

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

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

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**Docket No. EL15-29-000**

**PROTEST OF OLD DOMINION ELECTRIC COOPERATIVE,  
SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.,  
AND AMERICAN MUNICIPAL POWER, INC.**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214, and the Commission’s December 15, 2014 Notice of Filing and the Commission’s December 24, 2014 Notice granting extension of time, Old Dominion Electric Cooperative, Southern Maryland Electric Cooperative, Inc., and American Municipal Power, Inc., (hereafter “Joint Protestors”) hereby file this protest in the above-captioned proceeding.<sup>1</sup>

**I. DESCRIPTION OF THE FILING AND SUMMARY OF PROTEST**

On December 12, 2014, pursuant to Sections 205 and 206 of the Federal Power Act (“FPA”),<sup>2</sup> PJM Interconnection L.L.C. (“PJM”), filed proposed revisions to the Amended and Restated Operating Agreement of PJM (“Operating Agreement”) and related revisions to the PJM Open Access Transmission Tariff (“OATT” or “Tariff”) to propose changes to address what PJM refers to as “deficiencies” in those documents on matters related to resource performance and excuses for resource performance in PJM markets. The PJM filing was made in conjunction with a companion filing in Docket No. ER15-623, in which PJM seeks approval for a new

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<sup>1</sup> Each of the Joint Protesters has separately filed a Motion to Intervene in this proceeding.

<sup>2</sup> 16 U.S.C. §§ 824d and 824e, respectively.

Capacity Performance ("CP") Resource, and related revisions.<sup>3</sup> PJM requests an effective date of April 1, 2015 for its filing.

As demonstrated below, PJM's proposal for drastic changes to its energy market rules, without meaningful stakeholder input or consideration, and in reliance on the CP proposal which has yet to be determined just and reasonable, should be rejected.<sup>4</sup> As load-serving entities ("LSEs"), the Joint Protesters share PJM's concern that generators be available as committed to serve load in an economically efficient manner. However, PJM's filing unreasonably shifts to Market Sellers risks over which they have no control, and ignores or undermines issues such as gas-electric coordination and energy and ancillary services price formation which are ongoing before the Commission.<sup>5</sup> Joint Protesters expect the proposal will result in increased cost to load as generators take into account these increased and perhaps immitigable risks.

The majority of PJM's proposed revisions address the Operating Agreement, for which FPA Section 206 approval is required absent support of a supermajority of PJM Members. No such support was achieved or even sought with this filing because PJM did not bother to share the details of these changes with the stakeholders prior to filing. As a result, the proposed revisions to the Operating Agreement were never brought to a vote but instead filed unilaterally by PJM without any opportunity for prior review, discussion, amendment, and vote by the

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<sup>3</sup> *Reforms to the Reliability Pricing Market (RPM) and Related Rules in the PJM Open Access Transmission Tariff ("Tariff") and Reliability Assurance Agreement Among Load Serving Entities ("RAA")*, filed on December 12, 2014 in Docket No. ER15-623-000 ("CP Filing").

<sup>4</sup> The Joint Protesters oppose the drastic and premature reforms in PJM's CP Filing, and are submitting a protest to that filing as well.

<sup>5</sup> *See, e.g.*, Docket No. RM14-2-000 (NOPR, Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities, issued March 20, 2014); Letters from FERC requesting RTOs/ISOs to respond to data request (issued December 12, 2014); Docket No. AD14-14 (Shortage Pricing, Offer Mitigation and Offer Caps); Docket No. AD13-7-000 (Centralized Capacity Markets in ISOs and RTOs).

stakeholders. Therefore, for the proposed revisions to its Operating Agreement, PJM must satisfy the dual FPA Section 206 burden of proof to demonstrate (1) that the existing rules are unjust, unreasonable, unduly discriminatory or preferential, and (2) that PJM's proposed revisions are just and reasonable.<sup>6</sup> The proposed revisions to the Tariff require PJM to satisfy the FPA Section 205 burden of proof to demonstrate that its proposed revisions are just, reasonable and not unduly discriminatory or preferential.<sup>7</sup> PJM has failed to carry its burden of proof under FPA Sections 205 and 206, as applicable. Therefore, the filing must be rejected. Alternatively, if the Commission is inclined to accept any of PJM's proposals, then it should do so conditioned upon the outcome of the proceeding in Docket No. ER15-623 since, as PJM repeatedly acknowledges in its filing, the instant proceeding is premised in large part on approval of the CP proposal. Further, if the Commission does not reject PJM's filing outright, it should establish hearing and settlement judge procedures so that a record can be developed upon which the Commission can determine whether PJM's proposal is just and reasonable.

