UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	**)**	**Docket No. ER25-785-000**

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

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"),[1] the Electric Power Supply Association ("EPSA")[2] and The PJM Power Providers Group ("P3")[3] respectfully submit this joint protest to the December 20, 2024, filing by PJM Interconnection, L.L.C. ("PJM")[4] proposing revisions to the must-offer requirements and Market Seller Offer Cap ("MSOC") in PJM's Reliability Pricing Model ("RPM") rules.[5] As recently as one month before

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[1] 18 C.F.R. § 385.211 (2024).

[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. EPSA has separately moved to intervene in this proceeding. *See* (doc-less) Motion to Intervene of Electric Power Supply Association, Docket No. ER25-785-000 (filed Dec. 30, 2024).

[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 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. This pleading represents the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. P3 has separately moved to intervene in this proceeding. *See* (doc-less) Motion to Intervene of PJM Power Providers Group, Docket No. ER25-785-000 (filed Dec. 30, 2024).

[4] Capitalized terms used and not otherwise defined herein have the meanings assigned to them in the PJM Open Access Transmission Tariff (the "PJM Tariff") or if not defined therein, in the Reliability Assurance Agreement among Load Serving Entities in the PJM Region (the "RAA").

[5] Extending the Capacity Must-Offer Requirement to All Generation Capacity Resources, Docket No. ER25-785-000 (filed Dec. 20, 2024) (the "December 20 Filing").

submitting the December 20 Filing, PJM informed stakeholders that there was not adequate time for it to properly consider and implement changes to its must-offer requirements in time for the Base Residual Auction for the 2026/2027 Delivery Year (the "2026/2027 BRA") that is scheduled to take place in July 2025[6] PJM nonetheless then turned around and threw together the December 20 Filing, a flawed package that proves PJM's earlier point. While EPSA and P3 could not agree more that the MSOC rules should be reformed to "better reflect the full cost of . . . resources receiving a capacity obligation,"[7] the December 20 Filing does no such thing. The Commission should reject the December 20 Filing without prejudice to PJM revising and refiling a better developed and more meaningful proposal to be implemented after the 2026/2027 BRA.

I. BACKGROUND

A. PJM's Market Mitigation Rules and the MSOC

Under PJM's current market power mitigation rules, all Generation Capacity Resources are subject to a must-offer obligation,[8] except for Intermittent Resources, Capacity Storage Resources, and Hybrid Resources, which are not "required to offer as . . . Capacity Performance Resource[s]," but which may "be[] offered . . . ."[9] In

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6 *See* Adam Keech, *Consultation With Members Regarding Future 205 Filing on Capacity Market*, at 19 (Members Committee, Nov. 21, 2024) (the "PJM November 21 Presentation"), https://www.pjm.com/-/media/DotCom/committees-groups/committees/mc/2024/20241121/20241121-item-03a---1---member-consultation-regarding-future-205-filing-on-capacity-market---presentation.pdf.

7 December 20 Filing, Transmittal Letter at 2.

8 *See* PJM Tariff, Attachment DD, §§ 6.6(a), 6.6A(a).

9 *Id.*, § 6.6A(c).

addition, each Existing Generation Capacity Resource is subject to the MSOC,[10] which is equal to "the Avoidable Cost Rate [(the "ACR")] for such resource, less the Projected PJM Market Revenues for such resource, stated in dollars per MW/day of unforced capacity."[11] A Capacity Market Seller that wishes to submit an offer price of more than $0/MW-day is required to submit a request for a unit-specific MSOC based on its ACR or to use the applicable default ACR for the resource.[12] The ACR for a resource is, in turn, calculated based on a formula set forth in Section 6.8 of Attachment DD to the PJM Tariff, which includes, among other things, a Capacity Performance Quantifiable Risk ("CPQR") component that:

