

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

PJM Interconnection, L.L.C.

Docket Nos. ER15-623-000  
EL15-29-000  
ER15-623-001

Essential Power Rock Springs, LLC, Essential  
Power OPP, LLC, and Lakewood Cogeneration, L.P.  
v. PJM Interconnection, L.L.C.

EL15-41-000

**JOINT REQUEST FOR REHEARING AND CLARIFICATION OF AMERICAN  
MUNICIPAL POWER, INC., OLD DOMINION ELECTRIC COOPERATIVE, AND  
SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.**

Pursuant to Section 313 of the Federal Power Act (18 USC §8251) and Rule 713 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2015), American Municipal Power, Inc., Old Dominion Electric Cooperative, and Southern Maryland Electric Cooperative, Inc. (collectively, "Joint Parties") hereby submit the following Request for Rehearing and Clarification of the Commission's June 9, 2015 Order on Proposed Tariff Revisions to implement the Capacity Performance ("CP") proposal made by PJM Interconnection, L.L.C. ("PJM") in this proceeding ("June 9 Order"). Joint Parties strongly object to the June 9 Order for a number of reasons, but chiefly because it will cause a dramatic increase in electricity end-user costs in the PJM region without ensuring any meaningful improvement in the reliability or quality of service.

**I. STATEMENT OF ISSUES/SPECIFICATION OF ERRORS**

Pursuant to Commission Rules 713(c)(1) and 713(c)(2), Joint Parties specify the following issues on rehearing, each of which stems from an error or omission in the June 9 Order

that renders the Order arbitrary, capricious, insufficiently supported, and beyond the Commission's authority:

1. Whether the Commission abused its discretion by accepting the CP proposal as just and reasonable without undertaking any meaningful evidence-based analysis comparing the relative costs and benefits of the proposal. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962); *San Diego Gas & Elec. Co. v. FERC*, 904 F.2d 727, 731 (D.C. Cir. 1990); *Carolina Power & Light Co. v. FERC*, 716 F.2d 52, 55-56 (D.C. Cir. 1983); *Michigan v. EPA*, No. 14-46 at 7-8 (June 29, 2015 U.S.); 576 U.S. \_ (2015).

2. Whether the Commission erred by exposing CP Resources to Non-Performance Charges on the basis of physical and non-physical constraints that the Commission realized must necessarily be taken into account for other relevant purposes. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)

3. Whether it was unduly discriminatory for the June 9 Order to expose CP Resources to Non-Performance Charges on the basis of factors that are outside a resource owner's control while directing PJM to acknowledge and give effect to such factors as operating parameter limits. *Alabama Elec. Coop. v. FERC*, 684 F.2d 20 (D.C. Cir. 1982); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076 (2007).

4. Whether the Commission failed to engage in reasoned decision-making by ignoring valid and well-supported concerns relating to potential economic withholding. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962); *San Diego Gas*

*& Elec. Co. v. FERC*, 904 F.2d 727, 731 (D.C. Cir. 1990); *Carolina Power & Light Co. v. FERC*, 716 F.2d 52, 55-56 (D.C. Cir. 1983); *Michigan v. EPA*, No. 14-46 at 7-8 (June 29, 2015 U.S.); 576 U.S. (2015).

5. Whether it was arbitrary and capricious for the June 9 Order to approve PJM's proposed elimination of *force majeure* as the definition of "extraordinary circumstances" for purposes of Financial Transmission Right allocation. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)

6. Whether, in light of the Commission's stated reluctance to upset market settlements, it was arbitrary and capricious for the June 9 Order to accept PJM's proposed modification to the definition of "extraordinary circumstances" for purposes of the Financial Transmission Rights allocation on the basis that parties aggrieved by an exercise of PJM's discretion may file a Section 206 complaint. *See, e.g., Maryland Pub. Serv. Comm'n v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, *reh'g denied*, 125 FERC ¶ 61,340 (2008) (directing elimination of tariff provisions that exempted certain generating facilities from mitigation but rejecting requests for retroactive relief in the absence of a tariff violation); Chairman Bay's dissent to the June 9 Order (hereinafter, "Bay Dissent") at 6 ("The reality is that once a market construct is accepted and implemented, it is very difficult to unwind.").

7. Whether it was arbitrary and capricious for the June 9 Order to approve PJM's proposed elimination of the Short-Term Resource Procurement, given that it was a key component of a previously approved settlement and in the absence of any evidence that the Short-Term Resource Procurement has any adverse effects. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Equitrans, L.P.*, 104

FERC ¶ 61,008 (2003); *order on reh'g*, 106 FERC ¶ 61,013 (2004); *order on appeal*, *Brooklyn Union Gas Co. v FERC*, 409 F.3d 404 (D.C. Cir. 2005);

8. Whether, based on the evidence presented, it was arbitrary and capricious for the June 9 Order to direct PJM to eliminate the monthly stop-loss limit. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)

9. Whether the Commission failed to engage in reasoned decision-making and approved an unduly discriminatory provision by accepting PJM's proposed limitations on the resource types that would be permitted to submit aggregated offers. *Alabama Elec. Coop. v. FERC*, 684 F.2d 20 (D.C. Cir. 1982); *Cal. Indep Sys. Operator Corp.*, 119 FERC ¶ 61,076 (2007); *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

10. Whether it was arbitrary and capricious for the Commission to fail to clarify in the June 9 Order that Intermittent Resources may aggregate with other like resources unless they are located in modeled Locational Deliverability Areas. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)

11. Whether it was arbitrary and capricious for the Commission to fail to clarify in the June 9 Order that resources may aggregate for the purposes of both qualification as a CP Resource and for compliance measurement purposes. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)

12. Whether it was arbitrary and capricious for the Commission to fail to clarify in the June 9 Order that undelivered megawatts will not count as a shortfall during unforeseen emergency conditions. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)

## II. EXECUTIVE SUMMARY

Joint Parties have argued since CP's inception that it should be rejected as an unwarranted change in PJM's Reliability Pricing Model ("RPM") that would dramatically increase costs to load while failing to promote improved reliability.<sup>1</sup> Indeed, even with changes made by PJM in response to the Commission's Deficiency Letter and even with the conditional changes required by the Commission, Joint Parties still believe that the only thing CP ensures is an immense increase in revenue flow to generators, with no assurance the increased revenue will produce investment in the facilities and equipment PJM claims are needed. Although PJM denies that CP is all about "the vortex," Joint Parties' sense is that CP is, at bottom, a hasty and ill-conceived reaction by PJM to winter's events and a belief that *some* dramatic action must be taken, and taken now, lest the responsible entities be charged with laxity the next time extreme weather or other unusual conditions challenge the system. This is especially perplexing given that during the severe winter of 2014-2015, little to no stress occurred. One of the many concerns with CP is that it detracts from the significant progress that has been made and could continue to be made in addressing the real drivers of the lower-than-expected resource availability, which included: (1) gas/electric coordination issues, including gas fuel deliverability limits on extreme winter days when resources were not committed day ahead or were curtailed due to constraints within a local gas distribution company;<sup>2</sup> (2) generating unit design constraints

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<sup>1</sup> See *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., passim* (January 20, 2015) (hereinafter "Joint Protest") (The parties to the Joint Protest are collectively referred to herein as "Joint Protesters").

<sup>2</sup> See the presentation posted at <http://www.pjm.com/~media/committees-groups/committees/elc/20140911/20140911-item-03-capacity-performance-presentation.ashx>, at slide 4 (noting that, of the 9,848 MW outages attributed to lack of fuel on January 7, 2014 at the hour ending 7:00 pm Eastern time, 8,503 MW (or 86%) had not been committed day-ahead).

that prevented operation below certain threshold temperatures; (3) effects of extreme low temperatures on usability of consumables (*e.g.*, freezing of coal and limestone piles, and gelling of fuel oil); and; (4) boiler and boiler control system operational problems.<sup>3</sup>

While the Commission appears to agree with PJM on virtually every CP aspect including the need for it at all, Chairman Bay shares Joint Parties' view of CP for what it really is:

The majority today accepts a flawed, complex, highly technical market construct in which there is a potential mismatch between incentives and penalties, in which mitigation has largely been eliminated in a market characterized by structural non-competitiveness, and in which there may be billions in additional capacity market costs borne by consumers. The reality is that once a market construct is accepted and implemented, it is very difficult to unwind. Of all the costs associated with the CPP, not the least among them is this: the opportunity cost of the time and resources that could have been used to develop a more sustainable, efficient, and cost-effective design.<sup>4</sup>

Joint Parties renew their request to reject CP as an unsupported and unwarranted change to RPM that will dramatically increase costs to load without assurance of any commensurate benefit. At a minimum, the Commission should grant rehearing or clarify its June 9 Order to address some of the most egregious parts of CP.