At the outset, Joint Protesters urge that in reviewing the reasonableness of PJM's filing, the Commission bear in mind the inadequate stakeholder process afforded by PJM. PJM summarily states in its filing that it used the Enhanced Liaison Committee ("ELC") stakeholder process, as described in the CP Filing. As discussed in Section II.E. below, the ELC process was developed by PJM outside of any FERC proceeding and its application here goes well beyond the Commission's expectations for processes to facilitate interaction between stakeholders and the RTO Board. Moreover, the ELC process was used by PJM for both the instant proposal and

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<sup>6</sup> *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,112 at P 11 (2004) (citations omitted).

<sup>7</sup> *See Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1993) (citations omitted).

the CP Filing to supplant the open, inclusive and responsive stakeholder process the Commission approved for use in PJM.<sup>8</sup>

In addition to avoiding a stakeholder vote, the ELC process also meant that stakeholders were not privy to revisions made by PJM or its Board between the end of stakeholder discussion and submission to the Commission. Therefore, many of the specific proposals contained in PJM's filing have never been seen by stakeholders including the Joint Protesters, much less vetted against feasible alternatives with input from the diverse positions represented by the PJM stakeholder community. The Commission has recognized the value of stakeholder input and adequate stakeholder process, even for contentious issues.<sup>9</sup> Joint Protesters urge the Commission to bear in mind the lack of process afforded with respect to PJM's proposed changes in this proceeding. The deficiency of the stakeholder process for PJM's proposals in this filing is discussed further in Section II.E., below.

In its filing letter (at page 3), PJM recognizes that more time could be taken to consider its proposed changes:

While PJM urges the Commission to approve the changes requested in this filing by April 1, 2015, PJM recognizes that, while that timing is reasonable and desirable, it is less critical for the energy market changes in this filing than it is for the capacity market changes in the Capacity Performance Filing. PJM's next Base Residual Auction ("BRA") is scheduled for May, 2015, and will procure capacity on a three-year forward basis, i.e., for the 2018/2019 Delivery Year. The RPM rule changes in

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<sup>8</sup> *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,071 (2010), *clarification denied*, 135 FERC ¶ 61,057 (2011).

<sup>9</sup> *See, e.g., PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,071 at P 36 (2010) ("RTO/ISO stakeholder bodies are comprised of numerous entities that frequently have divergent interests and positions. RTO/ISO boards must account for these divergent points of view in making their management decisions. As a general proposition and as required in Order No. 719, governance policies and stakeholder processes should be well-suited to enhance appropriate stakeholder access to RTO/ISO boards, and, in turn, facilitate the boards' direct receipt and consideration of stakeholder concerns and recommendations, including minority views. In pursuing these objectives, RTOs and ISOs also have an ongoing obligation to operate independent of any market participant or class of market participants, as required b Order No. 2000." (citations omitted).

the Capacity Performance Filing must be approved and in place reasonably in advance of that auction, if PJM is to implement those rules for that auction.

The energy market changes in this filing, by contrast, are slightly less time-critical. Approval before the next BRA is greatly preferred, as it would eliminate any uncertainty among Capacity Market Sellers about energy market rules that would most likely affect their capacity resources during the Delivery Year addressed by the May 2015 Auction. But as a practical matter, Market Participants are reasonably on notice, simply by virtue of this filing, of the energy market rules PJM hopes to implement on or before that forward Delivery Year. Moreover, it has always been the case that energy market rules can and do change in the three years between the conduct of a BRA and the start of the Delivery Year addressed by that BRA.

Joint Protestors agree with PJM that this filing provides sufficient notice of PJM's intent to modify its energy market rules. However, as discussed herein, the filing does not provide sufficient information and is otherwise unjust and unreasonable. Therefore, Joint Protestors urge the Commission to reject this filing outright to allow sufficient time for PJM staff, the PJM Board and Market Participants to vet these rules.

## **II. PROTEST**

PJM's proposed revisions to the Tariff and Operating Agreement are based on PJM's experience in January 2014, a period which included a Polar Vortex and which was characterized by anomalous cold weather during which various operational issues tested the ability of PJM to maintain reliability in the face of high forced outage rates, high demand, and factors such as gas-electric coordination. PJM states that during the month "PJM scheduled additional generation to be available for expected extreme system conditions, and to mitigate any potential power shortfalls due to generator forced outages, to ensure reliable operations of the bulk power system during the Winter Storm."<sup>10</sup> PJM further states that "...contractual constraints on generators' availability challenged PJM operators and contributed to a significant increase in uplift payments

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<sup>10</sup> Transmittal Letter at 5.

for January 2014. The contractual constraints included natural gas generators with the need for early commitment, days ahead of the Day-ahead Energy Market, to ensure fuel deliverability; inflexible scheduling criteria such as 24-hour and multi-day gas commitment requirements; and, the purchase of gas for an entire weekend in order to operate for only a few hours.”<sup>11</sup>

Joint Protestors, as LSEs in the PJM region, are well aware of the conditions faced by PJM in winter of 2013-2014, which serve as the basis for PJM's filing. ODEC and AMP are also generation-owning utilities and thus are able to discern how PJM's proposals will unreasonably shift risk to resource owners that are beyond their control. The above-quoted statements by PJM are in complete disregard of the gas-power scheduling realities that generators face when adhering to gas nomination cycles and gas pipeline tariff rules, especially when pipelines are physically constrained. PJM's proposal to cure gas/electric coordination issues absent the Commission addressing these issues is unworkable and will be unduly burdensome to gas-fired generation resources. Moreover, Joint Protestors disagree with PJM's contention that the experience from last winter justifies the drastic revisions proposed here and in the companion CP Filing.

