

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

PJM Interconnection, L.L.C.)

Docket No. ER23-1996-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
AMERICAN MUNICIPAL POWER, INC.,
EAST KENTUCKY POWER COOPERATIVE, INC., AND
AES CLEAN ENERGY DEVELOPMENT, LLC**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,¹ American Municipal Power, Inc. ("AMP"), East Kentucky Power Cooperative, Inc. ("EKPC"), and AES Clean Energy Development, LLC ("AES") hereby submit this motion for leave to answer and answer to the answers filed in the captioned proceeding by PJM Interconnection, L.L.C. ("PJM") on June 20, 2023² and on June 26, 2023.³ The Commission should reject PJM's proposed amendment to its May 30, 2023 filing, accept PJM's proposed Open Access Transmission Tariff ("Tariff") revisions as originally filed, confirm that a "shortage of the Primary Reserve requirement" does not include a "shortage of the Extended Primary Reserve Requirement," and initiate an investigation under Federal Power Act ("FPA") section 206,⁴ as proposed by the Independent Market Monitor for PJM ("IMM").⁵

I. MOTION FOR LEAVE TO ANSWER

AMP, EKPC, and AES should be permitted to answer PJM's Second Answer because it seeks affirmative relief in the form of a compliance directive from the

¹ 18 C.F.R. §§ 385.212, 385.213.

² PJM, Answer, Docket No. ER23-1996-000 (filed June 20, 2023) ("Second Answer").

³ PJM, Answer, Docket No. ER23-1996-000 (filed June 26, 2023) ("Third Answer").

⁴ 16 U.S.C. § 824e.

⁵ IMM, Comments, Docket No. ER23-1996-000 (filed June 22, 2023).

Commission⁶ and therefore should be treated as a motion that is not within the scope of Rule 213(a)(2).⁷ However, in an abundance of caution, AMP, EKPC, and AES respectfully request leave to answer PJM's Second Answer, along with leave to answer PJM's Third Answer. Rule 213(a)(2) generally prohibits answers to answers unless such answers have been authorized by the decisional authority.⁸ The Commission exercises its discretion to grant motions for leave to submit answers when doing so will clarify the issues, assist in the Commission's decision-making processes, or otherwise ensure an accurate and complete record.⁹

As explained in detail below, PJM's answers include misleading arguments and confuse the issues. Further, PJM has included in its Second Answer an unsupported amendment to its May 30 filing for which PJM has failed to comply with or seek waiver of the Commission's sixty-day prior notice requirements. Accordingly, the Commission should grant leave and accept this answer to clarify the issues, assist in the Commission's decision-making process, and ensure a complete decision-making record.

II. ANSWER

PJM's May 30 filing included the same definition of "Emergency Action" that was included in the Member-Endorsed Solution¹⁰ overwhelmingly endorsed by PJM Members

⁶ Second Answer at 11.

⁷ 18 C.F.R. § 385.213(a)(2).

⁸ *Id.*

⁹ See, e.g., *PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,035, at P 32 (2013); *Wisconsin Pub. Serv. Corp.*, 144 FERC ¶ 61,093, at P 27 (2013); *Iberdrola Renewables, Inc.*, 137 FERC ¶ 61,185, at P 17 (2011); *Virginia Elec. And Power Co.*, 125 FERC ¶ 61,391, at P 26 (2008).

¹⁰ See IMM, Trigger Proposal (May 11, 2023) <https://pjm.com/-/media/committees-groups/committees/mc/2023/20230511-special/item-01b---1-trigger-summary.ashx>.

in a vote at the May 11, 2023 Special Meeting of PJM's Members Committee.¹¹ AMP, EKPC, and AES continue to support PJM's May 30 filing,¹² to the extent that the Commission accepts it without modification. PJM, however, has sought in its Second Answer to amend its proposed Emergency Action definition¹³ and AMP, EKPC, and AES oppose that amendment.

