

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

PJM Load Parties)	
)	
v.)	Docket No. EL24-104
)	
PJM Interconnection, L.L.C.)	
)	

**COMMENTS ON REMAND OF
CONSTELLATION ENERGY GENERATION, LLC
AND THE PJM POWER PROVIDERS GROUP**

Constellation Energy Generation, LLC and The PJM Power Providers Group (“P3”)¹ offer these comments to inform the Commission’s consideration of the remand in *Maryland Office of People’s Counsel v. FERC* (“OPC”).² That decision was a classic remand for further explanation. It emphasized that “[t]here may have been a sound basis for the FERC to deny relief” but that the Commission’s explanation was incomplete because it did not adequately consider potential differences between this case and *PJM Power Providers Group* (“P3”).³ Consistent with the D.C. Circuit’s guidance, the Commission should continue to deny relief, while addressing the flaws the court found.

First, the Commission should do so under the filed-rate doctrine. The whole point of the Base Residual Auction (“Auction”) is to establish capacity prices through an integrated framework and process, which includes setting parameters and then receiving offers based on those parameters.

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 108,000 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. 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.

² *Md. Office of People’s Counsel v. FERC*, 164 F.4th 920 (D.C. Cir. 2026).

³ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 399-402 (3d Cir. 2024).

As the Third Circuit held, the filed-rate doctrine bars changing those parameters after they have already been set. All the more so, the doctrine bars changing the Auction outcome after offers have been received and the parameters applied.

Key to the D.C. Circuit’s remand decision was that the Commission “never addressed” potential “differences” between Section 205 (at issue in *P3*) and Section 206 (at issue here).⁴ But the differences between those provisions make no difference to the outcome in this case. On remand, the Commission should address the two provisions and explain why their differences are immaterial. The filed-rate doctrine applies to both Sections 205 and 206, “bind[ing] both the parties and the agency . . . to the rate on file.”⁵ Hence, neither a utility nor the Commission can make changes that are retroactive as judged from the relevant reference point—the utility’s rate filing under Section 205 or the filing of a complaint under Section 206. This symmetry ensures notice to all and promotes “evenhandedness, fairness, stability, and predictability.”⁶ And as to that reference point, *P3* and this case are the same: In both, the Auction had already commenced when PJM Interconnection, L.L.C. (“PJM”) (in *P3*) and Complainants (here) sought to change the rules.

The Commission should then address the sole remaining distinction between *P3* and this case. PJM in *P3* sought to change an *Auction parameter*; Complainants seek to directly replace the *Auction outcome*. But again, that distinction makes no difference, and the filed-rate doctrine protects Auction results no less than the parameters that produce them. The filed rate—the provisions of PJM’s Open Access Transmission Tariff (“Tariff”) governing the Auction—creates an integrated market mechanism that begins with the posting of the Auction parameters and ends with payment of the clearing price. And because that process defines the filed rate, the filed-rate

⁴ *OPC*, 164 F.4th at 922, 926.

⁵ *Pioneer Trail Wind Farm, LLC v. FERC*, 798 F.3d 603, 610 (7th Cir. 2015).

⁶ *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 12 (D.C. Cir. 2014).

doctrine does not permit the Commission to administratively change prices after the Auction has begun. Any other conclusion would eviscerate the filed-rate doctrine in capacity auctions, which by their nature are for future performance, and authorize PJM *itself* to jettison the results after an Auction has begun.

Second, the Commission should invoke its remedial discretion as an independent ground to deny relief. As the Commission and Complainants themselves have recognized, the Commission's broad remedial discretion extends to denying a remedy even when rates may be deemed unjust and unreasonable. If Auction results were up for grabs after the fact, it would destroy the certainty on which PJM's Auctions depend. That outcome is itself an unjust and unreasonable result and is why the Commission generally does not do what Complainants in substance urge and re-run auctions. Today, moreover, maintaining certainty is especially essential: retaining existing resources and securing new entry is paramount, but Market Participants must know results *will stick* before making decisions that can exceed \$1 billion. Indeed, even were the Commission in the business of hindsight-based rejiggering of auction results, the one thing that is clear with hindsight is that PJM needed *stronger* investment signals, not weaker ones.

The way to bring closure to the 2024/25 Auction saga is to deny relief on both grounds.

