

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

PJM Interconnection, L.L.C.

)

Docket No. ER24-2995-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
PJM INTERCONNECTION, L.L.C.**

In accordance with Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),¹ PJM Interconnection, L.L.C. (PJM) submits this Answer to protests filed in response to PJM’s September 6, 2024 filing (Filing)² proposing revisions to the PJM Open Access Transmission Tariff (Tariff) and Reliability Assurance Agreement (RAA). Specifically, PJM proposes to sunset its existing tariff provisions governing Energy Efficiency (EE) Resource³ participation in PJM’s wholesale capacity market—*i.e.*, the Reliability Pricing Model (RPM)—starting prospectively with the RPM Auction for the 2026/2027 Delivery Year due to improvements in load forecasting, stakeholder focus on demand-side incentives and price signals, and the growth of third-party attribute programs in PJM’s capacity market that lack a sufficient nexus to end-use customers. To be clear, PJM stakeholders may continue to explore the development of other programs more narrowly focused on emerging technologies and with much greater prescriptive requirements, but that opportunity does not provide a reason to reject PJM’s Filing under Federal Power Act (FPA) section 205.⁴

¹ 18 C.F.R. §§ 385.212 & .213 (2023).

² *PJM Interconnection, L.L.C.*, Docket No. ER24-2995-000, Proposal to Enable Energy Efficiency to Benefit Loads Through Demand-Side Reduction to the Peak Load Forecast and Savings from Energy Market Charges (Sept. 6, 2024) (Filing).

³ Capitalized terms used herein and not otherwise defined have the meaning used in the Tariff, the PJM Operating Agreement, the RAA, or the PJM Manuals.

⁴ 16 U.S.C. § 824d; *see, e.g., N.Y. State Pub. Serv. Comm’n v. FERC*, 104 F.4th 886, 891 (D.C. Cir. 2024); *see also infra* note 96 (listing relevant precedent).

PJM’s Independent Market Monitor, whose responsibilities include reviewing submittals made by EE Resources, has provided a useful summary of certain existing EE providers’ business practices:

[Midstream and Upstream EE Resource Providers] repackage manufacturing and sales data for energy efficient products and submit them as the basis for payments through the PJM capacity market mechanism. EE providers’ arrangements with midstream and upstream equipment suppliers sometimes include incentives in the form of payments to the equipment supplier. These payments are represented to incent the purchase of the energy efficient product, but there is no evidence that these payments result in a decreased sales price to the customer rather than going directly to manufacturers and distributors.⁵

As shown by this description, certain EE Resource submittals rely upon “repackage[d] sales data” and provide “no evidence that these payments result in a decreased sales price to the customer rather than going directly to manufacturers and distributors.” These payment may simply represent a payment by the EE provider for sales receipts so that the EE provider can claim the EE savings in the PJM market for otherwise normal sales activity. Protesters’ submittals do not meaningfully contradict this description. Thus, unlike other Capacity Resources, such EE providers are unable to demonstrate any reasonable causal nexus between their actions and end users’ decisions to install EE measures, most of which, if not all, occur naturally for the end-users’ own benefit without resort to capacity payments that are ultimately collected from other consumers. Given

⁵ *Indep. Market Monitor for PJM v. Indicated Energy Efficiency Sellers*, Docket No. EL24-113-000, Complaint of the Independent Market Monitor for PJM at 8 (May 31, 2024). The IMM has proposed a settlement with the regulated EE providers in that complaint proceeding. The IMM agreed to rescind his complaint against a group of utilities that included Exelon Corporation on behalf of Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, Potomac Electric Power Company, and PECO Energy Company; FirstEnergy Service Company on behalf of FirstEnergy Corp. and its affiliates FirstEnergy Pennsylvania Electric Company, Jersey Central Power & Light Company and The Potomac Edison Company; Public Service Electric and Gas Company; Southern Maryland Electric Cooperative, Inc.; and Rockland Electric Company.

these concerns, it is prudent to sunset the existing tariff provisions governing EE Resource participation in PJM's wholesale capacity market at this time.

I. MOTION FOR LEAVE TO ANSWER

The Commission has discretion to accept responses to answers and has routinely done so for good cause shown where accepting the response would either lead to a more complete or accurate record, improve the Commission's understanding of the issues, clarify disputed or erroneous matters, or help the Commission in its decision-making.⁶ Good cause exists for the Commission to accept this Answer because it corrects flawed statements made in various protests, provides information that is not otherwise in the record, and will assist the Commission in accepting PJM's proposed Tariff revisions.⁷

II. ARGUMENT

A. The Proposal to Modify the Existing Tariff Provisions Governing EE's Participation in the PJM Capacity Market Does Not Conflict With Commission Precedent: No Precedent Requires Continued Treatment of EE as a Supply-Side Resource in the Capacity Market Under the Existing Tariff

Protestors claim that Commission precedent somehow restricts consideration of PJM's Filing.⁸ They argue that the Commission found in 2009 that EE Resources must be permitted to participate as supply-side Capacity Resources in RPM Auctions.⁹ Protestors further claim that this

⁶ 18 C.F.R. § 385.213(a)(2); *see, e.g., PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133, at P 12 (2017); *KO Transmission Co.*, 156 FERC ¶ 61,147, at n. 5 (2016).

⁷ *See, e.g., Sw. Power Pool, Inc.*, 171 FERC ¶ 63,040, at P 20, *appeal denied*, 172 FERC ¶ 63,008 (2020); *Gulf S. Pipeline Co., LP*, 145 FERC ¶ 61,236, at P 35 (2013), *reh'g denied*, 154 FERC ¶ 61,219 (2016); *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057, at P 94 (2012).

⁸ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (2009) (2009 Capacity Reform Order).

⁹ *See, e.g., PJM Interconnection, L.L.C.*, Docket No. ER24-2995-000, Protest of New Jersey Division of Rate Counsel, Maryland Office of People's Counsel, Illinois Citizens Utility Board, Illinois Attorney General's Office, Delaware Division of the Public Advocate, and the District of Columbia Office of People's Counsel (Joint Consumer Protest) at 2 n.4 (Sept. 27, 2024); *PJM Interconnection, L.L.C.*,

proposal conflicts with Order No. 2222¹⁰ because, in their view, this proposal erects an unlawful barrier to entry against EE Resources.¹¹ These claims are clearly untrue. In the first place, the instant section 205 proposal is based on 14 years of experience PJM has gained in reviewing EE participation in the capacity market. Nothing in the Commission's approval of PJM's original tariff straightjackets PJM or the Commission from making modifications regarding the participation of EE Resources in the capacity market pursuant to section 205. The protestors' argument would essentially make it impossible for a public utility to propose any change to any existing tariff provision under section 205. The Commission recognized, even in 2009, that RPM need not include EE projects as supply-side resources if those projects were properly recognized as demand reducers in the load forecasts used for RPM Auctions.¹² Furthermore, the Commission's recent decisions concerning the capacity market administered by the New York Independent System Operator, Inc. (NYISO) squarely hold that Order No. 2222 does not require EE to participate in capacity auctions as a supply-side resource.¹³ The protestors' attempt to distinguish the NYISO EE Orders is unavailing.

Docket No. ER24-2995-000, Protest of Advanced Energy Management Alliance Regarding PJM Energy Efficiency Resource Filing (AEMA Protest) at 8 (Sept. 27, 2024) (same).

¹⁰ *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

¹¹ *See PJM Interconnection, L.L.C.*, Docket No. ER24-2995-000, Protest of Recurve Analytics, Inc. at 6-7 (Sept. 26, 2024) (Recurve Protest); *PJM Interconnection, L.L.C.*, Docket No. ER24-2995-000, Protest of the Environmental Law & Policy Center, the Sustainable FERC Project, and the Natural Resources Defense Council at 8-10 (Sept. 27, 2024) (PIO Protest); AEMA Protest at 20-21.

¹² 2009 Capacity Reform Order, 126 FERC ¶ 61,275 at P 130.

¹³ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,198 (2022) (*NYISO I*), *reh'g denied*, 181 FERC ¶ 61,054 (2022) (*NYISO II*) (together, the NYISO EE Orders).

