

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

PJM Interconnection, L.L.C.

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Docket No. ER15-623-000

**PROTEST OF OLD DOMINION ELECTRIC COOPERATIVE, AMERICAN  
MUNICIPAL POWER, INC., AND SOUTHERN MARYLAND ELECTRIC  
COOPERATIVE, INC. TO PJM INTERCONNECTION, L.L.C'S DEFICIENCY  
LETTER RESPONSE**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2014) and the Combined Notice of Filings No. 1 issued in the above-referenced proceeding on April 13, 2015, Old Dominion Electric Cooperative, American Municipal Power, Inc. and Southern Maryland Electric Cooperative, Inc., (collectively, "Joint Protestors") submit this further Protest to the Capacity Performance ("CP") proposal made by PJM Interconnection, L.L.C. in this proceeding on December 12, 2014, as supplemented by its April 10, 2015 response to the Commission's letter informing PJM that its initial filing is deficient. As discussed herein, PJM's April 10 filing (the "Deficiency Response") confirms that the CP proposal is premature, lacks critical details and is a far more drastic revision of PJM's existing Reliability Pricing Model ("RPM") than is necessary or justified to resolve PJM's stated concerns about reliability and resource performance. Therefore, Joint Protestors continue to request that the Commission reject the CP filing in its entirety and direct PJM to take the actions set forth in Joint Protestors' initial protest<sup>1</sup> or, in the alternative, suspend the filing for the maximum five month period, establish hearing procedures, and direct further measures as Joint Protestors have requested.<sup>2</sup>

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<sup>1</sup>*Protest and Motion to Reject Filing or, in the Alternative, for Suspension and Hearings by American Municipal Power, Inc., Old Dominion Electric Cooperative, and Southern Maryland Electric Cooperative, Inc.*, submitted in this proceeding on January 20, 2015 ("Joint Protest"); *see also Motion for Leave to Answer and Answer of American*

## I. GENERAL OBSERVATIONS

Protestors of PJM's CP filing have demonstrated that PJM's proposal to revamp its RPM market design to adopt a new CP product and phase out the existing Capacity Resource product has not been shown to be just, reasonable and not unduly discriminatory or preferential because, among other things, CP as proposed by PJM: (1) will impose excessive and unreasonable costs on load-serving entities and consumers without commensurate benefits; (2) unduly discriminates against single-plant capacity owners and renewable resources; (3) may actually *degrade* reliability; (4) cannot be implemented within the time PJM proposes; and, (5) is so lacking in critical details as to render the filing unjust and unreasonable.

On March 31, 2015, the Commission issued a notice informing PJM that its CP filing is "deficient and that additional information is required in order to process the filing."<sup>3</sup> In its Deficiency Response, PJM does more than simply attempting to support its CP proposal; PJM also includes yet further modifications to its original CP proposal, as well as giving indications that additional Commission modification to portions of the original filing would be acceptable.<sup>4</sup> Thus, rather than supporting the CP proposal, PJM's Deficiency Response actually underscores that the CP proposal is *still* too much in flux for the Commission to determine whether it is just

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*Municipal Power Inc., Old Dominion Electric Cooperative and Southern Maryland Electric Cooperative*, filed in this proceeding on March 2, 2015 and the *Supplement to Joint Protest by American Municipal Power Inc., Old Dominion Electric Cooperative and Southern Maryland Electric Cooperative*, submitted in this proceeding on March 19, 2015.

<sup>2</sup> See Joint Protest at pages 77-79.

<sup>3</sup> Deficiency Notice at 1.