While it is true that each generator with a gas pipeline agreement (be it for Firm Transporter or another service) has a “contract” with the pipeline, the ratable take issue described by PJM is actually not a “contractual constraint”; electric generator-shippers who take service cannot change the fact that interstate pipelines have Commission-approved tariffs that allow pipelines to require a nomination on a ratable basis which only occurs when the pipeline is experiencing or about to experience restrictions. This physical limitation is a “contractual” issue

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<sup>11</sup> *Id.*

only in that shippers sign contracts for firm services under the pipeline tariff; no contract can go beyond the physical capability of the pipeline and ignore a pipeline's tariff.

PJM's proposed energy market changes would impose costs on generators that are outside their control. PJM's filing would also result in operating parameters that are so restrictive, with relatively unattainable exceptions, that resources will be subject to (1) a CP non-performance charge when the resource cannot meet PJM's one hour notification time, as discussed below; or (2) are ineligible for balancing operating reserve credits (*i.e.*, make-whole payments) when the resources must run for 12, 16, or 24 hours to meet a pipeline constraint but PJM will not provide an exception to the parameter limited schedule to permit the unit to operate. The Joint Protesters are concerned that despite PJM's premise that "resource performance responsibility should rest with Market Sellers, and should not be transferred to loads"<sup>12</sup>, PJM's proposed changes will create unreasonable and immitigable risk for Market Sellers and the resulting costs of meeting PJM's requirements or available generation, will be borne by load. Given that PJM has not demonstrated that its existing provisions are unjust and unreasonable, and that PJM's filing here is premature because it relies upon the CP Filing which has yet to be ruled upon, PJM should wait and develop a comprehensive proposal, working with stakeholders, which takes into account the Commission's rulings and initiatives on resolution of gas-electric coordination.

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<sup>12</sup> Transmittal Letter at 4.

## **B. PJM Has Not Satisfied Its Burden of Proof with Respect to Changes to Parameter Limited Schedules**

Parameter limited schedules (“PLSs”) are those that conform to the actual physical parameters of a unit.<sup>13</sup> In certain limited instances, it is appropriate for PJM to restrict units to their parameter limited schedules in order to "reduce the possibility that market power may be exerted to receive Operating Reserve credits."<sup>14</sup> Joint Protesters do not take issue with this basic premise and the need for PLSs *to reduce the possibility of an exercise of market power*. However, PJM's proposed revisions, purportedly in response to the issues experienced last winter, are quite simply too disconnected from reducing the exercise of market power to be deemed just and reasonable, as discussed below.

At the outset, given that the premise of PJM's filing is the issues from last winter, and PJM has not demonstrated that these issues resulted from attempts or exercises of market power, Joint Protesters submit that PJM has not demonstrated that its existing PLS provisions (which are geared to limiting the exercise of market power) are unjust and unreasonable.<sup>15</sup> For example, PJM characterizes as mere "contractual constraints" real physical pipeline and gas deliverability

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<sup>13</sup> *PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,244 (2008) ("2008 Order").

<sup>14</sup> *Id.* at P 5.

<sup>15</sup> To the contrary, PJM's assessments of the drivers of past performance last winter do not include market power concerns. See PJM's *Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events*, May 8, 2014, PJM Interconnection, L.L.C. The report is available online at

<http://www.pjm.com/~media/committees-groups/committees/oc/20140722/20140722-item-03-cold-weather-resource-improvement-education.ashx>. The report cites to gas fuel deliverability, freezing coal, boiler issues, among other causes, as responsible for the January 2014 outages; also see PJM's *Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events*, May 8, 2014, available at

<http://www.pjm.com/~media/documents/reports/20140509-analysis-of-operational-events-and-market-impactsduring-the-jan-2014-cold-weather-events.ashx>



issues, such as operational flow orders.<sup>16</sup> The existing PLS matrix allows for such real, physical gas pipeline issues which affect electric generator resource availability to be taken into account in submitting parameter limited schedules. PJM has not shown that such flexibility is inherently unjust and unreasonable. Instead, PJM seeks to remove such flexibility under the guise of avoiding unavailability of Capacity Resources in real-time and minimizing uplift (make-whole) payments.<sup>17</sup> PJM has also not demonstrated that its proposed revisions to the PLS provisions of the OA and Tariff are just, reasonable and not unduly discriminatory or preferential, as discussed in the remainder of this section.