### **III. ARGUMENT**

#### **A. It Was Arbitrary, Capricious and an Abuse of Discretion for the Commission to Accept the CP Proposal as “Just and Reasonable” Without Undertaking Any Meaningful Evidence-Based Analysis Comparing the Relative Costs and Benefits of the Proposal.**

The June 9 Order rejected arguments that a change of this magnitude to the RPM market rules should have included a cost-benefit analysis. The Commission reasoned that it "does not generally require the mathematical specificity of a cost-benefit analysis to support a market rule

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<sup>3</sup> See the presentation posted at <http://www.pjm.com/~media/committees-groups/committees/oc/20140818/20140818-item-02-cold-weather-resource-improvement-education.ashx>, at slides 14-15 (noting that “boiler issues” represented, respectively, 19% of single fuel and 29% of dual-fuel forced outage causes during the hours ending 6:00 pm and 7:00 pm Eastern time on January 7, 2014.

<sup>4</sup> Bay Dissent at 6.

change."<sup>5</sup> Be that as it may, the Joint Parties agree with Chairman Bay that a cost-benefit analysis is not needed "every time a market rule is changed. But, there, given the potential multi-billion dollar cost of the CPP and the burden consumers will be asked to bear, any analysis, no matter how rudimentary, would have been helpful before concluding this proposal is just and reasonable."<sup>6</sup> The absence of any such analysis for the June 9 Order renders it arbitrary and capricious.

The Commission's authority under the Federal Power Act ("FPA") is bound by certain legal standards that are designed to ensure rational, evidence-based outcomes that are fair and do not harm consumers. For example, in its orders, the Commission must "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made and that its conclusions follow logically from the agency's findings." *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). These protections are rooted in the Administrative Procedure Act. 5 U.S.C. § 706(2)(A). The Commission must also: (1) give "meaningful consideration" to the facts and circumstances presented in a case, *San Diego Gas & Elec. Co. v. FERC*, 904 F.2d 727, 731 (D.C. Cir. 1990); (2) respond to the arguments raised in pleadings before it, *Carolina Power & Light Co. v. FERC*, 716 F.2d 52, 55-56 (D.C. Cir. 1983); and (3) address substantial arguments raised before it, *Iowa v. FCC*, 218 F.3d 756, 759 (D.C. Cir. 2000). Commission orders are arbitrary and capricious if the Commission relies upon improper factors, ignores important arguments or evidence, fails to articulate a reasoned basis for the decision, or produces an explanation that is "so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor*

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<sup>5</sup> June 9 Order at P 49.

<sup>6</sup> Bay Dissent at 1.

*Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Just last month, the U.S. Supreme Court, in directing the United States Environmental Protection Agency (“USEPA”) to consider cost—including the cost of compliance—before deciding whether regulation is appropriate and necessary, described the consequences of a regulatory agency’s failure to weigh the costs of its decisions against the benefits:

Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions. It also reflects the reality that “too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems.” *Entergy Corp. v. Riverkeeper, Inc.*, 556 U. S. 208, 233 (2009) (BREYER, J., concurring in part and dissenting in part). Against the backdrop of this established administrative practice, it is unreasonable to read an instruction to an administrative agency to determine whether “regulation is appropriate and necessary” as an invitation to ignore cost.

*Michigan, et al. v. Environmental Protection Agency, et al.*, No. 14-46 at 7-8 (June 29, 2015 U.S.); 576 U.S. \_ (2015) (hereinafter “*Michigan v. EPA*”).

Similarly, in this case, like the USEPA, the Commission stated that it “does not generally require the mathematical specificity of a cost-benefit analysis to support a market rule change.”<sup>7</sup> But there is a huge difference between not requiring “mathematical specificity” and essentially disregarding evidence comparing the costs and benefits of a proposal. To avoid the result described in *Michigan v. EPA*, the Commission should have required that PJM provide evidence that the benefits of its proposal outweigh the significant costs and detriments. The Commission should correct this failure on rehearing.

Rather than engaging the record evidence regarding the costs and disadvantages of PJM’s proposal and comparing those to the claimed benefits, the Commission concluded without any

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<sup>7</sup> June 9 Order at P 49.

meaningful evidence-based comparison of costs and benefits that, “on balance and in light of other changes on which we condition our acceptance, we find the proposal to be just and reasonable.”<sup>8</sup> The Commission took note of PJM’s claim that it prepared a cost-benefit analysis for stakeholders with input from the Market Monitor, and that the analysis showed that the overall economic benefits of CP exceed the economic costs in years with extreme weather.<sup>9</sup> However, in protests filed with the Commission, Joint Protesters<sup>10</sup> and others presented analyses, demonstrating inherent flaws in the basis for PJM’s proposal, including that the forecasted costs of the proposal greatly exceed the expected benefits. The June 9 Order disregarded those well-supported arguments without consideration or discussion.

In greater detail, PJM’s purported analysis was posted in October 2014, and was based upon an estimate of the annual cost of increased performance expectations both during the transition period and in future years, while factoring in energy cost savings that PJM claimed would offset the costs incurred to increase unit availability.<sup>11</sup> The analysis showed that, even after factoring in these purported energy cost savings, the net incremental cost of CP could be as high as \$4.0 billion between 2015 and 2018, and as much as \$700 million each year thereafter.<sup>12</sup> By comparison, PJM estimated that the energy costs uplifted to the market in January 2014 were on the order of \$600 million.<sup>13</sup> Thus, the costs that CP would impose on consumers literally dwarf the estimated energy costs PJM charged to the market as uplift during the period of winter

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<sup>8</sup> June 9 Order at P 49.

<sup>9</sup> *Id.* at P 37.

<sup>10</sup> *See, for example*, Joint Protest at 18.

<sup>11</sup> *See* the joint PJM-IMM cost-benefit analysis titled “Capacity Performance Initiative” posted at [www.pjm.com/~media/committees-groups/committees/elc/postings/capacity-performance-cost-benefit-analysis.ashx](http://www.pjm.com/~media/committees-groups/committees/elc/postings/capacity-performance-cost-benefit-analysis.ashx) (hereinafter, “PJM Cost-Benefit Analysis”), at 2.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *See id.* at 3 (stating that an estimate of \$500 million in avoided uplift costs represents “roughly 83 percent of the costs experienced solely in the month of January 2014”), and PJM Operational Analysis, *supra* note 15, at 44 (specifying energy uplift costs in January 2014 of \$597,396,000).

weather that was the genesis for CP. As Chairman Bay noted, this is the equivalent of fixing “a several hundred million dollar uplift problem in the energy market with a multi-billion dollar redesign of the capacity market.”<sup>14</sup>

As the Supreme Court emphatically reaffirmed in *Michigan v. EPA*, agencies like the Commission must rest their decisions on a consideration of relevant factors:

Federal administrative agencies are required to engage in “reasoned decisionmaking.” *Allentown Mack Sales & Service, Inc. v. NLRB*, 522 U. S. 359, 374 (1998) (internal quotation marks omitted). “Not only must an agency’s decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.” *Ibid*. It follows that agency action is lawful only if it rests “on a consideration of the relevant factors.” *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983) (internal quotation marks omitted).<sup>15</sup>

Rather than ruling in a “logical and rational” manner, however, the June 9 Order simply accepted PJM’s analysis at face value. The June 9 Order failed to engage in any meaningful way either the minimal and perfunctory evidence presented by PJM or the more detailed evidence presented by Joint Parties and others; it thereby failed to demonstrate (as it must) a clear and rational basis for its conclusion that certain evidence was correct and other evidence was incorrect. In fact, as Chairman Bay stated, “despite the potential multi-billion dollar burden consumers will be asked to bear, there is no analysis, however rudimentary, indicating whether the benefits are at least roughly commensurate with the costs.”<sup>16</sup> The Commission compounded its error by denying requests to convene an evidentiary hearing to test the competing evidence.

By failing to take the basic steps necessary to ensure compliance with the Administrative Procedure Act and decisional law establishing the prerequisites for reasoned decision-making

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<sup>14</sup> Bay Dissent at 6.

<sup>15</sup> *Michigan* at 5.

<sup>16</sup> Bay Dissent at 6.

(noted above), the June 9 Order commits error. A proposal marked by such a huge mismatch between costs and benefits cannot be deemed “just and reasonable.” Therefore, the Commission should grant rehearing for the purpose of requiring PJM to provide evidence that demonstrates that the benefits of its CP Proposal outweigh the overwhelming burdens.