1. A Supermajority of PJM Stakeholders Reasonably Determined That Allowing EE Projects to Participate in RPM Auctions as Capacity Market Sellers is No Longer Justified

In 2008, the Commission directed PJM to convene a PJM stakeholder process to consider various potential modifications to RPM¹⁴ that were recommended in a report from the Brattle Group.¹⁵ One of those recommendations was “that PJM consider incorporating the value of EE . . . initiatives *either* through updated and proactive adjustments to its load forecasts *or* by allowing direct participation as a capacity resource in RPM auctions.”¹⁶

Following a stakeholder process, PJM filed a suite of proposed enhancements to the RPM design on December 12, 2008, including revisions to permit EE Resources to qualify as Capacity Resources provided that their operation and installation were properly verified. PJM explained the issue with EE Resource participation as follows:

[T]he reliability value of non-dispatchable resources such as energy efficiency (“EE”) initiatives is recognized within RPM [as originally adopted] only after the impact of EE programs is reflected in the historic load data. RPM’s base residual auction is conducted three years before the Delivery Year, but it relies on forecasts based on peak loads from the summer before the auction, i.e., four years before the Delivery Year. As a result, there is a “gap” between when the EE resource is online, but not recognized in the load forecast used in the RPM auctions, and when the EE resource is recognized in the load forecast.¹⁷

PJM proposed to fill this “gap” by allowing an EE Resource to qualify as a Capacity Resource for up to four consecutive Delivery Years. PJM explained that, “[a]fter that reduction is reflected in the load forecast, the customer’s load obligation, and capacity requirements, are

¹⁴ See *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272, at P 52 (2008) (2008 Capacity Reform Order).

¹⁵ Johannes Pfeifenberger, *et al.*, Review of PJM’s Reliability Pricing Model (RPM), The Brattle Group (June 30, 2008), <https://www.brattle.com/insights-events/publications/review-of-pjms-reliability-pricing-model-rpm/> (emphasis added.)

¹⁶ 2008 Capacity Reform Order, 124 FERC ¶ 61,272 at P 115 (emphasis added).

¹⁷ *PJM Interconnection, L.L.C.*, Docket No. ER09-412-000, Transmittal Letter at 29 (Dec. 12, 2008) (footnote omitted).

reduced even without” the participation of EE as supply-side resources.¹⁸ The Commission accepted PJM’s “lag time” rationale for allowing EE Resources to participate in RPM, finding that “PJM’s proposal would allow an EE resource to bid into the auction, and if it is accepted, to bid for an additional three consecutive years. As a result, the resource *may* receive capacity payments for *up to* four consecutive years.”¹⁹

The Tariff modifications accepted by the Commission memorialized the interplay between the recognition of EE projects in the load forecast and the participation of EE Resources in RPM Auctions. For example, the RAA defines EE Resources as follows:

“Energy Efficiency Resource” shall mean a project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, meeting the requirements of RAA, Schedule 6 and exceeding then-current building codes, appliance standards, or other relevant standards, designed to achieve a continuous (during the periods described in Reliability Assurance Agreement, Schedule 6 and the PJM Manuals) *reduction in electric energy consumption that is not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed*, and that is fully implemented at all times during such Delivery Year, without any requirement of notice, dispatch, or operator intervention.²⁰

Under this definition, an EE project whose reductions are included in the load forecast for a given Delivery Year do not qualify to participate in RPM Auctions. The prohibition is repeated in RAA Schedule 6, section L.1, and the parallel provisions in Tariff Attachment DD-1, section L.1, which both state:

An Energy Efficiency Resource is a project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, exceeding then-current building codes, appliance standards, or other relevant standards, designed to achieve a continuous (during peak summer and winter periods as described herein) *reduction in electric energy consumption at the end-use customer’s retail site that is not reflected in the peak load forecast prepared for*

¹⁸ *Id.* at 32 (emphasis added).

¹⁹ 2009 Capacity Reform Order, 126 FERC ¶ 61,275 at P 131 (emphasis added).

²⁰ RAA, Definitions, “Energy Efficiency Resource” (emphasis added).

*the Delivery Year for which the Energy Efficiency Resource is proposed, and that is fully implemented at all times during such Delivery Year, without any requirement of notice, dispatch, or operator intervention.*²¹

In short, the driving force behind the Commission’s determination to permit the conditional participation of EE projects in RPM Auctions was the lag in recognizing the load reduction value of EE projects in PJM’s load forecast. That rationale was no longer relevant after PJM changed its load forecast methodology in 2015 to capture projected EE projects. Mr. Gledhill has explained that PJM’s end-use intensity modeling, adopted in 2015, more accurately captures the impact of EE on forecasted demand.²² Per Mr. Gledhill, “[r]eliance on end-use intensities in the PJM Load Forecast eliminated the four-year lag between installation of an energy efficiency project and the reflection of that project’s impact on load in the PJM Load Forecast.”²³

Nevertheless, PJM and its stakeholders chose to accommodate EE as a supply-side Capacity Resource through adoption of the “addback” mechanism in the PJM Manuals, through which EE Resources have been generously compensated by consumers for several years. Indeed, the Independent Market Monitor’s annual reports have shown a significant increase in capacity payments to EE Resources since 2017, growing from \$86,147,605 and 1,922.3 MW in 2017 to a peak of \$185,755,803 and 4,806.2 MW in 2022.²⁴ However, it was clear then, as it is now, that

²¹ RAA, Sched. 6 § L.1 (emphasis added); Tariff, Attach. DD-1, § 1.1 (same)

²² See Filing, Attach. C., Aff. of Andrew Gledhill at PP 17-19.

²³ *Id.* at 19.

²⁴ See Monitoring Analytics, 2023 State of the Market Report at tbl. 6-33, https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2023/2023-som-pjm-vol2.pdf. This year, after Winter Storm Elliot revealed a shortage of reliable winter capacity, a significant quantity of generation resources also exited the market. In response to this tightening of reliable capacity supply, EE Resources became the subject of increased stakeholder scrutiny and several complaints were filed that belatedly protested the “addback” mechanism in PJM Manual 18 as a violation of the “rule of reason.” See, e.g., *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Docket No. EL24-118-000, Complaint of the Joint Consumer Advocates at § III.A. (June 20, 2024); *Indep. Market Monitor for PJM v. PJM Interconnection, L.L.C.*, Docket No. EL24-126-000, Complaint of the Independent Market Monitor for PJM at 7-8 (July 10, 2024). However, as PJM has explained, the Tariff provides

including EE projects in the load forecast was an available and sufficient alternative to participation as a supplier in RPM auctions. Protestors grossly mischaracterize the Commission's 2009 ruling as a mandate that the only acceptable way to recognize EE projects is through supply-side mechanisms. That claim is belied by the very rationale that the Commission relied upon in approving the 2009 PJM proposal.

2. Order No. 2222 Does Not Require EE to be a Supply-Side Resource in Capacity Markets

The decisions in *NYISO I* and *NYISO II* confirm that a capacity market construct need not include EE Resources in order to be just and reasonable. These decisions involved tariff revisions filed by the NYISO to comply with the requirements of Order No. 2222, which “remove[s] barriers to the participation” of distributed energy resource (DER) aggregations in the capacity, energy, and ancillary service markets operated by RTO/ISO markets.²⁵ The question at issue was whether NYISO was required to permit EE projects to participate as capacity sellers in NYISO's capacity market. The Commission squarely held that Order No. 2222 does not require EE to be a supply-side resource in capacity markets. As the Commission explained:

We also are not persuaded by protesters' arguments that Order No. 2222 requires NYISO to change its existing performance requirements to accommodate a specific type of resource, in this case energy efficiency, to participate in NYISO's capacity market as part of an Aggregation. Order No. 2222 does not require NYISO to change its existing market qualification and performance requirements; rather, “distributed energy resource aggregations must be able to meet the qualification and performance requirements to provide the service that they are offering into RTO/ISO markets.” Accordingly, we agree with NYISO that it should not be required to change its capacity market qualification requirements to enable energy

significant discretion for PJM and its stakeholders to address EE performance requirements and verification through its Manuals, and the “addback” mechanism was adopted with the Commission's knowledge. See, e.g., *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Docket No. EL24-118-000, Answer of PJM Interconnection, L.L.C. at 17-18 (Aug. 5, 2024) (“[T]he Commission has been aware, at least since 2017, of the role played by the addback in the RPM Auctions and that the addback was a feature of the PJM Manuals.”).