BACKGROUND

This proceeding stems from PJM's attempt, after the 2024/25 Auction had already begun, to change the rules governing its market mechanism via Tariff amendments filed under Section 205. In *P3*, the Third Circuit vacated and remanded the Commission's order approving those changes. It held that the Commission's approval violated the filed-rate doctrine "because it altered the legal consequence attached to a past action when it allowed PJM to use a different [DPL-South]

Reliability Requirement than the one it had calculated and posted.”⁷ The Third Circuit explained that the amendment impermissibly changed the legal consequence of the Tariff requirement that PJM “determine the [DPL-South] Reliability Requirement . . . prior to the . . . Auction”⁸ The Third Circuit further rejected the Commission’s argument that “PJM’s compliance with ‘one stage of the auction process’ did not preclude it from ‘updating the manner in which the [DPL-South] Reliability Requirement is incorporated into a later phase of the auction process.’”⁹ And the Third Circuit concluded that the Commission’s position that it could “change auction rules any time before clearing prices are final and capacity commitments are awarded without running afoul of the filed rate doctrine” would “make[] auction rules inherently unstable.”¹⁰

After PJM requested and received approval to re-run the 2024/25 Auction using the original DPL-South Reliability Requirement,¹¹ Complainants filed a conditional Section 206 complaint asking the Commission to deem the re-run clearing prices unjust and unreasonable and to reinstate the results that would have occurred under the methodology *P3* found to violate the filed-rate doctrine. The Commission rejected that request, finding the requested relief “would be inconsistent with” *P3*.¹² On rehearing, the Commission reached the same result, on the ground that “granting the complaint would lead to an outcome inconsistent with the Third Circuit’s ruling.”¹³

⁷ *P3*, 96 F.4th at 399.

⁸ *Id.* (quoting Tariff, Attach. DD § 5.10(a)(vi)(B)).

⁹ *Id.* at 400 (quoting *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 at P 171 (2023)).

¹⁰ *Id.* at 402.

¹¹ *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,065 at P 24 (2024).

¹² *PJM Load Parties v. PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,020 at P 21 (2024).

¹³ *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,199 at P 12 (2024).

Complainants appealed, and the D.C. Circuit vacated and remanded. The D.C. Circuit faulted the Commission’s reasoning—that *P3* directly “mandate[d] the Complaint’s denial”¹⁴—on three grounds. First, the D.C. Circuit emphasized that the “Third Circuit was simply not presented with[] . . . whether a subsequent use of FERC’s section 206 authority to modify the resulting auction” would violate the filed-rate doctrine, and that even had “the Third Circuit . . . telegraphed how it would resolve” that question, that signal would not be binding.¹⁵ Second, the D.C. Circuit believed the Commission “wrongly assume[d]” that the mere label “retroactive” answered the filed-rate question.¹⁶ Third, the D.C. Circuit found that the Commission had incorrectly placed weight on the “economic effects” the Third Circuit had “expected” to flow from its decision.¹⁷ The court emphasized, however, that it did “not mean to suggest that the [Complainants] are necessarily entitled to a refund under Section 206(b)” and that “[t]here may have been a sound basis for FERC to deny relief.”¹⁸

The 2024/25 Delivery Year has now concluded. Resources that cleared the Auction have therefore performed pursuant to the Tariff, ensuring that they were available as the Tariff required and incurring bonuses and penalties based on performance or nonperformance.

¹⁴ *OPC*, 164 F.4th at 926.

¹⁵ *Id.* at 926.

¹⁶ *Id.* at 927.

¹⁷ *Id.* at 927-28.

¹⁸ *Id.* at 922, 927.

COMMENTS

I. The Filed-Rate Doctrine Continues To Bar The Complaint.

A. The Differences Between Sections 205 and 206 Are Irrelevant Here.

The place to begin is with the key issue the D.C. Circuit faulted the Commission for not addressing—the distinction between Sections 205 and 206 and whether it makes a difference.¹⁹ Neither of the Commission’s prior orders analyzed that potential distinction.²⁰ And as the D.C. Circuit observed, Section 206 does indeed authorize the Commission to act “retroactively” in one sense: When the Commission under Section 206(b) establishes a “refund effective date,” it “permissibly effectuates what might be thought of as ‘retroactive . . . rate decreases,’” measured from the date of the Commission’s decision.²¹ But for present purposes, here is the critical point: Congress did not give the Commission a blank check to act retroactively; rather, it crafted Section 206’s refund effective date as a limited, specific exception from Section 206’s otherwise unqualified command that the Commission may act “only prospectively”²² by setting a new rate to be “thereafter” in force.²³ In particular, the refund effective date “shall not be earlier than the date of the filing of [the] complaint.”²⁴ Consistent with the filed-rate doctrine, Congress did not authorize the Commission to reach back *before* that reference point.

In this critical respect, Sections 205 and 206 are the same. Under Section 205, utilities cannot change rates retroactively as measured from when the utility *files the new rate*.²⁵ So just as the complaint date is the impassable reference point under Section 206, the rate filing date serves

¹⁹ *OPC*, 164 F.4th at 922, 926.

