192] Sierra Club-Talen Agreement, *supra* note 185, at P 1.
[193] PJM Answer, Attachment A, Sierra Club-Talen Agreement Amendment at P 3 ("Sierra Club-Talen Agreement Amendment"); 16 U.S.C. § 824a(c).

identify and propose a robust alternative to the Brandon Shores RMR that would have provided capacity both in the short-term and long-term and would have reduced burdens on consumers.[194] Sierra Club and its partners met with PJM staff many times during the development of the alternative. Sierra Club and its partners were under no obligation to invest substantial time and resources into developing this alternative and did so specifically because PJM had not conducted such an analysis on its own. While PJM rejected the alternative based on unexplained modeling assumptions,[195] Sierra Club's work with GridLab and Telos was a far more robust attempt at developing an alternative to the Brandon Shores RMR than PJM, Talen, or any other stakeholder conducted.

3. Modification of the Sierra Club-Talen agreement is not necessary for the Commission to grant the requested relief.

PJM wrongly concludes that it cannot rely on the Brandon Shores and Wagner facilities to provide capacity without modification to the Sierra Club-Talen agreement. First, while this is not true for either facility, it is especially obvious that it is not true with respect to the Wagner facility. Talen has already converted the Wagner facility to oil. The Sierra Club-Talen agreement has no effect on the ability of Wagner to continue operating since it has already ceased burning coal. Talen is retiring Wagner purely for economic reasons, not because of the Sierra Club-Talen agreement.

Second, PJM appears to concede that the Sierra Club-Talen agreement is not an obstacle to Brandon Shores performing as an RMR resource. PJM states that while it initially sought reforms that would provide PJM with the authority to require a generator to remain in operation,

[194] Grid Lab, *Brandon Shores Retirement Analysis* (Feb. 2024), https://gridlab.org/brandon-shores-retirement-analysis/.
[195] Grid Lab, *Brandon Shores Retirement: Alternative Portfolio Development & Analysis: Response to PJM's BESS Technical Viability Report* (May 29, 2024), https://gridlab.org/wp-content/uploads/2024/06/Telos-GridLab-Response_29May2024.pdf.

"[o]nce Talen acquiesced to Brandon Shores being retained—pursuant to an RMR agreement it would file with the Commission and with severely limited operating parameters, the acuity of the issue disappeared."[196] If PJM doubted the ability of Brandon Shores to operate pursuant to an RMR, it would be conceding that the RMR agreement it negotiated with Talen, and that Talen has put before the Commission in a separate proceeding, would ask consumers to pay hundreds of millions of dollars per year to Talen with no expectation that Brandon Shores would perform when called.

Third, while PJM calls attention only to the Sierra Club-Talen agreement as a constraint on the ability of the Brandon Shores facility to perform under an RMR, Talen has also been clear that an outstanding and to-date unresolved National Pollution Discharge Elimination System permit from the State of Maryland is also an impediment to continuing to burn coal for the duration of the RMR.[197] PJM, however, does not appear to view the lack of a Commission-approved RMR agreement or settlement of outstanding permitting issues to be an impediment to its reliance on the Brandon Shores facility the way it views the Sierra Club-Talen agreement.

Fourth, while there are many unknowns about the final shape of the RMR, Sierra Club and Talen continue to discuss how they could amend the agreement to allow Brandon Shores to burn coal pursuant to an RMR agreement.[198] It is not unusual for material terms of an RMR to remain unresolved into and even through the term of an RMR, even while the RMR unit performs as requested by PJM. Outstanding RMR agreement issues need not impede PJM from reflecting expected RMR resources in the capacity market.

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[196] PJM Answer, *supra* note 2, at 20, FN 55.
[197] Brandon Shores Transmittal Letter, *supra* note 184, at 4.
[198] Talen noted in its Answer that Sierra Club contacted Talen counsel prior to filing the complaint in this case. Talen Protest, *supra* note 3, at 8 note 26. While this is true, Sierra Club and Talen leadership have discussed amending the agreement on multiple occasions going back to at least December 2023. Sierra Club and Talen continue to actively discuss amendment.

Finally, the Sierra Club-Talen agreement allows Talen to burn coal at Brandon Shores beyond 2025 pursuant to a section 202(c) order from DOE. This provision alone provides PJM with assurance that the Sierra Club-Talen agreement is not an obstacle to Brandon Shores providing capacity during an emergency, regardless of whether or not there is a final FERC-approved RMR agreement. PJM has frequently sought and obtained section 202(c) orders, including during capacity emergencies and including for units operating under RMR arrangements. For example, in 2022 during Winter Storm Elliott, PJM obtained a section 202(c) order authorizing "all electric generating units serving the PJM footprint to operate up to their maximum generation output levels under limited, prescribed circumstances, even if doing so exceeded their air quality or other permit limitations."[199] Between June 2017 and February 2019, PJM obtained numerous section 202(c) orders to authorize operation of the Yorktown facility, which was also operating under an RMR arrangement.[200] While they do present some administrative hurdles, reliance on section 202(c) orders to maintain reliability during capacity emergencies is nothing new for PJM.

C. The Commission need not resolve the details of the Brandon Shores and Wagner RMR agreements in this proceeding.

PJM suggests that Sierra Club has contradicted itself by protesting the Brandon Shores and Wagner RMR agreements at the Commission while also arguing that PJM should require RMR resources to participate in PJM's capacity auctions. As explained above, the details of any single RMR are immaterial to the relief requested in this proceeding. However, to the extent the

[199] PJM, *Winter Storm Elliott Frequently Asked Questions*, at 4 (April 12, 2023), https://www.pjm.com/-/media/markets-ops/winter-storm-elliott/faq-winter-storm-elliott.ashx

[200] *See* Department of Energy, *Federal Power Act Section 202(c)—PJM Interconnection & Dominion Energy Virginia, 2017* (June 19, 2017), https://www.energy.gov/oe/articles/federal-power-act-section-202c-pjm-interconnection-dominion-energy-virginia-2017 (listing numerous section 202(c) orders for the Yorktown facility).

Commission finds the Brandon Shores and Wagner RMRs relevant, it can rest assured that no such contradiction exists.

As PJM notes, Talen states in its Brandon Shores RMR filing that the Sierra Club-Talen agreement would prevent Brandon Shores from performing after December 31, 2025. Talen also notes that a lack of state permits would also prevent performance, though PJM makes no mention of that fact in its Answer. Talen does not, however, condition ratepayers paying Talen hundreds of millions of dollars on resolution of these contractual and permitting limitations. Sierra Club, therefore, protested the Commission's acceptance of Talen's proposed RMR agreements "as filed" because it does not believe that ratepayers should pay Talen for *not* performing during an emergency.

