

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

Independent Market Monitor for PJM)	Docket No. EL19-47-000
v.)	
PJM Interconnection, LLC;)	
)	
Office of the People’s Counsel for District of Columbia)	Docket No. EL19-63-000
Delaware Division of the Public Advocate)	Not Consolidated
Citizens Utility Board)	
Indiana Office of Utility Consumer Counselor)	
Maryland Office of People’s Counsel)	
Pennsylvania Office of Consumer Advocate)	
West Virginia Consumer Advocate Division)	
PJM Industrial Customer Coalition)	
v.)	
PJM Interconnection, LLC)	

**REPLY BRIEF OF THE
PJM POWER PROVIDERS GROUP AND
ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to the Federal Energy Regulatory Commission’s (“FERC”) order issued on March 18, 2021, in the above-captioned proceedings,¹ and the May 12, 2021 Notice of Extension of Time for reply briefs,² the PJM Power Providers Group (“P3”)³ and the Electric Power Supply

¹ *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,212 (2021), (“March 18 Order”).

² *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, Notice of Extension of Time, issued May 12, 2021.

³ 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 approximately 84,000 MWs of generation assets, produce enough power to supply over 20 million homes and employ over 40,000 people in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

Association (“EPSA”)⁴ (collectively, “P3/EPSA”) respectfully submit this reply brief regarding the appropriate remedy to the complaints filed by the Independent Market Monitor for PJM Interconnection, L.L.C. (“IMM”) and Joint Consumer Advocates⁵ against PJM Interconnection, L.L.C. (“PJM”). In particular, the Commission’s March 18 Order requested that parties address:

- the appropriateness of using different values for Penalty Performance Assessment Intervals (“PAI”) and Expected PAI in the default Capacity Performance market seller offer cap calculation and the appropriate method for setting each value, including for updating one or both over time;
- whether revisions to the default offer cap can be made without revision to the unit-specific offer cap review process outlined in section 6 of Attachment DD of the Tariff, including whether and how that process should account for the risk of Capacity Performance penalties;
- whether an alternative method for market power mitigation in the PJM capacity market would better address the concern that the current methodology precludes the Market Monitor from reviewing offers that raise market power concerns and mitigating offers where appropriate; and
- whether it would be just and reasonable to remove the market-wide default market seller offer cap (“MSOC”) and instead employ unit-specific offer caps for all resources that fail the Market Structure Test, and, if so, whether other tariff revisions would be appropriate to implement this approach.⁶

P3/EPSA file this reply brief in order to make the following recommendations for a replacement rate, as more fully explained below.

⁴ EPSA is the national trade association representing leading competitive power suppliers. 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.

⁵ The Joint Consumer Advocates for purposes of this proceeding include: the Office of People’s Counsel for the District of Columbia, Delaware Division of the Public Advocate, Citizens Utility Board, Indiana Office of Utility Consumer Counselor, Maryland Office of People’s Counsel, Pennsylvania Office of Consumer Advocate, West Virginia Consumer Advocate Division, and PJM Industrial Customer Coalition.

⁶ March 18 Order, P. 72.

I. RECOMMENDATIONS

A. The Commission Should Maintain PJM's Capacity Performance Market Structure, With Targeted Changes To The Default MSOC.

P3/EPISA urge the Commission to maintain the focus on this proceeding on the narrow question in front of it and resist the calls of other parties to use this proceeding as an impetus for a complete redesign of PJM's capacity market mitigation measures. The Commission simply found that one component of the Capacity Performance ("CP") market design was flawed, that of the default MSOC based on the current value of the PAIs. The Commission found that the default offer cap described in the PJM's Tariff is "incorrectly calibrated" such that it may unjustly and unreasonably prevent the appropriate review of offers, thereby allowing potential exercises of market power, and reducing the capacity market's overall competitiveness.⁷ The Commission did not find that the entire market construct itself was unjust and unreasonable – just this narrow component of the current structure. P3/EPISA thus submit that the Commission should focus its efforts on the narrow question of setting the appropriate value for the PAIs, and not a total re-design of the market mitigation measures embedded in the capacity market design.