> consists of the quantifiable and reasonably-supported costs of mitigating the risks of non-performance associated with submission of a Capacity Performance Resource offer . . . , such as insurance expenses associated with resource non-performance risks. CPQR shall be considered reasonably supported if it is based on actuarial practices generally used by the industry to model or value risk and if it is based on actuarial practices used by the Capacity Market Seller to model or value risk in other aspects of the Capacity Market Seller's business. Such reasonable support shall also include an officer certification that the modeling and valuation of the CPQR was developed in accord with such practices. Provision of such reasonable support shall be sufficient to establish the CPQR. A Capacity Market Seller may use other methods or forms of support for its proposed CPQR that shows the CPQR is limited to risks the seller faces from committing a Capacity Resource hereunder, that quantifies the costs of mitigating such risks, and that includes supporting documentation (which may include an officer certification) for the identification of such risks and quantification of such costs.

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10 *See* December 20 Filing, Transmittal Letter at 31-32 (explaining that all Existing Generation Capacity Resources are subject to the MSOC given that "all Capacity Market Sellers fail the three pivotal supplier test because any supplier added to the two largest suppliers in the PJM footprint would be jointly pivotal given the current level of supplier concentration").

11 PJM Tariff, Attachment DD, § 6.4(a).

12 *See id.*

> Such showing shall establish the proposed CPQR upon acceptance by the Office of the Interconnection.[13]

B. PJM's Prior Filing to Modify the MSOC

On October 13, 2023, PJM made a filing under Section 205 of the Federal Power Act (the "FPA")[14] proposing revisions to various RPM rules, including the MSOC rules.[15] In the ER24-98 Filing, PJM noted the Commission's past recognition that a seller should be able to "include costs and risk assessments that are quantifiable, reasonably supported, and attributable to a seller's capacity obligation under Capacity Performance" in its offers.[16] It also pointed to the Commission's prior characterization of the CPQR as being "intended to explicitly allow suppliers to include in their offers risks that can be quantified and that are not already reflected in the [ACR] formula."[17] At the same time, PJM acknowledged that "the lack of clarity on CPQR in the Tariff has led to this issue becoming unduly contentious in the unit-specific review process and ha[s] limited the ability of Capacity Market Sellers to reflect CPQR risk in their offers . . . ."[18] PJM explained that the "broad language" in the CPQR definition "leaves room for differences of opinion regarding what actuarial practices are generally used by the industry to model

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13 PJM Tariff, Attachment DD, § 6.8(a).

14 16 U.S.C. § 824(d) (2018).

15 Proposed Enhancements to PJM's Capacity Market Rules - Market Seller Offer Cap, Performance Payment Eligibility, and Forward Energy and Ancillary Service Revenues, Docket No. ER24-98-000 (filed Oct. 13, 2023) (the "ER24-98 Filing").

16 *Id.*, Transmittal Letter at 8 (quoting *Independent Mkt. Monitor for PJM v. PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,121 at P 16 (2022), *aff'd sub nom. Vistra Corp. v. FERC*, 80 F.4th 302 (D.C. Cir. 2023)).

17 *Id.* at 7-8 (alteration in original) (quoting *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 353 (the "Capacity Performance Order"), *on reh'g*, 152 FERC ¶ 61,064 (2015), *on reh'g & compliance*, 155 FERC ¶ 61,157 (2016), *aff'd sub nom. Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656 (D.C. Cir. 2017)).

18 *Id.* at 9.

or value risk or what other methodology may be appropriate," and that "[t]his ambiguity has, in certain cases, resulted in unit-specific CPQR values not being accepted given the differences of opinion."[19] To address this problem, PJM proposed a standardized methodology for calculating CPQR that would give a Capacity Market Seller "another option of requesting a CPQR value that could be included in [its] Market Seller Offer Cap."[20]

The ER24-98 Filing also explained that "resources with high net [Energy and Ancillary Service ("EAS")] offsets can have a net ACR value that may be lower than the CPQR component alone, or even negative,"[21] and that, under such circumstances, Capacity Market Sellers would be "forced to offer at $0.00/MW-day, requiring them to clear in the capacity market regardless of the Capacity Market Seller's perceived risk if they are subject to the must offer requirement."[22] PJM further stated that:

> This phenomenon has occurred for all types of units, ranging from thermal to solar and wind resources that have relatively low avoidable costs of maintaining the unit as a Capacity Resource that are mostly or entirely offset by high expected EAS revenues. In these cases, the high EAS offsets often cancel out the CPQR component and result in a net ACR that does not adequately reflect the cost of risks from non-performance charges. When this occurs, a resource would be more profitable without a capacity obligation rather than potentially clearing the capacity market at a level that is confiscatory and less than the cost of risk for being a committed Capacity Resource.[23]

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19 *Id.* at 11.

20 *Id.* at 17.

21 *Id.* at 19.

22 *Id.* at 20.

23 *Id.*

As a remedy, PJM proposed tariff revisions to permit the MSOC to reflect a "standalone" unit-specific CPQR component, where "resources that would continue to participate in the EAS markets even if they do not receive a capacity commitment" would be permitted to use a MSOC based on their "incremental costs that would be avoided only in the absence of a capacity obligation, such as CPQR, without an offsetting such costs with the resource's expected net EAS revenues."[24]

On February 6, 2024, the Commission rejected PJM's proposed revisions in the ER24-98 Filing but provided guidance on certain issues "to assist PJM in developing a new proposal, should it wish to do so."[25] Addressing the standalone unit-specific CPQR component, the Commission agreed that "as a general matter, a competitive offer in the capacity market may reasonably reflect only incremental costs that are avoidable if the resource does not receive a capacity commitment," but found PJM had "not sufficiently explained in the tariff or transmittal how it will distinguish a resource's incremental costs that are (or would be) incurred as a result of receiving a capacity commitment from those costs that are not."[26] Providing a number of examples, the Commission also noted that there are a variety of costs that could be considered incremental costs that would be avoided without a capacity obligation but that "PJM does not include in its pleadings or proposed tariff provisions a defining principle to identify and differentiate costs incurred only in the absence of a capacity obligation compared to costs incurred in whole or in part

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24 *Id.* at 22.

25 *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,097 at P 35 (2024) (the "ER24-98 Order"). *See also id.* at P 1.

26 *Id.* at P 35 (footnote omitted).

for some other purpose, such as to enhance EAS revenues."[27] Similarly, although the Commission acknowledged that "it may be just and reasonable to have a standardized default methodology to calculate CPQR because standardizing this calculation has the potential to increase transparency for all parties and decrease administrative burdens,"[28] the ER24-98 Order found that PJM had not provided "sufficient transparency" for interested stakeholders and the Commission to "know how PJM would calculate CPQR under the standard methodology, or what the inputs might be."[29]

C. The December 20 Filing

The December 20 Filing proposes to extend the must-offer requirement to all Existing Generation Capacity Resources, and "to sunset the categorical exemption from the capacity must-offer requirement applicable to Intermittent Resources, Capacity Storage Resources, and Hybrid Resources beginning with the [2026/2027 BRA]."[30] PJM also proposes to modify its MSOC rules so that Sell Offers may "better reflect the full cost of such resources receiving a capacity obligation."[31] In particular, recognizing that "Capacity Market Sellers must be able to submit Sell Offers that reflect the cost associated with potential performance risk," PJM proposes to allow Capacity Market Sellers to submit offers that are "based on the greater of the resource's net ACR as calculated in

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27 *Id.* at P 37.

28 *Id.* at P 66.

29 *Id.* at P 67 (footnote omitted).

30 December 20 Filing, Transmittal Letter at 2. *See also id.* at 28 (explaining that "under this proposal all Existing Generation Capacity Resources that are offered into the RPM Auction would be required to offer the full annual Accredited UCAP of the resource" and that "Intermittent Resources cannot satisfy the must-offer requirement simply by being offered as a Summer-Period Capacity Resource or Winter-Period Capacity Resource").