<sup>4</sup> Page 17-19 of PJM's April 10 Response: "PJM clarifies that it would not be opposed to the Commission requiring PJM to eliminate the monthly stop loss in this proceeding or requiring PJM to review the monthly stop loss and any impact on performance incentives at an appropriate time after implementing the Capacity Performance design."

and reasonable and not unduly discriminatory or preferential. Accordingly, PJM's filing must be rejected for failing to satisfy the requirements of Federal Power Act ("FPA") Section 205.<sup>5</sup>

In spite of these clear shortcomings, PJM is bound and determined to have CP implemented for this year's Base Residual Auction ("BRA"), which will procure capacity for the 2018/2019 Delivery Year. PJM is so determined to have CP in place for this year's BRA that it has sought and now received the extraordinary measure of a waiver of its Tariff in order to delay the BRA until after the Commission rules on the merits of the CP proposal.<sup>6</sup> PJM's request to let the tail wag the dog comes in spite of its acknowledgment that delaying the BRA would likely have significant adverse consequences, including affecting "finance decisions of potential new entrants as well as retirement and new investment decisions for existing resources."<sup>7</sup>

Notwithstanding PJM's single-minded focus on implementing CP as soon as possible rather than resolving the deficiencies in the initial CP filing, PJM's Deficiency Response only adds to the CP filing's shortcomings by proposing new and unvetted modifications to CP. For example, PJM's Deficiency Response proposes to replace the offer cap in the original CP filing with a new offer cap, apparently recently developed by PJM in coordination with the Independent Market Monitor for PJM ("IMM").<sup>8</sup> The offer cap is a critical element of PJM's capacity construct because it is necessary to mitigate against the exercise of market power. The effectiveness of the offer cap as a mitigation tool is especially important given that the incentive to withhold capacity is much greater under CP than under PJM's existing RPM construct. But

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<sup>5</sup> 16 U.S.C. § 824d.

<sup>6</sup> PJM filed its request for waiver to delay this year's BRA in Docket No. ER15-1470-000. Joint Protestors protested the waiver and urged the Commission against holding market certainty and the BRA hostage as a result of PJM's failure to develop a just and reasonable proposal. On this date, the Commission issued an order granting PJM's waiver request. *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067 (2015).

<sup>7</sup> Deficiency Response at 3.

<sup>8</sup> It is worth noting that this coordination took place outside of any stakeholder process, and stakeholders were made aware of the new proposal only through PJM's Deficiency Response.

PJM's Deficiency Response fails to provide the necessary support for its new offer cap proposal. PJM offers only a general description and appendix of examples, but supplies neither the necessary details nor the required changes to the already-filed tariff language that would reflect its new offer cap proposal. Similarly, PJM states in the Deficiency Response that its new offer cap proposal "will allow such resources to submit unit-specific offer caps which detail all [Avoidable Cost Rate] components including a quantifiable risk as proposed by PJM in its Capacity Performance filing."<sup>9</sup> But PJM provides no details regarding the criteria that would be applied in making this subjective determination. Indeed, PJM's Deficiency Response creates *new* deficiencies because PJM has not furnished adequate support for either the unchanged components of its CP proposal or for the new components proposed for the first time in its Deficiency Response.

Given these clear shortcomings, if the Commission does not reject the filing outright, it must at least reject PJM's request to implement CP for the 2015 BRA in order for PJM to fully develop and flesh out its proposal. In other words, the Commission should follow through with its direction that PJM's response would "constitute an amendment to [its] filing and a new filing date will be established pursuant to *Duke Power Co.*, 57 FERC ¶ 61,215 (1991)" and "a notice of amendment will be issued upon receipt of [PJM's] response." PJM's Deficiency Response, proposing undeveloped amendments to an already-deficient filing, is the "poster child" for the Commission to follow the *Duke* precedent by treating the filing as an amendment and abiding by the prior notice provisions of FPA Section 205(d) which require that a filing cannot take effect any less than 60 nor more than 120 days after filing – which would mean PJM's amended filing

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<sup>9</sup> Deficiency Response at 3.

on April 10 could not become effective prior to June 9, 2015.<sup>10</sup> Otherwise, PJM will be permitted an end-run around the prior notice provisions of FPA Section 205(d), by using its Deficiency Response as the vehicle to amend its CP proposal. Such an outcome would be unreasonable (and should be viewed by the Commission as unacceptable) given the significance of the changes proposed, the haste with which PJM has developed and seeks to implement its CP proposal, the burdens its proposal will place on consumers, and the other adverse impacts it will cause. Therefore, if the Commission does not reject the filing outright, Joint Protestors urge the Commission to clarify that CP cannot become effective prior to June 9, 2015.