**B. The Commission's Decision to Expose CP Resources to Non-Performance Charges on the Basis of Physical and Non-Physical Constraints that the Commission Realized Must be Taken Into Account In Other Respects Is Inconsistent and Renders the Non-Performance Charges Unjust, Unreasonable and Unduly Discriminatory**

PJM claimed that the penalties for non-performance, principally the Peak-Hour Availability Charge, were inadequate to enforce a resource's capacity commitment.<sup>17</sup> Therefore, PJM proposed a new Non-Performance Charge, whereby resource performance would be measured when PJM declares an Emergency Action, referred to as Performance Assessment Hours. For resources that fall short of their expected performance, the Non-Performance Charge will be based on the yearly Net Cost of New Entry ("CONE") for a CP Resource, or the yearly resource clearing price for a Base Capacity Resource divided by 30.<sup>18</sup>

At the same time it proposed these new, higher economic penalties, PJM also sought to unreasonably limit the factors that would excuse non-performance and allow a resource owner to avoid the Non-Performance Charge. According to PJM, "excuses for non-performance must be strictly circumscribed."<sup>19</sup> Events that are classified by the North American Electric Reliability Corporation ("NERC") as outside management control ("OMC") will now be treated as forced outages which will expose the resource to Non-Performance Charges. Moreover, the *only* excuses for non-performance would be if PJM (not the resource owner) determines that "the

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<sup>17</sup> PJM December 12 Filing at 7-10.

<sup>18</sup> Tariff Attachment DD, Section 10(A).

<sup>19</sup> December 12 Filing at 44.

resource was unavailable *solely* because it 'was on a Generator Planned Outage or Generator Maintenance Outage approved by [PJM], or was not scheduled to operate by [PJM], or was online but was scheduled down by [PJM], for reasons other than (i) limitations specified by such seller in the resource operating parameters, (ii) the submission by such seller of a market-based offer higher than its cost-based offer."<sup>20</sup> PJM also proposed a "stop-loss" limit on the Non-Performance Charge, in order to limit resources' exposure to financial penalties. However, PJM subsequently offered to eliminate the monthly stop-loss limit or review it later, while retaining an annual stop-loss limit.<sup>21</sup>

In the June 9 Order, the Commission accepted PJM's proposed Non-Performance Charge mechanism, subject to condition that PJM modify its proposal in order to (1) submit an annual informational filing with the Commission to provide updates on the use of 30 hours as the estimate of Emergency Actions; (2) eliminate the monthly stop-loss limit as proposed by PJM; (3) clarify the definition of Net Energy Imports;<sup>22</sup> (4) clarify application of the performance assessment calculation "to external resources with and without a capacity commitment when an Emergency Action is triggered PJM-wide";<sup>23</sup> (5) clarify that "a capacity resource's expected performance for any Performance Assessment Hour shall not exceed 100 percent of its cleared UCAP quantity, or explain[] why the absence of such a statement is just and reasonable;<sup>24</sup> (6) clarify that credit for performance will be assigned first to a resource's CP obligation and then to any Base Capacity obligation;<sup>25</sup> and (7) correct its Tariff so that a Capacity Resource does not

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<sup>20</sup> December 12 Filing at 45; Tariff Attachment DD, Section 10(A)(d).

<sup>21</sup> PJM Deficiency Letter Response at 20.

<sup>22</sup> June 9 Order at P 178.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> June 9 Order at P 181.

face both a Non-Performance Charge and Peak Season Maintenance Compliance penalties or Peak Hour Period Availability penalties for the same event during the transition period.<sup>26</sup>

Joint Parties continue to oppose the Non-Performance Charge mechanism as an overreaction to the claim that the reason generators might fail to perform is because the penalties are not stiff enough. Non-performance can be tied to legitimate operational issues over which resource owners have no control; these operational issues should be addressed directly, rather than through an overly complex and ill-defined CP initiative with unreasonably limited excuses for non-performance. In their initial Protest, the Joint Protesters identified ongoing PJM initiatives that were expected to improve operational performance, as well as suggested revisions to PJM's penalty structure that would improve operational performance without the unreasonably high and overly broad Non-Performance Charge.<sup>27</sup> The June 9 Order failed to engage these points in any meaningful way (or at all), instead adopting an unfocused and extreme penalty mechanism that is more likely to degrade reliability (by driving resources out of the market) than to improve it.

An additional condition with which the Joint Parties take particular exception is the Commission's directive that PJM modify its Tariff to clarify as follows: "(i) if a capacity resource is not scheduled by PJM due to any operating parameter limitations submitted in the resource's offer, any undelivered megawatts will be counted as a performance shortfall . . .".<sup>28</sup> This directive requires that PJM completely disregard any operating parameter limitations in quantifying shortfalls for assessing Non-Performance Charges. Such a disregard for the reality that resources can face both physical and non-physical restrictions that are beyond the control of

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<sup>26</sup> *Id.* at P 185.

<sup>27</sup> *See* Joint Protest at 36-37.

<sup>28</sup> June 9 Order at P 173. While this seems an explicit condition and directive from the Commission, it was excluded from the List of Conditions for Acceptance, Appendix C to the June 9 Order.

the resource owner and physically impossible to overcome is patently unreasonable because it subjects resource owners, and therefore load, to higher capacity prices for which they are not responsible. While PJM, and apparently the Commission, write off such limitations as simply a "design and economic choice by the resource provider",<sup>29</sup> that will rarely, if ever, be the case and does not provide a basis for ignoring operating parameter limitations in assessing penalties. The majority of generating units cannot turn on and off like a light switch; even PJM acknowledges this reality.<sup>30</sup> The only way a resource owner could avoid a Non-Performance Charge would be if it were already running at the onset of the event. This will have the unintended and undesirable impact of resource owners anticipating PJM dispatch directives and operating units without a clear instruction from PJM.

Neither PJM nor the Commission has made a correlation between resource shortfalls and events within resource owners' control, sufficient to justify the new zero-tolerance penalty mechanism. For example, the Commission points to the winter of 2013-2014 as support, because while outage rates were "two to three times that of historical norms, penalties constituted just 0.6 percent of total capacity revenue."<sup>31</sup> The winter of 2013-2014 was anomalous in many respects and cannot be used as the test case to justify the overly restrictive Non-Performance Charge.<sup>32</sup> Further, as Chairman Bay noted in his dissenting statement, the winter of 2014-2015 "saw marked improvement" in terms of outage rates and uplift payments.<sup>33</sup> The Commission's

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<sup>29</sup> PJM Answer at 70; June 9 Order at P168.

<sup>30</sup> See, Minimum Operating Parameters Under Capacity Performance posted on June 12, 2015 (available at: <http://pjm.com/~media/committees-groups/committees/elc/postings/20150612-june-2015-capacity-performance-parameter-limitations-informational-posting.ashx>).

<sup>31</sup> June 9 Order at P 158.

<sup>32</sup> *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* at 14-15 (April 24, 2015)(hereinafter "Joint Protest of PJM Deficiency Letter Response").

<sup>33</sup> Bay Dissent at 2.

decision to ignore this improvement as typical and not indicative of lasting performance improvements was unfounded.<sup>34</sup>

Moreover, it is pure conjecture for PJM to claim that such unreasonable and penalties and narrowed exceptions will "result in more flexible and better performing resources over time."<sup>35</sup> To the extent physical and non-physical constraints truly are beyond the control of the resource owner, subjecting the resource to Non-Performance Charges will do nothing more than increase the cost paid by load, either through penalties or through a risk premium to be included in sell offers in order to account for these events outside of resource owners' control.

The Commission's own findings demonstrate that PJM's proposed limited exception to the Non-Performance Charge is unjust and unreasonable. In its Energy Market Filing (Docket No. EL15-29), PJM proposed to revise its acceptable parameter limits, such that offers for CP Resources and Base Capacity Resources would reflect unit-specific physical constraints, but would ignore actual constraints resulting from other factors and would preclude make-whole payments for costs that are incurred because a resource operated outside of unit-specific parameter limits.<sup>36</sup> PJM also proposed to cap the minimum start-up and notification times for all resources, as well as cap the minimum down time of Capacity Storage Resources.

The Commission rejected PJM's proposed revisions to its parameter limit provisions, finding that PJM had not demonstrated that its proposal was just and reasonable.<sup>37</sup> Relevant here, the Commission determined as follows:

. . . because PJM's proposed revisions are based only on physical constraints and generic time restrictions that may prevent a resource from reflecting in its energy

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<sup>34</sup> See June 9 Order at P 44.

<sup>35</sup> PJM's February 13, 2015 Answer, at 70.

<sup>36</sup> See June 9 Order at 435.