Sierra Club is not the only party that protested Talen's proposed RMR agreements and also supports the relief requested in this proceeding. The PJM Independent Market Monitor, the Maryland Public Service Commission, and the Maryland Office of People's Counsel all filed comments in support of the Complaint in this proceeding and protested Talen's RMR agreements. There is no contradiction in arguing both that PJM should account for RMR resources in its capacity market and protesting the details of the out-of-market payments that will be paid to any given RMR resource. The Commission has already instituted a settlement process to resolve the issues in the Brandon Shores and Wagner proceedings. That process is ongoing.[201] The Commission has no need to resolve those issues in this proceeding.

[201] *See* Second Report of Settlement Judge re H.A. Wagner LLC et al. under ER24-1787 et al., Docket No. ER24-1787 (Oct. 18, 2024), Accession No. 20241018-3028.

VI. The Commission Should Delay the Upcoming Capacity Auctions, Establish a Refund Effective Date of September 27, 2024, and Direct PJM to Submit Reformed Rules Regarding the Treatment of RMR Units.

A. Delaying upcoming auctions is appropriate to protect consumers against billions of dollars of excessive costs.

As the Complaint demonstrated, the non-participation of RMR units in the most recent capacity auction drove excessive costs of between $4 billion and $5 billion.[202] While PJM and Generators baselessly assert that these costs are just and reasonable, they raise no dispute about the extreme price impacts that RMR units' non-participation caused in the recent capacity auction—and no dispute that upcoming auctions will burden consumers with similar costs if the Commission fails to take action. As the Complaint noted, PJM currently has auctions scheduled for December 2024, June 2025, and December 2025—meaning that if price impacts are similar in upcoming auctions, consumers may face $15 billion in excessive costs from RMR units' non-participation.[203] Moreover, OPSI has observed—and no party has disputed—that due to the steeper demand curve for the upcoming auction, the excessive costs to consumers from RMR units' non-participation in the capacity market may reach $14.5 billion *in the next auction alone*.[204] And unless the Commission takes action, these excessive costs will again fall on consumers who already face some of the most extreme energy burdens in the nation.[205] The harm to consumers from billions of dollars in excessive costs significantly outweighs any interest in returning PJM's capacity market to a three-year-forward schedule and thus weighs heavily in favor of an order delaying upcoming auctions. In short, getting the capacity market rules right is more important than running auctions quickly.

[202] Complaint, *supra* note 7, at 1.
[203] *Id.* at 48.
[204] OPSI Answer, *supra* note 5, at 3.
[205] Complaint, *supra* note 7, at 50.

Furthermore, while PJM's goal of returning to a three-year-forward schedule is understandable, the theoretical basis of that schedule—that "holding an auction three years in advance of the delivery year provides adequate time for the development of new generation"[206]—has not been accurate in the PJM region for quite some time. Instead, it can take years for projects to progress through PJM's backlogged interconnection queue.[207] Indeed, because PJM will not even begin reviewing new entrants to the queue until 2026, it is extraordinarily unlikely that new projects would be able to come online within three years. As the Synapse Report found (and PJM did not dispute), "wait times for new entrants to the queue could be longer than 3.5 years."[208] Because PJM's backlogged interconnection queue makes it exceedingly difficult for new generation to come online within three years, the queue also undermines the theoretical basis for the three-year-forward auction schedule. Hence, the purported need to return to that schedule does not weigh significantly against auction delay in this case.

Notably, PJM itself supports Complainants' request for the Commission to delay upcoming capacity auctions and has requested a delay of approximately six months both through a motion in this docket and through a waiver filing in a separate docket. Of course, PJM and Complainants have a different view of the basis for delay. PJM maintains that delay is justified by a "cloud of uncertainty" cast by the Complaint, while Complainants maintain that delay is warranted by the need to remedy unjust and unreasonable market rules that threaten enormous excessive costs to consumers. Complainants explained in response to PJM's waiver filing that

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[206] *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 92 (2007).
[207] *See*, *e.g.*, *Improvements to Generator Interconnection Procedures and Agreements* ("Order No. 2023"), 184 FERC ¶ 61,054 at P 39 (2023) ("[A]s of February 2022, all 2,274 projects waiting for an interconnection agreement in the PJM interconnection queue had been waiting for a year or more; 33% (758 projects) had been waiting more than 500 days, 22% (497 projects) have been stuck for more than two years, and 7% (166 projects) have been waiting more than three years.").
[208] Synapse Report, *supra* note 9, at 33.

delaying the auction is appropriate but that the Commission should not necessarily limit that delay to six months; again, getting the rules right is more important than running auctions quickly.

American Municipal Power ("AMP") casts doubt on the Commission's authority to delay the auction in response to PJM's motion in this matter.[209] However, AMP concedes that the Commission has authority to delay the auction based on a ruling in response to the Complaint in this matter.[210] PJM also agrees that the Commission "could grant the requested delay in the Complaint docket."[211] While Complainants believe that the Commission has authority to act in either docket (or both), Complainants maintain that the appropriate course of action is to delay the auction in this docket through an initial finding that PJM's existing Tariff is unjust and unreasonable. As PJM itself states, PJM made its proposal to delay the auction in response to the Complaint, and as such, the Complaint docket is the appropriate venue for relief.

Finally, numerous other entities have also voiced support for delaying upcoming auctions, including various Generators, consumer advocates, OPSI, and the Governors of several states. Indeed, OPSI, the Governors, and consumer advocates also voice support for the Complaints' requested relief.

B. Establishing a refund effective date provides fair notice to stakeholders and preserves the Commission's discretion to prevent inequitable outcomes.

Section 206 of the FPA states that the Commission "shall establish a refund effective date" in "a proceeding instituted on complaint," and that the refund date "shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such

[209] Protest and Answer in Opposition of American Municipal Power, Inc. to Request of PJM Interconnection, LLC to Delay Auctions, at 2, Docket No. ER25-118 (Oct. 22, 2024), Accession No. 20241022-5161.
[210] *Id.* at 6.
[211] PJM Interconnection, LLC's Motion for Leave to Answer and Answer to Protests, at 4, Docket No. ER25-118 (Oct. 24, 2024), Accession No. 20241024-5144.

complaint."[212] Consistent with this statutory text, the Complaint requested that the Commission establish a refund effective date of September 27, 2024, the date of the Complaint.