²⁰ *PJM Load Parties v. PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,020.

²¹ *OPC*, 164 F.4th at 927 (quoting *City of Anaheim v. FERC*, 558 F.3d 521, 524 (D.C. Cir. 2009)).

²² *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1226 (D.C. Cir. 2018) (citing 16 U.S.C. § 824e(a)).

²³ 16 U.S.C. § 824e(b).

²⁴ *Id.*

²⁵ 16 U.S.C. § 824d(d).

that same function under Section 205. Under both sections, “the FPA is generally premised on notice to sellers and customers as to when rates may be subject to change”: “Section 205 is premised on notice to the public prior to new rates being able to take effect, and section 206 likewise is premised on notice to sellers that rates may be changed and that refunds for rates charged after a certain date may be subjected to refund.”²⁶ And in this way, as the D.C. Circuit recognized, the “filed-rate doctrine . . . rests on,” and applies to, both “section 205 and 206.”²⁷ The doctrine is thus a “two-way street,” applying “regardless of what party is seeking to reexamine the past,”²⁸ and “bind[ing] both the parties and the agency.”²⁹ It reflects Congress’s judgment that “[s]table markets depend on stable rules” and that the interest in predictability “outweighs the value of being able to correct for decisions that in hindsight may appear unsound”³⁰—including when the Commission perceives an “error[] in judgment” or “distortion in market signals.”³¹

Here, the limited retroactivity that Section 206 authorizes is irrelevant, and the differences between Sections 205 and 206 are immaterial. When the Complaint was filed, the Auction had already commenced. Hence, the Commission could no more retroactively adjust the rules under Section 206 than PJM could revise those rules under Section 205. So the only way to distinguish this case from *P3* would be to hold that the filed-rate doctrine somehow protects the Auction parameters, but not the outcome that results from the application of those parameters. And that view is plainly untenable. The filed-rate doctrine does not bizarrely require PJM to complete the Auction but then bless jettisoning the results and replacing them with a different number entirely.

²⁶ *Cal. ex rel. Lockyer v. British Columbia Power Exchange Corp.*, 125 FERC ¶ 61,016 at P 16 (2008).

²⁷ *OPC*, 164 F.4th at 923.

²⁸ *P3*, 96 F.4th at 402 (quotation marks omitted).

²⁹ *Pioneer Trail Wind Farm*, 798 F.3d at 610.

³⁰ *P3*, 96 F.4th at 402 (quoting *Pub. Utils. Comm’n of Cal. v. FERC*, 894 F.2d 1372, 1383 (D.C. Cir. 1990) (“*CPUC*”).

³¹ *Id.* (quoting *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 797 (D.C. Cir. 1990)).

B. The Filed-Rate Doctrine Does Not Permit Complainants To Revise PJM’s Integrated Market Mechanism After The Auction Has Commenced.

A more detailed examination of PJM’s Tariff confirms that Complainants do not seek the “prospective[.]” relief the filed-rate doctrine permits and instead seek the same type of retroactive relief *P3* held was untenable.³² That conclusion follows from three points. First, the relevant filed rate is the Tariff’s market mechanism. Second, that mechanism creates an integrated process that begins with posting the Auction parameters and concludes with payment of the clearing price to cleared Capacity Resources. Third, as a result, changing the clearing price after the Auction has begun would reach back in time—retroactively disturbing the integrated market mechanism via the sort of “post hoc tinkering” the filed-rate doctrine forbids.³³ We take each point in turn.

First, the filed rate here is the Tariff mechanism governing the Auction. It is blackletter law that the filed-rate doctrine “‘is not limited to “rates” per se,’ but also extends to matters ‘directly affect[ing] . . . rates,’” such as non-rate terms and conditions.³⁴ As to PJM’s market mechanism, the Tariff thus “describ[es] the . . . procedures, not the prices that may change over time.”³⁵ Hence, the Commission has recognized that “for the purposes of the filed rate doctrine, the rate on file with the Commission *is th[ose] procedures,*” not the outcome.³⁶ Put otherwise: The filed rate “is not the actual price produced but the set of rules that produces the price.”³⁷

³² *See Old Dominion*, 892 F.3d at 1226.

³³ *CPUC*, 894 F.2d at 1383.

³⁴ *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 829-30 (D.C. Cir. 2021) (quoting *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966-67 (1986) (alterations in *Okla. Gas*)).

³⁵ *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 168 FERC ¶ 61,042 at P 89 (2019).

³⁶ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 at P 165 (2023) (emphasis added).

³⁷ *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,055 at P 74 (2023); *accord W. Deptford*, 766 F.3d at 22 (as to formula rates, the “formula itself is the filed rate that provides sufficient notice to ratepayers,” not the outputs of that formula (quotation marks omitted)).