²⁵ Order No. 2222, 172 FERC ¶ 61,247 at P 1.

efficiency resources (or any other resource type that currently does not qualify) to participate in NYISO's capacity market.²⁶

The Commission found that "Order No. 2222 does not require RTOs/ISOs to model energy efficiency in a certain way," and it "reject[ed] as out of scope the arguments raised by various parties on whether energy efficiency should be modeled as supply or demand side participation."²⁷

Protesters to NYISO's filing argued that Order No. 2222 required EE projects to be included as capacity resources and also that EE projects must be recognized as supply-side resources because of their operating characteristics. Protesters observed "that energy efficiency resources currently participate as supply-side resources in the capacity markets of other RTOs/ISOs, including ISO New England Inc., PJM, and Midcontinent Independent System Operator, Inc. (MISO)."²⁸ Protesters further argued that "including energy efficiency in NYISO's capacity market" was wise policy because, in their view, doing so would reduce infrastructure and production costs and would "unlock[] capacity value by enabling energy efficiency aggregators to earn capacity revenues."²⁹ The protestors renewed those arguments on rehearing, claiming that "[t]he Commission has found on numerous occasions that the physical and operational requirements of energy efficiency resources are capable of providing capacity as a supply-side resource," and citing specifically to the initial PJM orders that authorized EE Resources to participate in RPM.³⁰

²⁶ See *NYISO I*, 179 FERC ¶ 61,198 at P 112.

²⁷ *Id.*

²⁸ *Id.* at P 102.

²⁹ *Id.* at P 103.

³⁰ *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER21-2460-000, Request For Rehearing of Clean Energy and Consumer Advocates at 4 n.11 (citing 2009 Capacity Reform Order, 126 FERC ¶ 61,275 at P 130 & *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 202 (2007)).

The Commission accepted NYISO’s capacity market construct as just and reasonable despite the exclusion of EE projects as sellers in NYISO’s capacity auctions and rejected arguments that NYISO’s approach violates Order No. 2222. The Commission focused on whether Order No. 2222 required NYISO’s definition of DERs to authorize the participation of EE projects as sellers in NYISO’s capacity market.³¹ The Commission determined that Order No. 2222 did not impose that requirement.³² But the NYISO EE Orders stand for the more fundamental proposition that EE projects do not have to be treated as supply-side resources in capacity markets.³³ To the extent that protesters claim that EE projects must be recognized as Capacity Resources in order for the PJM capacity market to be just and reasonable, those arguments should be summarily rejected consistent with the NYISO EE Orders.

3. PJM’s Proposal Does Not Conflict with Order No. 2222 Regardless of Prior EE Resource RPM Participation

Notwithstanding the Commission’s determinations in the NYISO EE Orders, several protesters contend that PJM’s proposal to sunset EE participation as capacity suppliers in the RPM Auctions conflicts with Order No. 2222. They claim the NYISO EE Orders are distinguishable because, unlike the NYISO capacity market, PJM has previously allowed EE Resources to participate as supply-side resources and that this prior participation demonstrates EE Resources continue to be “technically capable” of serving as Capacity Resources.³⁴ That is not correct. Protestors appear to assume that technical capabilities are ossified into the Tariff and cannot be

³¹ As shown below, the modifications to PJM’s Tariff proposed in the Filing also meet the requirements of Order No. 2222.

³² See *NYISO I*, 179 FERC ¶ 61,198 at P 112.

³³ See *id.*

³⁴ See, e.g., Recurve Protest at 6-7; PIO Protest at 8-10; AEMA Protest at 17, 20-21; *PJM Interconnection, L.L.C.*, Docket No. ER24-2995-000, Protest of Advanced Energy United at 11-12 (Sept. 27, 2024) (AEU Protest); Consumer Advocates Protest at 5.

changed on the basis of experience without erecting an unlawful “barrier to entry.” That theory is plainly wrong.

The Commission has squarely held that Order No. 2222 does not require EE Resources to be compensated as supply-side resources, rather than demand-side resources,³⁵ and protestors’ effort to distinguish that holding fails. Specifically, the protestors’ “barriers to competition” argument boils down to the proposition that, despite years of experience as to how the existing Tariff has been applied in a manner not originally intended, PJM is somehow barred from making any change to its Tariff in a manner that removes or limits a resource’s ability to participate as a supply-side resource in the capacity market if such resource had ever been “technically capable” of doing so. Such an argument would lead to the untenable conclusion that previously approved tariff changes prevent future changes from ever being made. PJM has previously submitted market rule reforms that limit the participation of existing generators, and PJM’s prospective changes to capacity market rules in this proceeding are no different conceptually than numerous other changes to capacity market rules that the Commission has accepted in the past. Moreover, years of experience demonstrate that certain EE submittals lack any causal nexus between the Capacity Market Seller and the end use customer’s decision to install EE. The question here, as in all FPA section 205 filings, is whether the Tariff revisions proposed by PJM are “just and reasonable.”³⁶

For example, PJM’s adoption of Capacity Performance requirements effectively disqualified certain resources from future participation because the new provisions imposed obligations that they were unable or unwilling to perform. The Commission accepted those Capacity Performance modifications because they demanded a level of performance that less

³⁵ See *NYISO I*, 179 FERC ¶ 61,198 at P 112.

³⁶ 16 U.S.C. § 824d.

efficient resources could not deliver, and the Commission agreed those changes were necessary “to provide greater assurance of delivery of energy and reserves during emergency conditions.”³⁷ The Commission similarly accepted PJM’s Expanded MOPR proposal by operation of law in 2021,³⁸ notwithstanding objections that certain newly-cleared capacity suppliers had relied on the narrow MOPR and re-institution of a broad MOPR would render newly-cleared capacity uneconomic.³⁹ Also, changes to capacity accreditation significantly reduced the level of capacity certain generation technologies could offer.⁴⁰ These actions clearly were not retroactive notwithstanding the fact that they imposed new limits on existing supplier participation in PJM’s capacity markets.

In sum, PJM’s proposal does not conflict with Order No. 2222 or any Commission precedent.

³⁷ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 6 (2015), *reh’g order*, 155 FERC ¶ 61,157 (2016).

³⁸ See *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000, Notice of Filing Taking Effect by Operation of Law (Sept. 29, 2021), *reh’g denied*, 177 FERC ¶ 62,105 (Nov. 29, 2021), *pet. for review denied*, *PJM Power Providers Grp. v. FERC*, 88 F.4th 250 (3rd Cir. 2023), *cert. denied sub nom. Pub. Utils. Comm’n of Ohio v. FERC*, No. No. 23-1069 (Oct. 7, 2024);

³⁹ See, e.g., *PJM Interconnection, L.L.C.*, Docket No. ER21-2582-000, Joint Protest of Carroll County Energy LLC and South Field Energy LLC at 6, 8 (Aug. 20, 2021) (“PJM’s proposal would effectively result in capacity price suppression and substantially reduce the capacity revenues relied on by CCE and SFE and deny CCE and SFE the reasonable opportunity to recovery on, and of, their total \$2.2 billion investments.”).

⁴⁰ See *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080, at P 36 (approving PJM’s removal of EE Resources from the ELCC model on the basis that it would double-count their impact and “distort the assessed capacity accreditation of all other modeled resources”), *reh’g denied*, 186 FERC ¶ 62,168 (2024); *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 (accepting Tariff revisions implementing an ELCC construct for determining accredited capacity capabilities for certain resource types that were incapable of maintaining continuous output), *reh’g denied*, 176 FERC ¶ 62,159 (2021).