## **II. ARGUMENT**

### **A. PJM's Proposal Fails to Mitigate Market Power.**

The Deficiency Notice specified several areas where PJM had not provided sufficient evidence regarding the market power mitigation aspects of its CP proposal. Questions 1 through 5 in the Deficiency Notice request that PJM address the lack of market power mitigation in PJM's CP proposal. In response, PJM includes nothing more than a cursory list of "features" of RPM, including: (1) a must-offer requirement; (2) advanced notice and review of retirement decisions; and (3) the Minimum Offer Price Rule, that PJM claims address market power mitigation broadly. Deficiency Response at 3.

PJM's representations regarding the competitiveness of its capacity construct are misleading, at best. PJM claims that "although the IMM has continually found the capacity market as structurally non-competitive, it has found the RPM results, competitive."<sup>11</sup> The ability

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<sup>10</sup> See also 18 C.F.R. § 35.17(b)(2015). Joint Protestors realize that the prior notice provisions have been effectively rendered moot by virtue of the Commission's order, issued today, granting PJM's request for waiver of its tariff in order to delay this year's BRA, in Docket No. ER15-1470. Nevertheless, the Commission should require PJM to abide by those prior notice provisions for its amended filing as reflected in the Deficiency Response.

<sup>11</sup> Deficiency Response at 3 (citation omitted).

of the IMM to find that the RPM results are competitive is not a function of the existence of a "larger set of mitigation tools" as PJM claims. Instead, the ability of the IMM to deem the results of the RPM auction competitive is due in large part to the ability of the IMM to mitigate RPM offers in order to reach the "competitive" results. There has been no change to diminish or eliminate the structural market power that has always existed in the PJM region. In fact, CP actually provides additional incentives to withhold for large fleet owners that obtain further benefits of insurance against other units under-performing during critical periods. Even the IMM has warned that "[m]arket power is and will remain endemic to the existing structure of the PJM Capacity Market. Nonetheless a competitive outcome can be assured by appropriate market power mitigation rules."<sup>12</sup>

Rather than addressing the Commission's legitimate market power concerns, PJM's Deficiency Response announces that PJM has adopted a new offer cap proposal that it had very recently opposed. While the initial CP filing proposed a default offer cap equal to Net CONE, for the first time, in its Deficiency Response, PJM now proposes to adopt what it characterizes as the "PJM/IMM Agreed-to Offer Cap" which is Net CONE multiplied by an expected balancing ratio. Although the differences in approach between PJM's initial and current offer cap proposal will result in little difference in outcome (shifting from a Net CONE market seller offer cap to a market seller offer cap about 85-90% of Net CONE with the ability to justify higher offer caps with a unit-specific review under either approach), PJM fails to explain how either offer cap proposal will effectively prevent economic withholding in LDAs with high supplier concentration.

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<sup>12</sup>[http://www.monitoringanalytics.com/reports/Reports/2014/IMM\\_Analysis\\_of\\_the\\_2017\\_2018\\_RPM\\_Base\\_Residual\\_Auction\\_20141006.pdf](http://www.monitoringanalytics.com/reports/Reports/2014/IMM_Analysis_of_the_2017_2018_RPM_Base_Residual_Auction_20141006.pdf) at 2 (last visited April 13, 2015).