PJM proposes that a Capacity Market Seller must limit the energy offer parameters for output from its resource to its pre-determined limits on cost-based offers, which are always parameter limited, and that it must limit the offer parameters for market-based offers conforming to its agreed upon PLS when the seller fails the three pivotal supplier test. PJM proposes to eliminate the current default PLS matrix and instead require Market Sellers to develop a unit-specific PLS. These new parameters would be defined by PJM in consultation with the Independent Market Monitor for PJM (“IMM”). According to PJM’s filing, the unit-specific PLS will reflect “physically achievable operating parameters for each individual resource on the basis of the resource’s operating design characteristics”<sup>18</sup>, and PJM will take into consideration in its determination any input received from the IMM. Units that operate beyond their approved

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<sup>16</sup> Transmittal Letter at 6.

<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 9, Redline OA at Section 6.6

PLS limits (unless they were doing so at the request of PJM) would not be eligible for make-whole payments.<sup>19</sup>

PJM further proposes in OA section 6.6(i) that if a resource cannot operate on the basis of these more flexible parameters, then it must inform PJM of the parameters to which it is capable of being operated.<sup>20</sup> However, any such operation outside of the more flexible parameter limited values will be considered to not be at PJM's direction.<sup>21</sup> In other words, a resource that is inflexible by virtue of the PJM parameters will be ineligible for make-whole consideration under sections 1.10.1 and 3.2.3 of the OA.

PJM's current OA provides for the following parameters as part of a generating resources' PLS:

1. Turn Down Ratio;
2. Minimum Down Time;
3. Minimum Run Time;
4. Maximum Daily Starts;
5. Maximum Weekly Starts.<sup>22</sup>

Values for these parameters are provided in the default PLS parameter matrix in section 6.6 of the current OA. The PLS matrix provides that a "Large Frame CT Unit[s] - 135 MW to 180 MW ICAP" would have a minimum run time of 5 hours or less.

The proposed new parameters<sup>23</sup> are as follows:

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

<sup>20</sup> Transmittal Letter at 7.

<sup>21</sup> *Id.*

<sup>22</sup> PJM OA (current) at Section 6.6(b).

<sup>23</sup> Transmittal Letter at 8.

1. Economic Minimum;<sup>24</sup>
2. Economic Maximum;
3. Minimum Down Time;
4. Minimum Run Time;
5. Maximum Daily Starts;
6. Maximum Weekly Starts;
7. Maximum Run Time (new);
8. Start-up Time (new) and;
9. Notification Time (new).<sup>25</sup>

The three new parameter limitations – 1) Maximum Run Time, 2) Start-up Time and 3) Notification Time - will apply for both base CP Resources and Base Capacity Resources during Emergency Actions, Hot Weather Alerts and/or Cold Weather Alerts, as applicable, for cost-based offers submitted in its energy markets when the resource is offer-capped starting with the 2018/2019 Delivery Year (“DY”) and subsequent DYs.

### **1. PJM's Proposal Allows Too Much Discretion**

The proposal provides PJM and the IMM overly broad discretion in determining a unit’s “operating design characteristics”, without any indication how those determinations will be made. For example, PJM’s clear misunderstanding of pipeline operational issues, as evidenced by its statements in the Transmittal Letter, provides no assurance that real, physical pipeline operational issues that adversely impact gas-fired generator availability will be permitted in a parameter-limited schedule. The import of PJM's PLS revisions will be that generators will be held to perform notwithstanding operational constraints that are outside of their control, while at

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<sup>24</sup> While economic minimum and the subsequent parameter, economic maximum, are currently features of the Turn Down Ratio PLS parameter, economic minimum and economic maximum will now be binding parameter limits on their own.

<sup>25</sup> Inclusion of Notification as a PLS is inappropriate as, until such time as the Commission addresses gas/electric coordination issues, this is the essential tool gas generators have to manage this mismatch between the gas and electric days.

the same time losing eligibility for make-whole payments. This shifting of risk entirely to Market Sellers is unreasonable and will assuredly result in unnecessary increased costs to load.

Further, PJM's proposal to narrow the ability to obtain an exception will likely render the exception effectively unavailable altogether. Both the existing and the PJM proposed OA Section 6.6 state that the resource may pursue an exception for physical reasons. However, PJM has proposed new, additional parameters that must be determined on a unit-specific basis by PJM in consultation with the IMM. These new parameters are duplicative - such that the new parameters would require a resource to pursue an exception for more than one parameter to meet natural gas pipeline constraints. This "multiple" exception request process will be overly burdensome to resources. For example, if a pipeline determined it was approaching its physical limitation and required the generating unit to run ratably, this would require the resource to seek, during a Cold Weather Alert, a waiver of parameters 3 (Minimum Run Time) and 9 (Notification time). An exception to Parameter 3 would be needed because the pipeline required a ratable nomination; while an additional exception to the Notification time Parameter would be needed because PJM proposes to limit Notification time to 1 hour during peak events. The generating unit must receive exceptions to both parameters before it may be eligible for make whole payments.