The rule-based nature of the filed rate here, in turn, guides the filed-rate question the Commission asks. Because the filed rate is the market *mechanism*, that mechanism can be changed “prospectively”³⁸ to alter future applications “thereafter.”³⁹ And by the same token, neither PJM nor the Commission can reach backward to past applications. As the Third Circuit put it, the Commission cannot “alter[] the legal consequence attached to a past action.”⁴⁰ So the question is: Would the Complaint modify future applications of the market mechanism, or past applications?

Second, that question’s answer follows from how the Tariff defines the market mechanism. To decide whether relief would “alter[] the legal consequence attached to a past action,” we look to the “text of the [t]ariff” to identify what consequences “attached to a past action in the Auction.”⁴¹ Here, the Tariff makes clear that PJM’s market mechanism is an integrated, four-step process that starts with the posting of Auction parameters and—critically—continues through payment by load:

- **Step 1—posting parameters:** PJM’s Tariff requires PJM to “[e]stablish[]” and publicly post certain Auction parameters “*prior to the conduct . . . of the . . . Auction . . .*”⁴² These parameters must be set before the Auction.⁴³
- **Step 2—offer submission:** PJM then opens the offer window. Suppliers offer to sell a designated “amount of capacity at a specific rate,”⁴⁴ and commit to provide electricity

³⁸ *Old Dominion*, 892 F.3d at 1226.

³⁹ 16 U.S.C. § 824e(a).

⁴⁰ *P3*, 96 F.4th at 399.

⁴¹ *Id.* at 399, 401.

⁴² Tariff, Attach. DD § 5.10(a)(vi)(B) (emphasis added).

⁴³ *Id.* § 5.10(a)(vi)(A) (requiring that the “parameters . . . will be established prior to the conduct of the Base Residual Auction for a Delivery Year and will be used for such Base Residual Auction” (emphasis added)); *id.* § 5.11(a) (requiring that “PJM will post” certain inputs “for a Delivery Year prior to conducting the Base Residual Auction for such Delivery Year” (emphasis added)).

⁴⁴ *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 659 (D.C. Cir. 2017).

during the Delivery Year.⁴⁵ These offers are binding on the suppliers once the window closes.⁴⁶ Suppliers risk “a robust penalty” if they fail to deliver.⁴⁷

- Step 3—clearing-price determination: PJM runs an optimization algorithm based on suppliers’ offers and Auction parameters. The algorithm yields the price for capacity (the “clearing price”) in each zone.⁴⁸ After the Auction, PJM must publicly post the results and clearing prices “as soon thereafter as possible,” and posted results are final.
- Step 4—acceptance and charges to load: Finally, PJM accepts the offers of all suppliers whose offers are less than or equal to the clearing price and fixes load’s obligation to pay the resulting charges. Suppliers are legally bound to provide capacity at the clearing price.⁴⁹ And the Tariff specifies that the Auction clearing price must be paid by load, as discussed below.

Because this case concerns Steps 3 and 4, it bears emphasis how these provisions show that the market mechanism, once the Auction has begun, continues through payment. The Tariff states that “[f]or each Base Residual Auction and Incremental Auction, the Office of the Interconnection shall calculate a clearing price *to be paid* for each megawatt-day of Unforced Capacity that clears in such auction.”⁵⁰ It also states that the “cost of payments to Capacity Market Sellers for Capacity Resources that clear such Auction *shall be paid* by PJMSettlement from amounts collected by PJMSettlement from Load Serving Entities through the Locational Reliability Charge during such Delivery Year.”⁵¹ And the PJM Reliability Assurance Agreement (“RAA”) provides that “each Party shall pay, as to the loads it serves in each Zone during a Delivery Year, a Locational Reliability Charge for each such Zone during such Delivery Year,” and this “Locational Reliability Charge shall equal such Party’s Daily Unforced Capacity Obligation in a Zone, as determined pursuant to RAA, Schedule 8, times *the Final Zonal Capacity Price* for such Zone, as determined

⁴⁵ Tariff, Attach. DD §§ 5.6, 5.8.

⁴⁶ *Id.* § 5.8(d).

⁴⁷ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 at P 18 (2016).

⁴⁸ Tariff, Attach. DD §§ 5.6, 5.8, 5.10, 5.12, 5.14(a).

⁴⁹ *Id.* § 5.14(a).

⁵⁰ *Id.* (emphasis added).

⁵¹ *Id.* § 5.4(a).

pursuant to Tariff, Attachment DD.”⁵² So again: The market mechanism continues to run, as one indivisible whole, through payment. And while the Auction inputs and results “may be adjusted under certain limited, enumerated circumstances listed in the Tariff,”⁵³ the Tariff nowhere creates a roving authority to alter the legal consequences that follow from the Auction.