Indeed, the Commission need look no further than PJM's own criticism of the IMM's previously submitted offer cap proposal to confirm the inadequacy of the PJM/IMM Offer Cap included in the Deficiency Response. The IMM initially proposed a Market Seller Offer Cap below Net CONE in its comments filed in this proceeding on February 25, 2015. In an Answer filed on March 6, 2015, PJM urged the Commission to reject the IMM's proposed offer cap due to the imprecision of the IMM's method. PJM argued that the "IMM's proposal, regardless of its theoretical merits would promise at best illusory added precisions. But in practice, the added complexity and uncertainty required to forecast expected system demand during an emergency event three or more years into the future will rob the IMM's proposal of any incremental 'accuracy' it purports to offer in calculating a Capacity Market Seller's Offer Cap."<sup>13</sup> PJM's prior criticism of the IMM's offer cap proposal applies equally to the PJM/IMM Agreed-to Offer Cap, which, as PJM states, is the IMM offer cap. There is no substantive difference in these proposals' inability to limit economic withholding in a CP construct where the incentives to withhold are greater and the ability to withhold is easier. Indeed, just a few months ago, the IMM, in its October 2014 review of the 2017/2018 Base Residual Auction, stated that “[r]eliance on the RPM design for competitive outcomes means reliance on the market power mitigation rules. **Attenuation of those rules would mean that market participants would not be able to rely on the competitiveness of the market outcomes.**”<sup>14</sup> Now, however, PJM asks the Commission to throw out these very same rules with no justification. Yet, PJM makes no attempt to demonstrate how an offer cap proposal that PJM itself claimed should be rejected when proposed by the IMM is now “just and reasonable” because proposed by PJM.

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<sup>13</sup> PJM's Limited Answer at 5.

<sup>14</sup>[http://www.monitoringanalytics.com/reports/Reports/2014/IMM\\_Analysis\\_of\\_the\\_2017\\_2018\\_RPM\\_Base\\_Residual\\_Auction\\_20141006.pdf](http://www.monitoringanalytics.com/reports/Reports/2014/IMM_Analysis_of_the_2017_2018_RPM_Base_Residual_Auction_20141006.pdf) (last visited April 13, 2015)(Emphasis added).

PJM also relies on the contention that this new proposal is the same as the approach accepted for ISO-New England, Inc. ("ISO-NE"), and apparently believes it significant that PJM and the IMM agree on this new approach.<sup>15</sup> However, as discussed in the Joint Protest, there are important differences between the PJM and ISO-NE capacity performance mechanisms, including market power mitigation. Given the number of small LDAs and supplier concentration in PJM, PJM cannot justify its offer cap proposal by saying it is "identical" to ISO-NE's offer cap methodology. PJM's methodology does not mitigate against economic withholding and the exercise of market power that the PJM IMM has repeatedly stated would occur absent IMM action. The IMM recently stated that "The aggregate [capacity] market structure was evaluated as not competitive. For almost all auctions held from 2007 to the present, the PJM region failed the three pivotal supplier test (TPS), which is conducted at the time of the auction. The local market structure was evaluated as not competitive. For almost every auction held, all LDAs have failed the TPS test, which is conducted at the time of the auction"<sup>16</sup>

For example, given the proposed obligations of CP Resources, a Capacity Market Seller with a portfolio of resources and high concentration in a geographic area could readily claim that a certain amount of prospective fuel related expense or capital investment is needed on some of its resources under the Avoided Cost Rate ("ACR") capital investment provision in order to satisfy CP requirements under PJM's proposal.<sup>17</sup> To the extent a few of these Sell Offers in a large portfolio are at or above Net CONE, the Capacity Market Seller could construct an offer curve across its resource fleet in order to clear a lower volume of capacity at a higher price. If the CP Resources that were offered at a higher level do not clear, then the Capacity Market Seller

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<sup>15</sup> See Deficiency Response at 1 ("PJM and the IMM agree that the competitive offer for any resource in any LDA can be defined using the equation . . .")

<sup>16</sup> Monitoring Analytics, PJM State of the Market Report for 2014, Section 8, page 179.

