

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

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

**Docket No. ER24-98-000**

**MOTION FOR LEAVE TO ANSWER, AND ANSWER  
OF THE PJM POWER PROVIDERS GROUP**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,<sup>1</sup> The PJM Power Providers Group (“P3”)<sup>2</sup> respectfully submits this Motion for Leave to Answer and Answer in response to the various November 9, 2023, comments and protests filed in response to the PJM Interconnection, L.L.C.’s (“PJM”) October 13, 2023 filing,<sup>3</sup> in the above captioned proceeding.

**I. MOTION FOR LEAVE TO ANSWER**

Pursuant to 18 C.F.R. § 385.212 and 18 C.F.R. § 385.213, P3 respectfully submits this Motion for Leave to Answer and Answer to the various comments and protests filed in the above

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<sup>1</sup> 18 C.F.R. §§ 385.212; 385.213 (2022).

<sup>2</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>3</sup> *PJM Interconnection, L.L.C.*, Docket No. ER24-98-000, Capacity Market Reforms to Accommodate the Energy Transition While Maintaining Resource Adequacy, filed October 13, 2023 (“PJM Capacity Market Reforms” or the “filing”).

captioned proceeding.<sup>4</sup> P3 respectfully submits this Answer<sup>5</sup> to respond to various statements made by several comments and protests.<sup>6</sup> P3 respectfully requests that the Commission accept this Motion for Leave to Answer and Answer in order to help contribute to a fuller record and assist the Commission in its decision-making process.

## II. ANSWER

Since 2021 when the Commission approved a dormant complaint, the Commission has heard a consistent refrain from capacity market sellers that a capacity market in which they are denied the ability to reflect their view of the going forward costs and risks of the assets they own will not be effective in a capacity construct that anchors an investable market. The Commission should approve the incremental MSOC reforms offered by PJM as a good first step, but much more needs to be done to address over-mitigation that prevents market participants from exercising their business judgment to reflect the costs and risks of their resources in their capacity offers. Without these critical reforms, the region will face increasing retirements from the market and a retreat of merchant capital to more inviting markets.

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<sup>4</sup> Although the Commission's procedural rules do not provide for answers to comments as a matter of right, the Commission has allowed answers where, as here, the answer provides further explanation or otherwise helps ensure a full and complete record. *See, e.g.*, Empire Pipeline, Inc., 164 FERC ¶ 61,076 P 9 (2018), PJM Interconnection, L.L.C., 104 FERC ¶ 61,154, at P 14 (2003), on reh'g, 109 FERC ¶ 61,236 (2004); Williams Energy Mktg. & Trading Co. v. Southern Co. Servs., Inc., 104 FERC ¶61,141, at P 10 (2003); Ameren Servs. Co., 100 FERC ¶ 61,135, at P 15 (2002), on reh'g, 103 FERC ¶ 61,178 (2003).

<sup>5</sup> 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.

<sup>6</sup> P3 notes the Commission's deficiency notice issued in this proceeding on November 16, 2023. The comments herein respond to the comments offered to date by other parties regarding the Capacity Market Seller Offer Cap. P3 anticipates offering additional comments to PJM's response to the November 16, 2023, notice at the appropriate time.

Recent history demonstrates the market harm we have experienced, and should continue to expect, without these critical reforms. In December 2019, there was nearly 35 GW of new natural gas capacity in the PJM queue.<sup>7</sup> In December 2022, that number fell to 5.5 GW the majority of which is likely not relying on the market for an investment signal.<sup>8</sup> Clearing prices in BRAs, have fallen dramatically between 2019 and 2022.<sup>9</sup> Over the same period, the pace of retirements has increased and PJM for the first time in its history predicted resource adequacy challenges within 5 years.<sup>10</sup>

The market seller offer cap is not the sole reason for the current challenges, but it certainly has played a significant role in shaping the troubling view of a resource constrained future. As Vistra explains, “PJM’s current MSOC fails to allow sellers to accurately reflect the full extent of their risks and costs associated with capacity market participation, thereby resulting in over mitigation of capacity market resources and, in some instances, making it more rational for resources to forego a capacity obligation and cease operation.”<sup>11</sup> Calpine expressed a similar view, stating “If suppliers are unable to price their risks into their offers—because the offer cap is too low or because they are forced through opaque administrative processes with the IMM and PJM to submit too-low offers—the math simply will not work. Such over-mitigation will cause

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<sup>7</sup> <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2019/2019-pennsylvania-state-infrastructure-report.ashx> at 9.