31 *Id.* at 2.

accordance with the Tariff or its 'standalone' CPQR that is submitted for review by the Independent Market Monitor for PJM ("Market Monitor") and ultimately approved by PJM after considering input from the Market Monitor."[32] The December 20 Filing also proposes to permit segmented offer caps to "better reflect the incremental costs of risk associated with higher committed levels of capacity."[33] At the same time, the December 20 Filing states that "PJM is *not* proposing any changes to the existing Tariff rules pertaining to how CPQR is calculated or the existing review and approval process for CPQR."[34]

II. PROTEST

A. PJM's Proposed Revisions Were Not Properly Considered in a Full and Robust Stakeholder Process

The December 20 Filing represents an abrupt change of position for PJM, which had previously informed stakeholders on two occasions in November 2024 that it would ***not*** be seeking such a change for the 2026/2027 BRA. On November 7, 2024, PJM stated that applying the must-offer obligation to intermittent resources is not "as simple as it has been portrayed," in part because of "known deficiencies" in the MSOC.[35] Later that month, on November 21, 2024, PJM again told stakeholders it was not going to propose changes to the must-offer requirements in light of the need to make corresponding changes to the MSOC.[36] Nonetheless, PJM then turned around and, less

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32 *Id.* at 9.

33 *Id.* at 10.

34 *Id.* at 42 (emphasis in original).

35 Adam Keech, *Consultation With Members Regarding Future 205 Filing on Capacity Market*, at 6 (Special Markets and Reliability Committee, Nov. 7, 2024) (the "PJM November 7 Presentation"), https://www.pjm.com/-/media/DotCom/committees-groups/committees/mrc/2024/20241107-special/item-02---capacity-market-adjustments---presentation.pdf.

36 *See* PJM November 21 Presentation at 19.

than a month later and with only minimal consultation with stakeholders, filed the December 20 Filing. The complexity that informed PJM's earlier position did not fall away over the Thanksgiving holiday, and, as discussed below in Section II.B, it is unsurprising that PJM's hurried consideration, without the benefit of meaningful stakeholder input, has not yielded a solution to the "known deficiencies" in the MSOC.[37]

PJM claims to have satisfied the requirements of Section 9.2 of the PJM Tariff and Section 7.5.1(ii) of the Consolidated Transmission Owners Agreement because it "consulted" with stakeholders and Transmission Owners on December 13, 2024.[38] PJM further claims that the December 20 Filing "includes feedback and suggestions from stakeholders during that consultation that PJM found meritorious and which were achievable within the scope and time constraints associated with this filing and the upcoming Base Residual Auction scheduled pre-auction activities."[39] Given the time constraints, which resulted entirely from PJM's last-minute change of heart, EPSA and P3 find it difficult to believe that any substantive changes could have been made to incorporate stakeholder input in the seven days between the "consultation" and filing. That hardly comports with any reasonable understanding of what it means for one person to "consult" with another.[40] Even if going through the motions of soliciting input on matters

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37 PJM November 7 Presentation at 6.

38 *See* December 20 Filing, Transmittal Letter at 53.

39 *Id.*

40 *See* Consult, *Webster's Dictionary* ("to ask the advice or opinion of"), https://www.merriam-webster.com/dictionary/consult. *See also California Wilderness Coalition v. DOE*, 631 F.3d 1072, 1087 (9th Cir. 2011) ("An ordinary meaning of the word consult is to 'seek information or advice from (someone with expertise in a particular area)' or to 'have discussions or confer with (someone), typically *before* undertaking a course of action.'" (quoting The New Oxford Dictionary 369 (2001) (emphasis in original)); *Campanale & Sons, Inc. v. Evans*, 311 F.3d 109, 117 (1st Cir. 2002) ("'[C]onsultation' means what consultation ordinarily means. *See* Black's Law Dictionary

