

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND	5
	A. RMRs require consumers to pay retiring resources to stay online to maintain reliability until transmission solutions are complete.	5
	B. PJM allows RMR units to choose whether to participate in the capacity market.	7
	C. Several RTO/ISOs require units operating under RMRs to participate in their capacity markets or similar resource adequacy constructs.	10
	1. NYISO	10
	2. ISO-NE.....	12
	3. CAISO	16
	D. The non-participation of RMR units in PJM’s capacity market reduces overall supply and increases prices for consumers.....	18
	E. The non-participation of RMR units in the most recent capacity auction in PJM had a significant effect on prices.	19
	F. RMRs may become more common in PJM given the projected rate of retirements, challenges planning for and building transmission, and the slow pace of PJM’s interconnection queue.	24
	G. Efforts to secure reforms through the stakeholder process.....	27
III.	DISCUSSION	29
	A. RMR units’ non-participation in the capacity market creates unjust and unreasonable prices by forcing consumers to pay twice for reliability.....	29
	1. RMR arrangements retain resources to be available for a broad range of reliability emergencies, including those related to capacity.	29
	2. Despite paying for reliability through the RMR arrangement, consumers must buy replacement capacity through the auction, sometimes at scarcity prices.....	33
	B. High capacity market prices driven by RMR units’ non-participation send inaccurate price signals.	36
	C. Allowing RMR units not to participate in the capacity market renders the market vulnerable to manipulation.....	43
	D. Absent immediate action from the Commission, PJM’s capacity market will continue to yield unjust and unreasonable outcomes.	48

E.	A range of just and reasonable approaches are available that would avoid inaccurate price signals and harm to consumers	52
IV.	RULE 206 REQUIREMENTS.....	55
V.	COMMUNICATIONS	58
VI.	CONCLUSION	59

Pursuant to Sections 206 and 306 of the Federal Power Act (“FPA”),¹ and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),² Sierra Club, Natural Resources Defense Council, Public Citizen, Sustainable FERC Project, and the Union of Concerned Scientists (collectively “Public Interest Organizations” or “PIOs”) file this Complaint against PJM Interconnection, LLC (“PJM”). PIOs request that the Commission: (1) establish a refund effective date pursuant to section 206 of the FPA as of the date of this complaint; (2) find that PJM’s capacity market rules are unjust and unreasonable because they fail to require a consistent accounting of the resource adequacy contributions of power plants operating under Reliability Must Run (“RMR”) arrangements and lead to excessive costs for consumers; and (3) order PJM to reform its capacity market rules to consistently account for RMR units’ resource adequacy contributions.

I. INTRODUCTION

This Complaint challenges unjust and unreasonable rules in PJM’s capacity market that have already caused \$4 billion to \$5 billion dollars in excessive costs for consumers in PJM’s most recent capacity auction—and that may cause \$12 billion to \$15 billion more in three upcoming capacity auctions unless the Commission requires reforms. In particular, this Complaint challenges PJM’s failure to consistently account in its capacity market for the resource adequacy value of generators operating under Reliability Must Run (“RMR”) arrangements. RMR arrangements require consumers to pay power plants that would otherwise retire to stay online in order to maintain reliability. Yet PJM does not accurately account for these RMR units’ contributions to resource adequacy during capacity auctions—despite

¹ 16 U.S.C. §§ 824e, 825e.

² 18 C.F.R. § 385.206.

consumers paying these power plants to remain in service, despite having explicit authority in numerous RMR arrangements to call these power plants to operate during capacity emergencies, and despite its own stated expectation that these plants will operate when called. Instead, by failing either to require RMR units to bid into the capacity market or to adjust its capacity procurement targets to account for the expected performance of RMR units, PJM forces consumers to pay again to procure the same capacity services that the RMR units already provide. This approach is unjust and unreasonable.

Notably, other regions already have rules—which the Commission has repeatedly approved—that better protect consumers against inflated capacity prices associated with RMR arrangements. Both the New York Independent System Operator (“NYISO”) and ISO New England (“ISO-NE”) have Commission-approved rules in place that require RMR units to participate in their capacity markets to avoid forcing consumers “to pay twice for the same capacity need”—precisely the outcome that has occurred in PJM.³ This Complaint asks the Commission to bring PJM’s practices into alignment with existing practices in other markets that the Commission has already found are just and reasonable because they protect consumers from unreasonable and excessive costs.

The costs for consumers from PJM’s unjust and unreasonable rules are extreme. As detailed below, PJM’s most recent capacity auction resulted in record-high prices, and the failure to account for RMR units’ resource adequacy contributions caused excessive costs for consumers. As detailed below, Monitoring Analytics, the Independent Market Monitor (“IMM”) for PJM, calculates that these excessive costs amount to \$4.2 billion.⁴ Similarly, an independent

³ See *ISO-New England, Inc.*, 165 FERC ¶ 61,202 at P 83 (2018).

⁴ Monitoring Analytics, Analysis of the 2025/2026 RPM Base Residual Auction Part A, at 2 (Sept. 20, 2024) (“IMM Analysis of 2025/2026 Auction”),

report from Synapse Energy Economics (“Synapse”) prepared for the Maryland Office of the People’s Counsel finds that these excessive costs amount to \$5 billion.⁵ As a result, electricity bills for consumers will rise throughout the PJM region—with the most extreme price increases falling on the shoulders of consumers who already bear some of the highest energy burdens in the nation. Under PJM’s current rules, consumers in the Baltimore Gas & Electric (“BGE”) Locational Delivery Area (“LDA”) must pay not only the lion’s share of hundreds of millions of dollars annually to keep multiple RMR units operating, but also the highest prices for capacity that are possible in PJM’s capacity market. From just the most recent auction, these ratepayers’ monthly bills will likely increase by nineteen percent, costing the average household an extra twenty-one dollars per month. This cost increase is especially harmful because the BGE LDA includes disadvantaged communities who already face some of the highest energy burdens in the country, according to the Department of Energy (“DOE”).

Unless the Commission acts to protect consumers, energy burdens from PJM’s unjust and unreasonable rules will likely continue to skyrocket under PJM’s rapid-fire schedule for upcoming capacity auctions. PJM’s next Base Residual Auctions (“BRA”) will take place in December 2024, June 2025, and December 2025—with a mere six months between each auction. Although PJM maintains that high capacity prices send a signal for investment in new generation, PJM’s rapid schedule leaves insufficient time for new generation to come online—especially because PJM’s interconnection queue remains badly backlogged and because PJM is resisting accelerating its interconnection process to come up to the pace that the Commission

https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_A_20240920.pdf. The IMM’s analysis document is included as Attachment 1 to this complaint.

⁵ Md. Office of People’s Counsel, Bill and Rate Impacts of PJM’s 2025/2026 Capacity Market Results & Reliability Must-Run Units in Maryland, at 8 (Aug. 2024) (“Synapse Report”),

https://opc.maryland.gov/Portals/0/Files/Publications/RMR%20Bill%20and%20Rates%20Impact%20Report_2024-08-14%20Final.pdf?ver=V9hZfyTmjLeNVt2Dg3cTgw%3d%3d. The Synapse Report document is included as Attachment 2 to this complaint.

required in its recent Order No. 2023. The fast pace of PJM’s capacity auctions and the slow pace of its interconnection queue mean that new generation is highly unlikely to be able to come online quickly enough to prevent price spikes like the one caused by PJM’s most recent auction. In other words, unless the Commission acts, PJM’s upcoming auctions are likely to each create another \$4.2 billion to \$5 billion in excessive costs for consumers.

Failing to account for resource adequacy provided by RMR units produces capacity market price signals that are disconnected from the actual supply and demand balance on the grid. As explained in the attached testimony of economist James F. Wilson,⁶ this distorted supply-demand balance is economically inefficient because it signals a degree of scarcity that does not exist. The result is artificially elevated prices that harm the markets by encouraging inefficient decisions by both supply and demand side market participants.