PJM created, and the Commission approved, that integrated approach for an important reason: “PJM’s posting of the fundamental auction parameters . . . is an important precondition for parties to make decisions regarding bilateral contracts, capacity imports or exports, and the manner in which they participate in the [capacity auction].”⁵⁴ And the core purpose of PJM’s market mechanism is that when the Auction commences, generators can rely on that process and its results to decide whether to invest tens or hundreds of millions of dollars to ensure they can serve when called.⁵⁵ As the Commission explained, “[t]he prices and obligations set in those auctions became set as of the date of the auctions, and PJM and the capacity resource providers had every right to rely on those prices and obligations in making their decisions, including any capacity commitments and investment decisions.”⁵⁶ And “even if resource providers had not yet made new investments in plant and equipment as a result of those auctions, each supplier of necessity would have had to forgo other opportunities to use its generating capacity, as a result of its commitment to serve PJM at the rates established in the auction.”⁵⁷ As the D.C. Circuit itself recognized, when the Commission adopts a “rate ‘rule’” rather than a “specific, absolute number[.]” the Commission may “indicate[] when [that rule] will take effect[] . . . within the meaning of the” filed-rate

⁵² RAA art. 7, sec. 7.2 (emphasis added).

⁵³ *P3*, 96 F.4th at 399.

⁵⁴ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at P 198 (2009).

⁵⁵ *E.g.*, *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 at PP 35-36, 68; *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at PP 47-48, 158 (2015).

⁵⁶ *Md. Pub. Serv. Comm’n*, 124 FERC ¶ 61,276 at P 28 (2008).

⁵⁷ *Id.*

doctrine.⁵⁸ Here, PJM’s Tariff clearly marked the legal effect that the market mechanism it created would carry.

Third, because PJM’s Tariff creates an integrated market mechanism that begins with the posting of parameters and continues through payment by load, the answer to the filed-rate question is obvious: The Complaint seeks to modify past applications of that mechanism, not future applications. “[I]f an event has already happened, it is in the past;” “[i]f it has yet to happen, it is in the future.”⁵⁹ And the event that “must happen ‘prior’ to” this integrated process—“establishing the Local Deliverability Area Reliability Requirement”—“already happened.”⁶⁰ The Complaint thus targets a past application of the market mechanism.

The answer here therefore accords with how *P3* answered the question—albeit “different”⁶¹—before the Third Circuit. After “PJM calculated and posted the [auction input] (past action)” set forth in PJM’s market mechanism, PJM “was required to use it in the Auction (legal consequence).”⁶² So, too, was PJM required to follow the “legal consequence[s]” that followed at the market mechanism’s next steps—“calculat[ing] a clearing price *to be paid*” to cleared Capacity Resources,⁶³ using that amount to identify the “cost of payments . . . that . . . *shall be paid* by” load,⁶⁴ and basing those payments on “*the Final Zonal Capacity Price* for such Zone, as determined pursuant to Tariff, Attachment DD.”⁶⁵

⁵⁸ *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 578 (D.C. Cir. 1990).

⁵⁹ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 at P 15 (Danly, Comm’r, dissenting).

⁶⁰ *Id.*

⁶¹ *OPC*, 164 F.4th at 926.

⁶² *P3*, 96 F.4th at 400.

⁶³ Tariff, Attach. DD § 5.14(a).

⁶⁴ *Id.* § 5.4(a).

⁶⁵ RAA art. 7, sec. 7.2 (emphasis added).

The Commission thus got the bottom line exactly right when it held that the filed-rate doctrine barred the Complaint. Rather than targeting future applications, Complainants asked the Commission to derail the market mechanism after the Auction was already running along the pathway that the Tariff’s market mechanism marked out. Making that change would require reaching back into the past and would fall outside the authority Section 206 confers to alter rates “prospectively.”⁶⁶ And permitting that maneuver would destroy the “predictability” that the filed-rate doctrine seeks to protect.⁶⁷ As the Third Circuit observed, it would “make[] auction rules inherently unstable.”⁶⁸ The need for that predictability in electricity markets is *why* the filed-rate doctrine is “impenetrable and does not yield to equities,” recognizing that no matter the temptation to adjust rates retroactively, in the long run stability benefits all.⁶⁹ As then-Commissioner Danly explained in his dissent to the Commission’s now-vacated order approving changes to PJM’s rules, it is hard to “understand what possible use a forward capacity market could have if Auction rates are subject to change until” capacity is delivered; if “the price is not final” when the Auction runs, “there is no such thing as a *forward* capacity auction except as an illusory exercise.”⁷⁰

The opinion in *Affirmed Energy, LLC v. FERC*⁷¹ strongly supports this conclusion. That opinion, also concerning PJM’s Auction, approved PJM’s decision to exclude from future Auctions energy-efficiency resources that had cleared past Auctions. The court concluded that this decision was not “impermissibly retroactive” *precisely because* it “applied solely to future capacity

⁶⁶ *Old Dominion*, 892 F.3d at 1226.