<sup>37</sup> June 9 Order at PP 436-437.

market offer certain parameter limitations caused by legitimate, non-physical constraints, those proposed revisions are not a just and reasonable solution for addressing the potential market power problem identified above.<sup>38</sup>

. . . we do not find PJM's proposals for capping the minimum start-up and notification times for all resources and for capping the minimum down time of Capacity Storage Resources to be just and reasonable. We note that these proposed requirements do not take into account unit-specific physical constraints faced by resources. Resources with longer minimum start-up and notification times should be permitted to accurately reflect their actual minimum times in their energy market offers, and Capacity Storage Resources should be permitted to accurately reflect their actual minimum down times if they exceed 1 hour, so that PJM's dispatch reflects the actual capabilities of dispatched resources. Additionally when such resources submit offers that reflect their actual constraints into PJM's energy markets, they should be allowed the opportunity to recover the costs of complying with PJM's dispatch instructions through compensation in the energy markets.<sup>39</sup>

. . . we reject PJM's proposal . . . that the parameter limits included in the offers of Capacity Performance Resources reflect only unit-specific physical constraints. We note that actual parameter limits could be the result not only of resource physical constraints, but of other constraints as well, such as contractual limits. For example, a natural gas pipeline may impose, due to physical constraints during peak periods, a requirement that all shippers take uniform delivery throughout the day. Such contractual provisions (which the Commission may have accepted as just and reasonable) can create an actual parameter limit with respect to a minimum run time, even though the limit is not based on the physical characteristics of the generator. Accordingly, in its compliance filing, we direct PJM to modify proposed Operating Agreement Section 6.6(b) to state that "...the Office of the Interconnection shall determine the unit-specific achievable operating parameters for each individual resource on the basis of its operating design characteristics and other constraints..." and that "These unit-specific values shall apply for the generation resource unless it is operating pursuant to an exception from those values under subsection (h) hereof due to operational limitations that prevent a resource from meeting the minimum parameters." In addition, we direct PJM to modify proposed Operating Agreement Section 6.6(f)(iv) and Section 6.6(g)(iii) to state that "parameters shall be based on the actual operational limitations" of the relevant resource type.<sup>40</sup>

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<sup>38</sup> *Id.* at 435.

<sup>39</sup> *Id.* at P 436.

<sup>40</sup> *Id.* at P 437.

It is patently unreasonable and unduly discriminatory for the Commission to require that PJM give effect to actual physical constraints, non-physical constraints and timing parameters for resources in a seller's energy market offers, but then to subject resource owners to Non-Performance Charges when those same parameter limits affect capacity availability. Many such events are simply beyond the ability of resource owners to control or avoid, so PJM's theory that increased penalties will bring about improved performance is unfounded. Instead, increased penalties will result in increased cost to load without any demonstration that the benefits will be roughly commensurate with the costs.<sup>41</sup> The same resources are at issue in the Non-Performance Charges as at issue in the energy market parameter limit provisions, facing the same constraints and other limitations. The June 9 Order is inexplicably and unreasonably inconsistent in holding resource owners liable for Non-Performance Charges for the same types of constraints that the Commission found would entitle an energy market seller to make-whole payments. On rehearing, the Commission should remedy this unduly discriminatory treatment by directing PJM to excuse Non-Performance Charges for the same constraints the Commission directed PJM to recognize in parameter limits.

If the Commission does not grant rehearing to remedy the unreasonable inconsistency and lack of support for the zero-tolerance Non-Performance Charge, by requiring PJM to allow actual constraints to count as excuses for Non-Performance, then the Commission should at least direct that certain types of events which are clearly outside of the resource owner's control and, therefore, not prevented (or preventable) through increased penalties assessed for non-performance, count as excuses for Non-Performance. Two examples are transmission outages and disruptions to fuel supply. Resource owners can attempt to secure the most reliable

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<sup>41</sup> Bay Dissent at 6.

transmission service by taking firm, network transmission service. Nevertheless, circumstances beyond their control can cause disruptions in transmission service which can in turn prevent the resource from performing as scheduled. The same can be said of some disruptions in fuel supply. Even with firm gas transport, where circumstances beyond the control of resource owners render fuel unavailable, such as a transportation constraint on the road to plant, or a complete failure or constraint on a pipeline, the resource owner should not be assessed a Non-Performance Charge. These types of losses are beyond the control of the resource owner and could not be prevented with a different "design and economic choice."<sup>42</sup> The Commission should require PJM to allow some flexibility in the Non-Performance Charge assessment in order to consider whether penalties are appropriate in all circumstances, as opposed to the zero-tolerance penalty structure approved in the June 9 Order.

Additionally, the Joint Parties request clarification regarding the timing for notification to generators regarding whether they will be assessed a Non-Performance Charge. PJM and its stakeholders have been working hard to understand how performance penalty hours will be assessed in accordance with the June 9 Order. Even as late as July 7<sup>th</sup>, PJM and its stakeholders discussed four examples of how penalties could be assessed.<sup>43</sup> This discussion continued during CP training on July 8<sup>th</sup>. While this level of detailed assessment is necessary and progress has been made in addressing various scenarios, these sessions have revealed that there is still an incomplete understanding by PJM and, subsequently its stakeholders, of the mechanics of implementing this aspect of the rules. PJM and the stakeholders will next work on this on July 15. Given this uncertainty, Joint Parties ask the Commission, at a minimum, clarify that

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<sup>42</sup> PJM Answer at 70.

<sup>43</sup> <http://pjm.com/~media/committees-groups/committees/oc/20150707/20150707-item-19-operational-examples-on-line-and-off-line.ashx>

generators will not be assessed a performance assessment penalty absent a clear communication from PJM prior to the generator incurring the performance obligation.

**C. The June 9 Order Requires Clarification and/or Rehearing with Respect to Market Power Mitigation.**

**1. By Ignoring Valid and Well-Supported Concerns Regarding Potential Economic Withholding, the Commission Failed to Engage in Reasoned Decision-Making.**

PJM's CP proposal, as revised in its Deficiency Letter Response, would replace the previous unit-specific, cost-based Avoidable Cost Rate offer cap with a default Market Seller Offer Cap for P Resources set at Net CONE times an expected average Balancing Ratio. The revised default offer cap was developed by PJM, working with the IMM.

In their Protest of PJM's Deficiency Letter Response, Joint Protesters demonstrated that PJM's offer cap proposal – both the initial default offer cap proposed at Net CONE and the revised proposal for a default offer cap of Net CONE times the Balancing Ratio – were deficient (and, therefore, unreasonable) in terms of their ability to protect against the exercise of market power. Specifically, Joint Protesters explained that, in Locational Deliverability Areas ("LDAs") with high supplier concentration, a Capacity Market Seller with a portfolio of resources and high concentration would have a greater incentive to "sacrifice" one resource by having it not clear at all or not as a CP Resource, in order to gain from the higher clearing price and gain a hedge against the risk of non-performance.<sup>44</sup> In order to address these concerns, the Joint Protesters requested that if the Commission did not reject PJM's proposal outright, then at the least the Commission should place limits on the ability to submit coupled offers.<sup>45</sup>

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<sup>44</sup> Joint Protest of PJM Deficiency Letter Response at 8-9.

<sup>45</sup> *Id.*

Notwithstanding the concerns expressed by Joint Parties and others, the Commission accepted PJM's proposed revised offer cap. Joint Parties agree with Chairman Bay that the combination of weakened market power mitigation rules adopted in the June 9 Order, the incentive created by CP to move auction prices up to the new threshold of 85 percent of Net CONE, and the lack of a structurally competitive market in PJM, "creates the very real risk of the unmitigated exercise of market power up to .85 of Net CONE."<sup>46</sup> On this basis alone, the Commission should reconsider the .85 Net CONE threshold default offer cap.

Even if the Commission affirms its acceptance of PJM's default offer cap, it nevertheless needs to revise PJM's market power mitigation in order to render the two components just and reasonable. While the Commission noted the concerns raised by Joint Protesters,<sup>47</sup> the Commission did not address or attempt to resolve the core problem - the failure of PJM's default offer cap proposal to address the exercise of market power by portfolio owners in LDAs with high supplier concentration, a prospect that is exacerbated by PJM's proposal. Moreover, the Commission did not consider the solution put forward by the Joint Protesters. The concern and proposed solution raised by Joint Protesters were specific in nature and cannot adequately be addressed by the Commission's general determination that PJM's proposed default offer cap is just and reasonable. The Commission's failure to address the Joint Protesters' concern and solution to the problem of economic withholding by portfolio owners in LDAs with high supplier concentration is a failure of reasoned decision-making.<sup>48</sup> This error should be corrected on rehearing. Therefore, if the Commission maintains its approval for PJM's default offer cap, then it should at least require PJM to revise its Tariff so that coupled offers can only be submitted for

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<sup>46</sup> Bay Dissent at 4.

<sup>47</sup> June 9 Order at P 326.

<sup>48</sup> See *Carolina Power & Light Co. v. FERC*, 716 F.2d 52, 55-56 (D.C. Cir. 1983).

resources that must make a substantial investment in order to qualify as a Capacity Resource, and coupled offers cannot be submitted by large owners of resources that are indisputably and clearly capable of making such investment.

Additionally, the Joint Parties request clarification regarding the timing for notification to generators regarding whether they will be assessed a Non-Performance Charge. PJM and its stakeholders have been working hard to understand how performance penalty hours will be assessed in accordance with the June 9 Order. Even as late as July 7<sup>th</sup>, PJM and its stakeholders discussed four examples of how penalties could be assessed.<sup>49</sup> This discussion continued during CP training on July 8<sup>th</sup>. While this level of detailed assessment is necessary and progress has been made in addressing various scenarios, these sessions have revealed that there is still an incomplete understanding by PJM and, subsequently its stakeholders, of the mechanics of implementing this aspect of the rules. PJM and the stakeholders will next work on this on July 15. Given this uncertainty, Joint Protesters ask the Commission, at a minimum, clarify that generators will not be assessed a performance assessment penalty absent a clear communication from PJM.