PJM's proposed amendment is both procedurally improper and substantively unsupported. Effectuating PJM's proposed amendment by way of a compliance filing would deprive PJM stakeholders of adequate notice and opportunity to comment on the amended filing. The proposed amendment is unjust and unreasonable because it would trigger Performance Assessment Intervals ("PAI") in cases where PJM is not truly short capacity, but instead has capacity available at prices higher than the price associated with step 2A of the operating reserve demand curve, and PAIs occurring in those circumstances would be inappropriately triggered by PJM's economic decisions, rather than reliability criteria.

A. The amendments to PJM's May 30 filing proposed in the Second Answer are procedurally improper.

PJM is seeking an order from the Commission that would impose a compliance obligation requiring PJM to file revised Tariff provisions that essentially substitute the

¹¹ PJM, Supplemental Voting Results, PJM Members Committee Meeting (May 11, 2023), <https://pjm.com/-/media/committees-groups/committees/mc/2023/20230511-special/summarized-voting-report.ashx>.

¹² See AMP, Comments, Docket No. ER23-1996-000, at 3 (filed June 9, 2023) ("AMP supports PJM's filing because it has the potential to reduce the risk of unnecessary Non-Performance charges faced by PJM Capacity Resources, which in turn may reduce future RPM offer prices submitted by these resources, while continuing to provide reasonable compensation to them."); EKPC, Comments, Docket No. ER23-1996-000, at 1 (filed June 8, 2023) (EKPC supports the revisions filed by PJM to the definition of "Emergency Action").

¹³ Second Answer at 11.

defined Tariff term “Extended Primary Reserve Requirement”¹⁴ for the term “Primary Reserve requirement” that was included in the May 30 filing.¹⁵ PJM’s proposal tees off of a request for clarification made by the Earthrise Entities, which sought clarification that PJM’s “reference to Primary Reserve requirement refers to the Reliability Requirement for Primary Reserves, which as explained in PJM Manual 13: Emergency Operations is equal to 150 percent of the Synchronized Reserve Reliability Requirement.”¹⁶

“Primary Reserve Requirement” is defined in the currently effective Tariff as:

the megawatts required to be maintained in a Reserve Zone or Reserve Sub-zone as Primary Reserve absent any increase to account for additional reserves scheduled to address operational uncertainty. The Primary Reserve Requirement is calculated in accordance with the PJM Manuals. The requirement can be satisfied by any combination of Synchronized Reserve or Non-Synchronized Reserve resources.¹⁷

The Earthrise Entities stated their “understanding that this reference to Primary Reserve requirement refers to the Reliability Requirement for Primary Reserves, which as explained in PJM Manual 13: Emergency Operations is equal to 150 percent of the Synchronized Reserve Reliability Requirement.”¹⁸ This understanding is consistent with representations PJM made in the May 30 filing itself: “A shortage of the Primary Reserve requirement (which is equal to 150% of the Synchronized Reserve requirement) represents a scenario where PJM does not have sufficient real-time reserves available to

¹⁴ *Id.*

¹⁵ May 30 Filing at 13.

¹⁶ Earthwise, Supplemental Comments, Docket No. ER23-1996-000, at 2 (filed June 9, 2023).

¹⁷ Tariff, section 1, definitions.

¹⁸ *Id.*

meet system needs.”¹⁹ The May 30 filing states further that: “Updating the definition of Emergency Action to include a Primary Reserve shortage (*i.e.*, 150 percent of the largest contingency) component makes it clear that any unit that can either provide energy, regulation or reserves (regardless of online state) will be performing”²⁰ Given these references to 150% of the Synchronized Reserve requirement in the May 30 filing, there does not seem to be any ambiguity left for PJM to clarify.

Nevertheless, PJM took the Earthrise Entities’ simple request for clarification as an invitation to expand the scope of the Emergency Action definition beyond a failure to meet the lesser Primary Reserve Requirement, to include the “Extended Primary Reserve Requirement,” which the Tariff defines as:

the Primary Reserve Requirement in a Reserve Zone or Reserve Sub-zone, **plus 190 MW**, plus any additional reserves scheduled under emergency conditions necessary to address operational uncertainty. The Extended Primary Reserve Requirement is calculated in accordance with the PJM Manuals.²¹

Thus, PJM’s proposed amendment to the May 30 filing will trigger PAIs in circumstances where there remain at least 190 MW more reserves available than under the Tariff language included in the May 30 filing. As a result, PJM’s proposed amendment to its filing may materially increase the number of PAIs during a particular shortage event.