Importantly, the relief requested in this Complaint would not undermine the capacity market’s ability to send accurate signals for necessary investment in new capacity resources, or retention of existing resources. PIOs recognize that when the inputs to the capacity market are well-designed, capacity prices can signal the need for new generation to ensure resource adequacy. However, when high capacity prices are inflated by ignoring generation that consumers are already paying to stay online and that an RTO is authorized to call to perform during capacity emergencies, those prices are not reflecting a true resource adequacy need and are excessive and unreasonable. As detailed below, if PJM’s capacity market had accounted for the resource adequacy contributions of RMR resources in the most recent capacity auction, as PIOs maintain is necessary, the resulting prices would have been more accurate and substantially lower—but would still have been among the highest capacity prices PJM has seen in a decade. In

⁶ See generally Affidavit of James F. Wilson, included as Attachment 3 to this complaint (“Wilson Aff.”).

Talen Energy Corporation’s Brandon Shores and Wagner fossil units in Maryland seek to recover from consumers as much as \$830 million for three-and-a-half years of service, just in fixed costs.¹⁵ These costs may be higher if the transmission owners are unable to complete the solutions by the end of 2028—the current planned in-service date.¹⁶ Notably, consumers in the BGE LDA will bear the vast majority of these RMR costs¹⁷—the same consumers who will pay record high prices of \$466.35/MW-day for capacity during the first year of the Brandon Shores and Wagner RMR based on an apparent shortage of capacity resources in the LDA.¹⁸

B. PJM allows RMR units to choose whether to participate in the capacity market.

Under PJM’s rules, a resource that plans to deactivate may obtain an exception to PJM’s requirement that generation resources (other than “intermittent” and energy storage resources) must offer into the Reliability Pricing Model (“RPM”), otherwise known as the capacity

[history.ashx](#) (listing “actual” costs identified by the IMM for various RMR arrangements, which total to \$595 million).

¹⁵ See, e.g., Brandon Shores LLC, RMR Arrangement – Continuing Operations Rate Schedule, Docket No. ER24-1790 (Apr. 18, 2024), Accession No. 20240418-5176 (seeking fixed costs and project investment for continuing operations that amount to nearly \$650 million); H.A. Wagner LLC, RMR Arrangement – Continuing Operations Rate Schedule, Docket No. ER24-1787 (Apr. 18, 2024), Accession No. 20240418-5128 (seeking over \$200 million in fixed costs and project investment for continuing operations that amount to over \$200 million). This cost estimate reflects the initial filings by Brandon Shores LLC and H.A. Wagner LLC, and may be reduced following litigation. See also Protest and Comments of the Maryland Office of People’s Counsel and the Southern Maryland Electric Cooperative, at 7 Tbl. 1, Docket Nos. ER24-1787 & ER24-1790 (May 16, 2024), Accession No. 20240516-5193 (listing annual and cumulative costs for the Brandon Shores and Wagner RMRs, including a cumulative \$628.6 million for the Brandon Shores RMR and a cumulative \$201.7 million for the Wagner RMR, for a cumulative total of \$830.4 million).

¹⁶ Synapse Report, *supra* note 5 at 9 (noting that “the projected completion date of December 2028 for these transmission solutions is highly uncertain; there could be delays in the project construction and execution, further imposing RMR costs on electric customers”).

¹⁷ OATT at Part V § 120 (cost allocation for RMR follows cost of transmission solution); see also Synapse Report, *supra* note 5, at 8–9 (noting that “BGE customers can expect to pay an estimated 74 percent” of the cost of RMR units in that LDA).

¹⁸ PJM, 2025/2026 Base Residual Auction Report (July 30, 2024) (“PJM 2025/2026 Base Residual Auction Report”), <https://pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.ashx>; see also Synapse Report, *supra* note 5 at 6 (noting that the most recent auction had a “total annual cost to electric customers of \$14.7 billion, a substantial increase from the \$2.2 billion in capacity costs in the 2024/2025 delivery year”).

market.¹⁹ If a generator opts to accept an RMR arrangement, it then has a choice whether or not to offer the retained resource into the capacity market.²⁰

Because PJM does not publish data regarding which resources have offered into the capacity market, or received capacity obligations, there is no comprehensive, publicly available information about how often RMR resources choose not to offer into the auction. However, PJM has recently observed that “RMR units typically do not participate in capacity auctions,”²¹ and as discussed below, it is evident that Talen chose not to offer Brandon Shores and Wagner into the Base Residual Auction during the first year of their anticipated RMR arrangement (2025/2026), which contributed to the historically high prices in that auction.²² Nevertheless, there are instances in which RMR resources have made commitments to offer into RPM. In 2012, FirstEnergy sought to deactivate seven units it operated in Ohio, Pennsylvania, and Maryland totaling 2,689 MWs.²³ Pursuant to Part V, Section 114, FirstEnergy sought agreement with the PJM IMM on the appropriate levels for each component of the Deactivation Avoidable Cost Rate for each unit. In the resulting agreement, filed with the Commission as part of FirstEnergy’s

¹⁹ OATT, Tariff, Attach. DD § 6.6(g) (providing that a resource qualifies for an exception to the capacity market must-offer requirement if it has a “documented plan in place to retire the resource prior to or during the delivery year, and has submitted a notice of Deactivation regardless of whether PJM has asked the unit to continue to operate beyond its requested deactivation date”).

²⁰ See David Mroz and Tim Bachus, Treatment of Deactivations in RPM, PJM, at slide 2 (Nov. 9, 2023), <https://www.pjm.com/-/media/committees-groups/task-forces/destf/2023/20231109/20231109-item-06---treatment-of-resources-in-rpm.ashx> (“Reliability Must Run (RMR) arrangement would stipulate whether unit is subject to must-offer”); Monitoring Analytics, Part V (RMR) CETO Impacts, at slide 2 (Aug. 19, 2024), <https://www.pjm.com/-/media/committees-groups/task-forces/destf/2024/20240819/20240819-item-05---rmr-ceto-impacts.ashx> (describing RMR capacity market offer options as “[o]ffer[ing] as [a] price taker” or “[d]o not offer”).

²¹ PJM, PJM Response to the 2023 State of the Market Report, at 4 (Aug. 2024) (“PJM Response to the 2023 State of the Market Report”), <https://www.pjm.com/-/media/library/reports-notice/state-of-the-market/20240822-pjm-response-to-the-2023-state-of-the-market-report.ashx>.

²² Synapse Report, *supra* note 5 at 24 (describing the price impact of the RMR units’ non-participation in the 2025/2026 capacity auction).

²³ See, e.g., FirstEnergy Serv. Co., Informational Filing regarding Deactivation Avoidable Cost (DAC) Rate under Section 116 of the PJM Interconnection, L.L.C.’s Open Access Transmission Tariff, at Attach. 1 (Deactivation Notice), Docket No. ER12-2710 (Jul. 10, 2012), Accession No. 20120710-5165.

informational filing, FirstEnergy committed to offer the capacity of any unit that did not already have a capacity obligation into the incremental auction “at a price of zero dollars.”²⁴

PJM has also established rules for RMR resources that do offer into capacity auctions. For instance, such resources must abide by the requirements of capacity resources with respect to offers into the day-ahead and real-time energy markets.²⁵ Similarly, PJM has noted that when an RMR unit undertakes a capacity commitment, “all obligations of a capacity resource apply.”²⁶

PJM’s rules include an important inconsistency in how they account for RMR units’ continued operation. Although PJM does not require RMR units to offer into the capacity auction, it does include these units when modeling the PJM system for purposes of determining the amount of capacity that can be transferred into constrained LDAs under peak load emergency conditions, and how much capacity is available within each LDA. As the IMM has explained, “[t]his approach is internally inconsistent” and could be resolved by either including RMR units as supply or by excluding these resources from the analysis of how much capacity can be imported into an LDA.²⁷ Relevant here, PJM has explained that it includes the RMR unit in these calculations because the “RMR unit is expected to produce MWs under emergency conditions,”²⁸ and because “the RMR units [are] expected to be operating and impacting power flows on the system during times of reliability need.”²⁹ PJM has further concluded that

²⁴ See, e.g., *id.* at Attach. 4 (IMM Agreement dated Apr. 10, 2012) (“To the extent that a Generating Unit does not already have a capacity commitment, FE Genco will offer such Generating Unit’s capacity into every Reliability Pricing Model Incremental Auction at a price of zero dollars.”).