B. PJM’s Proposal Does Not Violate the Filed Rate Doctrine or the Rule Against Retroactive Ratemaking

Certain protesters contend that PJM’s proposal to eliminate EE Resources from RPM violates the filed rate doctrine because, in their view, it violates the corollary rule against retroactive ratemaking.⁴¹ The protestors’ retroactivity theory, which is intertwined with their “barrier to entry” theory, has no merit: the filed rate doctrine does not pose any bar to PJM’s proposal. PJM’s proposal to sunset *future* EE participation as suppliers in RPM auctions, starting with the 2026/2027 Delivery Year, is prospective on its face and has not “altered the legal consequence attached to a past action.”⁴²

First, PJM’s proposal only affects future RPM Auctions. The rule against retroactive ratemaking does not protect the protestors’ past expectation that PJM’s generous compensation of EE Resources would continue indefinitely in the face of increasing reliability challenges. It is insufficient to claim, as protestors do, that the prospect of receiving capacity payments induces commercial entities to take actions for which the current market rules allow them to be paid. The issue is whether the current capacity construct imposes just and reasonable capacity costs on consumers, the overwhelming majority of whom are not paid anything from the capacity market to engage in naturally-occurring activities that reduce their respective energy demands. Moreover, the new Tariff provisions do not affect the “legal consequences” of commitments made by EE providers in past auctions. As PJM explained, EE Resources will remain Capacity Resources in a Delivery Year for which they already have cleared commitments.⁴³

⁴¹ See, e.g., AEU Protest at 14-15; AEMA Protest at 2.

⁴² *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 399 (3d Cir. 2024).

⁴³ See Filing at 10 (“PJM seeks to apply the proposed market rule change on a prospective basis and is not proposing to unsettle RPM Auction results or undo any existing Energy Efficiency Resource commitment under the current Tariff and RAA rules. The filed rate doctrine precludes retroactive changes for past actions where legal consequences have attached. As a result, Energy Efficiency

Second, protestors' retroactivity argument is built around a fundamental misreading of the current Tariff. Their argument is that the text of RAA Schedule 6, section L.1, which is duplicated in Tariff Attachment DD-1, section L.1, guaranteed EE resources a four-year participation period that PJM now proposes to take away. But that is not what the language in the RAA and Attachment DD-1 actually says. Rather, it states that "[a]n Energy Efficiency Resource that clears an auction for a Delivery Year *may* be offered in auctions for up to three additional consecutive Delivery Years, but *shall not be assured* of clearing in any such auction."⁴⁴ That language is decidedly conditional and explicitly removes any guarantee of future participation. Neither the Tariff nor the RAA require PJM to allow EE Resources to participate in auctions for four consecutive Delivery Years. As both the Tariff and RAA state, "[a]n Energy Efficiency Resource that clears an auction for a Delivery Year may be offered in auctions for up to three additional consecutive Delivery Years, but shall not be assured of clearing in any such auction."⁴⁵ Like the Tariff and RAA, PJM Manual 18B eschews imposing a mandate on PJM to allow EE Resources to participate in an RPM Auction for four consecutive years. PJM Manual 18B, section 1.2 provides only that "Energy Efficiency installations are *eligible* to participate in RPM Auctions for four successive Delivery Years," not that they must participate.⁴⁶ Protesters may not turn provisions describing potential occurrences into cast-iron assurances.

Third, as detailed above, the Commission has approved several capacity market reforms as prospective notwithstanding that they changed the obligations of Capacity Resources for a

Resources that cleared the RPM Auctions for the 2025/2026 Delivery Year will need to follow through on their commitments and submit compliant post-installation measurement and verification plans in advance of that Delivery Year to substantiate their cleared quantities.") (footnotes omitted).

⁴⁴ Tariff, Attach. DD-1, § L.4; RAA, Sched. 6, § L.4 (emphasis added).

⁴⁵ Tariff, Attach. DD-1, § L.4; RAA, Sched. 6, § L.4.

⁴⁶ PJM Manual 18B, § 1.2 (emphasis added).

Delivery Year even after the completion of the relevant RPM Auctions.⁴⁷ This principle is now well-settled in Commission precedent.⁴⁸

Finally, EE Resources cannot claim that these revisions to PJM's Tariff come as a surprise. The PJM Independent Market Monitor has argued for years that EE Resources should not qualify as Capacity Resources.⁴⁹ Moreover, as the protestors themselves concede, PJM has engaged in a stakeholder process that has been ongoing since October 2023.⁵⁰ Given these developments, it is difficult to accept the protestors' suggestion that EE Resources reasonably relied on their continued participation in RPM as Capacity Market Sellers. That status has been under increasingly intense stakeholder scrutiny for more than a year.

⁴⁷ See *supra* at 12 & nn.37-40.

⁴⁸ See *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,058, at P 40 (2022) (accepting changes to definition of emergency action) (“We find that PJM’s proposal does not violate the filed rate doctrine because it does not change any rate, term, or condition of service relating to past performance; rather, it applies only prospectively to future performance. The Commission previously has found that the terms and conditions of performance and other obligations that are part of forward capacity markets may be revised, even after a forward auction for a future delivery period is completed, if the changes are made prospectively.”); *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,020, at P 38 (2015) (“The fact that PJM runs a capacity market with three-year commitments does not freeze all changes to PJM’s tariff for the three-year period covered by the auction.”); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103, at P 62 (2014) (finding that PJM’s proposal to modify the notification time for demand response load reductions and apply that change to delivery years for which PJM already held its capacity auction “only change[es] the requirements applicable to future performance” and “will have a prospective application only and thus [does] not violate the filed rate doctrine.”); *ISO New England Inc.*, 145 FERC ¶ 61,095, at PP 26, 28 (2013) (accepting as prospective ISO New England Inc.’s proposal to modify the definition of Shortage Event in its forward capacity market and apply that change to delivery years in which participants already submitted offers and received capacity commitments).

⁴⁹ See, e.g., Monitoring Analytics, 2017 State of the Market Report at 237, https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2017/2017-som-pjm-volume2.pdf (“The MMU recommends that energy efficiency resources (EE) not be included on the supply side of the capacity market, because PJM’s load forecasts now account for future EE, unlike the situation when EE was first added to the capacity market.”); see also *PJM Interconnection, L.L.C.*, Docket No. ER24-2995-000, Comments of the Independent Market Monitor at 2 (“EE is not a capacity resource”).

⁵⁰ See, e.g., AEU Protest at 15-16.

C. PJM Has Demonstrated that PJM’s Proposal is a Just and Reasonable Reform Under FPA Section 205

Several protestors contend that PJM failed to sustain its burden under FPA section 205.⁵¹

The protestors challenge PJM’s justifications for eliminating EE projects as Capacity Resources:

(i) the PJM load forecast “captures the PJM Region’s energy efficiency adoption;”⁵² (ii) “there is a lack of a causal link between end-use customer actions and capacity payments made to sellers of Energy Efficiency Resources;”⁵³ and (iii) customers still receive the benefit of EE projects when they are no longer treated as Capacity Resources. The protestors’ claims are unavailing.

1. PJM’s Load Forecast Methodology is Just and Reasonable

The protestors challenge PJM’s demonstration that the peak load forecast captures projected EE development based on perceived inadequacies in PJM’s load forecast data. As explained in its Filing and in Mr. Gledhill’s Affidavit, PJM follows best practices in developing the load forecast and continues to refine those practices using EIA data as the basis for its projections.⁵⁴ An independent study—the Itron Report—determined that PJM’s load forecast

⁵¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,206, at P 51 (2014) (“Under section 205 of the FPA, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility. The Commission, however, ‘must approve th[e increase] as long as the new rates are just and reasonable.’ Under section 205(e) of the FPA, the utility bears the ultimate burden of proof (burden of persuasion) to show that its proposed rate increase is just and reasonable. While the burden of proof regarding the justness and reasonableness of a proposed tariff revision remains with the filing party, the Commission requires that a protesting party make an adequate proffer of evidence to call into question the reasonableness of the challenged revision.”).

⁵² Filing at 32.

⁵³ *Id.* at 6.