<sup>17</sup> See proposed Tariff Attachment DD, Section 6.4

could economically gain on its overall portfolio and rationally claim that the market did not support the new investment. The real issue is the level of subjectivity in CP for PJM or the IMM to determine that prospective fuel expense or capital investment is needed as long as supported by the clearing price, versus prospective fuel expense or capital investment as part of an overall profitable economic withholding by a Capacity Market Seller with a large portfolio of resources. PJM's new offer cap proposal does nothing to address this issue.

As a further example of how the new offer cap proposal inadequately mitigates market power (just as the initial CP filing does), a resource owner with a high concentration of resources in a geographic area could have a greater incentive under CP than under the existing RPM construct to have a resource not clear at all or at least not clear as a CP Resource. Under PJM's proposal, a unit offering CP Resource and Base Capacity does so with a coupled offer. So, a unit could be offered at a very high price as a CP Resource, through a staggered bid as part of a portfolio strategy, and then also be offered at a lower price as Base Capacity. The result could be that the resource would not clear as a CP Resource but would either clear as Base Capacity or not at all. (Note the ability to clear as Base Capacity is only during the initial years where both products are a possibility.) If the resource clears as Base Capacity, it can cover winter performance risk. If it does not clear as either a CP Resource or Base Capacity, the unit could cover winter *and* summer performance risk. Or, during any Delivery Year with CP being cleared, if the same unit or two that do not clear at all for capacity, larger fleet owners with diverse portfolios will have some resources clear that will cover summer and winter performance risk. In this scenario, those large fleet owners directly benefit from the higher clearing price in spite of lower clearing volume and end up with insurance against performance risk – which may

not be readily available to other market participants. PJM's market seller offer cap proposals – either the initial or the Deficiency Response – do nothing to address this problem.

**B. PJM's Deficiency Response Introduces Uncertainty as to whether a Resource that is Indisputably and Unambiguously a Capacity Performance resource can Use a Coupled offer Strategy to Effectively Withhold Capacity.**

Joint Protestors request clarification that PJM's Deficiency Response does not result in a watering down of the clearly stated must-offer principles in PJM's December 12, 2014 Filing Letter.

The must-offer principles in PJM's December 12 filing were as follows:

When considered together, these provisions embody the following principles: 1) any resource that can qualify as a Capacity Performance Resource must offer as a Capacity Performance Resource, unless it falls in one of the categorically excluded resource types; 2) a resource that can qualify as a Capacity Performance Resource, but requires substantial investment to do so, is not excused from the Capacity Performance Resource must-offer requirement, but may submit a coupled offer as both Capacity Performance Resource and Base Capacity Resource, with a price difference that reflects the costs necessary for it to become a Capacity Performance Resource ....<sup>18</sup>

However, PJM's Deficiency Response raises questions about whether the December 12, 2014 principles remain intact. Specifically, PJM's Deficiency Response states that "... PJM views the IMM analysis as correctly identifying the additional types of costs that should be allowed for a Capacity Performance Resource offer"<sup>19</sup>, with such costs "... including the potential payment of penalties that are based on Net CONE \* B, and the foregone opportunity to obtain performance bonus, also calculated at up to Net CONE \* B...."<sup>20</sup>

Joint Protestors submit that if such "additional types of costs were to be considered among the costs to be a CP Resource relative to the above-noted December 12, 2014 must-offer

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<sup>18</sup> PJM Docket No. ER15-623 filing letter, at 61 (emphasis added).

<sup>19</sup> PJM's Deficiency Response, at 13.

<sup>20</sup> *Id.*, at 14.

principles, then it is unclear if a CP Resource that is indisputably and unambiguously a CP Resource would be able to submit a “coupled offer,” invoking these hypothetical costs, seeking thereby to clear as a Base Capacity Resource and not as a CP Resource. The market power implications of permitting certain resources the ability to effectively withhold CP capacity are significant. As discussed above, the IMM has stated that market power in the PJM capacity market is “endemic”.<sup>21</sup> It is not beyond the realm of possibility that a large owner of existing resources could determine that a coupled offer strategy could be used, in a form of withholding, to reduce the supply of cleared CP Resources, raising the CP clearing price substantially in the process.