**2. The Commission Should Direct PJM to Clarify the Exception to the Must-Offer Requirement.**

The June 9 Order accepted PJM's two exceptions from the must-offer requirement: (1) Intermittent Resources, Capacity Storage Resources, Demand Resources and Energy Efficiency Resources; and (2) resources "which the Capacity Market Seller demonstrates [are] reasonably expected to be physically incapable of satisfying the requirements of a Capacity Performance Resource."<sup>50</sup> Joint Protesters explained that the second exception regarding physical incapability

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<sup>49</sup> <http://pjm.com/~media/committees-groups/committees/oc/20150707/20150707-item-19-operational-examples-on-line-and-off-line.ashx>

<sup>50</sup> Tariff Attachment DD, Section 6.6A(c).

is virtually incomprehensible in substance and process.<sup>51</sup> There is no guidance in the Tariff whatsoever regarding the breadth, or lack thereof, of the "physically incapable" standard. In the transmittal letter for its CP filing, PJM said that physical incapability cannot be demonstrated on the basis of economic feasibility.<sup>52</sup> PJM further explained that "the 'physically incapable' excuse would be reserved for those resources that, for example, require capital improvements, or new fuel delivery infrastructure that cannot be arraigned, permitted and completed in time for the Delivery Year."<sup>53</sup> Joint Protesters also pointed out unworkable timing of the process for seeking an exception. Joint Protesters noted that the exception process and must-offer obligation can create a "Catch 22" for a Market Participant that does not believe it can meet the requirements of a CP Resource. If the exception request is denied, then the Market Participant has no choice but to then obligate itself to meet the very requirements of CP Resources which it already will have determined are unachievable, exposing itself to Non-Performance Charges for limitations with which it is fully aware but from which it cannot get an exemption.<sup>54</sup>

The Commission did not address the infeasibility of the exception. Instead, in a single sentence, the Commission summarily determined that PJM's "proposed mechanisms are reasonable and sufficiently narrow to prevent economic withholding."<sup>55</sup> The unadorned and unsupported assertion that the proposed exceptions are narrow enough to prevent economic withholding does not at all address the concern, expressed by Joint Protesters, that the exception is so vague, incomprehensible and administratively prohibitive that it will amount to no exception at all. On rehearing, the Commission needs to address these concerns by at least

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<sup>51</sup> Joint Protest at 44-45.

<sup>52</sup> December 12 Filing at 60.

<sup>53</sup> *Id.*

<sup>54</sup> Joint Protest at 45, n. 73.

<sup>55</sup> June 9 Order at P 355.

directing PJM to provide greater clarity on what constitutes "physically incapable" or how it will make that determination, clarifying that "physically incapable" includes actual Commission-approved pipeline tariff restrictions that affect unit availability in conjunction with a recent history of restricted operation, and consider whether changes to the process for seeking an exception from the must-offer requirements are warranted, in light of the timeline for submission of offers.

**D. The Commission's Approval of the Modifications to the *Force Majeure* Provisions Was Arbitrary and Capricious.**

In its December 12 filing, PJM proposed to revise the *force majeure* provisions of its Tariff, the PJM Operating Agreement and Reliability Assurance Agreement to create a new term, Catastrophic Force Majeure. The stated purpose of PJM's change was to address its concern that the "broad protections afforded by PJM's existing force majeure provisions . . . are incompatible with reasonable expectations of performance by Market Participants operating in PJM's markets, including RPM."<sup>56</sup> Included in those revisions was a modification to the provisions governing load-serving entities' ("LSEs") allocation of Stage 1A Auction Revenue Rights. PJM Tariff Section 5.2.2(f)(ii) addresses measures to be taken by PJM to ensure an allocation of Financial Transmission Rights ("FTRs") to LSEs in the event an allocation is not feasible due to system conditions. Those provisions do not apply in the instance of extraordinary circumstances, which previously was defined as an event of force majeure. PJM's December 12 filing proposed to revise the provision, so that extraordinary circumstances "shall mean an unanticipated event outside the control of PJM that reduces the capability of existing or planned transmission

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<sup>56</sup> Transmittal Letter to PJM's December 12 Filing in EL15-29, at 16.

facilities and such reduction in capability is the cause of the infeasibility of such Financial Transmission Rights."<sup>57</sup>

In addition to protesting the unreasonably narrow Catastrophic Force Majeure proposal, Joint Protesters raised the concern that "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."<sup>58</sup> In its Answer, PJM said nothing regarding this change, so the proposal was left unexplained and, therefore, unjustified by PJM. PJM made no attempt to demonstrate why the existing provisions regarding guaranteed FTRs except in an event of force majeure were unjust and unreasonable, or why its proposed change was just and reasonable.

In the June 9 Order, the Commission accepted PJM's proposed changes, including the elimination of "force majeure" as the definition of extraordinary circumstances regarding FTR allocations. The Commission offered that PJM's revision was reasonable because it is "generally consistent with the other force majeure revisions adopted herein" and because the Commission believes PJM should retain some discretion in deciding when to relax a binding constraint in allocating FTRs.<sup>59</sup> Finally, the Commission offered that if PJM impermissibly applies its discretion, market participants can file a complaint with the Commission.<sup>60</sup>

The Commission's approval of PJM's revised definition of extraordinary circumstances for purposes of FTR allocation under the PJM Tariff was arbitrary and capricious. PJM did not explain why the use of "force majeure" as the definition for "extraordinary circumstances" was unjust and unreasonable, and the Commission made no such finding. The basis for PJM's and

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<sup>57</sup> Tariff Attachment DD, Section 5.2.2(f)(ii).

<sup>58</sup> Protest of Old Dominion Electric Cooperative, Southern Maryland Electric Cooperative and American Municipal Power, Inc., filed January 20, 2015 in Docket No. EL15-29, at 20.

<sup>59</sup> June 9 Order at P 470.

<sup>60</sup> *Id.*

the Commission's determination that the force majeure provisions in other sections of the Tariff, OA and/or RAA are no longer just and reasonable do not apply here, so the Commission's reliance on a "generally consistent" determination makes no sense. PJM's stated purpose for narrowing the force majeure provisions was to limit excuses for Market Participant non-performance of their obligations in the PJM markets.<sup>61</sup> The FTR allocation provision, on the other hand, addresses *PJM's* obligations to *LSEs*, and measures that *PJM* must take to ensure adequate FTRs are made available for allocation to LSEs. The reasoning of narrowing Market Participants' excuses for non-performance simply cannot apply here. The Commission's non-specific finding that changes are "generally consistent", when they are for explicitly and materially different purposes, was arbitrary and capricious. Instead, because PJM has not made the case for why the previous provision, which defined "extraordinary circumstances" as an event of force majeure, is unjust and unreasonable, the Commission erred in not rejecting that aspect of PJM's proposal under FPA Section 206.<sup>62</sup>

Moreover, the notion of affording PJM new "discretion" and leaving market participants to file a complaint if PJM abuses that discretion, is far from a just and reasonable solution. There are no stated standards that would govern PJM's exercise of its new discretion. As the Commission advised in the June 9 Order, "the scope of PJM's review authority must be appropriately defined and limited."<sup>63</sup> PJM's discretion here should likewise be appropriately defined and limited. Also, as the Commission is well aware, FTRs/ARRs are critical to LSEs in their ability to hedge against congestion costs, and the FTR/ARR allocation process has been the

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<sup>61</sup> See Transmittal Letter to EL15-29 December 12 filing, at 16 (" . . .broad protections afforded by PJM's existing force majeure provisions . . . are incompatible with reasonable expectations of performance by Market Participants operating in PJM's markets, including RPM")

<sup>62</sup> See *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 22 (D.C. Cir. 2002) (quoting *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 341 (1956)).