⁵⁴ *See id.* at 14; *id.* Gledhill Aff. at P 6.

practices are reliable.⁵⁵ Finally, the empirical evidence Mr. Gledhill presented shows that EE is not underestimated in the load forecast.⁵⁶

Protestors nonetheless claim that PJM’s EIA data is not sufficiently comprehensive. They claim the allegedly “stale” data fails to adequately consider rebates that may incentivize EE development and does not address certain types of EE projects. The theme of all these claims is that PJM bears the burden of demonstrating that the level of EE projected in the load forecast addresses all possible factors and scenarios. But EIA data is a widely utilized source that both governments and utilities utilize across the nation. Indeed, developing a load forecast without using EIA data would be questionable given existing industry standards and practices. Moreover, ratemaking is not required to achieve, and could never be expected to achieve, the level of perfection demanded by these protesters. This is particularly so with respect to developing a load forecast. As Affirmed Energy acknowledges, “[f]orecasting demand in PJM is an incredibly complex task.”⁵⁷

Further, consistent with well-established precedent, load forecast methodologies are required to be “just and reasonable,” not perfect. For example, in rejecting challenges by consumer advocates to PJM’s load forecast determinations in 2015, the Commission stated that “[l]oad forecasting is not unlike rate design” in its use of the “just and reasonable” standard.⁵⁸ Thus,

⁵⁵ See Gledhill Aff. at PP 11 n3 & 4, 28 n.8 (citing Eric Fox, *et al.*, Itron, Inc., *2022 PJM Model Review* at 46-49, (Sept. 6, 2022) (Itron Report), <https://www.pjm.com/-/media/planning/res-adeq/load-forecast/pjm-model-review-final-report-from-itron.ashx>); *id.* at PP 21-23, 26 (discussing the Itron Report); *see also* Itron Report at 48-49 (discussing how PJM’s load forecast methodology captures the impacts of EE programs).

⁵⁶ See Gledhill Aff. at PP 33-34 (comparing changes in forecasted load to demonstrate that EE-driven load reductions are not underestimated in those forecasts).

⁵⁷ *PJM Interconnection, L.L.C.*, Docket No. ER24-2995-000, Protest of Affirmed Energy LLC at 10 (Sept. 27, 2024) (Affirmed Energy Protest).

⁵⁸ *Joint Consumer Representatives v. PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,187, P 32 n. 45 (2015) (citing *Ala. Elec. Co-Op., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982)) (“[R]atemaking is, of

achieving exact precision in a load forecast is neither feasible nor expected. That is why load forecasts are, by definition, *predictions or estimates* of future loads. The end-use intensity load forecast methodology described in PJM’s Filing and in Mr. Gledhill’s Affidavit continues to comply with the Commission’s requirements and PJM’s load forecast methodology has only improved with applied experience since it was found just and reasonable nearly a decade ago.⁵⁹

PJM utilizes a top-down load forecast methodology that incorporates economics, weather, distributed solar generation, and electric vehicles. This methodology also incorporates additional considerations such as energy intensities. In other words, energy intensity data from EIA is only one component of the top-down load forecast methodology. Protesters fail to grasp that PJM uses statistical methods to calibrate the EIA inputs to historical load. The EIA inputs are not just uploaded into a data base and summed as would be the case if PJM used a “bottom up” forecasting method. As explained in Mr. Gledhill’s affidavit, “end-use intensities [for the residential and commercial sector] are direct inputs into *statistically adjusted end-use models*, which capture economic growth and structural changes reflected in end-use saturation and efficiency trends and building shell improvements.”⁶⁰ For example, Affirmed Energy states that “[o]verestimating energy intensity means that EIA, and by extension PJM’s load forecast, is underestimating energy

course, much less a science than an art.”) & *Colo. Interstate Gas v. FPC*, 324 U.S. 581, 589 (1945) (“[A]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.”); *see id.* P 32 (“Joint Consumers have failed to demonstrate that PJM’s current forecasting methodology as applied by PJM is unjust and unreasonable.”).

⁵⁹ Protestors contest the evidence that PJM submitted, but fail to provide any record evidence of qualitative impact themselves. Even if such evidence did exist (which PJM flatly denies), it would not be sufficient to undercut PJM demonstrations showing that the load forecast methodology is reasonable. *See Midwest Indep. Transmission Sys. Operator*, 148 FERC ¶ 61,206 at P 51 (“While the burden of proof regarding the justness and reasonableness of a proposed tariff revision remains with the filing party, the Commission requires that a protesting party make an adequate proffer of evidence to call into question the reasonableness of the challenged revision.”).

⁶⁰ Gledhill Aff. at P 22 (emphasis added); *see id.* at P 23 (“PJM’s industrial sector model relies on EIA data and uses an end-use intensity modeling methodology.”).

efficiency.”⁶¹ This is not accurate: PJM does not simply import the EIA data, and Affirmed Energy’s insinuation that it does shows that Affirmed Energy does not fully understand how PJM’s statistical load forecast model works. PJM calibrates the EIA data with actual historical load data to validate and improve the load forecast. Energy intensity, whether overestimated or underestimated, is directly reflected in the load forecast. Affirmed Energy’s claim that EIA data is “stale” and that PJM is “not using current data” fails for similar reasons.⁶² In short, PJM not only uses the most current data available, it adjusts the EIA data through a statistical calibration to the load being observed.

Several protesters also question the significance of the empirical evidence in Mr. Gledhill’s affidavit showing that EE impacts are not being understated. For example, Mr. Gledhill discusses the fact that the 2023/2024 Delivery Year forecast was higher than the 2023/2024 normal peak load and explains that this indicates that EE impacts were not underestimated.⁶³ Had they been understated, the actual peak load experienced would have been lower than the forecasted peak because the unrecognized EE would have suppressed the actual observed load. Affirmed Energy criticizes Mr. Gledhill’s observations, contending that they are a “simplistic rationale” based on a “single variable [that] disregards the complexity of load forecasting.”⁶⁴ But Affirmed Energy never discusses the magnitude of the differences Mr. Gledhill observed, nor does Affirmed Energy discuss the claims being made regarding the size of the alleged understatement of EE impacts.

⁶¹ Affirmed Energy Protest at 7.

⁶² *Id.* at 8.

⁶³ *See* Gledhill Aff. at PP 33-34.

⁶⁴ Affirmed Energy Protest at 9.

Protesters have claimed that “PJM is systematically failing to account for between 3,000 MW and 6,000 MW of energy efficiency reductions to load occurring within its footprint.”⁶⁵ That is a very large number. As Mr. Gledhill showed, it is not possible that PJM’s load forecast underestimated EE load reductions in the 2023/2024 Delivery Year or the 2024/2025 Delivery Year, much less to the degree that protestors allege. “In 2023, the weather normal peak load in 2023/2024 Delivery Year exceeded the forecasted peak load.”⁶⁶ That could not have been true if EE load reductions were underestimated. In addition, “[t]he most recent load forecasts for 2024/2025 Delivery Year used for the Third Incremental RPM Auction were actually [1,510 MW] higher than the older forecast for 2024/2025 Delivery Year used for the Base Residual Auction.”⁶⁷ The difference between the original forecast and the refined forecast was 1,510 MW. Again, PJM could not have “failed to account for significant energy efficiency reductions to load” if the updated load forecast increased by 1,510 MW on the eve of the Delivery Year.⁶⁸ And because the protestors are claiming that PJM has underestimated EE load reductions by 3,000 to 6,000 MW, their position is that PJM has actually underestimated EE load reductions to the order of 4,500 to 7,500 MW. That is obviously untrue. It is the equivalent of overlooking several large thermal generation stations on the supply side.

⁶⁵ Gledhill Aff. at P 32; *accord Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Response of PJM Interconnection, L.L.C., Docket No. EL24-118-000 at Ex. A., Suppl. Aff. of Andrew Gledhill (July 29, 2024). The “Joint Consumer Advocates” in Docket No. EL24-118-000 include three of the consumer advocate protestors in this matter: the New Jersey Division of Rate Counsel, the Maryland Office of People’s Counsel, and the Illinois Citizens Utility Board.

⁶⁶ Gledhill Aff. at P 33.