Accordingly, Joint Protestors request that to the extent the Commission approves PJM’s CP proposal, it should not approve PJM’s revised offer-cap plan without reaffirming the inherent guidance provided by PJM in its initial filing – namely that an offer strategy that offers a resource as both CP and Base capacity is reserved for resources that must make a substantial investment to do so, and that large owners of resources that are indisputably and unambiguously a CP Resource – for example, a nuclear facility - should not be permitted to use an offer strategy that offers the unit as both CP and Base capacity. To do otherwise would be invite the exercise of market power in the PJM capacity market.

### **C. Elimination of Incremental Auctions Is Not Just and Reasonable.**

The Deficiency Notice posed the question of whether further modifying the CP proposal to reduce the number of Incremental Auctions from three to one would "reduce the incentive to

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<sup>21</sup>“Market power is and will remain endemic to the existing structure of the PJM Capacity Market” [http://www.monitoringanalytics.com/reports/Reports/2014/IMM\\_Analysis\\_of\\_the\\_2017\\_2018\\_RPM\\_Base\\_Residual\\_Auction\\_20141006.pdf](http://www.monitoringanalytics.com/reports/Reports/2014/IMM_Analysis_of_the_2017_2018_RPM_Base_Residual_Auction_20141006.pdf) (last visited April 13, 2015) at 2.

make speculative offers, and thereby improve price formation in the capacity market."<sup>22</sup> Apparently, PJM saw this inquiry as an invitation and suggested that the Commission could "issue an order requiring PJM to include this proposal as part of its Capacity Performance structure...." Deficiency Response at 23. However, as the Deficiency Notice recognizes, PJM's proposal to reduce the number of Incremental Auctions from three to one was recently rejected.<sup>23</sup>

PJM's Deficiency Response does not add any new justifications for elimination of the Incremental Auctions. By its own words, PJM's only reasoning for eliminating two Incremental Auctions is to "further reduce the incentive to make speculative offers and improve price formation in RPM."<sup>24</sup> As Joint Protestors and others explained in Docket No. ER14-1461-000, there are a number of reasons a resource may seek to replace its BRA commitment that have nothing to do with speculation whatsoever. Those can "range from changes in the capability of a physical resource between the BRA and the Delivery Year (*e.g.*, failed capability test, deration, an event of force majeure or other factors outside a resource control) to unique characteristics of Demand Resources that impact the ability to supply the full capability of a particular resource committed in a given Delivery Year" due to changes in customer Peak Load Contribution or other changed circumstances at customer facilities, and changes that are beyond a resource's control such as changes in PJM's own load forecast.<sup>25</sup> Moreover, Joint Protestors and others demonstrated that PJM had not substantiated its claims that three Incremental Auctions lead to speculation, since PJM's interpretation of the underlying data was flawed, and PJM had not demonstrated that its changes were necessary for reliability.<sup>26</sup>

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<sup>22</sup> Deficiency Notice, Question 9.

<sup>23</sup> *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,108 (2014).

<sup>24</sup> Deficiency Response at 22.

<sup>25</sup> Protest of the Indicated PJM Stakeholders, filed March 31, 2014 in Docket No. ER14-1461-000, at 8.

<sup>26</sup> *Id.* at 9-10.

In rejecting PJM's package of changes, including the proposed elimination of two Incremental Auctions, the Commission agreed with protesters in this regard, as follows:

We agree with PJM that offers into its capacity market should not be speculative. However, PJM has not demonstrated the degree to which purchases of replacement capacity are, in fact, the result of resources' inability to meet their capacity obligations for non-speculative reasons, or resources submitting physical offers and responding to subsequent economic signals, or overly-optimistic offers "insured" by consistent price spreads, or speculators looking to profit from consistent price spreads. We are mindful, in this regard, of intervenors who assert that suppliers may indeed have legitimate reasons to buy out their capacity obligations with other physical resources.