⁶⁷ *Consol. Edison Co. of N.Y., Inc. v. FERC*, 347 F.3d 964, 969-70 (D.C. Cir. 2003).

⁶⁸ *P3*, 96 F.4th at 402.

⁶⁹ *Xcel Energy Servs. Inc. ex rel. Sw. Pub. Serv. Co. v. FERC*, 77 F.4th 1057, 1067 (D.C. Cir. 2023).

⁷⁰ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 at P 11 (Danly, Comm’r, dissenting).

⁷¹ 166 F.4th 1070 (D.C. Cir. 2026).

auctions.”⁷² The D.C. Circuit, like *P3*, recognized that a change to Auction rules violates the filed-rate doctrine when it is impermissibly retroactive under *Landgraf v. USI Film Products*,⁷³ including when it attaches “new legal consequences to events completed before their enactment” or impairs “vested rights acquired under existing laws.”⁷⁴ The court emphasized that “[l]aws that nullify past transactions are quintessentially retroactive”⁷⁵ and—critically here—recognized the key rule governing PJM’s Auction transactions: “Any provider who submits a bid below . . . the clearing price,” as established using “bids” and PJM’s “estimate of demand,” “*will receive that price* in exchange for its commitment to provide electricity.”⁷⁶ So as explained above, changing how “capacity auctions work,”⁷⁷ after they have already commenced, violates the filed-rate doctrine by nullifying past transactions—the parameters and bids that structure the market mechanism.

C. No Obstacle Prevents The Commission From Recognizing That The Filed-Rate Doctrine Bars The Relief Complainants Seek.

Complainants, for their part, from the start have ignored the integrated nature of PJM’s market mechanism. They have imagined that the filed rate is a *number*, which the Commission can simply rejigger as it does with stated rates. But as explained, the filed rate “is not the actual price produced but the set of rules that produces the price.”⁷⁸ And that “set of rules” includes the integrated market mechanism described above, which starts with the posting of Auction parameters and ends with payment by load. When the Tariff consists of procedures and a new Tariff is applied to, in substance, redo procedures that were already completed, all for the purpose of changing the

⁷² *Affirmed*, 166 F.4th at 1074.

⁷³ 511 U.S. 244, 269-70 (1994).

⁷⁴ *Id.* (internal quotation marks omitted); see *Affirmed*, 166 F.4th at 1080-81; accord *DIRECTV, Inc. v. FCC*, 110 F.3d 816, 825-26 (D.C. Cir. 1997) (applying *Landgraf* to filed rate issue in the FCC context).

⁷⁵ *Affirmed*, 166 F.4th at 1082 n.4.

⁷⁶ *Id.* at 1075 (emphasis added).

⁷⁷ *Id.*

⁷⁸ *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,055 at P 74.

outcome that the procedures will produce, the filed-rate doctrine stands as an “impenetrable shield.”⁷⁹ PJM’s integrated market mechanism exists precisely to induce reliance, and Complainants—with their hypothetical stated rates—have never grappled with what makes this mechanism distinctive.⁸⁰ Nor have Complainants acknowledged how their Complaint would demand that PJM use a different market mechanism—the one whose application the Third Circuit in *P3* found would violate the filed-rate doctrine—from the one set forth in PJM’s Tariff when the Auction commenced.

None of the flaws the D.C. Circuit found in *OPC* militate against denying the Complaint based on the filed-rate doctrine. First, the D.C. Circuit instructed the Commission to address the distinctive issues raised by “a subsequent use of FERC’s section 206 authority to modify the resulting auction.”⁸¹ The Commission can do that by considering the distinctive issues presented here and explaining why those issues do not change the Commission’s conclusion. Second, the D.C. Circuit warned against treating the word “retroactive” as a talisman.⁸² The Commission can do that by explaining how the specific features of PJM’s Tariff bring the filed-rate doctrine into play. Third, the D.C. Circuit emphasized that the Commission should not rely on the “economic effects” the Third Circuit “expected” to flow from its decision.⁸³ The Commission need not rely on those consequences to recognize that the Complaint’s whole enterprise—changing PJM’s market mechanism after it commenced—is at war with the filed-rate doctrine.

⁷⁹ *Okla. Gas*, 11 F.4th at 829-30 (quotation marks omitted).