**2. PJM's Proposal To Limit a Generating Resource's Combined Start-Up And Notification Time To 14 Hours And The Notification Time To 1 Hour During A Hot Or Cold Weather Alert Is Unjust and Unreasonable**

The PJM proposal would limit, for CP generating resources, the combined start-up and notification time to 14 hours and the notification time to one hour during a Hot or Cold Weather Alert. PJM's proposed OA Section 6.6 (f) provides that when a Hot Weather Alert or Cold

Weather Alert has been issued, the filing proposes that the notification time to bring a CP-cleared unit on line cannot exceed one (1) hour:<sup>26</sup>

(f) For the 2016/2017 Delivery Year *and subsequent Delivery Years*, the following additional parameter limits shall apply for Capacity Performance Resources, other than Capacity Storage Resources, submitted in the Day-ahead Energy Market or rebidding period that occurs after the clearing of the Day-ahead Energy Market for the following Operating Day, and for the Real-time Energy Market for the same Operating Day:

(i) The combined start-up and notification times shall not exceed 24 hours, *except when a Hot Weather Alert or Cold Weather Alert has been issued*;

(ii) *When a Hot Weather Alert or Cold Weather Alert has been issued, combined start-up and notification times shall not exceed 14 hours*;

(iii) *When a Hot Weather Alert or Cold Weather Alert has been issued, notification time shall not exceed one hour*; and,

(iv) When a Hot Weather Alert or Cold Weather Alert has been issued, parameters shall be based solely on the physical operational limitations of the Capacity Performance Resource for both its market-based schedules and cost-based schedules.<sup>27</sup>

In addition, as noted in Proposed OA, Schedule 1, section 6.6(g), commencing with the May BRA for the 2018/2019 DY, the new PLS restrictions regarding notification time would also apply to price-based schedules for Base resources (but not in the winter):

(g) For the 2018/2019 and 2019/2020 Delivery Years, the following additional parameter limits for Base Capacity Resources submitted in the Day-ahead Energy Market or rebidding period that occurs after the clearing of the Day-ahead Energy Market for the following Operating Day, and for the Real-time Energy Market for the same Operating Day:

(i) Combined start-up and notification times shall not exceed 48 hours;

(ii) *When a Hot Weather Alert has been issued, notification time shall not exceed one hour*; and,

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<sup>26</sup> Proposed OA, Schedule 1, section 6.6(f) (iii); proposed Tariff, Attachment K-Appendix, section 6.6(f) (iii).

<sup>27</sup> *Id.* Emphasis added.

(iii) When a Hot Weather Alert has been issued, parameters shall be based solely on the physical limitations of the Base Capacity Resource for both *its market-based schedules* and cost-based schedules.<sup>28</sup>

As a practical matter, PJM's proposed energy market rules do not reflect an understanding of the physical realities of today's gas-power markets and would not even represent a workable set of changes to PJM's PLS, as least insofar as the notification parameter is concerned, even if the Commission's "Gas Day" Final Rule in Docket No. RM14-2 (which would start the gas day at 4 A.M. and serve to ensure that both electric peaks) were adopted. Specifically, compliance with the CP resource notification time of 1 hour and start-up and notification time to 14 hours (and a lower combined start-up and notification time after negotiating a unit-specific PLS with PJM and the IMM) during winter and summer peak load events is at odds with fundamental natural gas nomination and scheduling and the nomination cycles themselves: When gas pipelines are restricted and require generator-shippers to nominate ratable takes, respect nomination cycles, and eliminate the ability of generators to nominate on a post-cycle basis in the winter, generators generally cannot respond to a 1 hour notification period absent a strategy that entails the generator nominating gas daily, well in advance of a potential PJM dispatch. For combustion turbines that might operate only a handful of days per year, such a strategy would be tantamount to inviting financial ruin.

As such, PJM's proposed energy market changes present a tremendous risk for gas units and may be confiscatory by forcing generating resources to incur substantial losses on gas procured to meet a PJM request, causing generators to incur a CP non-performance charge for failing to meet PJM's arbitrary start-up and notification parameters, and eliminating the

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<sup>28</sup> Proposed OA, Schedule 1, section 6.6(g).

opportunity for make whole payments if the unit is unable to obtain an exemption. It is Joint Protestors view that gas pipeline fuel constraints must be allowable and included in offer parameters. In Joint Protestors experience, natural gas fuel constraints are determined by Commission jurisdictional pipelines enforcing ratable take provisions in their respective Commission-approved tariffs.