²⁵ Keyur Patel, Treatment of Reliability Must Run (RMR) Arrangement Resource in Day-ahead and Real-time Energy Market, PJM (Nov. 9, 2023), <https://www.pjm.com/-/media/committees-groups/task-forces/destf/2023/20231109/20231109-item-07---treatment-of-rmr-resources-in-da-and-rt-market.ashx>.

²⁶ *Id.* at slide 2.

²⁷ IMM Analysis of 2025/2026 Auction, *supra* note 4 at 6.

²⁸ Patricio Rocha-Garrido and Michael Herman, PJM CETO/CETL & Load Deliverability, at slide 16 (Aug. 19, 2024) (“PJM CETO/CETL & Load Deliverability”), <https://www.pjm.com/-/media/committees-groups/task-forces/destf/2024/20240819/20240819-item-04---ceto-cetl-and-load-deliverability-test.ashx>.

²⁹ PJM Response to the 2023 State of the Market Report, *supra* note 21 at 4.

“[e]xcluding these units from the analysis could result in an incomplete and potentially inaccurate assessment of local reliability needs,” and lead to “distorted price signals that would incent generation where transmission upgrades could have replaced that need.”³⁰ PJM has not addressed the inconsistency between considering RMR units as available for purposes of modeling capacity import limits because it expects these units to generate energy during capacity emergencies, but failing to account for these units in capacity auctions.

C. Several RTO/ISOs require units operating under RMRs to participate in their capacity markets or similar resource adequacy constructs.

PJM’s approach of allowing RMR units to decide whether to participate in its capacity market is an outlier among RTO/ISOs. The Commission has repeatedly approved mechanisms in other RTO/ISOs that ensure that markets account for the fact that RMRs require consumers to pay otherwise retiring units to continue to be available to maintain reliability. The Commission has consistently found that it is critical for markets to avoid “requiring ratepayers to pay twice to satisfy the same capacity need.”³¹

I. NYISO

The New York Independent System Operator (“NYISO”) requires RMR units to participate in its capacity market as price-takers by submitting bids of \$0.00.³² In 2015, the Commission determined under section 206 of the FPA that NYISO’s tariff was unjust and unreasonable because it did not “contain provisions governing the retention of and compensation to generating units needed for reliability,” i.e. RMR units.³³ Consequently, NYISO developed

³⁰ *Id.*

³¹ *New York Indep. Sys. Operator, Inc. (“NYISO II”),* 161 FERC ¶ 61,189 at P 55 (2017); *see also New York Indep. Sys. Operator, Inc. (“NYISO I”),* 155 FERC ¶ 61,076 at PP 82–83 (2016); *ISO New England, Inc.,* 165 FERC ¶ 61,202 at PP 82–83.

³² *NYISO II,* 161 FERC ¶ 61,189 at PP 55, 62.

³³ *NYISO I,* 155 FERC ¶ 61,076 at PP 1–2.

tariff revisions that included a requirement for “RMR generators to offer all of their unforced capacity (UCAP) into an installed capacity (ICAP) spot market auction,” unless an RMR unit had a pre-existing bilateral agreement excusing it from this requirement.³⁴

Although NYISO initially proposed exceptions to the requirement for RMR units to be “price-takers,”³⁵ the Commission “reject[ed] NYISO’s proposal to impose a capacity offer price on RMR generators higher than \$0.00/kW-month as unjust and unreasonable.”³⁶ The Commission reasoned that if RMR units have bids higher than \$0.00 and fail to clear the capacity auction, the result would be that “another generator that otherwise would not have cleared will clear instead,” which would mean that “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.”³⁷ The Commission thus found that “[i]t is more efficient for RMR generators to offer their UCAP at \$0.00/kW-month as ‘price-takers.’”³⁸ The Commission also found that this price-taking approach was consistent with its precedent regarding another “form of RMR agreement” in NYISO, and “continue[d] to believe” that any market rule that resulted in a non-zero bid “would allow for inefficient outcomes and is thus unreasonable.”³⁹ The Commission sustained this decision on rehearing.⁴⁰

³⁴ *Id.* at P 74.

³⁵ *Id.*

³⁶ *Id.* at P 82.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *NYISO II*, 161 FERC ¶ 61,189 at PP 54–63. Although NYISO argued that non-zero bids would be appropriate for RMR units needed for resource adequacy as opposed to local transmission security, the Commission found that there was no record basis to “discern under what circumstances NYISO would need an RMR for resource adequacy, and thus, under NYISO’s proposal, would need to be subject to an offer floor.” *Id.* at P 62.

2. ISO-NE

ISO-NE developed requirements for resources retained for “fuel security” purposes to participate in its Forward Capacity Market (“FCM”) as price-takers by submitting bids of \$0.00.⁴¹ Under this approach, so-called “fuel security resources” entered into a type of RMR arrangement that is an out-of-market agreement to retain resources that would otherwise retire in order to maintain reliability. As in NYISO, this requirement resulted from a process that the Commission instituted under section 206 of the FPA based on a preliminary finding that ISO New England, Inc.’s (“ISO-NE”) tariff may be unjust and unreasonable because it lacked provisions providing for “a short-term, cost-of-service agreement to address demonstrated fuel security concerns.”⁴² The Commission thus directed ISO-NE to develop generally applicable tariff terms that would, among other reforms, explain “how such resources would be treated in the [capacity market].”⁴³ In response, ISO-NE proposed tariff revisions that “allow for the retention of a resource for fuel-security reasons” and address how such resources must participate in the capacity market.⁴⁴

ISO-NE proposed that fuel security resources would be required to participate in its capacity market “as price-takers,” meaning that these resources would be bid into auctions “at a price of zero to ensure that the resource clears the auction.”⁴⁵ ISO-NE explained that this price-taker treatment avoids “unreasonably suppressing capacity prices” or “inflated [capacity auction] prices.”⁴⁶ ISO-NE did not propose alternative approaches such as allowing non-zero bids or allowing fuel security resources to decline participation in the capacity market because those

⁴¹ *ISO New England, Inc.*, 165 FERC ¶ 61,202 at PP 57, 82.

⁴² *Id.* at PP 3–4.

⁴³ *Id.* at P 58.

⁴⁴ *Id.* at P 5.

⁴⁵ *Id.* at P 57.

⁴⁶ *Id.*

“alternatives would result in the [capacity auction] not accounting for a retained resource’s contribution to resource adequacy” and thus procuring “excess resources.”⁴⁷ Similarly, ISO-NE reasoned that “not accounting for the capacity value of a resource retained for fuel security” would cause its capacity auction to “clear at a price that does not reflect the true marginal reliability impact of procured capacity.”⁴⁸ ISO-NE’s price-taker treatment of retained resources aimed to avoid that “costly and inefficient outcome.”⁴⁹

Numerous commenters supported ISO-NE’s proposal to require retained resources to participate in the capacity market as price-takers, including the New England States Committee on Electricity (“NESCOE”), the American Public Power Association, certain public interest organizations, and Potomac Economics, which is ISO-NE’s external market monitor.⁵⁰ Potomac Economics explained that “the price-taker proposal will result in efficient capacity prices” and thus was “the most efficient solution.”⁵¹

ISO-NE defended its proposal to treat retained resources as price-takers against a charge that this approach would “suppress capacity prices” by explaining that “once a resource is retained for fuel security, it is appropriate to consider its contributions to resource adequacy when determining capacity awards and prices since the retained resources will continue to contribute to resource adequacy.”⁵² In contrast, ignoring or discounting retained resources’ contributions to resource adequacy would lead to capacity prices “based on an inflated estimate of capacity’s incremental contributions to resource adequacy,” which “would lead the region to

⁴⁷ *Id.* at P 58.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at PP 60–63.