147 FERC ¶ 61,108 at P 69. On that basis, the Commission rejected PJM's proposal to eliminate two Incremental Auctions, instituted an investigation under FPA Section 206 and directed its staff to convene a technical conference to "facilitate the development of a just and reasonable solution"<sup>27</sup> to the possibility that the existing PJM tariff provisions might "fail to promote long-term reliability in its capacity market by possibly permitting speculative sell offers to be submitted into PJM's capacity market auctions." PJM requested that the Commission stay the technical conference pending resolution of CP and offered to report back to the Commission after an order on CP, identifying areas where PJM believes further reforms are needed.<sup>28</sup>

Nothing has changed with respect to PJM's proposal to eliminate two of the Incremental Auctions, so there is no basis for now finding that PJM's proposal to do so here is just and reasonable. There has been no demonstration that speculation exists due to three Incremental Auctions, or that elimination of two of them is needed for reliability. The Incremental Auctions provide a necessary opportunity to buy replacement capacity – for legitimate reasons – and allow

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<sup>27</sup> *Id.* at P 74.

<sup>28</sup> In its letter filed in Docket Nos. ER14-1461, *et al.* on August 18, 2014, PJM requested that the Commission defer action in that proceeding "until such time as it has acted on PJM's Capacity Performance filing." PJM further advised that "upon a ruling by the Commission in that proceeding, PJM would report to the Commission on what it believes are remaining issues that should be addressed in this proceeding and all stakeholders could respond to such report so as to provide the Commission with a updated focus of purposes of scheduling further activity in this matter."

PJM to procure additional capacity if its peak load forecast increases after the Base Residual Auction.

Eliminating Incremental Auctions as part of this already overly complex proceeding, is not just and reasonable. Further, adding yet another change to the already overly complex CP proposal would allow PJM an end-run around the FPA Section 205 requirement to demonstrate that moving from three Incremental Auctions to only one Incremental Auction is just, reasonable and not unduly discriminatory or preferential. If PJM insists on eliminating Incremental Auctions, it should pursue that goal through the separate FPA Section 206 investigation already convened (but stayed at PJM's request) in Docket No. ER14-1461-000.

**D. CP is Not Required to Incent Resource Performance.**

The Deficiency Notice posed the question of what other mechanisms besides proposed seller representations "could be used to supplement the Non-Performance Charge to better incent resource performance?"<sup>29</sup> Without repeating all of the previously submitted arguments and evidence, Joint Protestors remind the Commission that, despite PJM's claims to the contrary, CP came to the fore after the extreme events of winter 2014. However, capacity resource performance was not the root cause of the operational performance issues. Instead, the four main drivers of lower-than-expected resource availability were: (1) gas-electric coordination issues; (2) generating unit design; (3) effects of extreme low temperatures on usability of consumables; and (4) boiler and boiler control system operational problems.<sup>30</sup>

The unit availability issues that arose in January 2014 appear to have been largely resolved *without CP*, as reported by PJM during the April 20, 2015 Members Committee Information Webinar. Despite colder weather and higher loads (a new winter peak), no filed

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<sup>29</sup> Deficiency Notice, Question 8.

<sup>30</sup> See Joint Protest at 14-17.

changes to its Tariff or Operating Agreement and with the current RPM capacity construct, generator outage performance improved from an outage rate of 22% in 2014 to 13.3% in 2015. As provided previously to the Commission, this improved performance was due to extensive work by PJM and the stakeholders over the remainder of 2014 to improve communication, test units and enhance winter preparedness.<sup>31</sup> The Commission should resist PJM's urge to use "performance incentives" to address issues that are not based on performance decisions by capacity resource owners. Instead, as the Commission has done with its Final Rule on coordination in scheduling between the gas and electric industries,<sup>32</sup> the focus should be on addressing these operational issues directly through improved price formation as opposed to hoping to resolve them through the CP proposal that will create new uncertainty, fail to address even PJM's stated concerns, and burden load with unjustifiably higher prices for capacity.