PJM’s only justification for its proposed amendment is a representation that:

a shortage of the Extended Primary Reserve Requirement, when coupled with certain emergency procedures, does represent a capacity shortage because those are times when PJM is not only short on reserves but also taking emergency steps to maintain system balance. It would not be prudent to

¹⁹ May 30 filing at 12.

²⁰ *Id.*

²¹ Tariff, section 1, definitions (emphasis added).

delay declaring a Performance Assessment Interval until there is a shortage of the Primary Reserve Requirement, rather than the Extended Primary Reserve Requirement, when PJM is already employing certain emergency procedures because it would increase the risk of a more severe operational emergency.²²

Without further explanation, PJM supplies its proposed amended Tariff language. PJM then invites the Commission to require a compliance filing adopting that language.²³

It would be improper for the Commission to accede to PJM's entreaties. PJM proposes a material modification of its May 30 filing that would increase the risk of non-performance penalties faced by Capacity Resources by increasing the number of PAIs. Capacity Resources will then seek to include these increased costs in their Reliability Pricing Model ("RPM") capacity auction offers, which will increase the price paid for capacity by load-serving entities in PJM.

PJM's proposal that the Commission bypass the sixty-day prior notice provision of FPA section 205 and instead accept PJM's filing conditioned on PJM submitting its alternative proposed Tariff revisions in an after-the-fact compliance filing is unlawful. "Section 205 puts FERC in a 'passive and reactive role.'"²⁴ The only Tariff revisions properly before the Commission are the revisions that PJM filed on May 30. While the Commission may in some cases "suggest 'minor' modifications to a proposal made by a Regional Transmission Organization,"²⁵ this is not such a case. PJM's agreement to the revisions is irrelevant because the revisions are not "minor."²⁶ In the event PJM now

²² Second Answer at 10-11.

²³ *Id.* at 11.

²⁴ *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108, 114 (D.C. Cir. 2017) (quoting *Advanced Energy Management Alliance v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017)).

²⁵ 862 F.3d at 110.

²⁶ *Id.* at 116.

intends to revise the Emergency Action definition included in its May 30 filing, PJM must submit an amended filing.²⁷ An amended filing would require an additional notice and comment period,²⁸ and a Commission order accepting PJM's proposal or effectiveness following passage of the sixty-day prior notice period without such an order. Any other approach would not provide PJM's "customers [with] adequate notice of the proposed rate changes or an adequate opportunity to comment on the proposed changes."²⁹

B. PJM's proposed amendment to its filing is substantively unsupported because it would trigger PAIs based on economic criteria—rather than reliability criteria.

1. PJM's Tariff and Operating Agreement make clear a Primary Reserve Shortage only occurs when Primary Reserve levels are less than the "Reliability Requirement."

As noted above, the term Primary Reserve Requirement is defined in the PJM Tariff and Operating Agreement as follows:

"Primary Reserve Requirement" shall mean the megawatts required to be maintained in a Reserve Zone or Reserve Sub-zone as Primary Reserve **absent any increase to account for additional reserves scheduled to address operational uncertainty**. The Primary Reserve Requirement is calculated in accordance with the PJM Manuals. The requirement can be satisfied by any combination of Synchronized Reserve or Non-Synchronized Reserve resources.³⁰

²⁷ *New York Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,028, at PP 21-22 (2023) ("NYPA's proposed revisions are inconsistent with NYPA's representations in its transmittal letter. . . . Accordingly, NYPA must submit a compliance filing correcting the definition of Third Party Costs to reflect the definition in the February Transmittal Letter."); see, e.g., *PJM Interconnection, LLC*, 144 FERC ¶ 61,238, at P 25 (2013) ("We do . . . expect that PJM and the IMM, having made commitments in the transmittal letter, will abide by them.")