⁵¹ *Id.* at P 63.

⁵² *Id.* at P 78.

procure more capacity than specified by its demand curves, resulting in an expensive and inefficient outcome for the region.”⁵³

The Commission accepted ISO-NE’s proposal to require fuel security resources to participate in the capacity market as price-takers.⁵⁴ The Commission specifically “agree[d] that the year-round resource adequacy contributions of resources retained for fuel security should be counted in the capacity market and therefore f[ound] that such resources should be entered into the [capacity auction] as price-takers to ensure that they clear.”⁵⁵ The Commission also found that ISO-NE’s price-taking approach to fuel security units is consistent with Commission precedent in the *NYISO* decisions discussed above.⁵⁶

In approving ISO-NE’s price-taker approach, the Commission emphasized the need to prevent unreasonable price increases for consumers by reiterating the point several times. For example, the Commission reinforced the consistency between ISO-NE and NYISO by noting that “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,” which the Commission noted would be “inefficient and unreasonable because it would require ratepayers to pay twice for the same capacity need and would result in over-procuring capacity.”⁵⁷ Similarly, the Commission rejected the argument that a purported “distinction between resources retained for reliability and resources retained for fuel security” could justify a non-zero price, reiterating that “[i]f resources needed for fuel security are not entered into the [capacity auction] as price-takers, they risk not clearing in the [capacity auction] and their resource adequacy contributions to the

⁵³ *Id.*

⁵⁴ *Id.* at P 82.

⁵⁵ *Id.*

⁵⁶ *Id.* at PP 83–84.

⁵⁷ *Id.* at P 83 (citing *NYISO I*, 155 FERC ¶ 61,076 at P 82 and *NYISO II*, 161 FERC ¶ 61,189 at P 55).

system would not be counted.”⁵⁸ The Commission again explained that “such an outcome would result in a higher clearing price and a higher procurement quantity, which would create an inefficient and unreasonable market outcome.”⁵⁹ The Commission also noted its agreement with Potomac Economics that “as long as resources are retained for fuel security purposes, including such resources in the [capacity auction] as price takers prevents an artificial and inefficient increase in [capacity auction] prices.”⁶⁰

Further, the Commission specifically approved ISO-NE’s rejection of alternative approaches that would allow non-zero bids under certain circumstances. In doing so, the Commission reiterated that “retaining a resource outside of the [capacity auction] 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.”⁶¹ The Commission similarly approved ISO-NE’s rejection of an alternative of allowing non-zero bids set through the independent market monitor’s mitigation, finding that this approach could only account for retained resources’ contributions to resource adequacy if “that resource’s IMM-mitigated bid clears the [capacity auction.]”⁶² The Commission recognized “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 when finding that a resource must be retained for fuel security,” and emphasized that ISO-NE acted reasonably by “protect[ing] against inefficiently over-procuring capacity resources by reflecting a fuel security resource’s contribution to resource adequacy in the [capacity auction].”⁶³

⁵⁸ *Id.* at P 85.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at P 87.

⁶² *Id.*

⁶³ *Id.*

The Commission also found that “the price taker design accurately reflects a fuel security resource’s low going-forward costs.”⁶⁴ The Commission emphasized prior precedent noting that “in calculating the going forward costs of these reliability resources, it is reasonable to deduct their reliability must run revenues, because the revenues do not overstate the value provided by the resources to customers.”⁶⁵ Because RMR arrangements “provide the revenue that these resources need to remain available and reduce their going-forward costs to *de minimis* or zero,” the Commission found that “it is just and reasonable for ISO-NE to enter fuel security resources as price takers in the [capacity auction.]”⁶⁶

Although ISO-NE only sought temporary authorization to retain resources for fuel security, which has since lapsed, ISO-NE recently confirmed that it continues to view price taker treatment for retained resources as the correct approach. In a stakeholder presentation in September 2024, ISO-NE described potential reforms it may propose for its capacity market, such as development of a seasonal auction.⁶⁷ In that presentation, ISO-NE explained that “[r]esources retained for local transmission security are treated as price takers in the capacity market” and that the “ISO finds that this treatment continues to be appropriate and efficient.”⁶⁸

3. CAISO

While the California Independent System Operator (“CAISO”) does not administer a capacity market like those in NYISO, ISO-NE, or PJM, CAISO does require RMR units to participate in its markets and “align[s] RMR obligations with those of resource adequacy

⁶⁴ *Id.* at P 88.

⁶⁵ *Id.* (cleaned up).

⁶⁶ *Id.*

⁶⁷ Chris Geissler, Capacity Auction Reforms: Continued Discussion of Project Scope, ISO-NE (Sept. 10, 2024), https://www.iso-ne.com/static-assets/documents/100015/a03a_mc_2024_09-10_capacity_auction_reforms_iso_presentation.pdf.

⁶⁸ *Id.* at slide 20.

resources . . . to help support grid reliability and resilience.”⁶⁹ CAISO also applies its Resource Adequacy Availability Incentive Mechanism (“RAAIM”) to RMR resources,⁷⁰ which aims to treat RMR units “just like [resource adequacy] . . . resources.”⁷¹ CAISO’s RAAIM provides bonus payments for units with availability exceeding a certain threshold and imposes penalties on units with availability below a minimum threshold; the purpose of the RAAIM is to ensure that “resources are available for CAISO to meet [] reliability needs,”⁷² which is similar to PJM’s Capacity Performance system or ISO-NE’s Pay for Performance system.

CAISO explained in its proposal to require RMR units to participate in its markets that this requirement “will help ensure that ratepayers get the full benefit of paying the full cost of service of an RMR resource, while guarding against depressing market prices.”⁷³ CAISO also explained that “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.”⁷⁴ The Commission agreed, concluding that “the benefits of the must offer obligation discussed above outweigh the potential price impacts.”⁷⁵

⁶⁹ *California Independent Sys. Operator Corp.* (“CAISO”), 168 FERC ¶ 61,199 at P 72 (2019).

⁷⁰ *Id.*

⁷¹ CAISO, Tariff Amendment to Improve the Reliability Must-Run Framework, at 6, Docket No. ER19-1641 (Apr. 23, 2019), Accession No. 20190423-5000.

⁷² See California Public Utilities Commission, Resource Adequacy Availability Incentive Mechanism, at slides 3–4 (May 15, 2024), <https://stakeholdercenter.caiso.com/InitiativeDocuments/CPUC-Resource-Adequacy-Availability-Incentive-Mechanism-May-15-2024.pdf>.

⁷³ *CAISO*, 168 FERC ¶ 61,199 at P 62.

⁷⁴ *Id.* at P 68.

⁷⁵ *Id.* at P 73. While CAISO’s bidding requirement is distinct from NYISO and ISO-NE in that CAISO requires RMR units to bid into its markets at levels that reflect “the resource’s full marginal costs,” CAISO explained that this approach was necessary because it “cannot predict with certainty the specific hours every day when a resource will be needed.” *Id.* at P 62. The Commission agreed, finding that “CAISO must ensure that RMR resources will be available to meet reliability needs whenever they arise through the market optimization.” *Id.* at P 72. In other words, CAISO requires marginal cost-based bidding because it relies on clearing in the energy market to determine real-time performance obligations, which is distinct from the capacity markets in other RTO/ISOs, in which an obligation to actually perform is triggered by an RTO/ISO’s dispatch instructions during a capacity event.