Of all the entities that responded to the Complaint, only Talen objects to the establishment of a refund effective date of September 27, 2024.[213] Talen argues that the Commission should instead establish the latest possible refund effective date that the FPA permits.[214] Talen also argues that the filed rate doctrine would be an obstacle to the Commission granting the relief requested in the Complaint by allowing PJM to run upcoming auctions subject to the possibility of refunds.[215] While EPSA ignores the issue of the appropriate refund effective date, it also cites the filed rate doctrine as a purported obstacle to relief in this case.[216] Talen and EPSA each cite the recent decision by the Court of Appeals for the Third Circuit in *PJM Power Providers Group v. FERC* as the basis for their filed rate doctrine arguments.[217] Because that case is distinct, those arguments lack merit. Instead, these arguments support the establishment of the Complaint's requested refund effective date, which would prevent potential disputes about the filed rate doctrine.

To begin with, reliance on *PJM Power Providers Group* is misplaced, because that case is meaningfully distinct for several reasons. First, in that case, the Commission action at issue was a decision to approve a filing under section 205 of the FPA, whereas in this case the Commission is considering a complaint under section 206. The court did not consider, and could not have considered, whether the filed rate doctrine constrains the Commission's authority to allow an auction to be run subject to refund, because that authority arises only when the

[212] 16 U.S.C. § 824e(b).
[213] Talen Protest, *supra* note 3, at 18–20.
[214] *Id.* at 20.
[215] *Id.* at 19.
[216] EPSA Protest, *supra* note 3, at 43–46.
[217] *E.g.* Talen Protest at 19 (citing *PJM Power Providers Grp. v. FERC*, 96 F.4th 390 (3d Cir. 2024)).

Commission acts pursuant to section 206 of the FPA. Indeed, the court in *PJM Power Providers Group* did not even mention the Commission's refund authority under section 206, although it did recognize that once a rate is shown to be unjust and unreasonable, "section 206 [gives] FERC broad discretion to fashion a just and reasonable remedy."[218]

Additionally, in comparison to the facts in this case, the auction at issue in *PJM Power Providers Group* had progressed much further by the time the Commission approved PJM's section 205 filing. There, all pre-auction activities had been completed, bids had come in, and PJM had already run its algorithm to clear the auction before it noticed a problem; the only step that had not been taken was PJM formally posting the auction results.[219] Here, in contrast, many pre-auction activities had not been completed prior to the filing of the Complaint or the requested refund effective date. For example, no bidding had occurred and PJM had not yet made any final determination of which resources would be exempt from the requirement to offer into the capacity auction.[220] Insofar as market sellers would make different decisions about how to bid into the auction based on changes the Commission might make in response to this Complaint, they remain free to do so.

Furthermore, contrary to the arguments that the filed rate doctrine could prevent relief in this matter, the requested refund effective date provides notice to market participants that rates may change and addresses any concern that such changes in rates could be retroactive. As the Commission has explained, providing notice that a "rate" may change—i.e., be subject to refund—"changes what would be purely retroactive ratemaking into a functionally prospective

[218] *PJM Power Providers Grp.*, 96 F.4th at 396–97.
[219] *Id.* at 396.
[220] *See* PJM Capacity Auction Schedule, https://pjm.com/-/media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx (noting that "PJM notifies participant/IMM of its determination on must offer exception" on September 30, 2024 and that the auction window does not open until December 4, 2024).

process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision."[221] The Commission provided that explanation in a case that, like this matter, arose under section 206. There, the Commission also explained that "as a result of [a] complaint and the Commission's subsequent orders establishing a refund effective date, [market participants] were put on sufficient notice that the rates [at issue] were potentially subject to later revision by the Commission and potentially subject to 15 months of refunds beginning as of the refund effective date."[222] For that reason, the Commission correctly rejected an argument that it had "violated the filed rate doctrine and the corollary rule against retroactive ratemaking."[223] The same logic applies here, and for the same reason, establishing the refund effective date requested in the Complaint ensures that the Commission retains its authority to issue a remedy in this matter without running afoul of the filed rate doctrine.

Nevertheless, while Complainants do not believe that the filed rate doctrine poses an obstacle to the Commission providing relief in this case, Complainants do not object to Calpine's request that if the Commission grants the Complaint, it should also direct PJM to rerun pre-auction activities that have already elapsed.[224] Complainants agree that in light of the interrelated nature of PJM's capacity market rules, as well as the possibility that PJM may propose changes to those rules beyond the scope of this Complaint,[225] resetting the auction, including pre-auction activities that have occurred, would provide market participants with the best notice of what the rules of the auction would be before they are required to take action and thus represents appropriately equitable relief.

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[221] *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator*, 127 FERC ¶ 61,191 at P 27 (2009).
[222] *Id.* at P 28.
[223] *Id.*
[224] Calpine Protest, *supra* note 3, at 3–4.
[225] PJM Answer, *supra* note 2, at 2 (noting a potential "forthcoming proposal that will be submitted under section 205 of the Federal Power Act").

C. Commission precedent establishes that the appropriate remedy is an order finding that PJM's existing Tariff is unjust and unreasonable and directing PJM to propose just and reasonable revisions.

Just as the Commission's precedents establish why it is unjust and unreasonable for PJM to force consumers to pay twice for capacity, those precedents also establish an appropriate remedy. Consistent with its approach in prior cases, the Commission should issue a finding that PJM's Tariff is unjust and unreasonable and direct PJM to develop reforms. Both in *NYISO* and *ISO-NE*, the Commission found that existing tariffs were unjust and unreasonable because they lacked adequate rules regarding the treatment of RMR units and directed the ISOs to develop reforms.[226] Both of those rulings appropriately gave the RTO an opportunity to devise a just and reasonable approach to the retention of RMR units and to consider the specific issues related to each RTO's markets. For example, the Commission's order in *ISO-NE* afforded an opportunity to devise rules for the retention of resources for fuel-security, an issue that was distinct to that region's needs.

So too here, a finding that PJM's Tariff is unjust and unreasonable because it burdens consumers with excessive costs associated with the non-participation of RMR units in the capacity market would provide PJM an opportunity to work with stakeholders to consider and propose an alternative approach for the Commission's consideration. PJM and the Generators raise concerns that the remedies proposed in the Complaint are complicated in light of PJM's other rules regarding generator deactivations and penalties for underperformance in the capacity

[226] *NYISO*, 161 FERC ¶ 61,189 at P 4 (noting that "the Commission, acting under FPA section 206, found that NYISO's Market Administration and Control Area Services Tariff (Services Tariff) is unjust and unreasonable because it does not contain provisions governing the retention of and compensation to generating units needed for reliability" and that the Commission therefore "directed NYISO to submit proposed tariff revisions"); *see also ISO-NE*, 165 FERC ¶ 61,202 at PP 3–4 (noting that "[t]he Commission preliminarily found . . . that [ISO-NE's] Tariff may be unjust and unreasonable because it fails to address specific regional fuel security concerns" and that "[a]ccordingly, pursuant to its authority under FPA section 206, the Commission directed ISO-NE to either" submit tariff revisions or justify its existing tariff).

market. While these concerns are overblown, Complainants nevertheless believe it is appropriate for the Commission to provide PJM with an opportunity to propose reforms that address the complexities with which it and stakeholders have expressed concerns.

