

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

**PJM Interconnection, L.L.C.**

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**Docket No. ER23-729-002**

**COMMENTS  
OF THE PJM POWER PROVIDERS GROUP  
AND THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to the April 1, 2024, Notice of Filing issued by the Federal Energy Regulatory Commission (the “Commission” or “FERC”) in the above-captioned proceeding, The PJM Power Providers Group<sup>1</sup> (“P3”) and the Electric Power Supply Association<sup>2</sup> (“EPSA”) submit these comments in response to the March 29, 2024, Petition under Rule 207 (a)(5) of the Commission’s procedural rules, 18 C.F.R. § 385.207(a)(5), by PJM Interconnection, L.L.C. (“PJM”) (“PJM Petition”).<sup>3</sup> The PJM Petition states that as a result of the United States Court of Appeals for the Third Circuit opinion in *PJM Power Providers Grp. v. FERC*, PJM petitions the

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<sup>1</sup> P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 83,000 MWs of generation assets and produce enough power to supply over 63 million homes in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit [www.p3powergroup.com](http://www.p3powergroup.com).

<sup>2</sup> EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>3</sup> *PJM Interconnection, L.L.C., Petition Under Rule 207 of PJM Interconnection, L.L.C. For Order Confirming 2024/2025 Delivery Year Capacity Commitment Rules, Request For Order by May 6, 2024, and Request for Shortened 10-Day Comment Period*, Docket No. ER23-729-002 (March 29, 2024) (“PJM Petition”).

Commission to issue an order by May 6, 2024, confirming that the Open Access Transmission Tariff (“Tariff”) provisions governing the conduct of the Base Residual Auction (“BRA”) for the 2024/2025 Delivery Year are those in effect prior to the Commission’s orders in this proceeding, and that the capacity commitments that would result from applying those Tariff provisions for the 2024/2025 BRA are binding and effective for the 2024/2025 Delivery Year.<sup>4</sup> PJM also requests that the Commission authorize PJM to re-run the Third Incremental Auction for the 2024/2025 Delivery Year stating that re-conducting this Third Incremental Auction is critical.<sup>5</sup> In its Petition, PJM outlines its proposal with regard to the BRA and the Third Incremental Auction for the 2024/2025 Delivery Year in light of the PJM Power Providers court’s ruling.<sup>6</sup>

P3 and EPSA have been very involved in this docket since its inception. On January 5, 2023, P3 filed a doc-less Motion to Intervene, and on April 24, 2023, P3 filed the underlying Petition for Review in the United States Court of Appeals for the Third Circuit. On January 3, 2023, EPSA filed a doc-less Motion to Intervene, and on April 28, 2023, EPSA filed its Petition for Review in the United States Court of Appeals for the Third Circuit. P3 and EPSA respectively submit these comments,<sup>7</sup> in the above captioned proceeding.

## **I. COMMENTS**

P3 and EPSA support PJM’s Petition and urge the Commission to approve it as filed. Given the time constraints of the looming delivery year, the demands for clarity regarding capacity commitments and prices, and the undeniably unique series of events that led to the Petition, PJM has offered the Commission a reasonable path forward that, under the

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<sup>4</sup> PJM Petition at p. 1.

<sup>5</sup> PJM Petition at p. 2.

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

<sup>7</sup> The comments contained herein represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

circumstances, the Commission should approve. While other commenters may offer other approaches (some of which could have merit under other circumstances), the Commission cannot ignore the reality of the June 1 start of the delivery year and should have a high bar for making any changes to the PJM approach that could impact the ability to start the delivery year with legal prices and well-understood capacity commitments.

The PJM Petition appropriately recognizes the Third Circuit’s opinion in *PJM Power Providers Grp. v. FERC* as it relates to the BRA for the 2024/2025 Delivery Year. PJM proposes to calculate and publish the auction results that would have been in effect had PJM’s December 23, 2022, filing not been submitted and approved by the Commission in violation of the filed rate doctrine. This approach to the BRA for the 2024/2025 Delivery Year is a straightforward and reasonable means which the Commission should not hesitate to endorse.

As it relates to the Third Incremental Auction for the 2024/2025 delivery year, PJM proposes two options. PJM’s preferred option, requiring Commission approval on or before May 6, 2024, will see the Third Incremental Auction re-run based on updated parameters and other changes consistent with the revised BRA results. PJM states this is an opportunity to “allow sellers to adjust their newly established capacity commitments to account for any change in circumstances since they submitted their Sell Offers in December 2022.”<sup>8</sup> Under PJM’s second option, the Commission would grant PJM the authority to relieve Capacity Market Sellers of any capacity commitments in excess of the level of capacity the seller reasonably believes that its Capacity Resource(s) would not be able to meet—but only to the extent that the updated BRA results increased a Capacity Resource’s capacity commitment. Under this option, PJM would not re-run the Third Incremental Auction. PJM states that Commission action on or before May 22, 2024, is required for this option to achieve its intended goal. While P3 and EPSA are

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<sup>8</sup> PJM Petition at p. 5.

comfortable with both options, P3 and EPSA prefer PJM's proposal to relieve over committed capacity for affected resources, as there may be unintended consequences of allowing all market participants to adjust bids and offers for an auction where results have previously been published and where the circumstances of only a small number of participants were impacted by the re-calculated BRA results.<sup>9</sup> In either case, P3 and EPSA encourage the Commission to act on or before May 6, 2024.<sup>10</sup> In the event such action is not taken timely, P3 and EPSA specifically support PJM's proposal to relieve any over committed resources that are in such position because they relied on the unlawfully conducted BRA.

P3 and EPSA look forward to putting the litigation and disagreements surrounding the 2024/2025 BRA in the rearview mirror. The consumers of PJM are counting on having a reliable supply of power on June 1 and suppliers need to know whether they are going to be obliged to provide that power and at what price. PJM offers a path forward that will accomplish this goal. The Commission should take the opportunity presented by the PJM petition and approve it.

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<sup>9</sup> FERC's approval of either option would be within its discretionary ability to fashion a remedy in response to the unlawfulness of PJM's auction. As PJM offers on page 4 of its Petition, "...great deference in . . . its selection of a remedy, for 'the breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies, and sanctions.'" *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378, 393 (D.C. Cir. 2008) (quoting *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967)).

<sup>10</sup>The Commission does not need to address the arguments presented on page 8 of the PJM filing in which PJM "requests confirmation that PJM has the authority to re-conduct such auction under Tariff, Attachment DD, section 5.11(e)." P3 disagrees that PJM has such authority as presented and would encourage the Commission to either not address those arguments (because it is not necessary to do so) or reject them.

## II. CONCLUSION

P3 and EPSA support the Petition of PJM filed on March 29, 2024. P3 and EPSA urge the Commission to accept the PJM Petition and approve it.

Respectfully submitted,

On behalf of The PJM Power Providers Group

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On behalf of the Electric Power Supply Association

*/s/Nancy Bagot*

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Dated: April 11, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Official Service List compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 11th day of April, 2024.

On behalf of The PJM Power Providers Group

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