<sup>8</sup> <https://www.pjm.com/-/media/library/reports-notices/state-specific-reports/2022/2022-pennsylvania-state-infrastructure-report.ashx> at 9.

<sup>9</sup> <https://pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-base-residual-auction-report.ashx> at 6.

<sup>10</sup> <https://www.pjm.com/-/media/library/reports-notices/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx>.

<sup>11</sup> *PJM Interconnection, L.L.C.*, Comments, Limited Protest, and Motion to Intervene of Vistra Corp. and Dynegy Marketing and Trade, LLC, Docket No. ER24-98-000, November 9, 2023, at pp. 6-7.

needed resources to exit the market prematurely because they cannot adequately hedge their risks and will cause capacity clearing prices to send incorrect signals.”<sup>12</sup> Even policymakers from Pennsylvania and Ohio recognize that, “suppliers are constrained in their ability to make offers into the market because of over mitigation by PJM and the IMM.”<sup>13</sup>

Developers of renewable energy projects also expressed similar frustration with the current mitigation regime. Cypress Creek Renewables, Leeward Renewable Energy, MN8 Energy, and VC Renewables offered, “the current market rules have unjustly required certain market sellers to assume capacity commitments that are uneconomic.”<sup>14</sup> Pine Gate Renewable wrote, “the October 13 Filings would make much needed improvements to the MSOC that would allow all resources to appropriately include Capacity Performance penalty risk in their offers.”<sup>15</sup>

Meanwhile, parties such as the Sierra Club/NRDC and the IMM continue to pound the table for more mitigation in the name of reducing asset owner “discretion” which apparently is something that should not be allowed in a competitive market. PJM’s proposal is criticized as “radical” by the IMM, but, in fact, PJM’s proposal is rather modest in that it continues most of the current process with incremental changes to discreet aspects of that process. These non-asset

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<sup>12</sup> *PJM Capacity Market Forum*, Post-Forum Comments of Calpine Corporation, Docket No. AD23-7-000, Aug. 14, 2023, at p 2.

<sup>13</sup> *PJM Interconnection, L.L.C.*, Republican Members of the Pennsylvania Senate Environmental Resources and Energy Committee, Docket Nos. ER24-98-000, ER24-99-000, November 9, 2023, at p. 3, and *PJM Interconnection, L.L.C.*, Comments of the Energy and Public Utilities Committees of Ohio, Docket Nos. ER24-98-000, ER24-99-000, November 9, 2023, at p. 2.

<sup>14</sup> *PJM Interconnection, L.L.C.*, Comments in Support of Cypress Creek Renewables, LLC, Leeward Renewable Energy, LLC, MN8 Energy LLC and VC Renewables LLC, Docket no. ER24-98-000, November 9, 2023, at p. 7.

<sup>15</sup> *PJM Interconnection, L.L.C.*, Comments of Pine Gate Renewables, LLC on PJM Critical Issue Fast Path Filings, Docket Nos. ER24-98-000 and ER24-99-000, November 9, 2023, at p. 5.

owning parties seek an even more administrative process that further constricts the ability of asset owners to have any independent judgment related to the pricing of their capacity.

The Commission should take notice that those in this proceeding who are protesting PJM's modest changes to the capacity market seller offer cap do not own capacity, do not invest in capacity and seem to assume that market power will be exercised unless every PJM capacity market is mitigated to an overly simplistic measure of costs that assumes all costs and future outcomes are known. Meanwhile, there is not a single owner of capacity that commented in this docket that believes that the current MSOC provides asset owners the ability to determine their capacity market offers fairly and independently.