⁶⁷ *Id.* P 34.

⁶⁸ *Id.*

PJM's load forecasting methodology is state-of-the-art.⁶⁹ However, just like it would not be possible to identify and document every homeowner that bought a house that was smaller than they preferred in order to have lower utility bills, it is not possible to identify and document every potential watt of EE load reduction that could theoretically be offered in the RPM Auctions. That amount will always be a subset of the amount of "natural occurring" EE that manifests through a myriad of undocumented energy-reducing actions undertaken by individual persons and entities who do not attempt to offer their energy-reducing activities as capacity.⁷⁰ Accordingly, the correct analysis is whether the load forecast captures the amount of EE that could be realistically offered as capacity, not whether it captures the precise amount of market-cleared EE submitted by particular EE Resources. Mr. Gledhill addressed this point directly, stating that "[s]tatistical analysis strongly supports the inference that the energy efficiency capability embedded in the peak load forecast exceeds the Energy Efficiency Resources that clear or are offered in the RPM."⁷¹ Thus, if PJM were to rely exclusively on market-cleared EE for its load forecast modeling, it would almost certainly overestimate load.

Ultimately, while protesters acknowledge the inherent inexactitude of load forecasts,⁷² they demand "exacting precision" for the component made up of EE impacts.⁷³ However, the

⁶⁹ See *id.* PP 4-8.

⁷⁰ Itron Report at 48.

⁷¹ Gledhill Aff. at P 31.

⁷² See Affirmed Energy Protest at 10 ("Forecasting demand in PJM is an incredibly complex task."); PIO Protest, App. A, Letter from Mike Cham at 7 ("Utility energy efficiency incentives are difficult to work with in aggregate."); AEU Protest at 8 (Preparing the load forecast and demand curve projections "is a difficult task."); AEMA Protest at 15 ("Load forecasts, of course, are subject to a variety of potential errors.")).

⁷³ *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004) (citing *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) ("FERC is not bound to reject any rate mechanism that tracks the cost-causation principle less than perfectly"));

Commission has never been required to “allocate costs with exacting precision” because that is neither necessary nor achievable.⁷⁴ PJM acknowledges that EE load reductions need to be modeled in a just and reasonable manner; as Mr. Gledhill explains, PJM makes great efforts to accomplish that goal by employing a state-of-the-art load forecast methodology. Protesters have failed to present evidence quantifying their allegation that PJM’s load forecast methodology materially understates EE load reductions, much less that the overall load forecasting methodology is unjust and unreasonable. Ultimately, protestors have failed to provide any evidentiary basis that would justify fundamentally altering PJM’s load forecast methodology.

2. PJM Reasonably Highlighted the Lack of Evidence that Capacity Market Payments are Necessary to Promote EE Resources

In its initial Filing, PJM explained that “there is no evidence of any causal link between capacity market payments for Energy Efficiency Resources and the deployment of energy efficiency projects.”⁷⁵ Protesters claim that this statement creates a new standard for capacity payments that discriminates against EE Resources and that, if applied more broadly,⁷⁶ would justify the elimination of all “price-taker” Capacity Resources from RPM Auctions. First, PJM did not set a new standard for capacity market participation, but was simply explaining the unique challenges that EE Resources face in demonstrating why their purported energy reduction benefit to the market necessitates receiving capacity payments from PJM customers, who have their own reasons for pursuing load reduction without reliance on capacity market payments.

accord e.g., NextEra Energy Res., LLC v. FERC, No. 23-1094, 2024 WL 4394994, at *7 (D.C. Cir. Oct. 4, 2024); *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1260 (D.C. Cir. 2018).

⁷⁴ *Midwest ISO Transmission Owners*, 373 F.3d 1369.

⁷⁵ Filing at 2.

⁷⁶ *See, e.g., AEMA Protest at 18-20; Recurve Protest at 5-6; PIO Protest at 15-19; AEU Protest at 6-7.*

Second, PJM’s observation that EE Resources face unique challenges in demonstrating their benefits to the market was not discriminatory, but rather a long-overdue acknowledgment that EE Resources are not similarly situated to other Capacity Resources. For that reason, protestors miss the mark when they attempt to employ a *reductio ad absurdum* to argue that other Capacity Market Sellers should be excluded from RPM Auctions if they fail to demonstrate that they require capacity payments in order to remain in the market. That is creative sophistry, but it is untethered from reality.

In the case of EE providers that pay retailers to claim EE savings, there is simply no nexus between the end-use customer and the capacity revenues that are paid for any claimed EE savings. While Affirmed Energy claims that capacity revenues are used to pay retailers and manufacturers that may “optimize instore placement of products . . . to reduce customer search costs to locate a product,”⁷⁷ there is no evidence that retailers actually change, or are even required to change, the location of the product placement as a result of any contracts with EE providers. Assuming, *arguendo*, that the retailer does place an LED lightbulb “slightly below eye level or on the right side when walking down an aisle,”⁷⁸ the fact that a retail customer took less time to find an LED lightbulb that he or she went to the store to purchase does not demonstrate that such purchase was made because of the capacity revenues that an EE provider received. In all likelihood, that customer is not even aware of the EE savings that an EE provider will subsequently claim to get paid through PJM’s capacity market and will not be the explicit beneficiary of the EE provider’s actions. This is entirely different from the class of generator developers who are directly aware of capacity market signals in doing their due diligence on whether to invest in existing or new

⁷⁷ Affirmed Energy Protest at 3.

⁷⁸ *Id.*

resources. By contrast, the link between an end-use customer buying an EE device at a retailer or from a manufacturer is so attenuated from capacity market revenues that the customer is not even aware that their purchase may be claimed by an unknown third-party EE provider in PJM's capacity market.

a. Recognizing the Challenges with EE Resource Valuation is not Unduly Discriminatory Because EE Resources are not Similarly Situated to Other Capacity Suppliers

EE trends in PJM are primarily driven by customers adopting more efficient products in response to retail energy prices or as a result of various federal or state incentives.⁷⁹ The Department of Energy sets standards and testing procedures for many residential, commercial, and industrial products and issues appliance efficiency standards.⁸⁰ Consumers are supplied with this information and it influences their purchasing behavior.⁸¹ Further, increasingly stringent building codes and other EE standards will drive down the baseline for measuring EE reductions. The overwhelming majority of these intrinsically self-benefitting actions by individual persons and entities are not influenced by capacity payments or the actions of EE Resource aggregators since the end-use customers are not even aware that a third-party EE provider may claim their purchases

⁷⁹ Filing at 7.

⁸⁰ See Dep't of Energy, *Standards and Test Procedures: Buildings*, <https://www.energy.gov/eere/buildings/standards-and-test-procedures>.

⁸¹ See, e.g., EPA Office of Air and Radiation, *Climate Protection Partnerships Division, National Awareness of Energy Star for 2022: Analysis of 2022 CEE Household Survey* at 5 (2023), https://www.energystar.gov/sites/default/files/asset/document/National_Awareness_of_ENERGY_STAR_2022.pdf; Marcel Stadelmann & Renate Schubert, *How do different designs of energy labels influence purchases of household appliances? A field study in Switzerland*, 144 *TRANSDISCIPLINARY J. OF THE INT'L SOC'Y FOR ECOLOGICAL ECON.* 112 (2018) (finding that the use of either of two types of energy efficiency labels increased the sales of energy-efficient appliances); Richard G. Newell & Juha V. Siikamaki, *Can Product Labels Nudge Energy Efficient Behavior?* *RESOURCES* (Sept. 10, 2014), <https://www.resources.org/archives/can-product-labels-nudge-energy-efficient-behavior/>.

in PJM’s capacity market.⁸² Thus, there is no causal link at all between the customer’s actions and any capacity payments that are paid to the EE providers. Identifying the aggregate value of these collective energy reduction activities is the heart of the “causal link” issue identified in PJM’s Filing.

Protestors claim that the analysis in this proposal discriminates against EE Resources because PJM does not require other types of Capacity Resources to demonstrate a “causal link” between the receipt of capacity payments and their incentive to participate in RPM as Capacity Market Sellers or exit the market. That argument is not correct because it rests on the faulty premise that the participation of EE Resources is equivalent to other Capacity Market Sellers. There is no support for that premise.