However, Complainants stress the importance of the Commission making a clear finding that PJM's existing Tariff is unjust and unreasonable. PJM urges the Commission to sit on its hands and simply wait for PJM to submit a proposed set of reforms—about which PJM has offered zero details—that will ostensibly resolve this Complaint.[227] However, undercutting the suggestion that it will fix the serious problems raised in this Complaint, PJM has defended its existing Tariff provisions that exempt RMR units from participation in the capacity market and has argued that the resulting billions of dollars in burdens on already-overburdened consumers represent an appropriate price signal rather than excessive costs. Additionally, as described in Section III(B), PJM stakeholders recently advanced PJM's proposed solution package in the Deactivation Enhancements Senior Task Force that does not fix the unreasonable exclusion of RMR units from the capacity auction, over the IMM's package which would have done so. Hence, it is not at all clear that PJM will propose reforms that address the core issues raised in the Complaint unless the Commission explicitly requires PJM to do so. Additionally, Generators' chorus of arguments in defense of the existing Tariff—and in defiance of the Commission's reasoning in its precedents—reveals that when PJM develops reforms, it will be under extreme pressure from Generators to retain the practices that this Complaint has proven are unjust and unreasonable. To ensure that consumers are protected against excessive costs, it is essential that the Commission make a clear finding pursuant to section 206 of the FPA that PJM's existing Tariff is unjust and unreasonable.

[227] PJM Answer, *supra* note 2, at 2.; *id* at 52 (asking the Commission to delay upcoming auctions "without ruling on the Complaint's merits").

1. Generators' objections to the remedies proposed in the Complaint are tantamount to collateral attacks on Commission precedent.

The Complaint identified two potential remedies to PJM's unjust and unreasonable Tariff provisions that burden consumers with excessive costs by failing to account accurately for the resource adequacy contributions of RMR units.[228] First, the Complaint explained that the Commission could take the exact same approach in this case as it took in both *ISO-NE* and *NYISO* by requiring RMR units to participate in the capacity market as price-takers.[229] Commission precedent plainly establishes that this is a just and reasonable solution.[230]

Second, the Complaint identified an alternative approach that would account for the resource adequacy contributions of RMR units by reducing the amount of capacity to be procured. As the Complaint explained, this approach would resolve concerns about RMR units assuming the risks of penalties associated with the failure to perform during a capacity emergency and would produce an approximately equivalent impact on clearing prices and overall market revenues.[231] Because this alternative would protect consumers in a manner that is approximately equivalent to RMR units' participation in capacity markets as price-takers, which the Commission has repeatedly approved as just and reasonable, Complainants maintain that this approach would be just and reasonable as well.

Generators object that these proposed remedies are unjust and unreasonable because they would ostensibly "suppress" capacity market prices, and Complainants have responded to that baseless assertion at length above.[232] As explained, the Commission has rejected this assertion before, and it should do so again. Put simply, there is no merit to Generators' effort to argue that

[228] Complaint, *supra* note 7, at 52–55.
[229] *Id.*
[230] *NYISO*, 155 FERC ¶ 61,076 at P 82; *ISO-NE*, 165 FERC ¶ 61,202 at P 82.
[231] Complaint, *supra* note 7, at 52–55.
[232] *See supra* § IV (collecting and rebutting these arguments).

a remedy is unjust and unreasonable when the Commission has in fact found that remedy just and reasonable on multiple occasions.

Nor is there merit to Generators' objection that it would be unjust and unreasonable for RMR units to be subject to penalties for a failure to perform if they participate in the capacity market as price takers. To begin with, this argument applies only to price-taker treatment for RMR units, since RMR units would indisputably not be exposed to penalties if the remedy is instead a reduction in capacity procurement targets to account for RMR units' resource adequacy contributions. Additionally, contrary to Generators' arguments, RMR units would face little risk of penalties. First, such penalties would likely reduce the capacity revenue offset to the RMR unit's fixed cost payment—the RMR unit would be paid one way or another and therefore not bear any risk.[233] Second, PJM's capacity performance system aims to provide incentives for generators to invest in maintaining their facilities so that they will perform reliably when called; because most generators do not receive payments from consumers that cover maintenance costs, the capacity performance system of penalties and bonuses provides a financial incentive to conduct necessary maintenance. However, unlike most generators, RMR units do receive cost-of-service payments from consumers that fund, among other things, maintenance costs. The fact that consumers are required to fund the maintenance of RMR units means that these units ought to actually perform maintenance that ensures their reliable operation and thus mitigates their penalty risk.

To the extent the Commission believes that RMR units' penalty risk is an appreciable barrier to their participation in the capacity market, options exist to mitigate or eliminate that risk. For example, Mr. Wilson has testified that RMR arrangements may "specify to what extent

[233] Complaint, *supra* note 7, at Att. 3 Wilson Aff. P 26.

these penalties and incentives flow through to consumers."[234] Similarly, Mr. Wilson notes that to the extent RMR units face credible penalty risks, it might be appropriate for these units to submit non-zero bids that solely reflect their risk of incurring penalties, known as Capacity Performance Quantified Risk ("CPQR"). As PJM has previously explained, allowing generators to include CPQR in their capacity market offers can help mitigate risks by, for example, allowing generators to purchase insurance.[235] Additionally, other alterations to the capacity performance penalty structure may be appropriate for RMR units, such as capping their penalty risk at the auction clearing price; this would mean that RMR units that incur penalties would not lose more capacity revenue than they receive in a single auction. To the extent the Commission believes that penalty risk is an impediment to RMR units' participation in the capacity market, Complainants urge the Commission either to simply direct PJM to implement the alternative approach of reducing capacity procurement targets to account for RMR units' reliability contributions or to direct PJM to address this issue when developing proposed reforms.

2. EPSA's attempt to bind the Commission's hands lacks merit.

EPSA advances two Hail-Mary arguments for why the Commission ostensibly cannot issue relief in this case: first, that the Complaint represents a somehow impermissible "bank shot" that attempts to change the "rate practices" of RMR units themselves rather than PJM; and second, that the *Mobile-Sierra* doctrine purportedly protects RMR arrangements that are not yet final and are still subject to Commission-supervised settlement processes.[236] Neither argument has merit.

[234] Complaint, *supra* note 7, at Wilson Aff. P 38.
[235] *See PJM Interconnection, LLC*, Proposed Enhancements to PJM's Capacity Market Rules—Market Seller Offer Cap, Performance Payment Eligibility, and Forward Energy and Ancillary Service Revenues, at 12, Docket No. ER24-98 (Oct. 13, 2023), Accession No. 20231013-5141 (discussing "capacity performance insurance policies").
[236] EPSA Protest, *supra* note 3, at 38–40.