which PJM has left itself no time to act can otherwise be said to be sufficient to satisfy the tariff requirements, it is plainly inadequate for a proposal that will affect an enormous number of existing resources, as well as "*over 97%* of PJM's interconnection queue."[41] The Commission has consistently stressed that "a robust stakeholder process . . . is important to the development of proposals" and has, therefore, directed regional transmission organizations and independent system operators to "provide stakeholders the opportunity to express views" on proposals."[42] The adequacy of the process here is not some procedural quibble; a meaningful stakeholder process could have helped PJM develop a proposal that would adequately ensure that resources subject to the must-offer requirement can fully reflect their costs in their offers as discussed below. With a more meaningful stakeholder process, PJM might also have addressed other questions begged by the proposed expansion of the must-offer requirement. For example, PJM casually states that owners of previously exempted resources that are not prepared to live with a must-offer requirement may "request[] the removal of Capacity Resource status," which would also result in the Capacity Interconnection Rights ("CIRs") being "removed after

311 (7th ed.1999) (defining consultation as '[t]he act of asking the advice or opinion of someone').").

41 December 20 Filing, Transmittal Letter at 8 (emphasis in original).

42 *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 at P 231, *on reh'g & compliance*, 120 FERC ¶ 61,080 (2007), *on reh'g & compliance*, 122 FERC ¶ 61,127 (2008). *See also, e.g., Building for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation*, Order No. 1920-A, 189 FERC ¶ 61,126 at P 336 (2024) (noting "the importance of a robust stakeholder process to developing more accurate assumptions"); *New York Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,057 at P 48 (2019) (recognizing "the importance of the stakeholder process and its role in NYISO's ongoing offline pricing projects"); *ISO New England Inc.*, 147 FERC ¶ 61,026 at P 25 (2014) (acknowledging "the importance of the stakeholder process in formulating rates"); *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,079 at P 53 (2012) (finding certain concerns to be beyond the scope of that proceeding but stating that "we agree with parties that these are important issues and we encourage PJM and its stakeholders to continue this dialog in the stakeholder process").

one year . . . ."[43] But PJM does not acknowledge, much less address, the fact that the owners paid for CIRs with the expectation that doing so would give them the option, but not the obligation, to offer into the RPM Auctions.

The contrast between the accelerated stakeholder process leading up to the ER24-98 Filing and the all but non-existent process here is telling. Prior to the ER24-98 Filing, PJM's Resource Adequacy Senior Task Force held 30 meetings between October 2021 and March 2023, and the PJM Board then initiated a Critical Issue Fast Path accelerated stakeholder process in February 2023, with additional stakeholder meetings before PJM submitted its ER24-98 Filing nine months later, in October 2023.[44] Even then, EPSA and P3 were concerned that the MSOC changes proposed by PJM in the ER24-98 Filing only partially addressed the problems with the MSOC,[45] and the ER24-98 Filing was ultimately rejected by the Commission, largely because it lacked the necessary specificity in certain areas. Even without the other issues presented by expansion of the must-offer requirement, PJM should have known that any changes to the MSOC would require serious deliberation and consideration, certainly more deliberation and consideration than is evident from the December 20 Filing.

The haste with which PJM has thrown together and submitted the December 20 Filing is especially frustrating and unfortunate given that PJM had ample opportunity to revisit the MSOC rules since the issuance of the ER24-98 Order in February 2024.

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43 December 20 Filing, Transmittal Letter at 26.

44 *See* ER24-98 Filing, Transmittal Letter at 63-64.

45 *See* Comments of the Electric Power Supply Association at 3, Docket No. ER24-98-000 (filed Nov. 9, 2023); Comments of The PJM Power Providers Group and Protest Only of Severable Section on Performance Payment Eligibility at 6-8, Docket No. ER24-98-000 (filed Nov. 9, 2023); Motion for Leave to Answer, and Answer of The PJM Power Providers Group, Docket No. ER24-98-000 (filed Nov. 27, 2023).