In this regard, P3/EPISA support the proposals for a replacement rate as suggested by the Indicated Suppliers,⁸ as well as Exelon Corporation ("Exelon") and the PSEG Companies ("PSEG") (collectively, "Exelon/PSEG").⁹ Specifically, P3/EPISA recommend that the Commission continue to support the broad market design aspects of the CP market, but allow

⁷ March 18 Order, P. 65.

⁸ The Indicated Suppliers for purposes of this proceeding include: Calpine Corporation ("Calpine"), Vistra Energy Corp. and Dynegy Marketing and Trade, LLC (together, "Vistra"), LS Power Associates, L.P. ("LS Power"), and Talen Energy Marketing, LLC. Initial Brief of the Indicated Suppliers, Docket No. EL19-47-000; Docket No. EL19-63-000, dated May 3, 2021 ("Indicated Suppliers Initial Brief").

⁹ Initial Brief of the Exelon Corporation and the PSEG Companies, Docket No. EL19-47-000; Docket No. EL19-63-000, dated May 3, 2021 ("Exelon/PSEG Initial Brief").

targeted changes to ensure that the performance assessment hours be set at a level the Commission considers just and reasonable, as further explained below.

1. The Commission Should Recalibrate The Number Of Expected PAI.

At the outset, the Commission should remain aware of both the risks and opportunity costs that capacity resources face when offering into the capacity auctions. Different capacity resources have different operating profiles and as a result need to be able to reflect those differences in capacity market bids. Some units may not be able to easily assume the risks associated with non-performance. Some units may be better suited to seek performance payments during assessment intervals. One size does not fit all and providing some degree of flexibility to generation owners is important.

That said, P3/EPISA can support a reduction in the performance assessment hours that is more consistent with experience. P3/EPISA support recommendations for the Commission to direct PJM to reduce the number of Expected PAI used to calculate the default offer cap from the current 360 (30 performance assessment hours (“PAH”)) in the penalty rate denominator with a lower number, between 15 and 20 PAH. While such a reduction will reduce the flexibility provided to capacity resources, the reduction is within the zone of what is just and reasonable. As Exelon/PSEG note, this approach “will resolve any concerns about the exercise of market power and retain the fundamental CP design.”¹⁰ And as the Indicated Suppliers’ expert witness, Dr. Roy Shanker, found, a reduced PAH closer to 15 PAH is “very reasonable, if not conservative, given all the issues related to factors that are not taken into account in the existing models, and ‘missing’

¹⁰ Exelon/PSEG Initial Brief, p. 4.

PAH events that are not reflected in the MARS [General Electric Multi-Area Reliability Simulation Program] data.”¹¹

A surgical PAH/PAI recalibration will not only result in a just and reasonable replacement rate for the default MSOC, but importantly, a proper recalibration will ensure that broader and more disruptive CP market changes are not made. At the very least, the record in this proceeding has been focused on the correct PAH/PAI for the MSOC, not extensive revisions to PJM’s capacity market mitigation protocols. For all these reasons, P3/EPISA request that the Commission adopt a recalibrated PAH/PAI, preferably between 15-20 PAH/PAI, for the default MSOC.

2. The Commission Should Not Institute Different Values For The Penalty PAI And Expected PAI In The Default Market Seller Offer Cap Calculation.

If the Commission lowers the current 30 PAH, P3/EPISA request that the Commission not institute different values for the Penalty PAI and Expected PAI in the default Capacity Performance market seller offer cap calculation. P3/EPISA agree with commenters that assert that it would not be just and reasonable for the Commission to “dismember the CP market design, as the IMM urges it do”¹² by continuing to project 30 PAH when setting the penalty rate, while projecting only five PAH when setting the MSOC.¹³ Any revisions to the current MSOC should continue to properly consider the risks of assuming a capacity obligation in PJM’s CP market.