<sup>63</sup> June 9 Order at P 92 (citation omitted).

subject of a number of disputes.<sup>64</sup> In most instances, the allocation of FTRs will have already been made, or at least be underway, before LSEs will be able to discern whether PJM abused its discretion. It is unreasonable to expect that for such a critical item, LSEs' only recourse will be a complaint at FERC, particularly in light of the Commission's reluctance to upset market settlements.<sup>65</sup>

The Commission's dual burden under FPA Section 206 – establishing that an existing provision is unjust and unreasonable and that the adopted alternative is just and reasonable – has not been met with respect to the modification to the FTR action provision regarding extraordinary circumstances. For that reason, on rehearing the Commission must direct PJM to re-instate the previous provision whereby an event of force majeure is an "extraordinary circumstances" in the FTR allocation.<sup>66</sup>

**E. The Commission's Elimination of the Short-Term Resource Procurement was Arbitrary and Capricious.**

The Commission acted arbitrarily and capriciously in approving PJM's request to eliminate the Short-Term Resource Procurement Target (more commonly referred to as the "2.5% holdback") from the RPM construct as just and reasonable because (i) the Commission applied the incorrect standard of review, and (ii) even under the just and reasonable standard, the

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<sup>64</sup> See, e.g., *FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,209 (2013), *reh'g denied*, 151 FERC ¶ 61,205 (2015)

*PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,209 (2013), *reh'g denied*, 151 FERC ¶ 61,205 (2015)

<sup>65</sup> See, e.g., *Maryland Pub. Serv. Comm'n v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, at PP 49, 51, *reh'g denied*, 125 FERC ¶ 61,340 (2008) (directing elimination of tariff provisions that exempted certain generating facilities from mitigation but rejecting requests for retroactive relief in the absence of a tariff violation). Chairman Bay's Dissent at 6 ("The reality is that once a market construct is accepted and implemented, it is very difficult to unwind.")

<sup>66</sup> *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 22 (D.C. Cir. 2002) (quoting *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 341 (1956)).

Commission relied upon improper and unsupported factors, ignored important arguments and failed to articulate a reasoned basis for accepting PJM's elimination of the 2.5% holdback.

The Commission correctly identified that under PJM's existing rules, PJM procures in its Base Residual Auctions ("BRAs") 2.5% less capacity than the amount identified as required, instead procuring that 2.5% amount through the incremental auctions that are closer in time to the relevant delivery year. PJM does so, at least in part, to ensure the participation of short-lead time resources.<sup>67</sup> However, the Commission failed to acknowledge that the 2.5% holdback was an essential part of a settlement that was negotiated to replace the former Interruptible Load for Reliability mechanism.<sup>68</sup> As such, PJM was required to demonstrate that eliminating the holdback is necessary to prevent harm to the public interest.<sup>69</sup> No such showing was even attempted, and the Commission instead found that PJM was only required to demonstrate that a proposed change to its tariff under Section 205 of the Federal Power Act is just and reasonable.<sup>70</sup> The Commission offered no explanation for its departure from precedent.<sup>71</sup> Instead, the Commission stated that PJM sought to accommodate short-term resource procurement as of the establishment of its market but that PJM is not obligated to retain this provision.<sup>72</sup> Joint Parties accept that PJM is not obligated to retain the 2.5% holdback indefinitely. To eliminate that

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<sup>67</sup> June 9 Order at P 384.

<sup>68</sup> *PJM Interconnection L.L.C.*, 126 FERC ¶ 61,275 (2009) at 83.

<sup>69</sup> *Equitrans, L.P.*, 104 FERC ¶ 61,008 (2003), *order on reh'g*, 106 FERC ¶ 61,013 (2004), *order on appeal*, *Brooklyn Union Gas Co. v. FERC*, 409 F.3d 404 (D.C. Cir. 2005) (FERC established that it will not disturb a settlement it has approved over the objections of parties to the settlement unless special circumstances exist which dictate that the public interest will be served by abrogating the settlement).

<sup>70</sup> June 9 Order at P 399.

<sup>71</sup> *Michigan Pub. Power Agency v. FERC*, 405 F.3d 8, 13 (D.C. Cir. 2005); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

<sup>72</sup> June 9 Order at P 394.

provision over the objections of parties to the approved settlement that established it, however, PJM must demonstrate that the public interest will be served by abrogating the settlement. As no such finding was made, the Commission's approval of the elimination of the 2.5% holdback was arbitrary and capricious.

Notwithstanding the Commission's application of an incorrect standard of review, the Commission's finding that the elimination of the 2.5% holdback was just and reasonable is also arbitrary and capricious. The Commission simply accepted PJM's unsupported assertion that elimination of the holdback will "help promote reliability by ensuring that PJM has obtained committed capacity and is not reliant on short-term procurement," and did so without addressing counterarguments or articulating a reasoned basis for the decision. In fact, none of the three justifications for elimination of the holdback offered by PJM has merit.

As to the first purported justification, the Commission agreed with PJM that the three-year lead time element associated with PJM's annual May capacity auctions has not impeded the ability of most resources to participate in PJM's capacity auctions.<sup>73</sup> However, the support offered by PJM for its assertion that there are no impediments for resources to participate in the BRA is limited to two things, neither of which actually supports the elimination of the holdback: (i) a reference to the fact that PJM placed constraints on the amount of non-annual Demand Resources that could clear; and, (ii) the fact that PJM enacted capacity import limits. However, as noted by the Joint Parties, the fact that there has been robust participation in the capacity auctions proves nothing with regard to the continuing usefulness and effectiveness of the holdback in bringing all types of short lead-time resources or even additional MWs from similar

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<sup>73</sup> *Id.* at P 395.

resources into the incremental auctions.<sup>74</sup> In fact, PJM's argument could just as plausibly prove the opposite proposition – namely, that the holdback should be retained in light of the robust participation in incremental auctions it has elicited.

Second, the Commission stated that it is not persuaded that the holdback is necessary to address load forecast errors or that the overstatements are unavoidable or likely to recur at a level that requires mitigation.<sup>75</sup> The Commission noted that PJM's stakeholders have discussed this issue and proposed modeling changes and made load factor adjustments.<sup>76</sup> While the Commission is correct that the PJM stakeholders have discussed and attempted to correct long-standing problems with PJM load forecast accuracy,<sup>77</sup> to date there has been only a single, short-term adjustment made to the load forecast model that has been implemented for the first and only time in the 2015 Load Forecast Report.<sup>78</sup> Further, PJM concluded that an analysis of this change was required prior to making a determination of whether the 2.5% holdback continues to be necessary and, to date, no such analysis has been conducted or concluded.<sup>79</sup> Accordingly, there

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<sup>74</sup> Demand Response is but one of the four types of short lead-time resources the Commission had in mind when it approved the holdback. Demand Response is but one of the four types of short lead-time resources the Commission had in mind when it approved the holdback. *See, PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at n. 42 (2009).

<sup>75</sup> June 9 Order at P 396.

<sup>76</sup> *Id.*

<sup>77</sup> *See PJM's Response to the 2013 State of the Market Report, supra* note 5, at 12, noting that the 2.5 percent holdback “was also justified as an offset to forward load forecast uncertainty which was created as a result of transitioning the capacity market from a short term market to a longer term forward market.”

<sup>78</sup> *See* PJM Answer at 103-04. A “binary variable” was introduced into the load forecast model to “adjust the starting point of the forecast downward by the approximate amount that has been over-forecasted over the last two summers.” *See* 2015 Load Forecast Report (available online at <http://www.pjm.com/~media/documents/reports/2015-load-forecast-report.ashx>) at 1.

<sup>79</sup> *PJM's Response to the 2013 State of the Market Report*, dated May 7, 2014 (posted at <http://www.pjm.com/~media/documents/reports/20140507-pjm-response-to-the-2013-state-of-the-market.ashx>), at 12 (In rejecting the IMM's recommendation that the holdback be eliminated, PJM stated:

While PJM does not believe the historic performance justifies elimination of the 2.5 percent holdback at this time, it is important to note the load forecast mechanism was recently changed and *more analysis will be needed in the future to determine the impacts of these changes on forward load forecasting.* Therefore *PJM will evaluate the performance of the 2.5 percent*

is no evidence that the recent change in PJM's load forecasting technique has remedied the model's tendency toward over-procurement resulting from load forecasting error, and certainly no evidence that the change has rendered the buffer provided by the holdback unnecessary.<sup>80</sup> It is premature for either the Commission or PJM to conclude otherwise. The Commission's reliance on a short-term, single adjustment that has yet to be analyzed was arbitrary and capricious and should be reversed.

Finally, the Commission noted that PJM relied on findings made by the Market Monitor that PJM's existing holdback suppresses market clearing prices. Without more, the Commission concluded that it is not convinced that "the benefit of any incremental Demand Resource participation resulting from retaining the holdback requirement will necessarily outweigh the economic efficiency benefit of no longer withholding demand from the Base Residual Auction, an action that *can* suppress market clearing prices."<sup>81</sup> In hedging its conclusion as it did, the Commission may have been concerned by the fact that PJM's newfound reliance on the Market Monitor's findings is an unexplained departure from its prior, and very recent, assessments of the impacts and value of the holdback.<sup>82</sup> Specifically, although PJM asserted in this proceeding that the 2.5% holdback artificially suppresses BRA clearing prices,<sup>83</sup> it has consistently expressed the opposite view since the holdback first was proposed.<sup>84</sup> PJM expressed this contrary view as

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*holdback on an ongoing basis to ensure it is still performing in a manner consistent with resource adequacy requirements. (Emphasis added.)*

<sup>80</sup> PJM Answer at 103-04.

<sup>81</sup> June 9 Order at P397 (emphasis added).