Notwithstanding its earlier recognition that changes to the MSOC were necessary to ensure that "Capacity Market Sellers can, in all cases, adequately reflect the cost of risk associated with committing a Capacity Resource in a unit-specific offer cap,"[46] however, PJM made no attempt to work with stakeholders to improve on its ER24-98 Filing based on the Commission's guidance. PJM was only recently motivated to act and has only offered minimal changes to the MSOC, because, in its own words, "it will be challenging to defend extending the must-offer to more resources with the MSOC in its current form."[47]

The must-offer requirement and MSOC are the linchpins of PJM's market power mitigation rules and have profound implications for market participants. Capacity Market Sellers and indeed all stakeholders deserve more and better than the short-shrift PJM has given those issues here. The Commission should therefore reject the December 20 Filing without prejudice to PJM refiling a more thoughtful proposal that has been fully considered by and developed with stakeholders for implementation after the 2026/2027 BRA. There is no reason why PJM cannot take the time to do this given that, as PJM

46 ER24-98 Filing, Transmittal Letter at 9.

47 Adam Keech, *Consultation with Members: Capacity Market Must Offer and Market Seller Offer Cap Changes*, at 17 (Members Committee/TOA-AC, Dec. 13, 2024), https://www.pjm.com/-/media/DotCom/committees-groups/committees/mc/2024/20241213-special/item-01---1-consultation-with-members-capacity-market-must-offer-and-market-seller-offer-cap-changes---presentation.pdf.

itself states, there is no evidence or indication of any attempt to exercise market power;[48] instead, PJM is only seeking to act "proactively."[49]

B. Resources Should Not be Subject to the Must-Offer Requirement When the MSOC Does Not Provide a Real Opportunity for Offers to Reflect Costs

Intermittent Resources, Capacity Storage Resources, and Hybrid Resources assume substantial costs and risks in accepting capacity obligations.[50] In the December 20 Filing, PJM concedes that:

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[48] *See* December 20 Filing, Attachment C, Affidavit of Dr. Walter Graf on Behalf of PJM Interconnection, L.L.C. at P 21 (explaining that Dr. Graf's "analysis should not be construed as concluding that there was an exercise of market power in the 2025/2026 Base Residual Auction as that would require substantial additional and different analysis and would be addressed through avenues separate and distinct from this Section 205 filing").

[49] *See, e.g.*, December 20 Filing, Transmittal Letter at 9 (explaining that, "to proactively maintain the just and reasonableness of the capacity market rules, PJM proposes to remove the categorical must-offer exemption"); *id.* at 18 (stating that "requiring all Existing Generation Capacity Resources to be offered into the RPM Auctions is a reasonable solution to proactively mitigate against the physical withholding of resources, which could otherwise be used as a tactic to exert market power" (footnote omitted)).

[50] For example, Tesla, Inc. previously explained that storage resources are at significant risk of incurring non-performance charges because they cannot continuously provide energy without having to recharge, which means they may not be able to comply with PJM's dispatch instructions for the entire duration of an Emergency Action. *See* Comments of Tesla, Inc. at 14-16, Docket Nos. ER19-460-000, *et al.* (filed Feb. 8, 2019) (also explaining that it "does not make sense for the energy storage resource to place additional strain on the system by charging during Capacity Performance events, so it should not charge in preparation for later Capacity Performance intervals"). *See also, e.g.*, Comments of the American Clean Power Association, Solar Energy Industries Association, Advanced Energy United and MAREC Action at 4, Docket Nos. ER24-99-000, *et al.* (filed Nov. 9, 2023) (arguing that, "[f]or resources exposed to risks that are beyond their control (e.g., solar resources during times when no irradiant sunlight is available), it is essential to allow these resources the ability to reflect these risks in their capacity market bids"); Comments of Pine Gate Renewables, LLC on PJM Critical Issue Fast Path Filings at 5, Docket Nos. ER24-98-000, *et al.* (filed Nov. 9, 2023) ("While weather patterns can be forecast with increasing levels of sophistication, renewable generation cannot operate when called on at certain times of day for reasons entirely outside of the resource owners' control."); Comments in Support of Cypress Creek Renewables, LLC, Leeward Renewable Energy, LLC, MN8 Energy LLC and VC Renewables LLC at 12, Docket No. ER24-98-000 (filed Nov. 9, 2023) ("Intermittent resources like those owned and operated by members of the Renewable Energy Coalition assume substantial risk in capacity market participation because their technology type by its very nature leads them unable to guarantee 24/7 performance.").