As the Indicated Suppliers properly note, the use of a “reasonable Expected PAI to calculate both the MSOC and Non-Performance Charge Rate is the approach that is most

¹¹ Indicated Suppliers Initial Brief, p. 13, citing Affidavit of Roy J. Shanker, Ph.D., on behalf of Calpine Corporation, Vistra Energy Corp., Dynegy Marketing and Trade, LLC, LS Power Associates, L.P., and Talen Energy Marketing, LLC, dated May 3, 2021, Docket No. EL19-63 and EL19-47 (Not Consolidated) (“Shanker Affidavit”), ¶ 26.

¹² Exelon/PSEG Initial Brief, p. 3.

¹³ Indicated Suppliers Initial Brief, p. 2.

consistent with the goals of the Capacity Performance construct and rationale underlying the MSOC.”¹⁴ P3/EPISA agree with Exelon/PSEG in opposing the IMM’s arbitrary recommendation to use differing values for the Penalty PAI and Expected PAI, setting an exceptionally low Penalty PAI. As Exelon/PSEG correctly point out, “[b]y setting the penalty rate too low, the expected bonus will not approach Net CONE, and the market will not send the appropriate signals for new entry.”¹⁵ Indicated PJM Utilities also share this concern, stating that should “the Commission approve a replacement rate that fails to compensate for the penalty risk that attaches to units that clear the market and take on a Capacity Performance obligation, the Commission may inadvertently impede investments in new or existing generation, and further reduce capacity prices, thereby, undermining resource adequacy objectives.”¹⁶

Finally, PJM, as well, believes that the values for Expected PAIs should be the same as used in the default MSOC. Thus, PJM stated that “[W]hile some parties have advocated the use of different estimated number of PAIs for the Non-Performance Charge rate and that used in the MSOC calculation, PJM has consistently maintained that the default MSOC should not use different expected numbers of PAIs for the Non-Performance Charge and that used in the MSOC calculation. This is because the estimated number of PAIs is part of the current design of both the Non-Performance Charge rate and default MSOC; the use of two different estimates to represent the same parameter would not be reasonable.”¹⁷

¹⁴ *Id.*, p. 15.

¹⁵ Exelon/PSEG Initial Brief, p. 27.

¹⁶ Comments of The FirstEnergy Utility Companies and East Kentucky Power Cooperative, Inc. (collectively, “Indicated PJM Utilities”), Docket No. EL19-47-000; Docket No. EL19-63-000, dated May 3, 2021 (“Indicated PJM Utilities Comments”), pp. 2-3.

¹⁷ Initial Brief of PJM Interconnection, L.L.C., Docket No. EL19-47-000; Docket No. EL19-63-000, Not Consolidated, dated May 3, 2021 (“PJM Initial Brief”), p. 3, citations omitted.

For all of these reasons, the Commission should not use different values for Penalty PAI and Expected PAI in the default CP MSOC.

3. A Modified MSOC Should Provide For The Continuation Of Appropriate Market Seller Opportunity Costs.

P3/EPISA oppose the IMM's proposed net avoidable cost rate ("ACR") methodology to replace the default MSOC's use of the appropriately set PAH/PAI. In large part, use of this proposed Net ACR approach would prohibit market sellers from making offers that reflect the seller's view of risk and opportunity costs when those exceed the seller's Net ACR, by offering at or below the MSOC. As Exelon/PSEG explain, this is a key feature of the current CP market design that has led to its overall success. Dramatically reducing the MSOC "so that many sellers will need to seek unit-specific offer caps based upon their ACR, as the IMM proposes, would effectively leave those market sellers unable to offer based on their view of opportunity costs when that view exceeds the Net ACR."¹⁸

As P3/EPISA stated earlier, the Commission has previously addressed the just and reasonableness of opportunity costs (i.e., the bonus payments that an energy-only resource could earn to set the default MSOC) in the original Capacity Performance proceeding, as did the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court"). Specifically, the Commission found the following in its Capacity Performance Rehearing Order:

We disagree with those parties asserting that the Commission erred by accepting a default offer cap and offer review methodology that accounts for the opportunity cost of a resource's [sic] participating in PJM as an energy-only resource. As explained above, an appropriate competitive offer includes all of the marginal and opportunity costs a resource faces to participate in the capacity market. A market seller's opportunity cost of participating as an energy-only resource reflects the seller's point of

¹⁸ Exelon/PSEG Initial Brief, p. 4.

indifference between offering in the capacity market and participating as an energy-only resource. The opportunity cost facing a resource that would be profitable even absent capacity auction revenues [] is significant because it reflects the economic trade-off a rational market seller considers when formulating its capacity market offer.... We therefore continue to find that consideration of opportunity cost in deriving a default offer cap and in reviewing sell offers above the default offer cap is just and reasonable because it is a legitimate consideration in formulating a competitive offer within the Capacity Performance design.¹⁹

The D.C. Circuit Court of Appeals agreed with the Commission’s finding, ruling that:

The penalties and bonuses create opportunity costs for resources with a capacity commitment. Say, for example, Resource A and Resource B can both produce 50 megawatts of power for a given emergency hour. Resource A has a 45 megawatt capacity commitment and Resource B does not have a capacity commitment. Resource A will receive bonuses for only 5 megawatt-hours. Resource B, on the other hand, will receive bonuses for all 50 megawatt-hours. If both resources can produce only 40 megawatts of power during the emergency hour, Resource A will owe a penalty for 5 megawatt-hours and receive no bonuses. But Resource B will still receive bonuses for all 40 megawatt-hours. Resource A has to earn enough in the capacity market to make up for these lost bonuses. The new default offer cap is set at this rate. The cap is the rate a resource needs in the capacity market to earn more with a capacity commitment than without. It is by definition a competitive offer for a low-cost resource.²⁰

As such, the Commission has previously found that considering opportunity costs when setting the default MSOC is just and reasonable, the D.C. Circuit Court agreed, and no party to this proceeding has brought forth any new evidence to show otherwise.

Moreover, P3/EP SA share PJM’s assessment that based on historical RPM Auction clearing prices, the IMM’s proposed default net ACR would not only result in “all or a majority of offers to be subject to a unit-specific MSOC review” (i.e., “hundreds of unit-specific MSOC reviews annually”), but would also “clearly and unnecessarily increase administrative interference

¹⁹ Motion for Leave to Answer and Answer of the PJM Power Providers Group, Docket No. EL19-47-000, dated May 2, 2019, pp. 3-4, citing *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61, 157 (May 10, 2016) (“Capacity Performance Rehearing Order”), at P 185; affirmed by *Advanced Energy Mgmt. All. v. FERC*, 860 F. 3d 656 (D.C. Cir., June 20, 2017) (“Advanced Energy Mgmt.”).

²⁰ *Advanced Energy Mgmt.*, pp. 673-674.

to competitive bidding in the auctions.”²¹ Importantly, PJM correctly points out that the IMM’s net ACR approach would amount to an even greater number of unit-specific reviews than occurred prior to the implementation of the Capacity Market construct, since there are now other components of the unit-specific MSOC reviews, such as avoidable fuel cost expenses and capacity resource quantifiable risks, that were not previously included prior to the implementation of Capacity Performance.²²

Therefore, for all of these reasons, the Commission should ensure that market sellers are still allowed to base their offers on their view of opportunity costs.

B. If The Commission Determines That An Alternative Methodology For The Default MSOC For Market Power Mitigation In The Capacity Market Is Necessary, It Should Adopt PJM’s Proposed Modified ISO-NE’s Method.