<sup>82</sup> See Joint Protest at 60-61, citing *PJM's Response to the 2013 State of the Market Report* dated May 7, 2014 (posted online at <http://www.pjm.com/~media/documents/reports/20140507-pjm-response-to-the-2013-state-of-the-market.ashx>) at 12.

<sup>83</sup> PJM Answer at 103.

<sup>84</sup> See *PJM Interconnection, L.L.C.*, *supra* note 7 at P 77 ("In response to the generators' arguments, PJM states that the 'suppression' of prices that they claim would result from a short-term resource hold-back presumably already

recently as its May 2014 response to the IMM's 2013 State of the Market Report, wherein PJM reported that its analysis of historic RPM performance showed no such price suppression had occurred. PJM stated in this regard as follows:

Based on analysis of RPM performance since 2007, the 2.5 percent deferred supply does not unreasonably lower capacity procurement, rather it is a mechanism to provide opportunity for short-term resource participation and to prevent systematic over procurement of capacity. Actual market performance and comparison of 3.5 year forward load forecast to actual load requirements appear to validate the deferred supply procurement mechanism. *Based on this analysis, PJM does not believe there is evidence that the 2.5 percent deferred supply artificially or inappropriately suppresses forward capacity prices.* In fact, the 2.5 percent deferred supply appears to be a conservative quantity of supply deferral that properly reflects the dynamics of forward load forecasting and prohibits over-procurement of forward capacity and overstatement of forward capacity prices.<sup>85</sup>

Joint Parties agree with PJM's earlier and longstanding position that there is no evidence that the 2.5% holdback inappropriately suppresses forward capacity prices. As importantly, the opposite has not been proven – that eliminating the holdback will not amplify the already immense capacity price increases that will result from PJM's CP proposal for no commensurate benefit.

Finally, the Commission asserted that the elimination of the 2.5% holdback will help ensure that PJM has obtained enough committed capacity.<sup>86</sup> This is completely irrelevant as PJM has not had any issues with obtaining committed capacity. Indeed, PJM has adopted limitations on capacity imports and the use of Demand Response due in part to the fact that too much committed capacity was being provided. Rather, the impetus and justification for the CP proposal was to ensure that PJM's capacity market provides adequate incentives for resource

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exists from the current ILR holdback, but has not prevented Base Residual Auctions from clearing at or above Net CONE, nor has it prevented new entry.”)

<sup>85</sup> *PJM's Response to the 2013 State of the Market Report* (May 7, 2014) (posted at <http://www.pjm.com/~media/documents/reports/20140507-pjm-response-to-the-2013-state-of-the-market.ashx>), at 12 (emphasis added).

<sup>86</sup> June 9 Order at P 398.

performance. In other words, PJM's concern has not been its ability to procure sufficient capacity in the auctions, but rather the availability and performance of the capacity that is committed in the auction. There is no indication (let alone evidence) that eliminating the 2.5% holdback will contribute to improvements in the operational performance of capacity resources that are committed, which is the objective that ostensibly prompted the filing of PJM's CP Proposal. Furthermore, while it is undeniable that eliminating the holdback would put additional upward pressure on capacity auction clearing prices, the extra cash-flow that results would go to *all* resources that clear, regardless of whether the beneficiaries of the additional cash flow need to make investments for improved performance. Consequently, eliminating the holdback would provide a windfall to resources that already have full capability to perform in emergency conditions and are already fully compensated for their ability to perform accordingly.

For the above reasons, the Commission's acceptance of PJM's proposal to eliminate of the 2.5% holdback was arbitrary and capricious. On rehearing, the Commission should require PJM to retain the 2.5% holdback at least until it can demonstrate that (i) eliminating the holdback is necessary to prevent harm to the public interest, and (ii) that PJM has solved its long-standing load forecasting problems that have created and perpetuated a tendency toward over-procurement.

**F. The Commission's Direction to PJM Requiring Elimination of the Monthly Stop Loss Limit Was Arbitrary and Capricious.**

In order to ensure the total net charge liability (or penalty) undertaken by resources committing capacity are proportionate to the risks that a resource reasonably should undertake in committing capacity, PJM proposed two forms of caps, or "stop-loss" limits on the total Non-Performance Charges that may be assessed on a resource.<sup>87</sup> The first is an annual limit that

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<sup>87</sup> Tariff Attachment DD, Section 10A.

would limit the relevant resource's liability to 1.5 times annual Net Cost of New Entry ("CONE"). The second is a calendar month limit that would limit the relevant resource's liability to 0.5 times Net CONE times the relevant resource's installed capacity.

In response to the Commission's Deficiency Letter, PJM stated that it was willing either to eliminate the proposed monthly stop-loss limit or to commit to review the monthly stop-loss limit and any impact on performance incentives at an appropriate time after implementing the CP design.<sup>88</sup> PJM stated that, on the one hand, the monthly stop-loss limit reduces generators' exposure to the Non-Performance Charge in a month like January 2014. However, on the other hand, the monthly stop-loss limit (according to PJM) dilutes the core incentives by allowing under-performance without consequence once a resource has reached the monthly stop-loss limit. Of course, it also would reduce the size of Performance Bonus Payments available to resources that exceed their commitments.

The Commission agreed with PJM's Deficiency Letter comments and determined that the monthly stop-loss's allowance of non-performance without consequences after the monthly limit is reached warrants removal of PJM's proposed monthly stop-loss limit.<sup>89</sup> Accordingly, the Commission conditioned its approval of the CP proposal on PJM's elimination of the monthly stop-loss provision.<sup>90</sup>

In striking the monthly stop-loss limit, the Commission unjustly and unreasonably shifted the balance between penalties that are strong enough to discourage unwanted conduct but not so onerous as to either drive away capacity suppliers or impose such excessive risks that the price premium they are forced to recover through their offers is prohibitive. Without the monthly

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<sup>88</sup> PJM Deficiency Letter Response at 20-23.

<sup>89</sup> June 9 Order at P 165.

<sup>90</sup> *Id.*

stop-loss limit, suppliers may be forced to choose between including substantial risk premiums in their sell offers (with the concomitant risk of not clearing) or exiting the market entirely. They would face this Hobson's choice because, in the absence of a the monthly stop-loss limit, resource owners could lose a large part of annual capacity revenue in one fell swoop, notwithstanding the annual stop-loss limit. Moreover, shifting to a mechanism that relies exclusively on large financial penalties is more likely to cause an exodus from the market, right as PJM's other performance improvement initiatives, discussed at length in the Joint Protest and in the Bay Dissent, have begun to bear fruit. For this reason alone, the Commission's rejection of the monthly stop-loss limit was unjust and unreasonable and should be reversed.

Moreover, the Commission's basis for its requirement to eliminate the monthly stop-loss limit relied on PJM's assertion that retaining the monthly stop-loss limit would allow under-performance without consequence. But PJM's contention was pure conjecture, wholly unsupported, unscrutinized and untested. Claims of this nature do not constitute the substantial evidence on which the Commission's factual determinations must be grounded. It therefore was arbitrary and capricious, and an act of unreasoned decision-making, for the Commission to put its reliance on such a speculative claim in determining to eliminate the monthly stop-loss. At the very least, Joint Parties request that the Commission retain the monthly stop-loss limit but require PJM to present an annual report, after gaining some real-world experience with the stop-loss provisions, to: (i) evaluate the impact of those provisions, if any, on the efficacy of the Non-Performance Penalties in promoting improvements in resource availability and performance; and (ii) propose any necessary adjustments going forward.

**G. The June 9 Order Requires Clarification and/or Rehearing with Respect to Capacity Resource Aggregation.**

In its June 9 Order, the Commission agreed with PJM that certain resource types, including Capacity Storage Resources, Intermittent Resources, Demand Resources, Energy Efficiency Resources, and Environmentally-limited Resources (collectively referred to herein as “Intermittent Resources”), should be permitted to submit aggregated offers.<sup>91</sup> Joint Parties agree that aggregation is reasonable and appropriate for the listed resource types and that permitting such resources to submit aggregated offers as CP will likely enhance their ability to provide reliability benefits to the PJM region and may increase competition in the capacity market. However, as discussed below, Joint Parties also believe the June 9 Order is unduly discriminatory in limiting aggregation to only certain types of resources. Even if the Commission does not grant rehearing on that issue, however, two issues regarding implementation require clarification.

**1. All Capacity Resources Should Be Permitted to Submit Aggregated Offers**

The Commission accepted PJM's proposal to allow aggregated offers. It stated that aggregation of resources for this purpose is reasonable because "the aggregated offer allowance is designed to provide an avenue to CP participation by resources that otherwise may be unable or unwilling to participate on a stand-alone basis because no reasonable amount of investment in the resource can mitigate non-performance risk to an acceptable level within the CP market design."<sup>92</sup> The June 9 Order, however, also adopted the limitations on resource aggregation PJM had proposed.

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<sup>91</sup> June 9 Order at P 101.

<sup>92</sup> *Id.* at P 102.