First, EPSA's argument that the Complaint fails to target a PJM "rate practice" is simply incorrect. As the Complaint noted, RMR units in PJM are not required to participate in the capacity market because *PJM's Tariff* exempts them from the requirement to do so. Specifically, PJM's Tariff establishes a must-offer requirement for capacity resources,[237] but the Tariff exempts capacity resources from that requirement if they are "reasonably expected to be physically unable to participate in the relevant Delivery Year."[238] In turn, the Tariff further explains that "to establish that a resource is reasonably expected to be physically unable to participate," a generator may show that:

> [i]t has a documented plan in place to retire the resource prior to or during the Delivery Year, and has submitted a notice of Deactivation to the Office of Interconnection consistent with Tariff, Part V, section 113.1, *without regard to whether the Office of Interconnection has requested the Capacity Market Seller to continue to operate the resource beyond its desired deactivation date in accordance with Tariff, Part V, section 113.2 for the purpose of maintaining the reliability of the PJM Transmission system and the Capacity Market Seller has agreed to do so.*[239]

Hence, it is PJM's Tariff that exempts RMR units from the obligation to participate in the capacity market, and EPSA's contention that RMR units' non-participation in the capacity market is not a PJM "rate practice" is wholly without merit. Indeed, EPSA's contention that the Commission cannot act in the context of this Complaint under section 206 of the FPA against PJM simply makes no sense in light of the fact that the Commission has repeatedly and effectively required RMR units to participate in capacity markets in ISO-NE and NYISO after

[237] PJM OATT, Tariff, Attach. DD § 6.6(a)
[238] *Id.* § 6.6(g).
[239] *Id.* (emphasis added)

making findings under section 206 of the FPA that those ISOs' Tariffs were unjust and unreasonable.[240]

Nor is there merit to EPSA's contention that the *Mobile-Sierra* doctrine could tie the Commission's hands here. To begin with, the Complaint does not seek to change the terms of the RMR rate schedules currently before the Commission, but instead to change generally applicable tariff rules.[241] Furthermore, the RMR arrangements to which EPSA suggests this doctrine applies are not final; instead, they are still subject to protests that the Commission has not yet finally resolved. The issues raised in those protests include whether these specific RMR units should be required to participate in the capacity market and whether the *Mobile-Sierra* doctrine is even applicable to those arrangements.[242] Because these RMR arrangements are not even final, it is farfetched to suggest that the *Mobile-Sierra* doctrine would be an impediment to the relief requested in this Complaint—which, again, is prospective relief regarding PJM's Tariff. Finally, even if the *Mobile-Sierra* doctrine has any application here, the facts underlying this Complaint are still sufficient for the Commission to take action; billions of dollars in excessive costs to consumers that fall most heavily on consumers who already face some of the heaviest energy burdens in the nation are a sufficient basis to find serious harm to the public interest.

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[240] *NYISO*, 161 FERC ¶ 61,189 at P 4 (noting that "the Commission, acting under FPA section 206, found that NYISO's Market Administration and Control Area Services Tariff (Services Tariff) is unjust and unreasonable because it does not contain provisions governing the retention of and compensation to generating units needed for reliability" and that the Commission therefore "directed NYISO to submit proposed tariff revisions"); *see also ISO-NE*, 165 FERC ¶ 61,202 at PP 3–4 (noting that "[t]he Commission preliminarily found . . . that [ISO-NE's] Tariff may be unjust and unreasonable because it fails to address specific regional fuel security concerns" and that "[a]ccordingly, pursuant to its authority under FPA section 206, the Commission directed ISO-NE to either" submit tariff revisions or justify its existing tariff).

[241] The Continuing Operations Rate Schedules pertaining to the Brandon Shores and Wagner plants are silent as to whether the units can or must offer into RPM, but do state that any capacity revenues should be applied as an offset. *See* Brandon Shores LLC, Continuing Operations Rate Schedule, Docket No. ER24-1790 (Apr. 18, 2024), Accession No. 20240418-5176, Appendix A, at §§ 3.3, 3.5.

[242] *See*, *e.g.*, Protest of Sierra Club at 7–9, 12, Docket Nos. ER24-1787, ER24-1790 (May 16, 2024), Accession No. 20240516-5186.

CONCLUSION

Neither PJM's Answer nor any of the Protests in this matter persuasively rebut the Complaint. While the Protests attempt to portray Complainants as simply opposing any high prices, this is a gross mischaracterization of the Complaint, which seeks a targeted remedy for a specific market design flaw based on reasoning that the Commission has clearly and thoroughly established in regions with similar capacity market structures. Accurate assessments of supply and demand are fundamental to efficient and reasonable capacity prices; the Commission must step in where market rules place a thumb on the scale for higher prices that are not warranted. The Commission's intervention to protect consumers is especially critical where, as here, the price impacts from an unjust and unreasonable practice fall most heavily on already-overburdened consumers.

The Commission should grant the Complaint, establish a refund effective date of September 27, 2024, find that PJM's existing Tariff is unjust and unreasonable, direct PJM to propose reforms, and delay upcoming capacity auctions until just and reasonable rules are in place.

DATED October 31, 2024

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. § 385.2010 upon each party designated in the official service list compiled by the Secretary in this proceeding, by email.

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ATTACHMENT 1:

Reply Affidavit of James F. Wilson

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Sierra Club et al v. PJM Interconnection, L.L.C.	))))))	Docket No. EL24-148

REPLY AFFIDAVIT OF JAMES F. WILSON
IN SUPPORT OF THE COMPLAINT OF
THE PUBLIC INTEREST ORGANIZATIONS

Contents

REPLY AFFIDAVIT OF JAMES F. WILSON
IN SUPPORT OF THE COMPLAINT OF
THE PUBLIC INTEREST ORGANIZATIONS

I. Introduction

1. My name is James F. Wilson. I am an economist and independent consultant doing business as Wilson Energy Economics. My business address is 4800 Hampden Lane Suite 200, Bethesda, MD 20814.

2. My affidavit in support of the complaint in this proceeding ("Initial Affidavit") was submitted on September 27, 2024. That affidavit, and this reply affidavit, were both prepared at the request of complainants Sierra Club, Natural Resources Defense Council, and Union of Concerned Scientists. My assignment now was to review the various answers and protests in response to the complaint and address the issues raised. In particular, I address assertions in the Answers of PJM Interconnection, LLC ("PJM") and the New England Power Generators Association, Inc. ("NEPGA"), and the affidavits of Roy J. Shanker on behalf of the PJM Power Providers Group, Scott W. Niemann on behalf of Vistra Corporation, A. Joseph Cavicchi on behalf of Talen Energy Corporation, Paul M. Sotkiewicz on behalf of the Electric Power Supply Association, and Zachary Ming on behalf of Calpine and LS Power.

