UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Joint Consumer Advocates	**)**	
Complainants,	**)**	
v.	**)**	
	)	**Docket No. EL25-76-000**
PJM Interconnection, L.L.C.	**)**	
***Respondent*.**	**)**	

PROTEST OF
THE PJM POWER PROVIDERS GROUP
AND THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's (the "Commission" or "FERC") Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2025) and the April 15, 2025, Combined Notice of Filings #1 issued by the Commission in the above-captioned

proceeding, the PJM Power Providers Group[1] ("P3") and the Electric Power Supply Association[2] ("EPSA") protest the April 14, 2025, complaint filed by the Joint Consumer Advocates ("Complaint")[3] against PJM Interconnection, L.L.C. ("PJM").[4] P3 filed a doc-less Motion to Intervene on April 15, 2025, and EPSA filed a doc-less Motion to Intervene on April 16, 2025.

I. INTRODUCTION

The Complaint before the Commission seeks extraordinary relief with virtually no support and no acknowledgement that state policies advocated by the complainants have exacerbated the affordability and reliability concerns, they complain about. Enough is enough. Serious work needs to be done and distractions like the instant Complaint take resources away from that work. A swift and firm rejection from the Commission is not only warranted, but necessary.

P3 and EPSA strongly support competitive market outcomes that reflect actual system needs, conditions, and efficient market operations. These markets, like any other market regardless of sector, demand certainty and confidence that market outcomes will not be undone – particularly months after capacity auctions have run and decisions made based on those market results. However, the Complaint seeks an extraordinary remedy: to retroactively reprice and administratively reconfigure an auction that was conducted under tariff rules that were approved,

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[1] 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 88,000 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. This filing represents the position of P3 as an organization but not necessarily the views of any particular member with respect to any issue.

[2] 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.

[3] For this Complaint, Joint Consumer Advocates are: the Illinois Attorney General's Office; Maryland Office of People's Counsel; and New Jersey Division of Rate Counsel.

[4] *Joint Consumer Advocates v. PJM Interconnection, L.L.C.,* Docket No. EL25-76-000 (filed April14, 2025) ("JCA Complaint").

in full, by the Commission. The dangers of such retroactive action should be obvious to the Commission and the enormous disruption that would be created if the Complaint is granted cannot be understated.

As an initial matter, the Complaint does not come close to meeting its burden under Section 206 of the Federal Power Act ("FPA"). Under Section 206, the Complainant bears the burden of proving that a rate, charge, classification, rule, regulation, practice, or contract is "unjust, unreasonable, unduly discriminatory, or preferential." Section 206 represents a high bar that demands significant evidence and support to clear – which the Complaint does not offer. The Complaint offers that prices went up as evidence that the PJM markets rules are not just and reasonable. The Commission cannot possibly find that there is sufficient evidence in the Complaint to conclude that the current PJM rules are not just and reasonable – because there is none offered. Case closed; Complaint dismissed.

Although the Commission need not even get to the question of a replacement rate, the relief that the Complaint requests is extraordinary in its audaciousness. Shamelessly, the Complaint asks that the Commission, on the eve of the delivery year, re-run the auction and develop new capacity clearing prices for every capacity resource in PJM. The Complaint does not even mention that these rates have been known since July 2024. Moreover, despite the claims of the complainants, the requested retroactive relief is a violation of the filed rate doctrine and FERC does not have the authority to modify market outcomes absent a showing of fraud or a tariff violation (which are not argued by complainants.) Granting the Complaint would almost certainly invoke litigation that the Commission would lose.

Instead of bringing forth counter-productive complaints (and issuing the press releases to coincide with the filing), P3 would urge the complainants to honestly evaluate the state level

policies that are causing prices to rise and reliability to rise to a level of concern. The New Jersey Ratepayer Advocate offered such an evaluation in testimony before a joint legislative committee on March 28, 2025.[5] Like New Jersey, Illinois, and Maryland have state laws and policies that have or will lead to the premature retirement of resources that will reduce supply as demand is rising which will raise prices. Delivering such a message to state legislators will be a much more productive use of time than filing unsupported complaints at FERC.

II. THE COMMISSION MUST REJECT THE COMPLAINT

A. Complainants Do Not Meet Their 206 Burden.

Section 206 of the Federal Power Act requires that a complainant show that (1) the existing rate, rule, or practice is unjust, unreasonable, unduly discriminatory, or preferential; and (2) the proposed replacement is just, reasonable, and not unduly discriminatory or preferential.[6] This is a dual burden. The Commission cannot simply invalidate an existing tariff based on allegations of dissatisfaction or high prices. The complainants must present clear evidence of a failure of the tariff itself—not merely outcomes they find unfavorable. The Joint Consumer Advocates have not even come close to meeting their burden.