> in order for the must-offer requirement to extend to Intermittent Resources, Capacity Storage Resources, and Hybrid Resources without unreasonably imposing the cost associated with the risk of taking on a capacity obligation on the seller, ***Capacity Market Sellers must be able to submit Sell Offers that reflect the cost associated with potential performance risk.***[51]

Nonetheless, PJM fails to follow through and proposes tariff revisions that are woefully inadequate to make that happen.

Most critically, the December 20 Filing leaves the existing CPQR definition unchanged,[52] despite PJM's past acknowledgement that "the lack of clarity on CPQR in the Tariff has led to this issue becoming unduly contentious in the unit-specific review process and have limited the ability of Capacity Market Sellers to reflect CPQR risk in their offers . . . ."[53] Rather than tackling this problem head on, the December 20 Filing simply asserts that "the existing CPQR provisions are reasonable and necessary to sufficiently allow Capacity Market Sellers to include the company-specific nature of valuing non-performance risk so long as they can be supported and justified to the satisfaction of PJM and the Market Monitor."[54] The problem, of course, is that Capacity Market Sellers have ***not*** been able to provide valuations of non-performance risk "to the satisfaction of" the Market Monitor[55] because of the lack of clarity that PJM previously recognized. Indeed, PJM previously explained that the "broad language" in the PJM Tariff "leaves room for differences of opinion regarding what actuarial practices are generally

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51 December 20 Filing, Transmittal Letter at 9 (emphasis added).

52 *See id.* at 42-43.

53 ER24-98 Filing, Transmittal Letter at 9.

54 December 20 Filing, Transmittal Letter at 43.

55 *Id.*

used by the industry to model or value risk or what other methodology may be appropriate," which has "resulted in unit-specific CPQR values not being accepted given the differences of opinion."[56]

Comments in response to the ER24-98 Filing confirmed the difficulty of obtaining CPQR determinations.[57] Indeed, the Market Monitor itself demonstrated that its view of market participants' risks differed substantially from those of the market participants themselves: the Market Monitor took the position that, after Winter Storm Elliott, "[c]orrectly calculated maximum CPQR values increased from less than $10 per MW-day to about $50 per MW-day while some participants proposed CPQR values in excess of $100 per MW-day."[58] At the same time, the Market Monitor also objected to PJM's proposal because it disagreed with, among other things, certain of the methodologies that PJM proposed to use to calculate a standardized CPQR.[59] Given that even PJM and the

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56 ER24-98 Filing, Transmittal Letter at 11.

57 *See, e.g.*, ER24-98 Order, 186 FERC ¶ 61,097 at P 50 ("Constellation states that market sellers currently have little confidence in the process to establish CPQR because there is uncertainty as to whether the Market Monitor and PJM will agree on various risk factors, ranging from weather to the likelihood of equipment failures and the correlation of outages to [Performance Assessment Intervals ("PAIs")], or fuel supply/deliverability limitations."); Comments, Limited Protest, and Motion to Intervene of Vistra Corp. and Dynegy Marketing and Trade, LLC at 7, Docket No. ER24-98-000 (filed Nov. 9, 2023) (explaining that the CPQR determination process is "ill-defined and often unnecessarily contentious review process" and that "[f]ailure to convince the. . . Market Monitor that the risk is sufficiently supported results in the entire CPQR component being set to zero and sellers being unable to recover any of their risk-associated costs").