II. Summary and Recommendations

3. The primary issue in this proceeding is how generating units that are needed for reliability and operate for some period of time under cost-based contracts ("Reliability Must Run" or "RMR" units) should be treated in organized capacity markets, and, in particular, in PJM's Reliability Pricing Model ("RPM") capacity construct. As I explained in my Initial Affidavit, the Federal Energy Regulatory Commission ("FERC" or "Commission") has a clear policy in this regard – an RMR unit, which has been determined by the RTO to be needed for reliability, should

be offered into the RTO's capacity market as a price taker for the duration of the need and RMR contract. I have concluded in the past,[1] and again concluded in my Initial Affidavit, that the Commission's policy is supported by economic theory, is economically efficient, and is fully applicable to RMRs in the PJM region. I also noted that while in some instances RMRs in the PJM region have participated in RPM in recent years, many have not, but this resulted from negotiations between the owners and PJM.[2]

4. My Initial Affidavit further explained that holding an RMR unit out of RPM misrepresents the true state of supply, because the RMR unit, which is needed and has been retained for other reliability needs, does indeed contribute to resource adequacy. To ignore the unit distorts the supply-demand balance in RPM and, as a result, distorts capacity prices.

5. Protesters' affiants make many points with which I agree, and that are not at issue in this proceeding:

a. After many years of flat or declining peak loads, peak loads are now expected to grow on the PJM system;

b. New entry, including of resources that have completed the interconnection process, has been slower than needed to maintain reserve margins, due to a combination of factors including interconnection queue delays, supply chain issues and low capacity prices;

[1] Wilson, James F., *Affidavit in Support of the Protest of the New England States Committee on Electricity*, filed June 6, 2018 in FERC Docket No. EL18-154, pp. 4-5 (finding the FERC policy sound and concluding that the Mystic units should be offered as price takers into the ISO New England capacity market).

[2] Initial Affidavit p. 2 footnote 2 (noting that FirstEnergy's Eastlake #1 RMR contract called for it to offer into RPM at a price of zero dollars).

c. The excess capacity that has been present on the PJM system for many years is now declining, as retirements have exceeded new entry, so the PJM reserve margin is declining;

d. The PJM reserve margin may continue to decline in the coming years with additional load growth and retirements;

e. PJM's RPM capacity market was designed to set higher prices when the reserve margin is lower and capacity is needed;

f. Recent RPM prices, for the 2023/2024 and 2024/2025 delivery years, were quite low and did not signal a need for new capacity;

g. As the PJM reserve margin is now tightening, RPM prices should rise and did rise in the most recent base residual auction for the 2025/2026 delivery year;

h. Prices also rose in the 2025/2026 auction due to improved risk modeling and other market design changes;

i. Higher RPM prices reflecting a tighter supply-demand balance lead investors to bring forth new capacity and the owners of existing capacity to delay retirements;

j. It would be preferable for RTOs to implement more complete markets that provide adequate compensation to units needed for reliability, and avoid RMR arrangements, to the extent practical.

6. While the protesters dedicated many pages to developing these points, I do not consider them relevant to the main issue the Commission faces in this proceeding. As noted in my Initial Affidavit and further discussed herein, with RMR units included in RPM auctions, the RPM

mechanism will function as intended and send very strong price signals accurately reflecting the need for new capacity on the PJM system.

7. To understand the issues in this case, it is necessary to adopt the correct frame of reference: generating units that transition to RMR agreements are generally qualified to serve as capacity resources before the transition occurs. This is true for the RMR units that have been discussed in this proceeding, Brandon Shores Units 1 and 2 and Herbert A. Wagner units 1, 3, 4 and CT (hereafter, "BS&W"); these units are presently operating and are serving as capacity resources on the PJM system.[3] And from the present time through 2028, these resources will continue operating, transitioning to cost-based RMR contracts after May 31, 2025. Had this continuity with respect to the operation of these units been recognized in the RPM Base Residual Auction for the 2025-2026 Delivery Year (that is, had these units been included in the auction and cleared, as they did for the current and many prior delivery years), according to various estimates, the auction would still have strongly signaled a need for new capacity, setting one of the highest RPM clearing prices in RPM's 18 delivery year history.[4]

8. As I have many times pointed out,[5] high RPM clearing prices lead to increases in the offered capacity and other responses in the next auction, so that prices tend to return to moderate levels after instances of high prices. Before 2025/2026 there had been four RPM base

[3] See letter from Dale Lebsack, President, Talen Energy, to Yuri Smolansky, PJM, April 6, 2023, *Re: Notice of Deactivation Date for Brandon Shores 1&2*, page 1 ("The Brandon Facilities have capacity market obligations through May 31, 2025.") and letter from Dale Lebsack, President, Talen Energy, to Yuri Smolansky, PJM, October 16, 2023, *Re: Notice of Deactivation Date for H. A. Wagner 1, 3, 4 and CT*, page 1 ("The Wagner Facilities have capacity market obligations through May 31, 2025.")

[4] Initial Affidavit p. 14 and footnote 24, noting the Synapse estimate ($163.46/MW-day) and IMM estimate. Various other affidavits provided similar estimates; see, for instance, Ming Affidavit p. 22.

[5] See, for instance, Wilson, James F., *Reply Affidavit in Support of the Reply Comments of the Public Interest Entities*, filed November 4, 2022 in FERC Docket No. ER22-2984-000 (Quadrennial Review), pp. 7-9.

residual auction outcomes over $126/MW-day, and the average price in the subsequent auctions was $80/MW-day, well under the $94/MW-day average value for 2007/2008 through 2022/2023. The market reactions to relatively extreme price outcomes are quite strong and generally return prices beyond average levels in the very next auction. There is no evidence of a need to place thumbs on the RPM scale.

9. Recognizing that BS&W have been, are now, and will continue to contribute to resource adequacy, it becomes clear that *removing* them from the 2025/2026 auction (and not recognizing these units' contributions to resource adequacy in any other manner) misrepresented the actual supply-demand balance, and the true resource adequacy risk, expected for the PJM system in 2025/2026, and led to even higher RPM clearing prices than would otherwise have occurred. In my initial affidavit I argued that this "extra price signal" that resulted from removing these units was a distortion and not appropriate. I further argued that market participants were unlikely to provide an extra response to this extra price signal since it will be known to be a distortion of the actual supply-demand situation.[6]

10. The various commenters generally turn the frame of reference upside down, starting with the auction outcome that excluded BS&W, and characterizing the estimated outcome, had they been included, as the distortion. This upside down framing leads to the many pages lamenting the alleged "price suppression" resulting from recognizing the resource adequacy value of RMR resources.[7] None of the commenters directly address FERC's rationale for its policy that was

[6] Initial Affidavit p. 14.