D. The non-participation of RMR units in PJM’s capacity market reduces overall supply and increases prices for consumers.

PJM’s approach of allowing RMR units to choose whether to participate in the capacity market effectively reduces the overall supply in capacity auctions—even while consumers are paying RMR units to remain operational and when RMR arrangements enable PJM to call on an RMR unit to perform during a capacity event. As documented in a recent report from Synapse Energy Economics, PJM entered into 17 RMR arrangements since 2005 (not counting the recent RMR arrangements with Brandon Shores and Wagner), and “nearly all, if not *all*, of the past 17 RMRs have not participated in PJM’s capacity market.”⁷⁶ Similarly, “[n]either Brandon Shores nor Wagner participated in the most recent 2025/2026 capacity market auction and are not expected to participate in future auctions.”⁷⁷ Hence, units’ entry into RMR arrangements in PJM has historically reduced the available supply in its capacity auctions and will likely continue to do so moving forward. The fact that RMR arrangements reduce capacity supply in PJM distinguishes PJM from other RTO/ISOs such as NYISO and ISO-NE, where, as discussed above, RMR units are required to bid into the capacity market as price-takers.

Although numerous factors contribute to the clearing price in PJM’s capacity auctions, the fact that RMR arrangements effectively reduce supply puts upward pressure on prices. All else being equal, any reduction in supply in the capacity market will increase prices.⁷⁸ Indeed, PJM indicated that the reduction in supply associated with retiring resources was a key driver of increased prices in its most recent capacity auction.⁷⁹

⁷⁶ Synapse Report, *supra* note 5 at 15.

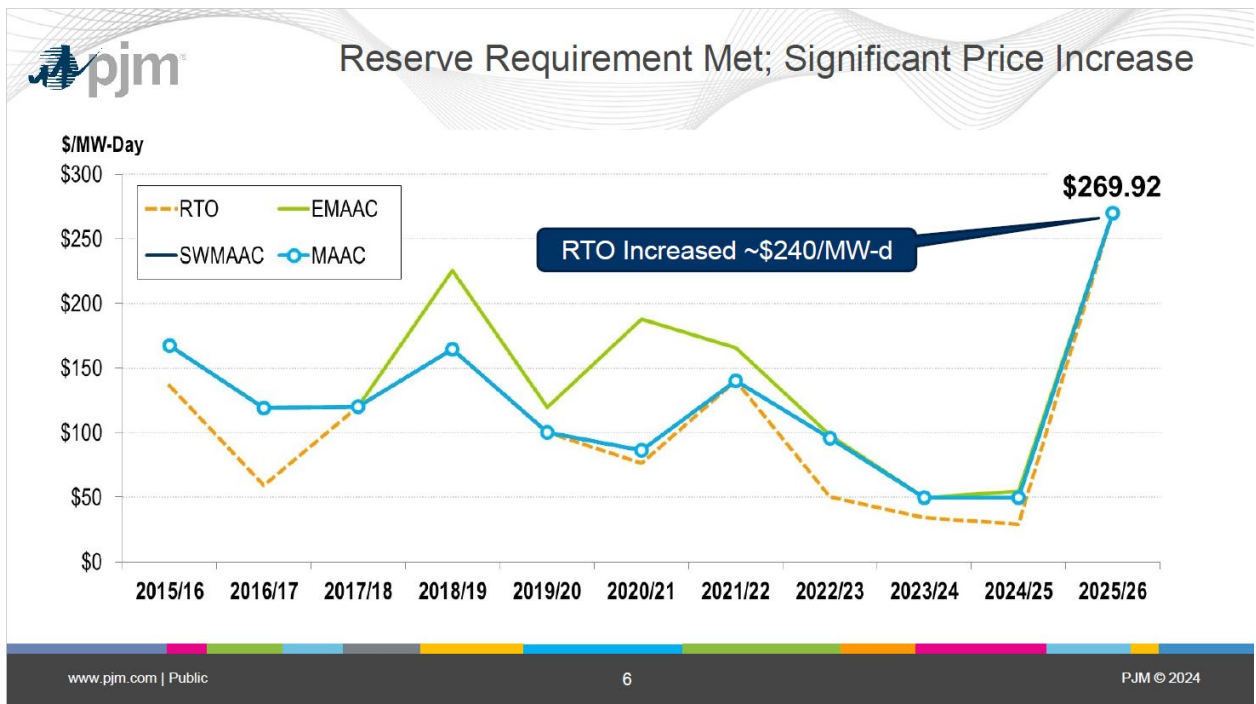
⁷⁷ *Id.*

⁷⁸ *See, e.g.*, Synapse Report, *supra* note 5 at 15 (“For an LDA that is already constrained, such as the BGE LDA—and without additional transmission upgrades or new generation to address constraints—if a unit no longer provides supply in the capacity market, clearing prices are pushed upwards.”).

⁷⁹ PJM, 2025/2026 Base Residual Auction Report, *supra* note 18 at 3 (describing “[s]ignificant decrease in overall supply from retirements (actual retirements plus must offer exceptions for future retirements)” as an important factor driving high prices in the 2025/26 BRA).

E. The non-participation of RMR units in the most recent capacity auction in PJM had a significant effect on prices.

PJM’s most recent capacity auction for the 2025/2026 delivery year yielded “a more than 800 percent increase in system-wide prices relative to the prior [auction] for the 2024/2025 delivery year, a price spike unprecedented in PJM.”⁸⁰ The following chart compares this “significant price increase” to results from PJM’s capacity auctions over the prior decade:⁸¹



Capacity prices in PJM were especially high in constrained LDAs, which are areas with limited capacity and where transmission constraints limit the amount of energy that can be imported during capacity events.⁸² In the 2025/2026 auction, both the BGE LDA and the Dominion

⁸⁰ Synapse Report, *supra* note 5 at 6.

⁸¹ PJM, 2025/2026 Base Residual Auction Results, at slides 4–5 (Aug. 21, 2024), <https://pjm.com/-/media/committees-groups/committees/mrc/2024/20240821/20240821-item-08---2025-2026-base-residual-auction--presentation.ashx>.

⁸² See PJM, Manual 18: PJM Capacity Market, at 24 (June 27, 2024), <https://www.pjm.com/~media/documents/manuals/m18.ashx> (noting that “[a]n LDA with Capacity Emergency Transfer Limit (CETL) less than 1.15 times Capacity Emergency Transfer Objective (CETO) will be modeled as a constrained LDA in RPM” and that other factors, such as “other reliability concerns” may lead PJM to model an LDA as constrained).

(“DOM”) LDA “cleared short of their reliability requirements due to load growth and retirements” and “[p]rices in these LDAs are at the price caps” of \$466.35 and \$444.26, respectively.⁸³ For the BGE LDA, “[t]his is a six-fold increase from the 2024/2025 BGE LDA [auction] clearing price of \$73/MW-day.”⁸⁴

The non-participation of RMR units in PJM’s most recent auction contributed significantly to the dramatic increase in capacity prices. As the Synapse Report describes, “[t]he most notable driver behind BGE LDA’s record high capacity price is the removal of four generating units from the capacity market, starting in the 2025/2026 delivery year,” namely Brandon Shores units 1 and 2, and Wagner units 3 and 4.⁸⁵ These units, which are located in the BGE LDA, are subject to RMR arrangements that allow PJM to call on them to perform during a capacity emergency—but which allow the units to choose whether to participate in the capacity market.⁸⁶ “Importantly, these RMR units d[id] not participate in the capacity market as supply-side resources, dramatically reducing supply in the already-constrained BGE LDA.”⁸⁷

To determine the impact of these RMR units’ non-participation in the capacity market, Synapse conducted a “counterfactual analysis of clearing prices in PJM” based on a trio of conservative assumptions about suppliers’ bidding behavior. First, Synapse assumed that if these units were to participate in the auction, their bids would be at levels no higher than roughly double the clearing price of prior auctions; because most of these units cleared in prior auctions

⁸³ 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-base-residual-auction---presentation.ashx>.