**3. PJM’s Proposal Unreasonably Treats a Generating Resource's Requirement to Operate Ratably to Address Pipeline Constraints as Market Manipulation**

PJM’s filing assumes that a resource that clears an RPM auction as a Base Capacity Resource or a CP Resource is “manipulating” PJM markets if the resource uses a Minimum Run Time to reflect ratable take conditions:

A resource clears an RPM auction as a Base Capacity Resource or a Capacity Performance Resource it will be compensated based on the physical capabilities of the unit only. It cannot extend its notification or start up time so that it looks less attractive to be scheduled. It cannot manipulate its Economic Minimum, Economic Maximum or Minimum Run Time due to contractual issues that are unrelated to the physical capability of the resource itself. If a cleared Base Capacity Resource or Capacity Performance Resource has an actual combined start-up and notification time exceeding the applicable requirements, and thus is unable to start-up within the required time period, then the affected Market Seller must either operate on a self-scheduled basis in order to ensure that it is able to meet PJM’s directions for operating according to these established requirements, or make that resource unavailable and go on forced outage until it is able to operate consistent with PJM’s direction.<sup>29</sup>

Joint Protestors disagree with this conclusion. As outlined above, there are many instances where the physical capability of a pipeline will be limited and no amount of risk management will be able to circumvent a ratable take. For PJM to assume that a generating resource that requests that PJM set its run time to reflect physical pipeline constraints is

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<sup>29</sup> PJM Transmittal Letter at 12.

“manipulation” demonstrates a lack of understanding of gas markets and pipeline nomination cycles. Joint Protestors submit that no such “manipulation” is occurring when a minimum run time is set to reflect pipeline ratable take contains.

**C. PJM’s Proposed Energy Must Offer and Availability Rules Need More Refinement**

In its filing, PJM states that generators have too much discretion in declaring reduced availability in the Day-ahead Market (outside of Maximum Generation Emergency) and seeks to limit this discretion by expanding the instances where a Maximum Emergency offer is prohibited. PJM notes there are four cases where a Market Seller can designate some or all of a Generation Capacity Resource as a Maximum Emergency Offer.<sup>30</sup> The four cases cover situations where a Market Seller can be facing a short term restriction where the generating resource can be used for the system if really needed by PJM but should not be used under more routine circumstances. Nonetheless, without establishing why any of these four cases is inappropriate, or even establishing a link between any of the four cases and the creation of an uneconomic offer price, PJM declares that a resource with a Maximum Emergency offer effectively (by virtue of an uneconomic offer price) excuses a Generation Capacity Resource from offering its available capacity into the Day-ahead Energy Market until PJM has reached the point of, in effect, issuing its last call for all available generation.<sup>31</sup> Accordingly, PJM proposes to expand its energy market rules to state that a resource may not designate its Generation Capacity Resource as a Maximum Emergency offer during certain extreme weather alerts or

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<sup>30</sup> *Id.* at FN 38.

<sup>31</sup> *Id.* at 23; and 22 FN 38.



other more severe emergencies.<sup>32</sup> PJM proposes to distinguish between Base Capacity Resources and CP Resources. For Base Capacity Resources, the bar on designation as a Maximum Emergency Offer would apply during the months of June through September, when PJM has issued a Hot Weather Alert Action. For CP resources, the bar on designation as a Maximum Emergency offer would apply year-round, when PJM has issued a Hot Weather Alert or Cold Weather Alert, or has declared an Emergency Action.

In both cases, the effect would be to require the resources to offer the full available capacity into the Day-ahead Energy Market under more circumstances than the current rules require, *i.e.*, when PJM has issued an extreme weather alert requiring numerous actions by capacity resource owners to prepare their resources to run. Resources would then have to continue to submit Day-ahead offers if PJM continues through the various Emergency Actions, even if PJM does not declare a Maximum Generation Emergency or an Emergency. By not allowing a Market Seller to designate a portion of a resource as a Maximum Emergency Offer in circumstances that are warranted, PJM's proposal may have the unintended consequence of actually reducing resources available during certain extreme conditions if the alternative action is taking a forced outage. PJM has not demonstrated that the current provisions are unjust and unreasonable. With very limited discussion (if any) and an incomplete record, neither has PJM demonstrated its proposed changes are just and reasonable.

Additionally, with respect to designating a Maximum Emergency Offer, on the one hand, PJM is tightening the must offer standard by applying it to more alerts. However, on the other hand, PJM also appears to meaningfully weaken the Day-ahead must-offer requirement by

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<sup>32</sup> *Id* at. 23-24

linking it to the Unforced Capacity, rather than the available installed capacity.<sup>33</sup> If the Day-ahead must offer requirement is linked to the Unforced Capacity, it appears that PJM could be saying, for example, that a 100 MW installed capacity resource corresponding to 95 MW UCAP sold into RPM may have a Day-ahead must offer of 95 MW and then can choose whether to offer the 5 MW regardless of its availability. Joint Protestors are concerned that if this interpretation is correct, then PJM has unreasonably relaxed the Day-ahead Energy Market must-offer requirement.