Unlike EE Resources, Capacity Market Sellers of other Capacity Resources invest significant amounts of capital to construct, operate, and maintain their facilities, which are considerably larger than EE Resources, in response to market signals that indicate the most efficient size and location for Capacity Resources. Unlike thermal generation resources, EE Resources are installed in diffuse locations, and their individual installation and load reduction performance is not well documented. Moreover, unlike the devices and methodologies employed to make energy consumption more efficient—which is an activity that is intrinsically self-benefiting to the consumer who makes such decisions—the investments that other Capacity

⁸² See Itron Report at 48 (“Impacts of State and Utility energy efficiency (EE) programs are captured in the model end-use intensities along with new standards and natural occurring efficiency improvements as old appliances are replaced with new appliances. . . . Most primary residential and commercial end-use intensities other than miscellaneous are declining or are flat as increase in end-use stock efficiency is generally increasing faster than saturation.”). Importantly, state programs will remain in place under PJM’s proposal. Filing at 9 (“In fact, during extensive stakeholder discussions about this issue, PJM’s stakeholders made clear that utilities within the PJM footprint will continue to incentivize energy efficiency projects based on various state-mandated programs irrespective of whether Energy Efficiency Resources continue to receive wholesale market revenues from PJM.”).

Resources make to sell energy and capacity expose those suppliers to greater performance risk in the face of vigorously price-sensitive competition. Additionally, Capacity Resources that actually produce energy and create capacity are subject to a robust system of oversight to determine whether their capacity offers are justified.⁸³ EE is not even similarly situated to its closest cousin, Demand Resources, which the Commission has long observed are superior to EE because those types of “Demand resources are dispatchable, i.e., they remain a load on the system unless and until PJM dispatchers request an interruption from them.”⁸⁴

b. The Unique Challenges with EE Resource Valuation Do Not Require the Exclusion of Other Capacity Resources from RPM

The fact that other Capacity Resources might be subject to a default Market Seller Offer Cap of zero, or be required to offer at a reduced price or zero following review by PJM and the Independent Market Monitor, proves nothing. Capacity Resources are much longer-lived assets than EE Resources. PJM’s Net CONE calculation for a reference gas-fired combustion unit assumes an operating life of 20 years, but many generating plants may remain operational for much longer, including 50 to 60 years in some cases.⁸⁵ The fact that a generation plant’s projected energy and ancillary services revenues might exceed its avoidable costs says nothing about whether the plant would have been constructed without the opportunity to receive capacity payments at all. That decision turns on the developer’s expectations and the evolution of market fundamentals over many years.

⁸³ See, e.g., Tariff, Attach. DD, § 6.4 (establishing the rules for Market Seller Offer Caps and the calculation of Avoided Cost Rates).

⁸⁴ See 2009 Capacity Reform Order, FERC ¶ 61,275 at P 135.

⁸⁵ For example, Units 1 and 2 of Talen Energy’s Herbert A Wagner Generating Station were built in 1956 and 1959 respectively. See *PJM requests delayed retirement of Maryland fossil-fired units, citing reliability concerns*, POWER ENGINEERING (Jan. 12, 2024), <https://www.power-eng.com/coal/boilers/pjm-requests-delayed-retirement-of-maryland-fossil-fired-units-citing-reliability-concerns/#gref>.

Commission precedent recognizes that incentives for the construction of Capacity Resources are not based on a one-year snapshot. As the Commission has explained:

[W]e conclude that a competitive capacity market would provide annual revenues *over time that, on average*, would approximate Net CONE. If annual revenues were significantly lower, prospective developers of new capacity would not enter the market, because they would not expect to recover the costs of their investments *over time*.⁸⁶

Thus, it is irrelevant whether a Capacity Resource may have received sufficient revenues to remain operational in a particular year without capacity payments. The question is whether the unit would have been developed at all were capacity payments unavailable due to the potential for “missing money” to support its existence.⁸⁷ The protestors’ attempt to equate the market positions of EE Resources and price-taking generation assets is unpersuasive.

c. The Unique Challenges with EE Resource Valuation Do Not Create Disputed Issues of Material Fact that Require a Trial-Type Hearing

Certain protestors claim that a causal connection exists between capacity payments and the purchase of more energy efficient appliances or equipment as a result of arrangements between EE Capacity Market Sellers and retailers. They claim, for example, that retailers that contract with EE Capacity Market Sellers may make greater efforts to sell more efficient products. But the “support” protestors provide for these claims is not authoritative, nor do the protestors provide any quantitative impact analysis.

⁸⁶ *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 25 (2011) (emphasis added).

⁸⁷ *Calpine Corp.*, 171 FERC, ¶ 61,035, at P 59 n.1006 (2020) (stating that the structure and purpose of the capacity market “exists to provide the ‘missing money,’” *i.e.*, “the capacity revenue a resource needs to be economic over and above what it earns in the energy and ancillary service markets.” (citation omitted)).

Affirmed Energy includes two exhibits whose apparent purpose is to show that capacity payments influence the adoption of EE measures.⁸⁸ Affirmed Energy maintains that these exhibits create a material issue of fact justifying a hearing. The first exhibit is a Lowe’s employee letter stating that PJM capacity payments “support the sale of energy-efficient products.” A second letter from the President of Crossroad Services, Inc., a company that “work[s] as an independent merchandiser,”⁸⁹ states that it has “provid[ed] incentives, through midstream programs directly to retailers and distributors.” Neither of these letters support protestors’ claims. The statement in the Lowe’s letter about “support[ing] the sale of energy-products” is vague and conclusory. The Crossroad letter also lacks probative value regarding PJM because neither PJM nor capacity market payments are ever mentioned. Moreover, neither letter is sworn, and both letters are from persons or entities that appear to benefit directly or indirectly from the receipt of PJM capacity payments, regardless of whether those capacity payments benefit the customers who pay them. In sum, Affirmed Energy’s submittals do not justify a hearing and should be disregarded as either non-probative or insufficiently probative to warrant a trial-type hearing.⁹⁰

⁸⁸ See Affirmed Energy Protest, Ex. A, Letter of C. Cassell; *id.* Ex. B, Letter of A. Parrish.

⁸⁹ Crossroads Services Inc., Our Story, <https://www.csimerchandising.com/about>.

⁹⁰ See *Columbia Gulf Transmission, LLC v. FERC*, 106 F.4th 1220, 1234 (D.C. Cir. 2024) (quoting *Blumenthal v. FERC*, 613 F.3d 1142, 1144 (D.C. Cir. 2010) (“In general, FERC has broad discretion to determine whether to hold an evidentiary hearing. It is well established ... that ‘mere allegations of disputed facts are insufficient to mandate a hearing; petitioners must make an adequate proffer of evidence to support’ their claim.”); accord *Cascade Nat. Gas Corp. v. FERC*, 955 F.2d 1412, 1425 (10th Cir. 1992) (“[M]ere allegations of facts are insufficient to mandate a hearing; petitioners must make an adequate proffer of evidence to support them.” (citation and internal quotation marks deleted)); *Woolen Mill Assocs. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990) (“We find no abuse of discretion in the Commission’s failure to conduct a formal evidentiary hearing as the record reveals no substantial evidence contradicting any material finding by the Commission.”); accord *Cerro Wire & Cable*, 677 F.2d at 124 (emphasis added) (citing *General Motors Corp. v. FERC*, 656 F.2d 791, 798 n. 20 (D.C. Cir.1981)).

3. Incorporating EE Load Reductions Into the Load Forecast Provides Superior Benefits to Customers

PJM has explained that customers receive the greatest amount of benefits by recognizing EE projects in the load forecast, which lowers both retail and wholesale costs to customers. Retail costs are reduced because the overwhelming majority of end-use customer-specific peaks are necessarily lower than system-wide peaks. And because the load forecast is a forward-looking projection of EE impacts, a reduced load forecast results in load paying for lower quantities of capacity as well as lower wholesale capacity market prices for the quantities that are procured. There are other benefits as well, including lower energy costs for end-use customers that install EE products. In contrast, paying EE Resources for capacity through the addback method charges customers for the installation of EE products that are going to be adopted without regard to any capacity market because those energy-reducing measures are intrinsically beneficial to the customers who install them.