⁸⁴ Synapse Report, *supra* note 5 at 7.

⁸⁵ *Id.*

⁸⁶ *See infra* § III(B)(1) at Tbl. 1 (citing RMR provisions specifying that PJM may dispatch these units during capacity emergencies).

⁸⁷ Synapse Report, *supra* note 5 at 8. Outside the scope of this proceeding, Sierra Club has engaged in related advocacy regarding the RMR units in the BGE LDA, as described in the declaration of Justin Vickers, which is included as Attachment 4 to this complaint.

that had a clearing price of \$73/MW-day, Synapse assumed that their bids would have been “at or below \$163.46/MW-day.”⁸⁸ Second, Synapse assumed that these RMR units were likely “marginal resources or were towards the top of the stack of cleared resources,” which again is conservative in light of clearing prices from prior auctions.⁸⁹ Finally, Synapse assumed that “with the exception of the Dominion LDA . . . other LDAs would not have separated from the RTO and caused other cascading price impacts,” which is conservative because other LDAs did not, in fact, separate even in the more constrained situation in which these RMR units did not participate as supply.⁹⁰

Synapse found that the non-participation of RMR units not only raised “the clearing price for the BGE LDA to the capacity price maximum” but “also likely had spillover effects into the RTO as a whole, increasing the RTO-wide clearing price and impacting customers throughout the region.”⁹¹ Synapse specifically found that these RMR units reflect a majority of the capacity in the BGE LDA, and without their participation as supply, the result is that the LDA’s clearing price is forced to its cap.⁹² However, if these RMR units had participated in the capacity auction, the BGE LDA would not have reached its price cap and instead would have cleared at a significantly lower price along with the rest of the RTO.⁹³

The price impact that Synapse identified is significant. Synapse found that if these RMR units had participated under its conservative assumptions, the BGE LDA and the entire RTO would have cleared at a price of \$163.46/MW-day. Notably, while that clearing price would have been significantly lower than the actual clearing price of \$269.92/MW-day, a clearing price of

⁸⁸ Synapse Report, *supra* note 5, at 27; *see also id.* at 27, n.58.

⁸⁹ *Id.* at 27.

⁹⁰ *Id.*

⁹¹ *Id.* at 9.

⁹² *Id.* at 24.

⁹³ *Id.* at 27 (“In this scenario, BGE, SWMAAC, and MAAC LDAs would not have separated from the RTO.”).

\$163.46/MW-day would still have been among the highest capacity prices in PJM in the last decade.⁹⁴ Still, as Synapse reported, “[i]f the RTO cleared at \$163.46/MW-day for the 2025/2026 BRA, electric customers across the RTO would save over \$5 billion in that delivery year.”⁹⁵ Hence, the non-participation of these RMR units in the capacity market “had a region-wide impact that will benefit generators (and cost customers) over \$5 billion.”⁹⁶

The IMM also conducted a sensitivity analysis of the 2025/2026 capacity auction that quantified the price impact of the non-participation of RMR units in the BGE LDA and found that this factor inflated capacity market revenues by \$4.2 billion.⁹⁷ The IMM’s analysis differed from Synapse’s in that the IMM assumed that the RMR units would be “included in the supply curve at \$0 per MW-day,” i.e., as price-takers.⁹⁸ The IMM also compared what “RPM revenues would have been had the capacity of the RMR resources been included” and found that their non-participation “resulted in a 41.2 percent increase in RPM revenues.”⁹⁹ Importantly, the IMM’s analysis also demonstrates that RMR units’ non-participation in the capacity market has a very large impact on overall capacity market revenues even though the RMR units represent only a small portion of overall supply. Even though the RMR units’ inclusion as supply would have been only “an increase of 1,440.6 UCAP MW, or 1.1 percent, compared to the actual results,” the IMM’s analysis still showed a price impact of \$4.2 billion.¹⁰⁰ Additionally, the IMM’s analysis corroborates Synapse’s finding that even if the RMR units in the BGE LDA had

⁹⁴ See Wilson Aff., *supra* note 6 at P 32.

⁹⁵ Synapse Report, *supra* note 5 at 27.

⁹⁶ *Id.* at 27.

⁹⁷ IMM Analysis of 2025/2026 Auction, *supra* note 4 at 9 (“If the capacity of the RMR resources in the BGE LDA [had] been included in the supply curve at \$0 per MW-day in the 2025/2026 RPM Base Residual Auction and everything else had remained the same, total RPM market revenues for the 2025/2026 RPM Base Residual Auction would have been \$10,399,791,048, a decrease of \$4,287,256,309, or 29.2 percent, compared to the actual results.”).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 13, 6.

well suited to address the reliability issues that may lead to RMR arrangements. Moreover, PJM does not adequately plan transmission upgrades to account for generators that are at risk of retirement due to their age, poor performance, or economic troubles. Instead, PJM defers analysis of the needed transmission upgrades until a unit has actually announced its retirement, which may give PJM as few as 90 days to identify needed transmission upgrades. This lack of proactive transmission planning makes RMR arrangements both more likely to be necessary and more likely to be protracted and costly. The IMM has recommended that PJM should plan more proactively for the transmission needs associated with foreseeable retirements, emphasizing that “[i]t is essential that PJM look forward and attempt to plan for foreseeable unit retirements, whether for economic or regulatory reasons.”¹¹⁶ The IMM further stressed that “improvement is needed in the process for ensuring that planning is looking at the probability of retirements, especially of resources that are critical to locational reliability in order to minimize the duration of any RMR requirement.”¹¹⁷

These three issues—the anticipated slate of retirements, the slow pace of PJM’s interconnection queue, and inadequate transmission planning to address foreseeable retirements—mean that RMRs may become increasingly common in PJM. For example, the Union of Concerned Scientists recently commissioned a power flow analysis of the impacts from retirements of coal and gas generators in Illinois that reinforces this possibility.¹¹⁸ That power flow modeling found that widespread retirement of coal and gas generators in Illinois would

¹¹⁶ 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 PJM”), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2024.shtml (“The planning process should, to the extent possible, evaluate the impact of the loss of units at risk and determine in advance whether transmission upgrades are required.”).

¹¹⁷ *Id.*

¹¹⁸ See James Gignac, *Illinois Has No Time to Waste in Building Its Carbon-Free Electricity Future*, Union of Concerned Scientists (Apr. 3, 2023), <https://blog.ucsusa.org/james-gignac/illinois-has-no-time-to-waste-in-building-its-carbon-free-electricity-future/>.

2. *Despite paying for reliability through the RMR arrangement, consumers must buy replacement capacity through the auction, sometimes at scarcity prices.*

Under PJM’s current rules, the resource adequacy value of RMR units is not reflected in the capacity market clearing price. PJM’s rules permit RMR units not to offer into the capacity market, and in all but a few cases, they have chosen not to. Nor does PJM have any other procedure in place to account for the operation of these RMR resources when determining how much capacity to purchase. As a result, despite paying in some cases hundreds of millions of dollars annually to support the continued operation of RMR units, consumers must nevertheless buy redundant capacity through the auction. To add insult to injury, in some cases consumers may be required to purchase that redundant capacity at elevated prices reflecting an artificial picture of scarcity.