[7] See, for instance, Cavicchi Affidavit p. 10 ("The response to high prices should not be price suppression through forcing retiring RMR resources to participate and to submit zero-price offers into capacity auctions."); Ming Affidavit p. 28 ("The forced participation of RMR resources in RPM would result in suppression of market prices below levels observed without their participation."); Shanker Affidavit p. 5, Second Conclusion ("The requested relief is not justified because it blunts the primary, and well accepted, goal of RPM: to signal scarcity and incentivize new entry through higher capacity market prices.")

clearly explained in my Initial Affidavit: units needed for reliability may be revenue inadequate but are economic, so they should offer into an organized capacity market at net going forward cost, which due to the RMR contract, is zero.[8] Some assert differences between the PJM market and those where FERC's policy was established, but none identify any differences that challenge the applicability of the policy to PJM.

11. My conclusions and recommendations are unaffected by the various answers and protests. To summarize: RMR units should participate in PJM's RPM capacity construct as price takers, to accurately and efficiently represent their contribution to resource adequacy and avoid the inefficiency and harm that result from misrepresenting true resource adequacy within RPM. Consumers should not have to pay twice for the RMR capacity. Alternatively and roughly equivalently, the reliability contributions of RMR units could be reflected in the resource adequacy analyses that determine the Reliability Requirements acquired through RPM.

12. The remainder of this reply affidavit addresses some of the specific arguments and assertions in some of the protest affidavits.

III. Responses to Protesters' Assertions

A. Why a Generator Ends Up on an RMR Contract Is Not Material

13. The various experts disagree about why RMR units in general, and the BS&W units in particular, become revenue inadequate. Some agree that RMR units are in fact economic and

[8] Initial Affidavit pp. 8-9.

are revenue inadequate due to missing markets, consistent with FERC policy,[9] while others dispute that missing markets were the cause, and assert that such resources are uneconomic.[10] With respect to the BS&W units, while the owner made various statements about the status of these plants in the communications with PJM, there was likely little doubt that these strategically-located plants would be found by PJM to be needed for reliability. Protesters similarly disagree about the types of reliability issues that arise and lead to a unit's retention.

14. Fortunately, the Commission need not resolve the questions about why resources are retained under RMR agreements. The issue in this proceeding is only: once a generator that is needed for reliability is retained under an RMR contract and consumers are bearing the full cost of the resource, how should its resource adequacy contribution be accounted for. Indeed, in the New York and New England cases through which the Commission developed its policy on this issue, various types of reliability needs were implicated. The original New York case described RMR units as generally retained to "ensure reliable transmission service."[11] In New England, the Mystic units were needed for fuel security.[12]

15. Some protesters suggest that the reasons a unit is retained should limit how it is used under its RMR contract.[13] This assumption is unsupported (the PJM Tariff does not require

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[9] See, for instance Ming Affidavit, p. 26 ("Regarding the assertion that these RMR units are in fact economic and are not procured due to "missing markets", I agree.")

[10] See, for instance, Cavicchi Affidavit p. 17 ("However, the facts and circumstances of the Brandon Shores and Wagner retirement requests do not implicate "missing markets" as the reason for the retirements."); Niemann Affidavit p. 7 ("When reliability issues result from the orderly retirement of a competitively supplied resource that has reached the end of its economic or physical life, or is no longer consistent with policy objectives, that resource may need to be temporarily retained through a nonmarket mechanism.")

[11] 155 FERC ¶ 61,076 (2016) P. 32.

[12] 165 FERC ¶ 61,202 2018) P. 2.

[13] See, for instance, Sotkiewicz Affidavit, which claims that Part V of PJM's Tariff allows for the retention of resources noticed for deactivation only for providing "transmission security," and then further assumes that an RMR unit should only be used to address such reliability needs.

this), it is contrary to Commission policy, and it would be economically inefficient. In the New York case noted above, the Commission recognized for purposes of allocating RMR costs six categories of reliability issues that an RMR unit might be addressing: resource adequacy; bulk power transmission facilities thermal transmission security; bulk power transmission facility voltage security; local transmission security; dynamic stability; and short circuit.[14] In the New England case, the Commission found as follows:[15]

> We accept ISO-NE's proposal to enter fuel security resources into the FCM as price-takers. ISO-NE explains that procuring a fuel-secure resource in the capacity market, without ensuring that its resource adequacy contributions are counted, may result in a market outcome that inefficiently over-procures the resource adequacy product at excessive prices.

16. Regardless of the reason for an RMR unit's retention, as long as it remains in operation, it provides resource adequacy. Once consumers are bearing the full cost of a resource, they should benefit from all of its reliability value. Protesters who would limit the operation of RMR units, such as Witness Sotkiewicz, would apparently have PJM dropping firm load at residences that are bearing a share of the cost of an RMR unit, while PJM declines to dispatch the same RMR unit if the specific reliability issues for which it was retained do not happen to be present at the moment. The RMR agreements in PJM have generally not been so restrictive, and have allowed PJM to dispatch RMR units in capacity emergencies.[16]

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[14] 155 FERC ¶ 61,076 (2016) P. 104.

[15] 165 FERC ¶ 61,202 (2018) P. 82.

[16] See, e.g., Complaint of Sierra Club, Natural Resources Defense Council, Public Citizen, Sustainable FERC Project, and Union of Concerned Scientists, at Table 1, and Attachment 6.

B. Witnesses Essentially Argue for "Thumbs on the Scale" for Resource Adequacy

17. Many of the protests and their witnesses emphasize the importance of high capacity prices at this time, and suggest that anything that could lead to lower capacity prices (apparently even fixing market design flaws) should be opposed. As described above, the recent RPM auction would have set very high prices even with the resource adequacy value of RMR units reflected. But investors wouldn't be fooled into additional investments by the impact of thumbs on the scale. They can see for themselves whether supply and demand are accurately represented in prices, and what new supply and transmission are likely coming in future years. Furthermore, investors focus on forward-looking and longer-term expectations, not just most recent prices. The "sky is falling" tenor of many of the protests is mainly supported by the distorted, excessive price outcome of the last auction that was partly due to the exclusion of the RMR units.

C. Witnesses are Silent re: FERC Policy for RMRs

18. The various witnesses, including former FERC staffer Sotkiewicz, are generally silent about the Commission's policy with regard to RMR units in organized capacity markets, which I described in detail in my Initial Affidavit.[17]

19. In its Answer, PJM asserts "significant and relevant regional differences in the Capacity Markets and RMR procedures of PJM and other RTOs."[18] However, while noting a number of differences in market and RMR rules, PJM does not explain how any of them are relevant to the issue at hand in this case. In particular, PJM does not assert any reason that the

[17] Initial Affidavit pp. 8-11.