The Commission erred in rejecting arguments that all types of resources should be permitted to submit aggregated offers. The reasoning for allowing aggregated offers from certain types of resources, such as demand response resources, could apply equally to other types of resources. For example, there are instances where no amount of investment in a traditional resource, such as a combustion turbine, or the timing of new pipeline capacity can adequately mitigate non-performance risk to an acceptable level. In such instances, it is unduly discriminatory and preferential to allow aggregated offers from some types of resources but not others.<sup>93</sup> Therefore, on rehearing, the Commission should direct PJM to remove categorical limitations and provide that *all* resources are permitted to submit aggregated offers.

**2. The Commission should Clarify that Intermittent Resources may Aggregate With Other Like Resources Unless They are Located in Modeled LDAs.**

Although the Commission found that Intermittent Resources should be permitted to aggregate offers as CP, the Commission held that such aggregation should be limited to resources located within the same LDA.<sup>94</sup> Without clarification, the adoption of this limitation will be arbitrary and capricious. Specifically, while Joint Parties agree that Capacity Emergency Transfer Limits should be taken into account for purposes of aggregating a CP offer and that aggregation should only be permitted where the aggregated resources have the ability to provide capacity across LDAs, clarification is required so that the limitation is not excessively and needlessly narrow.

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<sup>93</sup> See *Alabama Elec. Coop. v. FERC*, 684 F.2d 20 (D.C. Cir. 1982); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076 at P 369 (2007) ("In general, discrimination is 'undue' when there is a difference of rates, terms or conditions among similarly situated customers.")

<sup>94</sup> June 9 Order at P 103.

In the development of RPM, PJM identified 27 subregions for evaluating the locational constraints, known as LDAs. However, PJM only actually models the LDAs under certain circumstances indicating the existence of binding transmission constraints—*viz.*, when a Capacity Emergency Transfer Limit (“CETL”) into an LDA is less than 1.15 times the applicable Capacity Emergency Transfer Objective (“CETO”). An LDA will also be modeled if (a) the LDA had a Locational Price Adder in any one or more of the three immediately preceding Base Residual Auctions; or (b) the LDA is determined by PJM to likely have a Locational Price Adder based on historic offer price levels.<sup>95</sup> PJM may also decide to model the LDA as a constrained LDA regardless of the outcome of the above tests if there are other reliability concerns. In other words, concerns about the ability of aggregated resources to provide energy to the region during real-world emergencies only come into play in the circumstances (*e.g.*, presence of binding transmission constraints) in which PJM finds it necessary to model an LDA.

Consistent with the foregoing, PJM has recognized that aggregation across LDAs should be limited only during the conditions that would cause PJM to model an LDA. Specifically, PJM stated that it, "determined that it can permit aggregation across LDAs, and will include revised language to the PJM Open Access Transmission Tariff ("Tariff") should the Commission so order, in a compliance filing to remove the 'within the same LDA' restriction."<sup>96</sup> The Commission’s own more narrow interpretation, as set forth in the June 9 Order, appear to prohibit the aggregation of resources across LDAs or in “Rest of RTO,” even when there are no binding constraints that would impair the flow of energy during an emergency.

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<sup>95</sup> EMAAC, SWMAAC, and MAAC LDAs will be modeled as constrained LDAs regardless of the outcome of the above tests.

<sup>96</sup> PJM Answer at 25.

In order to be consistent with long-established RPM practices and to allow the broadest aggregation of resources that can reliably provide capacity across LDAs when needed during emergency conditions, Joint Parties respectfully request that the Commission clarify that the identified resources may make aggregated offers as CP with resources in other LDAs that are not modeled LDAs or that did not bind. Conversely, when PJM models an LDA, only resources located within the modeled LDA may aggregate with other resources located within the modeled LDA for the purpose of offering as CP. Any more stringent limits on aggregation, such as those imposed by the June 9 Order, go beyond what is necessary to promote reliable operations.

**3. The Commission Should Clarify that Capacity Resources May Aggregate for the Purposes of Both Qualification as CP and Compliance Measurement.**

The Commission explained that the purpose of such limited aggregation is to allow resources that would “generally not be able to offer as Capacity Performance Resources to aggregate their capabilities *in order to reliably perform during emergency conditions.*”<sup>97</sup> The Commission further clarified that Intermittent Resources are permitted to aggregate “because no reasonable amount of investment in the resource can *mitigate non-performance risk* to an acceptable level within the Capacity Performance market design.”<sup>98</sup> In other words, the Commission appears to have intended that limited resource aggregation be permitted to allow resources that could not otherwise qualify as a CP Resource on its own to join with other resources to qualify, thereby mitigating their risk of non-performance but still having the combined capability to perform reliably during an emergency. However, PJM has given itself wide latitude on how to interpret and apply the aggregation concept, ranging from a limited

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<sup>97</sup> June 9 Order at P 101 (emphasis added).

<sup>98</sup> *Id.* at P 102(emphasis added).

interpretation that would eliminate any risk mitigation benefits aggregation may otherwise offer, to something that appears to be more in line with the Commission's intent.

To be specific, in a CP training session conducted by PJM on June 24, 2015, PJM presented an example of resource aggregation using hypothetical solar and wind resources. PJM explained that the resources may aggregate for the purpose of qualifying as a CP Resource, but that in measuring compliance, each of the resources must be capable of meeting the performance requirements on its own even if it offered and was cleared as an aggregated resource. The relevant PJM slide states, "Aggregate Resource commitment quantity must be allocated to the individual resources comprising such aggregate in order to *assess performance on an individual resource basis.*"<sup>99</sup> At a later CP training session, however, PJM reversed course and, using the same example, presented a conclusion wherein the wind and solar resources' performance would be netted:

- Sum of the Performance Shortfall/Bonus Performance calculated for the underlying capacity resources that were required to perform during the Performance Assessment Hour establishes the Performance Shortfall/Bonus Performance for the Aggregate Resource for such Performance Assessment Hour.
- Non-Performance Assessment Charges/Credits will be assessed to the Aggregate Resource.<sup>100</sup>

Given the drastically different interpretations of aggregated resource compliance measurement, clarification from the Commission is required to prevent PJM from reverting to its earlier interpretation - an interpretation that would eliminate any risk mitigation benefits of

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<sup>99</sup> PJM Capacity Performance Training, June 24, 2015 at 34. Available at: <http://www.pjm.com/~media/committees-groups/committees/elc/postings/capacity-performance-training-presentation.ashx>. (last viewed on July 3, 2015).

<sup>100</sup> PJM Capacity Performance Training, July 8, 2015 at 42. The document should be available via the following link <http://www.pjm.com/~media/committees-groups/committees/elc/postings/capacity-performance-training-presentation.ashx>. (last viewed on July 9, 2015). However, as of the time of this filing, PJM had not yet posted the document to its website.

aggregation and, thus, eradicate the value and likely use of resource aggregation. Because of this uncertainty, Joint Parties are compelled to seek clarification from the Commission on this matter. Without Commission direction, PJM's election to change its interpretation at will could have the effect of ensuring that most Capacity Storage Resources, Intermittent Resources, Demand Resources, Energy Efficiency Resources, and Environmentally-limited Resources are effectively prevented from meeting the performance obligations of CP, leaving them to participate in the market only as sources of energy. Such an outcome would be contrary to the Commission's clear intent in permitting resource aggregation. Accordingly, the Commission should clarify that individual resources that are permitted to aggregate for the purpose of qualifying as CP also will be aggregated in measuring compliance during Performance Assessment hours.

**H. The Commission Should Clarify that Undelivered Megawatts Will Not Count as a Shortfall During Unforeseen Emergency Conditions**

The import of P 173 of the June 9 Order, discussed in Section III.B. above, is the no-tolerance Non-Performance Charge, where parameter limitations and market-based offers that are higher than cost-based offers can subject a resource to non-performance penalties. With respect to PJM's ability to rescind a Generator Maintenance Outage, the Commission reasons that PJM should have such authority because "emergency conditions are often not foreseeable."<sup>101</sup> The same reasoning should apply to resources committed to provide capacity. In circumstances where an emergency condition is not foreseeable, the resource should not be subject to Non-Performance Charges if it is not available. Instead, Non-Performance Charges should only apply during times of or approaching emergency conditions. In the alternative, the Commission should at least clarify that generators will not be assessed a performance assessment penalty absent a clear communication from PJM prior to the generator incurring the performance

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<sup>101</sup> June 9 Order at P 494.

obligation. Generators should be made aware in advance whether they will be assessed a Non-Performance Charge based on the criteria set forth in the June 9 Order, and any additional exception criteria that may be directed by the Commission.<sup>102</sup>

#### IV. CONCLUSION

WHEREFORE, Joint Parties respectfully requests that the Commission grant clarification and/or rehearing of the June 9 Order to address the errors specified herein.

Respectfully submitted,

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Dated: July 9, 2015

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<sup>102</sup> *Id.* at P 173.

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of July, 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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