The most recent auction illustrates how dramatic the impacts can be for consumers. In the 2025/2026 auction, the BGE LDA, where Brandon Shores and Wagner are located, “cleared short of [its] reliability requirements due to load growth and retirements” resulting in prices at the administrative price cap of \$466.35.¹³⁴ For the BGE LDA, “[t]his is a six-fold increase from the 2024/2025 BGE LDA [auction] clearing price of \$73/MW-day.”¹³⁵ BGE customers will have to pay these artificially elevated prices for capacity already being supplied by the Brandon Shores and Wagner plants, which will cost PJM customers approximately \$215 million for the same delivery year.¹³⁶ These dramatic price increases are especially unjust and unreasonable

¹³⁴ PJM, 2025/2026 Base Residual Auction Results, at slides 4–5 (Aug. 21, 2024), <https://pjm.com/-/media/committees-groups/committees/mrc/2024/20240821/20240821-item-08---2025-2026-base-residual-auction--presentation.ashx>.

¹³⁵ Synapse Report, *supra* note 5, at 7.

¹³⁶ Protest and Comments of the Maryland Office of People’s Counsel and the Southern Maryland Electric Cooperative, Inc., at Tbl. 1, Docket No. ER 24-1787 (May 16, 2024), Accession No. 20240516-5193.

retains these resources and causes them to operate to support reliability. In both cases, just and reasonable rates require the market to reflect the presence of the resource (RMR or state policy) so that consumers do not buy unnecessary replacement capacity.

In its 2021 filing to implement a narrower Focused MOPR, PJM's Vice President of Market Design, Adam Keech, explained that where a state-supported resource is artificially priced out of the market (in his example, a coal unit), "consumers in the state pay twice, i.e., for both the coal unit and the resource committed through the auction because the coal plant did not clear."¹⁴⁶ Mr. Keech's logic equally applies where a resource is retained for reliability reasons; like the state policy resource that will exist on the system regardless of capacity market clearing, the RMR resource is present and operating at PJM's direction to support reliability. Ignoring it leads unjustly and unreasonably to consumers paying twice for reliability.

Commission precedent is overwhelmingly in favor of requiring RMR units to offer into capacity markets as price takers to prevent consumers from being saddled with unnecessary capacity costs. PJM's rules, which do not require RMR resources to offer into the capacity market or otherwise adjust the amount of capacity procured to reflect the availability of RMR resources to meet resource adequacy needs, are unjust and unreasonable and must be remedied by the Commission.

B. High capacity market prices driven by RMR units' non-participation send inaccurate price signals.

PJM's rules that allow RMR resources not to offer into the capacity market not only require consumers to buy unnecessary capacity, but also produce inaccurate capacity price signals. As James Wilson explains, holding RMR resources out of the capacity auction distorts

¹⁴⁶ PJM Interconnection, LLC, Revisions to Application of Minimum Offer Price Rule, Attach. D: Affidavit of Adam J. Keech on behalf of PJM Interconnection, L.L.C., at P 11, Docket No. ER21-2582 (July 30, 2021) ("Keech Aff."), Accession No. 20210730-5166.

procuring capacity resources by reflecting a fuel security resource’s contribution to resource adequacy in the [capacity auction].”¹⁷¹

In sum, PJM’s current rules permitting RMR units to opt out of the capacity market and then not reducing the amount of capacity purchased to reflect the RMR unit’s availability results in unjust and unreasonable prices for capacity. The resulting prices reflect an artificial degree of scarcity because they ignore the physical operation of the RMR units. The harm caused to consumers is urgent and substantial—in the last auction consumers paid approximately \$5 billion in excess costs, and similar results are likely in the next few auctions.

C. Allowing RMR units not to participate in the capacity market renders the market vulnerable to manipulation.

Because PJM’s capacity market is structurally vulnerable to manipulation through the exercise of market power, PJM relies on certain rules and mitigation measures to prevent non-competitive outcomes. However, as discussed below, the absence of any requirement for RMR units to participate in the capacity market renders the market more vulnerable to manipulation through withholding than similar markets in other RTO/ISOs.

As the IMM has explained, “[s]tructural market power is endemic to the capacity market.”¹⁷² The capacity market’s vulnerability to market power stems from its design, which is “always tight in the sense that total supply is generally only slightly larger than demand.”¹⁷³ As a result of the inelasticity of demand for capacity, “any supplier that owns more capacity than the typically small difference between total supply and the defined demand is individually pivotal and therefore has structural market power.”¹⁷⁴ Similarly, “[a]ny supplier that, jointly with two

¹⁷¹ *Id.* at P 87.

¹⁷² Monitoring Analytics, Quarterly State of the Market Report for PJM, *supra* note 116116 at 310.

¹⁷³ *Id.* at 317.

¹⁷⁴ *Id.* at 318.

process that it expects to use along with its first “transition cycle” to clear 56,000 MW (nameplate) of new generation through the queue, PJM projects that “fast lane” process will be complete “by late 2025.”¹⁹⁷ Under the current schedule, at least two, and possibly three, more capacity auctions will have happened—with billions of dollars of excess costs for consumers—by that time. Moreover, PJM is quick to cast doubt on whether new projects that clear the queue will get built promptly¹⁹⁸ (while failing to recognize the role its own queue delays play in delaying project construction).¹⁹⁹ As the Synapse Report notes summarizes, “wait times for new entrants to the queue could be longer than 3.5 years” due to “high uncertainty around queue waiting times, the current backlog, and interconnection reforms,” which means that “their entry into the market will not help to address the anticipated RMRs and the related capacity market disruptions.”²⁰⁰

Furthermore, as discussed above, RMR arrangements may become increasingly common in PJM as it anticipates forty GW of retirements by 2030 and the interconnection queue remains slow.²⁰¹ If RMRs become more common, their non-participation in the capacity market is likely to cause even more pervasive and extreme increases in capacity market prices.

¹⁹⁷ PJM, *PJM Reaches Next Interconnection Milestone*, PJM Inside Lines (Aug. 6, 2024), <https://insidelines.pjm.com/pjm-reaches-next-milestone/>.

¹⁹⁸ *Id.*

¹⁹⁹ See *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 61,054 at P 43 (2023) (“Order No. 2023”) (noting that “delayed interconnection study results or unexpected cost increases can disrupt numerous aspects of generating facility development”); *id.* at P 971 (“Interconnection customers face financial harm when study deadlines are not met, ultimately inhibiting their ability to interconnect to the system in a reliable, efficient, transparent, and timely manner”); see also Abraham Silverman, et al., *Outlook for Pending Generation in the PJM Interconnection Queue* at 7 (May 2024), https://www.energypolicy.columbia.edu/wp-content/uploads/2024/05/PJM-Interconnection-CGEP_Report_042924-2.pdf (describing the key finding that “PJM’s increasingly lengthy interconnection process is exacerbating siting and permitting challenges and leading to knock-on delays in equipment procurement and financing decisions, suggesting the timeline for new generation in this market will likely remain long for the foreseeable future.”).

²⁰⁰ Synapse Report, *supra* note 5 at 33.

²⁰¹ *Supra* § II(F).

All of these factors—the rapid pace of PJM’s auctions, the slow pace of the interconnection queue preventing new entry before subsequent auctions cause further excessive prices, and the prospect of an increasing number of RMRs further distorting capacity prices—mean that it is urgent for the Commission to act to require reforms.

Equitable factors further reinforce the urgency for action by the Commission. As described above, ratepayers in the BGE LDA currently bear the brunt of paying for both the majority of the cost of RMR units in that LDA—hundreds of millions of dollars annually—while simultaneously paying the highest prices possible in PJM’s capacity market. The BGE LDA also includes numerous disadvantaged communities in which consumers bear some of the highest energy burdens in the nation, according to DOE’s Climate and Economic Justice Screening Tool. For example, DOE’s screening tool identifies several census tracts in the Baltimore area where consumers are ranked above the 90th percentile, and in some instances as high as the 98th or 99th percentile for energy cost, as measured by average annual costs divided by household income, and in some instances as high as the 98th or 99th percentile for low income.²⁰² The extreme energy burdens faced by consumers in the BGE LDA highlight how PJM’s capacity is causing serious equity and energy and environmental justice problems that require immediate resolution by the Commission.