[18] PJM Answer . p. 42-50.

Commission's policy with respect to RMRs in capacity markets makes any less sense in PJM than it does in New York and New England.

20. NEPGA, which opposed FERC's policy in New England, asserts (pp. 2-3) there is a "major structural difference" between the PJM and ISO New England markets, referring to the formal retirement notice periods.[19]

> NEPGA also notes, as a threshold matter, a major structural difference between the PJM and ISO-NE market ignored by the Complainants. ISO-NE's retirement notification process differs significantly from PJM's, in that ISO-NE requires a Retirement De-List Bid (the earliest retirement notification called for in the Tariff) over four years prior to the commitment period and nearly one year prior to the relevant Forward Capacity Auction. Whereas in PJM a resource retirement notification is due well after the capacity auction, indeed only months before the commitment period. Thus, where in ISO-NE a resource held for transmission security is entered as a price-taker in the capacity auction, this form of relief is inconsistent with the PJM retirement notification process and capacity market.

21. However, as noted in my Initial Affidavit[20] and by various others, the PJM tariff allows resources that plan to retire to seek an exemption from the must offer requirement before a base residual auction. Such a request is analogous to the Retirement De-List Bid under New England rules. NEPGA fails to articulate any relevance of this alleged difference.

22. Nothing in the various protests changes my conclusion that the Commission's policy calling for RMR units to participate in organized capacity markets is correct and applicable to PJM.

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[19] Motion to Intervene and Answer of the New England Power Generators Association, Inc., filed October 24, 2024 in Docket No, EL24-148, pp. 2-3.

[20] Initial Affidavit p. 6.

D. Arguments Disputing that Excluding RMRs Leads to "Paying Twice" Fail

23. While the Commission has clearly recognized that excluding RMR units from organized capacity markets results in consumers paying twice,[21] witnesses nevertheless attempt to argue otherwise. These arguments generally rest on the incorrect frame of reference described above, assuming the RMR units should have retired and should not be in the auctions.[22]

24. Witness Sotkiewicz makes a novel argument, imagining that the replacement transmission could be constructed overnight:[23]

> If, for instance, the transmission upgrades that will eliminate the need for Brandon Shores and H.A. Wagner could have been completed "overnight," the 2025/2026 BRA outcomes would have been the same, except to the extent the transmission upgrades had a different impact on CETL. Yet, there would be no question of "consumers paying twice for capacity" with the June 1, 2025 deactivation of Brandon Shores and H.A. Wagner in the "overnight" upgrade scenario.

25. But of course the main impact of the transmission upgrades would be to substantially expand transmission serving the BG&E zone, increasing CETL. This would likely eliminate the zone from the capacity market's perspective, substantially lowering capacity prices there. These lower prices would accurately reflect the available supply and transmission system, in a way that the prices resulting from the current market rules and treatment of RMR resources, which ignore the resource adequacy value of RMR resources, do not.

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[21] See Initial Affidavit p. 8, and, for instance, 155 FERC ¶ 61,076 (2016), P 82 ("If NYISO imposes a higher than $0.00/kW-month offer price on an RMR generator and the generator does not clear in the ICAP spot market auction, another generator that otherwise would not have cleared will clear instead. In this instance, ratepayers will pay twice—once for the cost of the RMR agreement, and again for the generator that otherwise would not have cleared the market.")

[22] See, for instance, Ming Affidavit pp. 24-25.

[23] Sotkiewicz Affidavit, p. 13.

E. RMR Units Can Provide Capacity Under Negotiated RMR Agreements

26. Various witnesses assert that RMR units do not provide the same service as capacity resources on the PJM system, so they shouldn't be treated as capacity. As noted above, some RMR agreements called for the unit to serve as a capacity resource while other RMR agreements did not – but this has resulted from the negotiations between PJM and owners, and either approach is consistent with the current PJM Tariff. As I proposed in my Initial Affidavit,[24] the negotiation of an RMR contract can lead to an acceptable level of Capacity Performance risk for the owner, with some or all of the potential cost and benefits of penalties and bonuses during Performance Assessment Intervals passed through to consumers through the RMR agreement. No witness asserted that this was not possible. Indeed, in the filed RMR agreement that would apply to the Brandon Shores units once the Commission makes a final determination in that regard, any capacity market revenues will offset RMR costs, so this would appear to mean that Capacity Performance penalties and bonuses would pass through to consumers.[25]

F. Witnesses Agree My Second Solution Would Have Similar Impact

27. Recognizing there could be barriers to reaching agreement with an owner about its RMR unit participation in RPM, I proposed a second solution: To reflect the reliability contribution of an RMR unit within the resource adequacy analysis that determines the Reliability Requirements for setting the capacity market demand curves in RPM.[26] I suggested that this approach would have approximately the same impact as including the RMR resource in RPM, and

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[24] Initial Affidavit pp. 15-16.

[25] *See* Brandon Shores LLC, Continuing Operations Rate Schedule, Docket No. ER24-1790 (Apr. 18, 2024), Accession No. 20240418-5176, Appendix A, at § 5.5.

[26] Initial Affidavit pp. 16-17, Alternative 2.

some witnesses agreed with this assessment.[27] None of the witnesses raised issues with this approach, other than the same price suppression arguments addressed above.

28. Various witnesses stress that RMR units should be considered transmission assets.[28] I also note that my second alternative, which would shift zonal reliability requirements based on the RMR unit's estimated contribution to resource adequacy, would produce a result consistent with this view. An increase in the transmission available to a zone (its CETL) reduces the amount of in-zone capacity that has to be purchased to meet the zone's reliability requirement. CETL is a very good substitute for lower-cost in-zone capacity.

29. If the RPM planning parameters were to ignore new transmission capacity that increased the CETL, the resulting zonal prices would be higher than was reasonable or efficient. For the same reason, RPM must account for the resource adequacy value of an RMR unit when clearing the auction.

30. This concludes my affidavit.

[27] See, for instance, Ming Affidavit p. 33 (agreeing that the two approaches "should lead to roughly the same RPM clearing prices"); see also Niemann Affidavit p. 33.

[28] See, for instance, Sotkiewicz Affidavit.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Sierra Club et al v. PJM Interconnection, L.L.C.	)	Docket No. EL24-148

VERIFICATION

I, James F. Wilson, pursuant to 28 U.S.C. § 1746, state, under penalty of perjury, that I am the same James F. Wilson referred to in the foregoing document entitled "Reply Affidavit of James F. Wilson in Support of the Protest of the Public Interest Organizations," that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

James F. Wilson

Dated: October 31, 2024