1. The Complaint Targets Outcomes, Not Rules.

The complainants conflate undesirable market outcomes with tariff flaws. Their argument rests largely on high auction clearing prices and increased consumer costs. However, Section 206 does not exist to guarantee specific outcomes, but to ensure that the process and tariff rules are just and reasonable. Price increases alone do not prove market failure, especially

[5] https://www.njleg.state.nj.us/archived-media/2024/ATU-meeting-list/media-player?committee=ATU&agendaDate=2025-03-28-10:00:00&agendaType=J&av=A.
[6] 18 C.F.R. §385.206.

where market-based mechanisms are functioning within the boundaries of Commission-approved rules.

PJM's capacity market design, including its market clearing mechanism, the variable resource requirement ("VRR") curve, and mitigation procedures, was developed over years of regulatory proceedings and Commission oversight. The same framework has yielded low prices in past auctions—suggesting a dynamic market responding to changing conditions. Never in the history of PJM have capacity auctions been changed after PJM published the final results.[7]

PJM conducted the 2025/2026 Base Residual Auction ("BRA") in strict accordance with its FERC-approved tariff. Any allegations that market participants who were not required to participate in the auction offered less capacity than desired, that interconnection queues caused supply constraints, or that reliability-must-run ("RMR") units were not treated optimally are criticisms of Commission-approved rules—not evidence of their failure. Moreover, FERC has previously accepted that the capacity market includes non-price barriers and entry risks as natural features of a market with real-world constraints.[8]

Finally, and importantly, these same complainants (and several others) filed a complaint on November 18, 2024, challenging several PJM market rules as being unjust and unreasonable. That complaint focused on a wide-ranging list of concerns regarding the PJM capacity construct

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[7] *See*, *PJM Power Providers Group v. Federal Energy Regulatory Commission*, 96 F.3d 390 (3d Cir. 2024) ("*PJM Power Providers*"), in which the court found that PJM violated the filed rate doctrine when it re-ran the auction following tariff changes that were made in between the time when it initially ran the auction and when it published the final results. In that case, the court found that: "The Tariff Amendment is retroactive because it altered the legal consequence attached to a past action when it allowed PJM to use a different LDA Reliability Requirement than the one it had calculated and posted." *Id.* at 399. In the instant complaint, the auction has been run with results calculated AND posted and yet the complainants still argue that the filed rate doctrine would not be violated by their requested relief.

[8] *PJM Interconnection, L.L.C.,* 117 FERC ¶ 61,331, P 6 (2006). "The RPM market structure is designed to rely on competition from new entry to mitigate market power and discipline prices."

– many of which were addressed in subsequent PJM Section 205 filings.[9] Nowhere in the November complaint is it suggested that the 2025/2026 BRA be re-run using tariff rules that were changed subsequent to the running of the auction. It is only now, on the eve of the delivery year, that this request is put before the Commission. Perhaps this outlandish ask explains why multiple parties who signed on to the November 2024 Joint Consumer Advocates Complaint, declined to sign on to the instant one.[10] Moreover, there are numerous examples in PJM's history in which capacity prices were suppressed by existing tariff provisions that were revised by subsequent Commission action.[11] Setting the precedent that the complainants desire would most certainly create a future avenue for any party aggrieved by low clearing prices caused by a shortcoming in the existing tariff when the auction was run. The complainants may want to think twice about what they are asking for.

2. The Complaint Raises Market Power Concerns with No Basis.

The complainants offer zero evidence of market manipulation or the exercise of market power despite offering it as a reason to rerun the settled auction. Stating that results "may be materially distorted by market manipulation" is not evidence that market power was exercised or that the PJM tariff is not just and reasonable. Nor can the "possibility" that market power was exercised be the legal basis for undoing an auction that was run under FERC-approved rules.

[9] In the November 18, 2024, Complaint, Complainants raise arguments about the treatment of RMR units, the must offer requirement for intermittent resources and the potential for capacity prices above $325/MW-day, all of which have been addressed by subsequent PJM and FERC action.

[10] The Ohio Consumers' Counsel, the People's Counsel for the District of Columbia, and the Illinois Citizens Utility Board all signed on to the November 2024 Joint Consumer Advocates complaint.