²⁸ See, e.g., *Duke Power Co.*, 57 FERC ¶ 61,215, at 61,713 (1991) ("the Commission will consider any amendment or supplemental filing filed after a utility's initial filing . . . to establish a new filing date for the filing in question").

²⁹ *NRG Power Mktg.*, 862 F.3d at 116.

³⁰ PJM Tariff, Definitions O-P-Q (emphasis added).

PJM Manual 11, section 4.3 provides a definition of the “reliability requirement”³¹ for Primary Reserves, which is 150 percent of the Synchronized Reserve reliability requirement, where the Synchronized Reserve reliability requirement is equal to the largest single contingency.³² It is important to note the Primary Reserve “reliability requirement” as defined in Manual 11 does not add any additional megawatts of reserves and is equivalent to the PJM Tariff-defined Primary Reserve Requirement.

The PJM Tariff and Operating Agreement explicitly define Extended Primary Reserve Requirement as being separate and distinct from the Primary Reserve Requirement:

“Extended Primary Reserve Requirement” shall equal the Primary Reserve Requirement in a Reserve Zone or Reserve Sub-zone, **plus 190 MW**, plus any additional reserves scheduled under emergency conditions necessary to address operational uncertainty. The Extended Primary Reserve Requirement is calculated in accordance with the PJM Manuals.³³

The PJM Tariff definition of Extended Primary Reserve Requirement is explicitly memorialized in PJM Manual 11, section 4.3 as the Primary Reserve reliability requirement plus the extended reserve requirement of 190 MW.³⁴

Table 1 below is included in section 4.3 of PJM Manual 11 and shows the distinction between the reliability requirement and the extended requirement.

³¹ The term “reliability requirement” is not a defined term in PJM’s Tariff or Operating Agreement.

³² PJM Manual 11, section 4.3, at 103-104.

³³ PJM Tariff, Definitions E-F (emphasis added).

³⁴ PJM Manual 11, section 4.3, at 103; section 4.3.3, at 106-107.

Table 1: PJM Manual 11 Delineation of Reliability and Extended Requirements for Reserves

	Reserve Service		
	Synchronized Reserve (SR)	Primary Reserve (PR)	30-Minute Reserve (30-Min)
Reliability Requirement	Largest Single Contingency	150% of Synchronized Reserve Reliability Requirement	Greater of (Primary Reserve Reliability Requirement, 3000 MW, or largest active gas contingency)
Reserve Requirement	SR Reliability Requirement + Extended Reserve Requirement	PR Reliability Requirement + Extended Reserve Requirement	30-Min Reliability Requirement + Extended Reserve Requirement

2. PJM’s Tariff description of shortage pricing describes a condition in which PJM cannot satisfy the Reliability Requirement.

The terms “shortage pricing” or Primary Reserve shortage are not PJM Tariff-defined terms. However, the plain English language meaning of shortage means “lack or deficit,”³⁵ “a situation where there is not enough of something,”³⁶ or “a deficiency in quantity.”³⁷ PJM Tariff, Attachment K–Appendix section 2.5.1 describes how shortage pricing is declared and implemented:

(a) The Office of the Interconnection shall use its Real-time Price software program, to determine if the Office of the Interconnection is experiencing a 30-minute Reserve shortage, a Primary Reserve shortage and/or a Synchronized Reserve shortage for the purposes of **declaring shortage**

³⁵ Merriam-Webster online dictionary, <https://www.merriam-webster.com/dictionary/shortage>.

³⁶ Cambridge Dictionary online, <https://dictionary.cambridge.org/us/dictionary/english/shortage>.