⁸⁰ *Cf. Transwestern*, 897 F.2d at 578.

⁸¹ *OPC*, 164 F.4th at 926.

⁸² *Id.*

⁸³ *Id.* at 927.

II. The Commission Should Also Reject The Complaint Based On Its Remedial Discretion.

Even if the filed-rate doctrine did not bar the Complaint, bedrock principles governing the Commission’s remedial discretion would independently preclude granting the Complaint. Administratively altering the 2024/25 Auction and clawing back capacity revenues already paid would send exactly the wrong message to Capacity Resource owners and developers at a time when stability is critical to retaining existing units and encouraging new entry to meet national reliability, affordability, and economic development goals. Meanwhile, PJM has prospectively fixed the perceived problem that gave rise to this dispute in the first place. Although *P3* vacated the Commission’s acceptance of PJM’s Section 205 filing as applied to the 2024/25 Auction, it left PJM’s fix in place going forward.⁸⁴ The problem will not recur.

It is blackletter law that “[t]he Commission’s discretion is ‘at [its] zenith when the action relates primarily . . . to the fashioning of . . . remedies.’”⁸⁵ This discretion extends even to denying compensatory remedies when “considerations within [the Commission’s] ambit counsel against” doing so “based on its review of the relevant equitable factors and balancing of the competing interests at stake.”⁸⁶ In exercising that discretion, the Commission’s “usual policy and precedent”⁸⁷—as Complainants have acknowledged⁸⁸—is that it “generally does not order a

⁸⁴ See *P3*, 96 F.4th at 402.

⁸⁵ *W. Farmers Elec. Coop. v. Sw. Power Pool, Inc.*, 183 FERC ¶ 61,218 at P 26 (2023) (quoting *Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 159 (D.C. Cir. 1979)) (alterations in *W. Farmers*).

⁸⁶ *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237 at P 22 (2019); see also, e.g., *Consol. Edison Co. of N.Y., Inc. v. FERC*, 510 F.3d 333, 339 (D.C. Cir. 2007) (declining to “enforce some absolute requirement of action on the part of FERC” to order relief after granting a complaint).

⁸⁷ *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,107 at P 11 (2024) (“The Commission further erred, PJM Load Parties contend, by departing from its usual policy and precedent against rerunning auctions.”).

⁸⁸ See *PJM Load Parties v. PJM Interconnection, L.L.C.*, Docket No. EL24-104, Conditional Complaint and Request for Fast Track Processing And Shortened Response Time of PJM Load Parties at 10 (Apr. 22, 2024) (“Complaint”).

remedy that requires rerunning a market because market participants participate in the market with the expectation that the rules in place and the outcomes will not change after the results are set.”⁸⁹ As the Commission has explained, unsettling market results “creates two different types of risk: (1) capital risk for resources that made investments based on auction results, and (2) regulatory risk going forward (i.e., investors would be unlikely to want to invest capital in a market if the results were subject to change at a later date due to legal error).”⁹⁰

The Commission has repeatedly exercised its remedial discretion in line with this policy and refrained from undoing past market results.⁹¹ For instance, the Commission has declined to order PJM to rerun past capacity auctions because “both generators and load make decisions on investment based on the price outcome of the auction that cannot be reversed.”⁹² “[G]enerators that fail to clear auctions will not make investments in new or expanded plants, while generators that do clear will make such investments, which cannot be undone,” and load may develop peak shaving programs or enter interruptible contracts.⁹³ The Commission has likewise rejected rerunning past MISO markets given that “[s]uch a remedy would be extremely complex, subject to controversy and further litigation, and cause significant disruptions and burdens.”⁹⁴ And the Commission has similarly declined to order relief that would require re-clearing the ISO-NE-administered market in light of the “financial risks to all Market Participants” that re-clearing would pose.⁹⁵

⁸⁹ *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237 at P 10.

⁹⁰ *Id.*

⁹¹ *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,107 at P 11 n.30 (collecting cases).

⁹² *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237 at P 25.

⁹³ *Id.*

⁹⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 162 FERC ¶ 61,173 at P 17 (2018).

⁹⁵ *ISO New England Inc.*, 191 FERC ¶ 61,029 at P 49 (2025).