#### **E. Additional Concerns**

Joint Protestors have detailed the reasons that PJM's initial CP filing and its Deficiency Response are deficient and demonstrated that the CP proposal has not been shown to be just, reasonable and not unduly discriminatory or preferential. There is another issue raised by PJM subsequent to its December 12, 2014 CP filing in this proceeding, however, that also should be considered by the Commission. In its February 13, 2015 Answer in this proceeding, PJM offered additional proposed tariff language to better frame the representation obligations of a Capacity Resource.<sup>33</sup> While PJM's proposed additions to section 5.5A(a)(i) of Attachment DD of the Tariff are an improvement in clarifying the obligations of fossil resources, this clarification is contradicted by the following specific language in that same section's paragraph A: "has made,

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<sup>31</sup> 2015 Winter Operations Update (Winter Report Preview); April 20, 2015 Presentation

<sup>32</sup> *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Final Rule, 151 FERC ¶ 61,049 (2015).

<sup>33</sup> PJM's February 13, 2014 Answer at pages 31-32.

or is capable of demonstrating that it will make, the necessary investment to ensure the Capacity Resource has the capability for the entire such Delivery Year to provide energy *at any time* when called upon by the Office of the Interconnection;”

It is physically impossible for any generation resource, even a CP Resource, to be available 100% of the time. It would then follow that no officer of any corporation should be willing to certify such performance. The requirement for such a certification as a condition precedent for a resource to qualify as a CP Resource not only defeats the purpose of having a certification so that PJM knows it can rely on the facts and representations made, it also exposes the certifying official to civil and criminal charges and significant penalties for making knowingly false statements.<sup>34</sup> It is unreasonable for PJM to require an officer certification for an impossible circumstance. Therefore, if the Commission does not reject PJM's CP filing, then the phrase “at any time” needs to be replaced with “in accordance with the guidelines set forth in paragraph E.”

### **III. CONCLUSION**

WHEREFORE, for the reasons stated here and in the initial protest, Joint Protestors respectfully request that the Commission reject PJM's CP filing in its entirety, with specific instructions to address its resource adequacy and reliability concerns through the stakeholder process.<sup>35</sup> Alternatively, if the Commission does not reject CP in its entirety, then the

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<sup>34</sup>See 18 C.F.R. § 1c (2015), which makes it unlawful for any entity to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." See also FPA Section 316A, which grants the Commission the authority to assess civil penalties against any person who violates FPA Part II or any rule or order thereunder, up to \$1 million per day, per violation.

<sup>35</sup>See Joint Protest at 77-78 for a list of specific directives that should be given to PJM.

Commission should grant the maximum five month suspension, establish hearing procedures, and make the additional rulings requested in the Joint Protest.<sup>36</sup>

Respectfully submitted,

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Dated: April 24, 2015

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<sup>36</sup> *Id.* at 78-79. In short, the Joint Protest requested that if the Commission accepts CP, then it should (1) eliminate the 2016/2017 and 2017/2018 Transition Incremental Auctions; (2) direct PJM to retain the Short Term Resource Procurement Target; (3) direct PJM to implement the more modest changes to its penalty structure and unit commitment rules discussed in the Joint Protest; and (4) direct PJM to evaluate whether the effectiveness of its CP-related tariff and RAA changes at the end of the suspension period necessitates or recommends changes in the Triennial Review Parameters recently accepted in Docket No. ER14-2490.

## CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of April, I have caused a copy of the foregoing to be served upon each person designated on the Official Service List in this proceeding.

/s – Adrienne E. Clair/

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