³⁷ Dictionary.com online, <https://www.dictionary.com/browse/shortage>.

pricing as further described in the PJM Manuals. If all reserve requirements in every modeled Reserve Zone and Reserve Sub-zone can be met at prices less than or equal to the applicable Reserve Penalty Factor for those reserve requirements, Real-time Prices shall be calculated as described in Tariff, Attachment K-Appendix, section 2.5 and no Reserve Penalty Factor(s) shall apply beyond the normal lost opportunity costs incurred by the reserve requirements. **When the Real-time Price software determines that a 30-minute Reserve shortage, a Primary Reserve shortage and/or a Synchronized Reserve shortage exists, whereby the reserve requirement cannot be met at a price less than or equal to the applicable Reserve Penalty Factor(s) associated with a Reserve Zone or Reserve Sub-zone, the Office of Interconnection shall implement shortage pricing. During shortage pricing, the Real-time Prices shall be calculated by incorporating the applicable Reserve Penalty Factor(s) for the deficient reserve requirement as the lost opportunity cost impact of the deficient reserve requirement consistent with the determination of the clearing price for each reserve product, and the components of Locational Marginal Prices referenced in Tariff, Attachment K-Appendix, section 2.5 above shall be calculated as described below.** Shortage pricing shall exist until the Real-time Price software program is able to meet the specified reserve requirements and there is no Voltage Reduction Action or Manual Load Dump Action in effect.³⁸

The Reserve Penalty Factor is defined as “the cost, in \$/MWh, associated with **being unable to meet a specific reserve requirement** in a Reserve Zone or Reserve Sub-zone. A Reserve Penalty Factor will be defined for each reserve requirement in a Reserve Zone or Reserve Sub-zone.”³⁹

The implementation of shortage pricing explicitly and in multiple places references reserve requirement. The definition of Reserve Penalty Factor is explicit in referencing

³⁸ PJM Tariff, Attachment K-Appendix, section 2.5.1(a); PJM Operating Agreement, Schedule 1, section 2.5.1(a) (emphasis added).

³⁹ PJM Tariff, Definitions R-S (emphasis added).

the reserve requirement and not any extended requirement. Given the Tariff definition of the Primary Reserve Requirement, this can only mean shortage pricing for Primary Reserves is implemented only when PJM is unable to meet the Primary Reserve Requirement, which is consistent with the PJM Manual 11 description of the reliability requirement. This is stated explicitly regarding shortage pricing with respect to Primary Reserves as quoted below:

The purpose of the Primary Reserve Warning is to warn members that the available Primary Reserve may be less than the Primary Reserve Requirement. The purpose of the Voltage Reduction Warning is to warn PJM Members that the available Synchronized Reserve may be less than the Synchronized Reserve Requirement and that a voltage reduction may be required.⁴⁰

The above is definitive. Primary Reserve shortages occur when available reserves are less than the Tariff-defined Primary Reserve Requirement, which does not include any part of the Primary Extended Reserve Requirement.

3. PJM's May 30 Filing explicitly references a Primary Reserve Shortage, meaning the inability to meet the Primary Reserve Requirement/Reliability Requirement.

Nowhere in PJM's May 30 filing does it mention the Extended Primary Reserve requirement. However, there are multiple references to "Primary Reserve shortage," and as discussed above, this implies the implementation of reserve shortage pricing. Moreover, PJM explicitly references in its filing the reliability requirement, as described in Manual 11, section 4.3:

A shortage of the Primary Reserve requirement (which is equal to 150% of the Synchronized Reserve requirement)

⁴⁰ PJM Tariff, Attachment K-Appendix, section 2.5.1(d); PJM OA, Schedule 1, section 2.5.1(d).

represents a scenario where PJM does not have sufficient real-time reserves available to meet system needs.⁴¹

Furthermore, in his affidavit on behalf of PJM, Mr. Bryson explicitly references the Primary Reserve Requirement (capitalized) in describing the linkages between a Primary Reserve Warning and Primary Reserve requirement.

The purpose of the Primary Reserve Warning is to warn members that the available Primary Reserve is less than required and present operations are becoming critical. **The Primary Reserve Warning is implemented when available Primary Reserve capacity is less than the Primary Reserve Requirement**, but greater than the synchronized reserve requirement.⁴²

All in all, the clear and explicit intent is that a Primary Reserve shortage happens when the Primary Reserve Requirement (synonymously, the reliability requirement) in the Manuals cannot be met and has nothing to do with the Extended Primary Reserve Requirement.