[11] For example, there are multiple Minimum Offer Price Rule ("MOPR")-related orders from the Commission in which the Commission modified the MOPR to address price suppression concerns in prior auctions that were only applied to prospective auctions.

Complainants must carry the burden to show that market power was exercised, they cannot merely suggest it may have happened and ask the Commission to carry their burden for them.

Indeed, PJM has thorough oversight mechanisms to address market power. The Independent Market Monitor ("IMM") has oversight of PJM's markets, and PJM responded to the IMM's concerns over the last BRA auction prices.[12]

B. **Retroactive Relief Violates the Filed Rate Doctrine**

The filed rate doctrine bars the Commission from retroactively altering rates determined pursuant to a tariff on file and in effect at the time the service or transaction was undertaken.[13] The doctrine ensures that no party may avoid or revise rates that are set pursuant to the terms of a duly filed tariff. The complainants' proposal to re-clear the 2025/2026 BRA based on the hypothetical inclusion of exempted or excluded resources violates this core principle. The rates resulting from the auction were the product of actions taken that were compliant with PJM's tariff in force at the time, which was accepted by FERC and binding on all parties. The auction prices were not unlawful per se; they were produced using lawful tariff mechanisms. That alone renders the requested relief impermissible.

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[12] *See* PJM Response to IMM Report on 2025/2026 Base Residual Auction at pgs. 5-6 (Oct. 11, 2024) *available here* https://www.pjm.com/-/media/library/reports-notices/reliability-pricing-model/20241011-response-to-imm-25- 26-bra-report.ashx ("PJM Response"). PJM has addressed allegations made by the IMM stating the "IMM's report makes a serious allegation that the must-offer obligation exemption that applies to certain resource types led to the exercise of market power through […] withholding" and resulted in an "increase in the clearing prices above the competitive level." The IMM has not shared evidence with PJM to support this conclusion. To the extent evidence is provided to support the IMM's claim, PJM will act swiftly to make necessary changes. At this time, we have significant concern with such a statement being publicly made without supporting evidence." PJM Response at p. 5. PJM further states that "The allegation that market power was exercised in the 2025/2026 BRA is a significant one that requires careful consideration, analysis, and support. PJM reiterates its desire for the IMM to share its analysis concluding market power was exerted and urges the IMM to include analysis supporting its conclusion if further claims are made." PJM Response at p. 6.

[13] See *Mont.-Dakota Utils. Co. v. Nw. Pub. Serv. Co*., 341 U.S. 246, 251 (1951); *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981).

The complainants attempt to circumvent the filed rate doctrine by arguing that no capacity has yet been delivered and that refunds or replacement rates can therefore be imposed under FPA Section 206. However, this reasoning fails. The filed rate doctrine makes clear that FERC has '*no discretion* to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or *for any other equitable considerations."*[14] As a result, the Commission has consistently rejected efforts to re-clear capacity auctions under the guise of prospective Section 206 authority.

Any attempt to revise the auction clearing prices now would undermine the certainty and integrity of the BRA process and effectively render every auction perpetually subject to challenge based on evolving views of market design until such time as the delivery year starts. The relief sought in the Complaint would fundamentally undermine the filed rate doctrine and the Commission's settled precedent regarding the sanctity of auction results conducted under effective tariffs. While changes to PJM's capacity market can be made on a prospective basis, as the complainants suggested in November of 2024, retroactive changes to an already cleared auction are clearly illegal.

Complainants' citation to *Public Citizen* cannot save their complaint from being barred by the filed rate doctrine.[15] The court in *Public Citizen* held that the Commission had failed to adequately explain its reasoning for denying complaints pertaining to the 2015/2016 Midcontinent Independent System Operator, Inc. Planning Resource Auction ("MISO

[14] *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 826 (D.C. Cir. 2021) (*Oklahoma Gas*) (citing *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (*Old Dominion*)) (emphasis added); *see also Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 794-97 (D.C. Cir. 1990) (*Columbia Gas*)).

[15] *See* Complaint at pp. 40-43 (discussing *Public Citizen* at length to support the argument that "there is no filed rate bar to section 206 relief").

Auction").[16] The Commission denied the complaints based on its finding that the MISO Auction results were just and reasonable, and the Commission did not base that finding on, or otherwise discuss, the filed rate doctrine.[17] The court found the Commission's explanation of that finding deficient and required further explanation.[18] Neither the Commission nor the court made *any* finding regarding the filed rate doctrine.