The Commission has a choice before it in this proceeding. The Commission can continue to pretend like the concerns of capacity market sellers are not real and that market power will be asserted if offers are made that are not effectively set by the PJM or the IMM. The Commission can continue to mitigate every capacity market offer and require all generators to endure an opaque process in which business-stifling conversations about costs and risks happen before every BRA. If the Commission continues down this path it is difficult to imagine a world in which PJM will be a market in which investors show up with capital and current asset owners are motivated to invest in facilities. It almost goes without saying that reliability will suffer under such an approach and consumers will be paying more for increasingly scarce capacity.

Alternatively, the Commission can accept the incremental steps offered by PJM in this filing and begin the process of finding an effective yet less intrusive means of policing market power in PJM. P3 and its members desire a market that is free from the exercise of market power and is effectively policed by a market monitor. However, the current MSOC goes far beyond what is

necessary to do that. The Commission needs to put PJM on a path of finding that balance and not double down on the current approach which is clearly contributing to a declining reliability trend in PJM. The Commission should accept PJM's first step and set the course for steps two and three.

**A. PJM Should be Allowed More Flexibility to Review Offers.**

Several parties suggested that PJM's proposal to provide flexibility to PJM somehow reduces the role of the IMM.<sup>16</sup> P3 does not see it that way. Under the PJM proposal, any unit owner seeking a unit specific offer cap will still need to submit its going forward costs and risks to the IMM. Nothing will change in the iterative process between the IMM and capacity seller and both parties will be inherently motivated to come to agreement. PJM's changes are only implicated in those ideally rare instances in which the IMM and the capacity seller cannot reach an agreement.

William Berg, on behalf of Constellation, offers a compelling explanation of why it is critically important for PJM to have a choice other than accepting the entire offer of PJM or the IMM. Mr. Berg explains that the current "all or nothing" approach denies PJM the ability to be an effective second option in the event the IMM and asset owner cannot agree. As he describes, the "all or nothing" could unnecessarily lead to higher costs to consumers which would be an unfortunate result to this very fixable issue.<sup>17</sup>

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<sup>16</sup>See e.g., *PJM Interconnection, L.L.C.*, Protest of the Organization of PJM States, Docket No. ER24-98-000, November 9, 2023, at p. 2. See also, *PJM Interconnection, L.L.C.*, Comments of the Pennsylvania Public Utility Commission, Docket No. ER24-98-000, November 9, 2023, at p. 2. See also, *PJM Interconnection, L.L.C.*, Protest of the Independent Market Monitor for PJM, Docket No. ER24-98-000, November 9, 2023, at pp. 26 -29.

<sup>17</sup>*PJM Interconnection, L.L.C.*, Comments and Limited Protest of Constellation Energy Generation LLC, Docket Nos. ER24-98-000 and ER24-99-000, November 9, 2023, Affidavit of William B. Berg at pp 6-7.

Finally, and importantly, while several parties cited the recent DC Circuit case as a justification for preserving the status quo, no party mentioned that the DC Circuit made clear that, “... the current Tariff and September 2021 Order make quite clear that suppliers do not play second fiddle when their proposed offers deviate from that of the Independent Market Monitor.”<sup>18</sup> The Court also found that, “the Independent Market Monitor’s proposal does not automatically displace an offer submitted by a supplier”<sup>19</sup> and “PJM plays the primary role of determining which offer makes it to market.”<sup>20</sup> PJM’s change is consistent with the court’s direction in that regard and should be approved.

**B. The Commission Found a MSOC based on Net CONE \* B to be just and reasonable in 2016.**

Several parties point to the recent decision of the DC Circuit Court to support the theory that no or minimal changes can be made to the current MSOC. P3 disagrees. At no point does the court say that the current MSOC is the only MSOC that the Commission can approve as just and reasonable. In fact, courts have consistently held that there is a zone of just and reasonableness with multiple possible solutions.<sup>21</sup> The court found that the current MSOC falls within that zone but never said that it was the exclusive solution in that zone.

Importantly, a mere seven years ago the Commission found, and appellate courts endorsed, a MSOC based on Net CONE \* B. Multiple parties argued that such an offer cap would allow

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<sup>18</sup> *Vistra Corp. v. FERC*, (2023), <https://www.ferc.gov/media/vistra-corp-v-ferc> at 32.