4. PJM's amendment to its May 30 filing would trigger PAIs for economic reasons—not reliability reasons.

PJM's May 30 filing explicitly and correctly focusses on the Primary Reserve Requirement (reliability requirement) and PJM's use of the phrase Primary Reserve shortage only further confirms this in the context of reserve shortage pricing in the Tariff and Operating Agreement. A deficit of the Primary Reserve Requirement (reliability requirement) means there are no longer sufficient reserves to meet operational reliability goals.

⁴¹ May 30 filing at 12.

⁴² Bryson affidavit P 16.

PJM's proposed amendment to its filing, however, could easily push PJM to trigger PAIs, or remain in PAIs, not for reliability reasons, but for purely economic reasons. An examination of PJM Manual 11, section 4.3.3 discussing the use of Reserve Penalty Factors in reserve formation under a reserve shortage in generic terms makes it clear that **being short the reliability requirement is the true definition of a reserve shortage.**⁴³

For example, on what PJM calls "Step 2A" of the operating reserve demand curve, PJM is only willing to pay up to \$300/MWh to procure the additional 190 MW of the extended reserve requirement. However, if reserve prices exceed \$300/MWh and are less than \$850/MWh (which is the Reserve Penalty Factor for being short the tariff-defined reserve requirement/reliability requirement), PJM can still ensure the reserve requirement is met and this does not trigger reserve shortage pricing as defined in the Tariff and Operating Agreement, as discussed above.⁴⁴

However, PJM's proposed amendment to its filing would trigger a PAI if PJM elected for purely economic reasons to operate short on reserves, even if additional reserves are available beyond the reserve requirement/reliability requirement at prices above \$300/MWh. For example, if the Reserve Zone or Reserve Sub-Zone did not satisfy an Extended Reserve Requirement before first allowing shortage pricing (*i.e.*, prices above \$300/MWh) to secure the megawatts needed to meet the Primary Reserve Requirement and any additional megawatts that may be needed for operational uncertainty, PJM would trigger a PAI. Essentially, PJM is seeking to expose committed

⁴³ PJM Manual 11, section 4.3.3, at 106-107.

⁴⁴ *Id.*

Capacity Resources to non-performance risk before PJM takes the economic steps available to it to meet operational requirements. PJM's proposed amendment dismisses the important performance incentive provided by elevated energy and reserve prices. PAI penalties are not the only incentive designed to ensure performance. Thus, PJM's request is not rooted in reliability considerations but rather economic decisions made by PJM.

As noted in PJM Manual 11, section 4.3.3, PJM has the obligation to commit additional reserves even if they may cost more than \$850/MWh if such reserves are available:

The penalty factor represents the price at which reserves will be valued if the desired reserve MW cannot be met with the available reserves on the system, and also acts as a price cap beyond which reserves will not be procured through market clearing.

- For example, assume the penalty factor to maintain 1,000 MW of Synchronized Reserves is \$850/MWh. **If there are less than 1,000 MW of reserves available, the deficient MW will be valued at \$850/MWh.** Similarly, if there are sufficient reserves to meet the 1,000 MW requirement, yet they are not available at prices less than or equal to \$850/MWh, **resources with merit order prices that exceed \$850/MWh will not be cleared and the deficient MW will be valued at \$850/MWh. However, such resources can still be committed manually by PJM operations personnel in order to maintain reliability.** In this case, such resources will be compensated additionally after the fact to ensure their true cost to provide the service is covered.

The penalty factor also provides a clear indicator of the reserve position of the RTO and modeled Reserve Sub-Zones. As the price of a reserve product increases to a value near the penalty factor, it indicates to market participants that the system is nearing a reserve shortage.⁴⁵

⁴⁵ *Id.* at 108 (emphasis added).

Clearly, to the extent reserves are available, PJM has the obligation to commit additional reserves to maintain reliability. To the extent PJM fails to do so, Capacity Resource owners should not be exposed to additional PAIs, the risk of which will ultimately be reflected in prices paid for capacity by load-serving entities. PJM's casual reference to the possibility of unspecified "certain emergency procedures" being invoked simultaneously⁴⁶ fails to rebut the harm customers would face under PJM's proposed amendment.