#### **D. PJM's Proposed Force Majeure Changes Must Be Rejected**

In its filing, PJM proposes to eliminate force majeure in its energy, capacity and ancillary services markets, except in very limited circumstances to be determined by PJM, while allowing the traditional force majeure provisions to continue to apply in "non-market, bilateral contexts arising in PJM's transmission system, operations and planning contexts . . ."<sup>34</sup> Despite its characterization of force majeure provisions as an "escape hatch provisions lurking in the shadows", PJM has not demonstrated either that the existing force majeure provisions are unjust and unreasonable, or that PJM's proposed changes are just and reasonable. The fact that the provisions have never been used does not support overhauling them; it demonstrates that there has been no use of these provisions to undermine the PJM market rules. As opposed to such a

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<sup>33</sup> *Id.* at 24: "In addition to the change described above, PJM proposes to clarify in section 1.10.1A(d) that all Generation Capacity Resource sell offers shall be based on the [installed capacity, or 'ICAP'] equivalent of the Market Seller's cleared [Unforced Capacity, or "UCAP"] capacity commitment.' This change is reasonable, as it simply makes explicit the existing obligation for all Generation Capacity Resources. Sellers can discount the expected capability of their resource to reflect an allowance for forced outages when they offer the resource *in an RPM Auction*. But a resource that is not on a forced outage would have its full installed capacity available, and could offer up to that amount *in the Day-ahead Energy Market*." (Emphasis in original).

<sup>34</sup> *Id.* at 15.

sweeping change, PJM could have instead simply clarified where the force majeure provisions will not apply, as opposed to eliminating them altogether.

By PJM's own statement, the definition of "force majeure" is inconsistent among agreements, and some contain multiple definitions which are "presumably appropriate to different matters addressed by the given agreement."<sup>35</sup> However, without providing any further identification of where these provisions appear or how the differences are warranted because they are "appropriate to matters addressed by the given agreement", PJM simply proposes to delete the force majeure provisions at Tariff section 1.13.A.01 and OA Section 18.9, and adopt a new definition, "Catastrophic Force Majeure."<sup>36</sup> An event cannot qualify as Catastrophic Force Majeure unless "(i) all, or substantially all, of the Transmission System is unavailable, or (ii) all, or substantially all, of the interstate natural gas pipeline network, interstate rail, interstate highway or federal waterway transportation network serving the PJM Region is unavailable" and even then only if the Office of the Interconnection deems it so – subject to FERC review.<sup>37</sup>

The proposal that *any obligation* arising under the OA shall not be excused or suspended by reason of force majeure, unless it is an event of Catastrophic Force Majeure, is overbroad and could have unintended impacts. Moreover, the combination of PJM's proposal to eliminate force majeure in all but circumstances it deems Catastrophic Force Majeure, while also proposing to shift all risks of non-performance to generators and severely limit generators' ability to reflect real, operational constraints in parameter limited schedules, is fundamentally unreasonable.

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<sup>35</sup> *Id.* at 15.

<sup>36</sup> *Id.* at 19; proposed OA Sections 1.6.01, 18.9.

<sup>37</sup> Proposed OA Section 1.6.01.

Further, PJM's analogies to the NYMEX, where in PJM claims that its proposed changes to the force majeure provisions are similar to the NYMEX approach to force majeure, are misplaced.<sup>38</sup> NYMEX is not a mandatory construct like RPM, where Market Sellers must offer their Capacity Resources and face significant penalties for non-performance. While PJM represents that its current force majeure provisions cannot be reconciled with the ISO-NE "no excuses" approach, that is also an unfair comparison. While the Joint Protesters do not endorse the ISO-NE approach, the ISO-NE provisions did not eliminate force majeure altogether. Instead, ISO-NE's *capacity performance* provisions did not contain any exemptions for non-performance – a more targeted and exact approach. Moreover, in *ISO-NE*, the Commission noted that there were a number of provisions to help mitigate risk to suppliers,<sup>39</sup> and the ISO-NE proposal resulted from an extensive stakeholder process. PJM has made no such demonstration or provided any such assurances in removing its force majeure provisions.<sup>40</sup> The proposal creates yet another risk which generators will factor into their prices, at the cost to load.

Finally, on this point, PJM's force majeure proposal will impact LSE's Stage 1A Auction Revenue Right ("ARR") guarantees, and PJM has not explained or justified this change. The change would provide PJM authority how it may allocate ARRs in:

For the purposes of this subsection (ii), extraordinary circumstances shall mean an unanticipated event outside the control of PJM-force majeure that reduces the capability of existing or planned transmission facilities and such reduction in capability is the cause of the infeasibility of such Financial Transmission Rights.<sup>41</sup>

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<sup>38</sup> Transmittal Letter at 16.

<sup>39</sup> 147 FERC ¶ 61,172 at PP 8, 62.

<sup>40</sup> As discussed elsewhere, PJM's proposal most assuredly did not result from an extensive stakeholder process.

<sup>41</sup> See Proposed Tariff Section 5.2.2(f)(ii)(PJM filing, page 119).