In their multi-page argument alleging that *Public Citizen* supports their position that the filed rate doctrine does not bar the relief Complainants have requested here, Complainants neglect to mention that the *Public Citizen* opinion does not even *mention* the filed rate doctrine. This is unsurprising because the filed rate doctrine was not before the court; it was not discussed in the Commission's decision below, and it was not raised in the briefing at the D.C. Circuit. Complainants' reliance on *Public Citizen* to support an argument grounded in a legal doctrine that *Public Citizen* itself does not even discuss in passing is thus profoundly lacking.[19] Given the complete absence of any discussion of the filed rate doctrine in *Public Citizen*, it is puzzling that complainants have relied on that case almost exclusively to support the argument that the filed rate doctrine does not bar their complaint.

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[16] *Public Citizen*, 7 F.4th at 1196.
[17] *Id.* at 1190.
[18] *Id.* at 1196.
[19] Equally meritless is complainants' claim that the D.C. Circuit produced a holding on the filed rate doctrine, which it did not discuss at all in its opinion, by implication. *See* Complaint at 43 ("Had the filed rate doctrine or rule against retroactive ratemaking prevented the Commission from changing auction rates in response to the complaint, there would have been no addressable injury in fact to support Public Citizen's standing before the D.C. Circuit."). Their position appears to be that the court somehow recognized that the filed doctrine, which had not been discussed in the Commission's order below, must have been looming in the background, and accordingly the court silently issued a ruling on the filed rate doctrine. But as the D.C. Circuit has recognized, this speculative reasoning has been soundly rejected by the Supreme Court: "The Supreme Court has 'repeatedly held that the existence of unaddressed jurisdictional defects has no precedential effect.'" *Am. Fed'n of Gov't Emps. v. Fed. Lab. Rels. Auth.*, 99 F.4th 585, 592 (D.C. Cir. 2024) (quoting *Lewis v. Casey*, 518 U.S. 343, 352 n.2 (1996)). Complainants cannot twist a case that does not mention the filed rate doctrine, much less make a finding with respect to it, into support for their argument that the filed rate doctrine does not apply here.

Complainants most likely point to *Public Citizen*, a case that has no bearing on this complaint,[20] to distract from the fact that the most directly applicable appellate precedent—*PJM Power Providers*—squarely prohibits the relief Complainants seek here. In that case, the Third Circuit concluded that a tariff amendment seeking to amend the PJM capacity auction rules that was filed after the auction had been conducted but before the results had been posted violated the filed rate doctrine.[21] The tariff in effect at the time the auction is conducted, which sets forth the rules for the auction, is the filed rate.[22] The proposed tariff amendment violated the filed rate doctrine "because it altered the legal consequence attached to a past action when it allowed PJM to use a different LDA Reliability Requirement than the one it had calculated and posted."[23] Here, of course, the proposed change to the tariff governing the auction rules is much further along in time; it is long after the auction results were posted. And it would clearly alter the legal consequence attached to a past action by changing the rules under which the auction was run, and subsequently re-running it. Accordingly, the relief requested by Complainants would run afoul of clear Third Circuit precedent.

C. FERC Does Not Have the Authority to Modify Market Outcomes Unless There Is Evidence of Fraud, Market Manipulation, or a Violation of Established Tariffs.

The Complaint offers no allegation, much less evidence, of fraud or failure to follow the tariff. The Commission has consistently rejected efforts to revisit auction outcomes absent these

[20] Even if *Public Citizen* were relevant here, it would still be factually distinguishable—there, the Commission had found that the MISO Auction would be unjust and unreasonable going forward; there has been no such finding here because the changes to the PJM auction were made pursuant to PJM's Section 205 filings.
[21] *PJM Power Providers*, 96 F.4th at 396 (explaining that PJM "halted the Auction and turned to FERC for permission to amend the Tariff" after it had calculated and posted the auction parameters, received offers from suppliers, and ran the optimization algorithm).
[22] *PJM Power Providers*, 96 F.4th at 394 ("In this case, the petitioners and FERC agree that the filed rate is the PJM Open Access Transmission Tariff ("Tariff"), which sets forth the procedures governing PJM's capacity auctions.").
[23] *Id.* at 399.

narrow circumstances.[24] FERC's long-standing policy is an appropriate one as markets crave predictability and certainty. If FERC were able to modify market outcomes simply because it did not like the result, it would undermine market confidence, disincentivize investment and introduce regulatory risk contrary to FERC's own precedent. As such, FERC limits its interventions to situations where market outcomes are demonstrably unjust or unreasonable due to improper conduct or tariff violations. Since there is no evidence of such conduct or violation in this case, rejecting the Complaint is appropriate.