Recent precedent further reinforces that it is urgent for the Commission to act quickly to prevent inequitable impacts from PJM’s capacity auctions because the Commission has little to no ability to redress inequities once PJM reaches critical points in its capacity auction process. For example, the Court of Appeals for the Third Circuit recently held that the filed rate doctrine

²⁰² See, e.g., 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).

constrained the Commission’s authority to redress inequitable outcomes from PJM’s capacity market, explaining that “equities play no role in [the] application of the filed rate doctrine . . . no matter how compelling the equities” and regardless of whether that rule may “produce a harsh result.”²⁰³ In light of the court’s ruling, the Commission was required to approve capacity auction results that were based on an “LDA Reliability Requirement [that] was overstated and inaccurate” for the DPL South LDA and that forced ratepayers who already faced significant energy burdens to “pay over \$100 million in excess of what would have been necessary” under accurate rules.²⁰⁴

Each of the three then-Commissioners filed concurrences expressing strong disagreement with the Commission’s inability to redress inequities and disapproval of the inequitable results. Chairman Phillips stressed that “*equity always matters*,” that he “did not join this Commission in order to rubber stamp such patently inequitable outcomes,” and that the Commission should “take all necessary steps to ensure that we never find ourselves in this position again.”²⁰⁵ Commissioner Clements noted that the filed rate doctrine has led to “a string of unjust outcomes stemming from the courts’ narrow view of that doctrine,” and emphasized that if PJM fails “to prevent inequitable outcomes, then it will fall to the Commission to cure this failure pursuant to its authority under section 206 of the Federal Power Act.”²⁰⁶ Commissioner Christie reiterated that the excessive prices at issue in that case “would in no universe . . . be considered just and reasonable,” emphasized that the application of the filed rate doctrine did in fact lead to inequitable results, and emphasized that the Commission shares responsibility to protect consumers from “dramatic rate increases” and that in light of the complexities and potential

²⁰³ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 400–401 (3d Cir. 2024) (quotation marks omitted).

²⁰⁴ *PJM Interconnection, LLC*, 187 FERC ¶ 61,065 at PP 5, 25–26 (2024).

²⁰⁵ *Id.* at PP 3–4 (Chair Phillips, concurring).

²⁰⁶ *Id.* at PP 2, 4 (Clements, Comm’r, concurring).

inequities of PJM’s capacity market the Commission must ensure “that it is not consumers who must abandon all hope.”²⁰⁷

The urgency for the Commission to act to prevent inequitable outcomes is even greater here than it was in the recent litigation regarding inequitable outcomes for ratepayers in the DPL South LDA. In that case, the excessive costs for consumers were roughly \$100 million, but in this case the excessive costs are vastly greater—at least \$4.2 billion from the most recent auction and likely similar impacts from imminent auctions.

PIOs have filed this Complaint as early as possible in order to provide the Commission with as much opportunity as possible to prevent inequitable outcomes. PIOs also strongly encouraged PJM to delay its upcoming capacity auctions so that it could pursue reforms to better account for the resource adequacy contributions of RMR resources and avoid excessive capacity prices and inequitable outcomes.²⁰⁸ However, despite having delayed previous auctions based on the possibility that its capacity market rules “may be unjust and unreasonable and require change,”²⁰⁹ the PJM Board recently refused to do so.

E. A range of just and reasonable approaches are available that would avoid inaccurate price signals and harm to consumers

For all the reasons articulated above, PJM current tariff and practices are unjust and unreasonable in failing to account for RMRs when clearing the capacity auction. It is critical that the Commission require PJM to revise its tariff to consistently account for the resource adequacy contributions of RMR units and thus produce capacity rates that send accurate price signals and

²⁰⁷ *Id.* at PP 1–3 (Christie, Comm’r, concurring) (quotation marks omitted).

²⁰⁸ Letter from Sierra Club, Earthjustice, Union of Concerned Scientists, Natural Resources Defense Council, and Public Citizen to PJM Board of Managers, Re: Support for Urgent Reforms Regarding Reliability Must Run Units and the PJM Capacity Market (Sept. 6, 2024), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/2024/20240906-pios-letter-of-support-to-pjm-bard-on-rmrs-in-rpm.ashx>.

²⁰⁹ See PJM Interconnection, LLC, Section 205 Filing to Delay Upcoming RPM Auctions at 4, Docket No. ER23-1609, April 11, 2023, Accession No. 20230411-5057.

issue a Show Cause order with a date certain for PJM to bring forward a solution that would achieve this objective.

To ensure the effectiveness of whatever remedy the Commission favors, PIOs respectfully request that the Commission immediately establish a refund date of the date of this Complaint, as authorized under section 206 of the FPA.²¹⁸ The FPA explicitly authorizes the Commission to:

order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force.²¹⁹

PJM’s capacity auction is a multi-step process,²²⁰ and PIOs believe it is critical that the Commission act swiftly in this case. The immediate establishment of a refund effective date of the date of this Complaint will put PJM and its members on fair notice that the conduct of upcoming capacity auctions will be subject to the Commission’s establishment of a just and reasonable set of rules for accounting for the resource adequacy contributions of RMR resources, and that unjust and unreasonable proceeds from upcoming capacity auctions will be subject to refunds.²²¹

IV. RULE 206 REQUIREMENTS

To the extent not already provided above, PIOs provide the following additional information required by Rule 206 of the Commission’s Rules of Practice and Procedure.²²²

²¹⁸ 16 U.S.C. § 824e.

²¹⁹ *Id.* § 824e(b).

²²⁰ The schedule of pre-auction deadlines for December’s 2026–27 auction can be downloaded at <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx>.

²²¹ See *PJM Power Providers Grp.*, 96 F.4th at 398 (noting the importance of “fair notice” in determining what is retroactive under the filed rate doctrine); see also *Landgraf v. USI Film Products*, 511 U.S. 244, 270 (noting that “retroactivity is a matter on which judges tend to have ‘sound . . . instinct[s]’, and familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance.” (internal citation omitted)).

²²² 18 C.F.R. § 385.206.

- F. Alternative Dispute Resolution (Rule 206(b)(9)):** PIOs have not used the Commission’s Enforcement Hotline or Dispute Resolution Services and do not believe at this time that alternative dispute resolution would resolve the issues underlying this Complaint. PIOs have no reason to expect that alternative dispute resolution would yield the requested relief.
- G. Form of Notice (Rule 206(b)(10)):** A form of notice of Complaint suitable for publication in the Federal Register is attached.
- H. Fast Track Processing (Rule 206(b)(11)):** PIOs do not seek fast track processing.
- I. Service (Rule 206(c)):** PIOs have served a copy of this Complaint on representatives for the Respondent (including those corporate officials designated by PJM on the FERC website for receipt of complaints) via e-mail, simultaneous with the filing of this Complaint.

V. COMMUNICATIONS

Pursuant to Rule 203(b) of the Commission’s Rules of Practice and Procedure,²²³ PIOs specify that communications in this matter are to be addressed to the following persons:

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Earthjustice
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²²³ 18 CFR § 385.203(b).

VI. CONCLUSION

For all the reasons explained above, PIOs respectfully request that the Commission establish a refund effective date of the date of this Complaint, find that PJM’s failure to consistently account for the resource adequacy contributions of RMR resources is unjust and unreasonable, and protect consumers from having to pay twice for capacity by requiring PJM to amend its capacity market rules.

DATED: September 27, 2024

Respectfully submitted,

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