### **E. PJM's Proposal to Rescind Generator Outages during Emergency Conditions Is Unjust and Unreasonable**

PJM proposes a number of changes around Generator Maintenance Outages and Generator Planned Outages. These changes include explicit language that a Generator Maintenance Outage cannot proceed unless it is submitted to PJM for approval, in accordance with standards and procedures in the PJM Manuals, and approved, prior to the outage start date. PJM proposes OA language that also clarifies the standard for when PJM may withhold approval of an outage, or withdraw a prior approval for an outage that has not yet commenced, or rescind approval of an outage that is already underway.

Among the Generator Maintenance Outage rules, PJM proposes that it will provide notice to the Market Seller at least 72 hours prior to requiring the generator to return from a Generator Maintenance Outage (including outages already underway) to normal operation and to the extent not able to return to be classified as a Generator Forced Outage.<sup>42</sup>

Joint Protestors' general expectation in practice is that the owner of a generator, if needed and able to return to service from any type of an outage for system conditions, would act prudently and in good faith to return that resource to service. A resource that does not come back from a Generator Maintenance Outage if PJM orders the resource to return exposes the resource to non-performance risk. This change grants PJM sole discretion on altering an even in-progress approved plant status for Generator Maintenance Outages with a hardcoded time of 72 hours. This time allowance may not be adequate in every case and as a result may expose a resource to unreasonable penalties. Issues with PJM's proposed changes to the rules for

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<sup>42</sup> See Transmittal Letter at 26-27.

generator outage scheduling may have been resolved if PJM had worked through the stakeholder process. FERC should direct PJM to engage in discussions with stakeholders to develop any changes to the maintenance scheduling procedures that PJM believes are necessary.

**F. PJM's Proposals Were Not Thoroughly Vetted In The PJM ELC Stakeholder Process**

PJM stated that the energy market reforms proposed by PJM were developed alongside the capacity market reforms PJM reflected in the CP filing in Docket No. ER15-623, employing the ELC stakeholder process described in that filing.<sup>43</sup>

Joint Protesters submit that the changes proposed herein received very little discussion in PJM's ELC process. These proposed changes could have been discussed and brought to a vote on a parallel path to PJM's proposed changes to its resource adequacy construct. As such, the record is less developed than other filings typically made by PJM; for example, had PJM brought these matter to stakeholders, a robust set of alternatives would have been proposed.

While the PJM manuals most assuredly allow the ELC to address issues identified by the Board, it was never meant to supplant, replace or circumvent well-established RTO governance principles of inclusiveness, fairness in balancing diverse interests, representation of minority positions, and ongoing responsiveness as set forth in 18 C.F.R. § 35.28(g)(6). The purpose of the ELC process is to provide the PJM Board of Managers ("Board") and PJM Members an orderly and facilitated process to directly discuss contentious issues that were not resolved or would be extremely difficult to resolve within the Stakeholder process. Joint Protestors do not dispute that foundational changes to the PJM administrative resource adequacy construct are contentious. Joint Protestors observe, however, seeking to effectuate such changes in a four month period is a

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<sup>43</sup> Transmittal Letter at 4.

woefully inadequate amount of time to develop a complete record for decision-making for the Commission, especially as the proposal changed significantly after the ELC met.

It is a well-documented fact that the operational problems experienced in PJM in January 2014 are being addressed through focused stakeholder attention on energy market commitment and scheduling rules. There are a number of improvements and initiatives that have been undertaken by PJM in 2014 based on lessons learned from the previous winter which will significantly improve reliability and unit performance by improving PJM's unit commitment and dispatch rules for 2015/2016 DY and beyond.

Among these changes are improvements to winter generator testing, improvements in unit commitment for long lead resources and units committed ahead of the Day-ahead market, improvements to the synchronized energy reserve requirement, and improvements in data sharing and communication between PJM, its generation resources and gas pipelines.<sup>44</sup>

The Joint Protestors believe that beneficial changes can and should be developed in the stakeholder process in a complimentary manner as gas and electric coordination issues are addressed over time. The timing issues between gas and electric markets continue to present challenges.

### **III. CONCLUSION**

For the foregoing reasons, Joint Protestors respectfully request that the Commission (1) reject PJM's filing as discussed above; or, if the Commission does not reject PJM's filing outright, then (2) condition the acceptance of this filing on the outcome of the CP Filing; and (3)

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<sup>44</sup> See items 13 and 14, Hot and Cold Weather Update presented to the PJM Operating Committee during its January 5, 2015 meeting: <http://pjm.com/committees-and-groups/committees/oc.aspx>

establish hearing and settlement judge procedures. Further, Joint Protesters request that the Commission take such other action as it deems necessary.

Respectfully Submitted,

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Dated: January 20, 2015



## CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 20<sup>th</sup> day of January 2015.

/s/ Adrienne E. Clair

Adrienne E. Clair

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