If the Commission determines that an alternative methodology for the default MSOC for market power mitigation in the capacity market is warranted, PJM’s proposed Modified ISO-NE’s Method offers a workable alternative.²³ This approach to calculate an alternative MSOC does not require estimating the number of annual expected PAIs, but rather uses a reasonable estimate of the competitive clearing prices for the relevant Reliability Pricing Model (“RPM”) Base Residual Auction (“BRA”) in place of the existing default MSOC calculation. Under this approach, an initial estimated competitive clearing price for the next BRA is calculated based on three publicly available inputs: (1) the total quantity of capacity that cleared in the last BRA, (2) the capacity clearing price in the last BRA, and (3) the projected change in demand for the next BRA.²⁴

²¹ PJM Initial Brief, pp. 11-13.

²² *Id.*, p. 12.

²³ See *ISO New England Inc., et al.*, 174 FERC ¶61,162 (2021).

²⁴ PJM Initial Brief, pp. 5-7.

PJM's alternative MSOC proposal was extensively discussed in PJM stakeholder meetings.²⁵ P3/EPISA agree with many of the expected design objectives of PJM's alternative MSOC proposal, including that it: (1) prevents the exercise of market power; (2) limits unnecessary administrative interference in the auction that may reduce the market's efficiency; and (3) uses a transparent and robust calculation method.²⁶

P3/EPISA also agree with PJM that its proposal is far superior to the IMM's proposed ACR method, which would likely produce a less accurate measure of a resource's true costs to supply capacity, result in over-mitigation, and suppress market clearing prices.²⁷ The Commission has already rejected the use of ACR's as the appropriate market mitigation measure in PJM and there is nothing in this record to support a change in Commission policy.²⁸

Moreover, any determination of market risk should remain with the owner of the physical assets, not placed in the control of one individual, even if that individual is the IMM. While the IMM clearly possesses a wide variety of market expertise, he lacks the expertise needed to quantify and determine risk associated with any particular asset, let alone a company's portfolio of assets. One of the values of utilizing a PAI approach is that it tends to force some consensus around particular risk factors.

²⁵ See e.g., PJM MIC Special Session – Capacity Market Seller Offer Cap, (April 21, 2021) *presentation available here* <https://www.pjm.com/-/media/committees-groups/committees/mic/2021/20210421-cap-market/20210421-item-02-default-market-seller-offer-cap-in-the-capacity-market.ashx>; also, PJM Critical Issue Fast Path – MOPR Phase 1, PJM Presentation: PJM Brief on the Market Seller Offer Cap, (April 28, 2021) *available here* <https://www.pjm.com/-/media/committees-groups/cifp-mopr/2021/20210428/20210428-msoc-item-01-pjm-brief-on-the-market-seller-offer-cap.ashx>.

²⁶ PJM Initial Brief, pp. 1-2.

²⁷ PJM Initial Brief, pp. 8-9.

²⁸ “As we note above, we find that given the redefined capacity product PJM proposes, it is reasonable to allow capacity sellers to factor into their offers the costs and risks associated with assuming the redefined capacity obligation. The existing net Avoidable Cost Rate methodology would not permit inclusion of such costs and risks and thus could prevent capacity sellers from submitting legitimate, competitive offers.” CP Order, P 344.

For all these reasons, if the Commission chooses an alternative default MSOC to the current approach of estimating the number of annual expected PAIs, P3/EP SA support PJM's alternative MSOC.

II. CONCLUSION

For the foregoing reasons, P3/EP SA respectfully request that the Commission consider the comments herein and adopt a lower PAH (between 15-20 PAH) as a replacement for the default MSOC. In lieu of adopting such an alternative, P3/EP SA can support PJM's proposed alternative default MSOC that is similar to that of ISO New England.

Regardless of the approach taken, P3 strongly urges the Commission to ensure that the next BRA (associated with the 2023/2024 Delivery Year), which is currently scheduled to begin on December 1, 2021, will not be further delayed as a result of this proceeding.

Respectfully submitted,

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June 9, 2021

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 9th day of June, 2021.

On behalf of the PJM Power Providers Group

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