58 Protest of the Independent Market Monitor for PJM at 10, Docket No. ER24-98-000 (filed Nov. 9, 2023).

59 *See* ER24-98 Order, 186 FERC ¶ 61,097 at P 55 ("the Market Monitor disagrees with the proposal to use the same process for resource accreditation to predict PAIs because the underlying Reserve Reliability Study simulates whether there is enough capacity to meet load, but does not simulate commitment, dispatch, or transmission constraints and therefore assumes that any MW available can be instantly used to meet demand" (footnote omitted)); *id.* at P 64 ("The Market Monitor argues that the value-at-risk approach is not a tool for pricing risk but rather a metric for quantifying the risk of a financial position. The Market Monitor also argues that PJM's

Market Monitor cannot reach agreement on the appropriate methodology for calculating CPQR, it is hardly surprising that Capacity Market Sellers have found themselves unable to obtain CPQR determinations that correspond with their first-hand assessment of their risks and costs, including the risks associated with capacity obligations. The CPQR process thus does not allow Capacity Market Sellers to submit offers that adequately reflect their risks, which can force sorely needed dispatchable resources out of the market prematurely, harming consumers and reliability. The December 20 Filing does nothing to address this fundamental problem.

At the same time, while it makes sense for PJM to allow segmented MSOCs, its proposal to permit Capacity Market Sellers to "include only incremental Capacity Performance Quantifiable Risk associated with the incremental capacity commitment"[60] suffers from the same problems with respect to the determination of CPQRs. It also raises questions of how Capacity Market Sellers will be able to justify to PJM's and the Market Monitor's satisfaction the "incremental" costs that will be incurred.

In short, it does no good for PJM to propose tariff changes providing that Capacity Market Sellers may submit offers based on their stand-alone CPQRs, but then refuse to make changes that would ensure that those CPQRs in fact reasonably reflect anticipated costs and risks. PJM should go back to the drawing board and develop meaningful, rather than illusory, improvements to the MSOC before it expands the universe of resources subject to the must-offer requirement. It is unacceptable that thermal resources are

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proposal is not consistent with the standard insurance model where the insurance premium exceeds the expected loss by an amount that reflects the risk preferences of the insurance company and the insured." (footnote omitted)).

60 December 20 Filing, Attachment A, Revisions to the PJM Open Access Transmission Tariff, Attachment DD, § 6.4(e).

required to offer but prevented from adequately reflecting their costs in their offers; it would be intolerable to expand the universe of resources subject to the must-offer requirement without fixing fundamental flaws in the MSOC. The December 20 Filing must therefore be rejected in its entirety.

In this respect, EPSA and P3 note that, even though the December 20 Filing states that PJM "consents to the Commission's exercise of authority to modify the proposed Tariff language to the extent necessary and permitted under section 205 of the FPA and *NRG Power Marketing, LLC v. FERC*,"[61] PJM's "consent" would not be sufficient to permit the Commission to make changes to the MSOC sufficient to address this fundamental flaw. As the court made clear in *NRG-PML*, "there are limits on FERC's authority to propose modifications under Section 205 *even when the utility consents to those modifications*."[62] While the Commission may require "'minor deviations' from a proposal,"[63] it cannot "suggest modifications that result in an 'entirely different rate design' than the utility's original proposal or the utility's prior rate scheme."[64] The Commission should thus reject the December 20 Filing in its entirety, while encouraging PJM to file a new proposal that addresses the concerns set forth herein and other input from a robust stakeholder process.

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61 December 20 Filing, Transmittal Letter at 3 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) ("*NRG-PML*").

62 *NRG-PML*, 862 F.3d at 115 (emphasis in original).

63 *Id.* (quoting *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993) ("*Western Resources*")).

64 *Id.* (quoting *Western Resources*, 9 F.3d at 1578) (also explaining that limitations on the Commission's power to modify FPA Section 205 filings are not just about protecting rights of the filing public utility but also reflect a concern that "FERC's proposal of a new rate scheme could deprive the utility's customers of 'early notice – in the rate proposal itself – of the sort of rate [change] that is sought" (citation omitted)).

III. CONCLUSION

Wherefore, EPSA and P3 respectfully request that the Commission reject the December 20 Filing.

Respectfully submitted,

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Dated: January 10, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically 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, D.C., this 10th day of January 2025.

/s/ *David G. Tewksbury*
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