C. The Commission should initiate a section 206 investigation to determine whether PJM's existing Reliability Pricing Model Tariff provisions are unjust and unreasonable.

Taken together, PJM's filings in this docket and PJM's related filings in Docket No. ER23-1609-000 suggest it is unlikely that PJM's anticipated October 1, 2023 filing following its Critical Issue Fast Path ("CIFP") process will entail a proposal for RPM changes that the Commission can timely accept as just and reasonable, without modification. Contrary to PJM's representation in its Third Answer,⁴⁷ the CIFP process has to date avoided any significant discussion of the two critical remaining RPM issues that PJM elected not to address in this proceeding; namely, the penalty rate and the stop-loss provision.

Time is short with the Base Residual Auction for the 2025/2026 Delivery Year currently scheduled for June 2024. As suggested by the IMM,⁴⁸ the Commission should therefore institute a proceeding under FPA section 206 to address whether PJM's

⁴⁶ PJM Second Answer at 10-11.

⁴⁷ PJM, Third Answer at 3 ("stakeholders are already considering various enhancements to PJM's capacity market, including potential modifications to the Non-Performance Charge rate and associated stop loss").

⁴⁸ IMM, Comments, Docket No. ER23-1996-000, at 2 (filed June 22, 2023).

currently effective RPM rules may be unjust and unreasonable. Indeed, at least one FERC Commissioner⁴⁹ and PJM itself have argued as much.⁵⁰ Addressing the first prong of section 206 on the record now, in advance of PJM's October 1 filing, would give the Commission the latitude it may need to react quickly to the October 1 filing and establish a just and reasonable replacement rate in the event the Commission determines that neither the currently effective Tariff provisions nor PJM's October 1 proposed amendments are just and reasonable.

⁴⁹ *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,172, Comm'r Danly concurring, at P 2 (2023) ("PJM's existing Reliability Pricing Model mechanism is manifestly unjust and unreasonable . . ."). See also *East Kentucky Power Cooperative, Complaint*, Docket No. EL23-74, at 52 (filed May 31, 2023) ("PJM's penalty rate and stop loss provisions, as well as its PAI trigger, are unjust and unreasonable as evidenced by the region's Winter Storm Elliott experience, and should be changed."); *SunEnergy1, LLC, Complaint*, Docket No. EL23-58 (filed April 5, 2023) ("while the September 2021 MSOC Order changed the price upon which Generation Capacity Resources can offer into the capacity market to be based on Net ACR, it did not change the stop-loss provision for the Non-Performance Charge, which is still based on the significantly higher Net CONE. The result is an asymmetric and unjust market framework. . .").

⁵⁰ *PJM, Auction Delay Filing*, Docket No. ER23-1609-000, at 4 (the current tariff provisions . . . may be unjust and unreasonable and require change . . ."); see also *id.* (application of the existing Tariff provisions "will not provide the accurate forward price signals necessary to attract and retain resources needed for reliability."); *id.* at 5 ("under the existing tariff provisions customers will 'commit and pay for resources that do not necessarily enhance system reliability.'"); *id.* at 6 ("reforms to the capacity market are needed to, at a minimum, enhance risk modeling, allow Capacity Market Sellers to fully reflect the cost of risk in their capacity offers, enhance capacity accreditation methodologies for all resource technologies, and synchronize such updated RPM Auctions with the Fixed Resource Requirement rules.").

III. CONCLUSION

WHEREFORE, for the foregoing reasons, AMP, EKPC, and AES respectfully request that the Commission: (1) reject PJM's proposed amendments to its May 30, 2023 filing; (2) accept PJM's proposed Tariff revisions as originally filed; (3) confirm that a "shortage of the Primary Reserve requirement" does not include a "shortage of the Extended Primary Reserve Requirement"; (4) reject PJM's compliance filing proposal; (5) initiate an investigation under Federal Power Act section 206; and (6) grant such further relief as the Commission may deem appropriate.

Respectfully submitted,

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Dated: July 5, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 5th day of July, 2023.

/s/ Gerit F. Hull

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