D. **The 2025/2026 Auction Outcome is Reflective of a Market that Needs Capacity.**

The 2025/2026 BRA results were in fact not extreme, but rather in line with where capacity prices should be under the market as specifically designed, because they signal a tightening market seeking to attract new resources and retain existing ones – particularly following years of suppressed prices that drove resources out of the market. The July 2024 auction was the first time that the RTO capacity price cleared above Net Cost of New Entry ("Net CONE") in over a decade and a half.

While the recent clearing prices did represent an increase from the unsustainably low clearing prices in the 2022/2023, 2023/2024 and 2024/2025 Delivery Year BRAs, the recent prices were wholly consistent with a grid that cleared over 99% of the capacity offered and thus needs "a lot of capacity" as PJM CEO Manu Asthana warned in October of last year.[25] These prices that were slightly above Net CONE for the RTO can hardly be considered evidence that PJM's tariff is unjust and unreasonable.[26]

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[24] *See*, *PJM Power Providers*, 96 F.4th.

[25] https://insidelines.pjm.com/asthana-to-opsi-we-need-capacity/.

[26] In fact, on average, PJM prices should clear at Net CONE according to Brattle in reports submitted to the Commission in several triennial (or quadrennial) reviews so as to attract new entry and maintain target reliability

Moreover, the market is responding to the price signal near Net CONE and PJM's call for more megawatts. Since the auction results for the 2025/2026 delivery year were announced, there has been a noticeable pattern of the market responding to the capacity prices for 2025/2026. Consider the following:

- On April 2, 2025, Homer City Redevelopment announced that the former coal plant will be transformed to a data center campus with up to 4.5 Gigawatts ("GWs") of power.
- On March 21, 2025, PJM announced that its Reliability Resource Initiative attracted 94 applications totaling 26.6 GWs of nuclear, natural gas and storage projects.[27]
- On March 17, 2025, AlphaGen announced that it has submitted to PJM plans to increase the capacity of existing sites in Maryland, New Jersey, and Ohio by 405 Megawatts ("MWs").[28]
- On March 14, 2025, LS Power announced that it was constructing 700 MWs of new generation in Pennsylvania, Ohio, and Virginia.[29]
- On September 4, 2024, Middle River Power decided to withdraw deactivation notices for the Elgin Energy Center in Illinois (540 MW).[30]
- On September 20, 2024, Constellation announced an agreement with Microsoft that will lead to the restart of the 835 MW Three Mile Island nuclear station.[31]

Nothing would kill the momentum that is materially improving the reliability prospects in PJM more than for the Commission to go back and reprice the auction results that investors are relying upon to justify future investment.

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requirements. *See generally,* EPSA Protest of Pennsylvania Complaint, Affidavit of Paul M. Sotkiewicz, Ph.D., Docket No. EL25-46-000 (filed January 21, 2025) *available at* https://epsa.org/wp-content/uploads/2025/01/EPSAProtest-w-Affidavit-EL25-46-000.pdf.

[27] https://insidelines.pjm.com/reliability-resource-initiative-draws-94-applications/.

[28] https://www.prnewswire.com/news-releases/alphagen-proposes-450-mw-of-additional-high-reliability-generation-across-pjm-302403345.html.

[29] https://www.lspower.com/ls-power-submits-proposal-to-add-new-generation-supply-across-pjm/.

[30] https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/elgin-deactivation-withdrawal.ashx.

[31] https://www.constellationenergy.com/newsroom/2024/Constellation-to-Launch-Crane-Clean-Energy-Center-Restoring-Jobs-and-Carbon-Free-Power-to-The-Grid.html.

III. CONCLUSION

P3 and EPSA urge the Commission to deny the Complaint in its entirety. Rewriting the results of a properly conducted auction would destabilize investment, chill entry, destroy the momentum created by the 2025/2026 BRA results and undermine the integrity of PJM's markets while most certainly leading to high prices over time. The Commission must affirm its longstanding commitment to prospective, tariff-based regulation and deny attempts to administratively second-guess market outcomes – particularly one as ill-timed as this Complaint.

Respectfully submitted,

On behalf of The PJM Power Providers Group

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Dated: May 5, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 5th day of May, 2025.

On behalf of the PJM Power Providers Group

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