Protesters criticize PJM's consideration of these benefits on the grounds that benefits should not accrue broadly across the PJM region or to customers in specific PJM zones, but rather should only be captured by the customers that actually install the equipment and seek to participate in the capacity market. For example, the Public Interest Organizations (PIOs) assert:

The Commission resolved th[e] issue [of how to allocate benefits associated with EE] over fifteen years ago when it first approved inclusion of Energy Efficiency Resources in the RPM. At that time, FERC found that “many retail customers who install energy efficiency measures do not capture the capacity benefit of the resources they install.” The relevant rules for capacity cost allocation have not changed since FERC made that finding, and PJM offers no evidence that they have.⁹¹

⁹¹ *PJM Interconnection, L.L.C.*, Docket No. ER24-2995-000, Protest of the Environmental Law & Policy Center, the Sustainable FERC Project, and the Natural Resources Defense Council at 19 (Sept. 27, 2024) (footnote citing 2009 Capacity Reform Order omitted). The PIOs' argument misses the point. It is not relevant whether there has been any change in the “relevant rules for capacity cost

First, as shown above, even in 2009, FERC considered including projected EE installations in the load forecast. Further, FERC determined in the *NYISO* orders that EE did not have to be supply-side resources for a region's capacity market to be just and reasonable. In addition, the PIOs fail to take into account that the current treatment of EE projects as Capacity Resources results in a large share of capacity payments going to the midstream and upstream aggregators of EE. No protester in this proceeding has shown the operating costs or profits realized by these companies. On net, more benefits will be realized by customers when these middle-men are removed. Capacity payments to suppliers should not be made when there is a lack of causality between an end-use customer's action and the capacity revenues that are paid to an EE provider that claims such EE savings. It is not just and reasonable to require all capacity customers to subsidize those intrinsically self-benefitting energy reduction actions through capacity payments.

Finally, EE has a greater impact on lowering capacity prices when it is included in the load forecast as a demand reducer compared to its impact when treated as a source of supply. This occurs because, when EE is treated as a demand reducer, it also reduces the reserve margin that would be associated with the incrementally higher load forecast that did not include EE reductions. This is based on the "principle that the benefit of reducing each megawatt of system peak load would avoid not only the construction of an equivalent amount of generation capacity, but also the generation reserve margin for that megawatt that the system must procure to address the imperfect availability of generation resources."⁹² The implied reserve margin under RPM was 18.6 % for

allocation" since 2009. What is relevant is the change in the load forecast methodology, which now effectively captures EE contributions to load reductions through the end-use intensity analysis.

⁹² *ISO New England Inc.*, 125 FERC ¶ 61,355, at P 5 (2008) (discussing demand resources).

Delivery Year 2025/2026.⁹³ Using this value as a benchmark, a reduction of 100 MW in the load forecast would be equivalent to 118.6 MW of EE reductions treated as supply. Customers thus derive more benefit from EE projects when they are treated as demand-reducers in the load forecast.

D. An Additional Transition Period is Neither Required Nor Appropriate

Certain protestors contend that PJM must include a transition period for the gradual phase-out of EE Resources from RPM. As noted above, the protestors neglect to acknowledge that this proposal already incorporates a transition period by honoring existing capacity commitments that are currently in place for EE Resources. Additionally, because this proposal would become effective with the 2026/2027 Delivery Year, EE providers would be allowed to continue offering EE Resources into the RPM Auctions through the 2025/2026 Delivery Year. As such, the proposed rules contemplate EE Providers will continue to submit post-installation measurement and verification reports associated with claimed EE through the 2025/2026 Delivery Year. An alternative transition period beyond what is already proposed in this filing is not appropriate and would have significant adverse effects on PJM customers.

The Commission's decision in *Central Hudson Gas & Electric Corp. v. FERC* provides a suitable framework for analyzing protestors' contentions.⁹⁴ In that case, NYISO modified an administrative demand curve used in capacity auctions. NYISO included a proposed phase-in period that the Commission rejected. The Second Circuit upheld the Commission's action, balancing the negative and positive impacts of a phase-in. The Court upheld the Commission's decision based on its finding that there were "specific offsetting short-term benefits" associated

⁹³ See PJM, 2025/2026 Base Residual Auction Report at 4 (July 30, 2024), <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.ashx>.

⁹⁴ 783 F.3d 92 (2d Cir. 2015).

with immediate implementation that were greater than the avoidance of “higher prices” associated with a phase-in.⁹⁵

Applying this analysis here leads to the conclusion that a transition would not be appropriate. Customers would not benefit in any meaningful way from such a transition. As explained above, including EE Resources in RPM as supply *negatively* impacts the customers who ultimately pay for capacity. That burden on consumers is greater when EE is a supply-side resource because that method unnecessarily inflates the quantity of capacity purchased on their behalf. The short-term benefits thus are to save customers money for the upcoming action while the only long-term impact is to exclude resources that should not be included.

Finally, while certain protestors urge the Commission to accept various alternative reforms, such as a transition period, those alternatives are not before the Commission. It is well-established as a matter of law that the Commission has no obligation to consider those alternatives in this proceeding.⁹⁶ The only question properly before the Commission is whether PJM’s proposal is

⁹⁵ *Id.* at 114.

⁹⁶ See, e.g., *N.Y. State Pub. Serv. Comm’n v. FERC*, 104 F.4th 886, 891 (D.C. Cir. 2024) (“FERC has construed its Section 205 authority as ‘limited to an inquiry into whether the [proposed] rates ... are reasonable,’ without regard to whether the rates are ‘more or less reasonable’ than other possible rate designs.”) (quoting *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984)); *id.* (“We have described FERC’s role under Section 205 as ‘essentially passive and reactive’; so long as a utility’s rates fit within the zone of reasonableness, FERC is obligated to approve them.”) (quoting *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9–10 (D.C. Cir. 2002) (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984) (Scalia, J.))); *Indep. Power Producers of N.Y., Inc. v. FERC*, No. 21-1166, 2022 WL 3210362, at *2 (D.C. Cir. Aug. 9, 2022) (“FERC’s ‘authority to review rates [under Section 205 is] limited to an inquiry into whether the rates proposed ... are reasonable—and not ... whether a proposed rate schedule is more or less reasonable than alternative rate designs.’”) (quoting *City of Bethany*, 727 F.2d at 1136); *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,215, at P 81 & n.165 (2020) (“Having found MISO’s proposal just and reasonable under section 205 of the FPA, the Commission is not required to consider whether the Zonal Deliverability Charge is more or less just and reasonable than other alternatives.”) (citing *City of Bethany*, 727 F.2d at 1136; *OXY USA Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995); *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009)).

just and reasonable at this time. A super majority of PJM's stakeholders believe it is. PJM has shown this reform is not merely just and reasonable, but also necessary, and the protests should be rejected.

III. CONCLUSION

For the reasons set forth in this Answer, PJM respectfully requests that the Commission accept PJM's September 6, 2024 Filing, without the need for additional hearing or technical conference.

Respectfully submitted,

/s/ John Lee Shepherd, Jr.

John Lee Shepherd, Jr.

Ted J. Murphy

Kenneth R. Carretta

Blake Grow

Hunton Andrews Kurth LLP

2200 Pennsylvania Avenue, NW

Washington, DC 20037

(202) 419-2135

(202) 955-1588

(202) 294-3914

(202) 955-1500

jshepherd@hunton.com

tmurphy@hunton.com

kcarretta@hunton.com

bgrow@hunton.com

Craig Glazer
Vice President–Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 423-4743 (phone)
craig.glazer@pjm.com

Chenchao Lu
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, PA 19403
(610) 666-2255
Chenchao.Lu@pjm.com

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of this motion for leave to answer and answer upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2023).

/s/ Blake Grow

Blake Grow
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 955-1500
bgrow@hunton.com

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