<sup>19</sup> *Id.* at 30.

<sup>20</sup> *Id.*

<sup>21</sup> “FERC is not required to choose the best solution, only a reasonable one.” *Petal Gas Storage, LLC v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007).

market sellers to exercise market power by permitting sellers to raise their offers to prices exceeding their marginal costs. The Commission did not agree, and the court backed them up.<sup>22</sup> As the Commission stated at the time, “Mitigation does not, and should not, protect consumers from actual capacity cost increases that are attributable to necessary investments that allow a capacity resource to participate in the capacity market, including relevant opportunity costs faced by said resource, or risks associated with that resource’s participation.”<sup>23</sup>

In 2015, P3 supported the Net CONE \* B as an important consideration for the assumption of additional capacity performance risk. Such a market offer cap provided asset owners the flexibility to develop offers based on assessments of the risk of non-performance of their units. It also was not a structure in which PJM and the IMM reviewed the going forward costs of every unit owner and CPQR was not even part of the conversation. It is also important to note that the BRA clearing price was always below Net CONE \* B meaning resources owners were consistently offering below their cap.

P3 recognizes that PJM rules can and should evolve over time, however, several parties suggest that PJM is inextricably locked into a market seller offer cap that mitigates offers to net ACR plus CPQR as determined by the IMM. While the Commission in 2021 and the Court in 2023 endorsed such a structure, it by no means locked that structure into stone going forward. Just like the 2016 structure, based on Net CONE \* B was upended by FERC less than 5 years after it went into effect, the Commission should not throw its hands in the air and assume that the courts have mandated the current approach going forward. They have not.

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<sup>22</sup> [https://www.cadc.uscourts.gov/internet/opinions.nsf/D83ABA956D38A48B85258145004EA347/\\$file/16-1234-1680319.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/D83ABA956D38A48B85258145004EA347/$file/16-1234-1680319.pdf). “The Commission reasonably concluded that resource owners can consider all of their costs and risks in formulating an offer.” Page 20.

<sup>23</sup> 155 FERC ¶ 61,157 (May 10, 2016) at P 183.



### **C. Market Power Can be Addressed Through Less Intrusive Means.**

P3 appreciates the recognition of the PJM Industrial Customer Coalition (“PJM ICC”) that “a further examination of more foundational changes to the MSOC”<sup>24</sup> may be in order. P3 agrees. P3 fully supports effective policing of market power in PJM; however, P3 also believes that PJM is an overly mitigated market which is creating a disincentive to investment and hastening the exit of resources that are still needed to preserve reliability.<sup>25</sup> PJM can and must do better and both consumers and suppliers appear open to that conversation.

PJM’s filing is an incremental first step that should be approved. However, more must be done and P3 would welcome further direction from the Commission or a technical conference before the Commission to discuss mitigation in PJM which could include a discussion of the continued viability of the three pivotal supplier test. As the grid evolves to include smaller units with more diverse owners, inconsistent must offer obligations and the likelihood of more constrained zones, better solutions and approaches are needed. Further conversations that delve into this issue are steps two and three. However, given the time it may take to complete steps two and three, it is important that step one (the proposed MSOC reforms in PJM’s filing) be approved.

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<sup>24</sup> *PJM Interconnection, L.L.C.*, Protest of the PJM Industrial Customer Coalition, Docket No. ER24-98-000, November 9, 2023, at p. 8.

<sup>25</sup> The Commission should note that the current MSOC is discouraging resource owners from even participating in capacity auctions for fear of clearing at unsustainable levels. Such a disincentive denies the market the opportunity to even purchase that capacity and myopically could lead to reliability challenges as available MWs are leaving the market because they are not allowed to offer at economic levels. See Testimony of J. Arnie Quinn before the Ohio Senate Energy and Public Utilities Committee, <https://ohiochannel.org/video/ohio-senate-energy-and-public-utilities-committee-3-22-2022> at 17:03 - 21:00.

Respectfully submitted,

On behalf of The PJM Power Providers Group

/s/ Glen Thomas

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November 27, 2023

**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 27th day of November, 2023.

On behalf of The PJM Power Providers Group

/s/ Diane Slifer

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