These principles apply here as well. The Complainants insist they are not asking the Commission to re-run the market, but their demand for the Commission to administratively revise the 2024/25 Auction results—using the results that a different set of Auction parameters would have yielded—seeks, in substance, exactly that untenable remedy.⁹⁶ The Commission would force PJM to claw back capacity revenues that not only were awarded years ago, and that investors have acted in reliance on, but that have been fully paid in a Delivery Year that is long over. Administratively changing a market outcome yields the same effect that the “Commission generally eschews” as re-running one does—“undermin[ing] the markets themselves by creating uncertainty[.]”⁹⁷

The Commission’s goal of providing market stability is now more important than ever. Load growth has skyrocketed and is only projected to continue—and even to accelerate—as states and industry pursue new power-intensive initiatives to meet national priorities and economic development goals, including winning the “AI race” and reindustrialization.⁹⁸ Supply, however, is struggling to keep up. For the first time ever, in the 2027/28 Auction, PJM failed to procure sufficient supply to meet its target reserve margin.⁹⁹ The National Energy Dominance Council and every single PJM governor responded by urging the RTO to “provide revenue certainty to new generation” by holding an unprecedented emergency reliability backstop auction,¹⁰⁰ and PJM is currently working on developing a proposal. There could not be a worse time for the Commission

⁹⁶ See Complaint at 10.

⁹⁷ *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237 at P 10.

⁹⁸ E.g., Ian Goldsmith & Zach Byrum, *Powering the US Data Center Boom: Why Forecasting Can Be So Tricky*, World Res. Inst. (Sept. 17, 2025), <https://www.wri.org/insights/us-data-centers-electricity-demand>.

⁹⁹ *PJM Interconnection, L.L.C., 2027-2028 Base Residual Auction Report* at 3, 5 (Dec. 17, 2025) (“2027/28 BRA Results”), <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2027-2028/2027-2028-bra-report.pdf>.

¹⁰⁰ U.S. Dep’t of Energy et al., *Statement of Principles Regarding PJM* (Jan. 15, 2026) (capitalization adjusted), <https://www.energy.gov/documents/statement-principles-regarding-pjm>.

to signal to investors that their revenues are subject to claw back not only years after an Auction, but long after the end of a Delivery Year. Indeed, it is hard to imagine any auction succeeding if investors do not have confidence that the rules will stick. As then-Commissioner Danly explained, if the Commission can “make[] up a new rule” after the Auction has already commenced, consumers may save some money in the short run, “but no one [will] ever play[] blackjack at the Federal Energy Regulatory Casino again.”¹⁰¹

Even if the Commission were in the business of rejiggering auction results based on hindsight reevaluation of what those results should have been, moreover, it would at best be contestable whether hindsight supports Complainants’ position. Whatever one’s view of the narrow question of the optimal parameters for the 2024/25 Auction, the resulting price signal was not clearly unreasonable. New entry was needed then and is still needed today. Indeed, since the 2024/25 Auction, PJM has cleared all or virtually all supply offered in DPL-South:

Auction	Offered	Cleared	Uncleared
	(MW UCAP)		
2025/26 ¹⁰²	960.4	956.9	3.5
2026/27 ¹⁰³	998.0	998.0	0
2027/28 ¹⁰⁴	959.6	959.6	0

The Auction prices confirm the same. The 2024/25 Auction cleared at \$426.17/MW-day for the DPL-South Locational Deliverability Area.¹⁰⁵ Both the 2026/27 and 2027/28 Auctions cleared

¹⁰¹ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 at P 8 (Danly, Comm’r, dissenting).
¹⁰² *PJM Interconnection, L.L.C., 2025-2026 Base Residual Auction Report* at 6 (July 30, 2024), <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.pdf>.
¹⁰³ *PJM Interconnection, L.L.C., 2026-2027 Base Residual Auction Report* at 6 (July 22, 2025), <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2026-2027/2026-2027-bra-report.pdf>.
¹⁰⁴ 2027/28 BRA Results at 17.
¹⁰⁵ *PJM Interconnection, L.L.C., 2024/2025 RPM Base Residual Auction Results* at 6 (June 18, 2024), <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-base-residual-auction-report.pdf>.

RTO-wide at the administrative price cap of \$329.17/MW-day and \$333.44/MW-day, respectively.¹⁰⁶ PJM estimated that, without the price caps, the 2026/27 and 2027/28 Auctions would have cleared at \$388.57/MW-day and \$529.80/MW-day, respectively.¹⁰⁷ Thus, even beyond avoiding detrimental market uncertainty, the Commission should decline to impose a remedy here because the 2024/25 Auction sent a reasonable signal for new entry in DPL-South. And at minimum, given the obvious need for new entry, Complainants cannot show that the market signal was so clearly unreasonable as to displace the Commission's policy against re-running auctions.

¹⁰⁶ 2027/28 BRA Results at 3.

¹⁰⁷ *Id.* at 16.

CONCLUSION

For the foregoing reasons, the Commission should continue to deny the Complaint.

March 11, 2026

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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 these proceedings.

Dated this 11th day of March 2026.

/s/ Zachary C. Schauf
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