

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

PJM Interconnection, L.L.C.

)

Docket Nos. ER15-852-000

**NOTICE OF INTERVENTION AND COMMENTS
OF THE ILLINOIS COMMERCE COMMISSION**

Pursuant to Rules 212 and 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 and 385.214(a)(2), the Illinois Commerce Commission (“ICC”) respectfully submits this notice of intervention and comments regarding the January 14, 2015, filing submitted by PJM Interconnection, L.L.C. (“PJM”) in the above-captioned docket (“January 14 Filing”). On January 29, 2015, the Deputy Secretary of the Commission issued a *Notice of Extension of Time* setting February 13, 2015, as the deadline for interventions, comments and protests in this case.

I. NOTICE OF INTERVENTION

Pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Commission, 18 C.F.R. §385.214(a)(2), the ICC hereby submits this notice of intervention in the above-captioned docket.

The ICC is a State Commission as defined in Section 1.101(k) of the Rules of General Applicability of the Commission, 18 C.F.R. §1.101(k). The principal place of business of the ICC is 527 East Capitol Avenue, Springfield, IL 62701. As the state regulator of public utilities in Illinois, the ICC has an interest that may be directly affected by the outcome of the proceeding. Its participation is also in the public interest.

The names, titles and business addresses of the persons designated for service pursuant to Rule 2010 (c) (1) of the Commission’s Rules of Practice and Procedure¹ are as follows:

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WHEREFORE, the ICC hereby notifies the Commission of its intervention in the above-captioned proceeding, and requests any and all other appropriate relief.

II. SUMMARY OF THE JANUARY 14 FILING

In its January 14 Filing, PJM proposes to modify rules addressing participation by demand response in PJM’s capacity market, known as the Reliability Pricing Model (“RPM”).² PJM states that it seeks to implement the revisions only in the event the United States Supreme Court denies the petitions for *certiorari* seeking review of *Electric Power Supply Ass’n v. FERC*.³ In such event, PJM seeks authorization to apply its proposed new rules to the May 2015 base residual auction, which is designed to commit resources for the 2018-2019 delivery year, and auctions for subsequent delivery years.⁴

¹ Rule 2010 requires the name of counsel on the official service list, and does not impose a limit. 18 C.F.R. §385.2010. To the extent that it may be necessary, however, and that the rule may be interpreted to limit counsel to one name, the ICC requests a waiver of that rule in order to include additional names of counsel as designated herein and so moves. Good cause exists to serve all counsel on a case in order to promote efficiency and fairness in the proceeding.

² January 14 Filing, at 1.

³ January 14 Filing, at 1 (*citing* 753 F.3d 216 (D.C. Cir. 2014) (“*EPSA*”).

⁴ January 14 Filing, at 1-2.

PJM proposes to adjust the amounts of capacity it procures in RPM auctions by modifying the demand curve for such auctions, known as the Variable Resource Requirement (“VRR”) curve, to conform to qualifying commitments by wholesale entities to reduce their wholesale loads in the capacity market.⁵ In short, demand response would be shifted from the supply side to the demand side. PJM states that the proposed new market rules include provisions for reductions in the PJM capacity obligations and associated capacity charges under the PJM Tariff and Reliability Assurance Agreement for wholesale entities whose load reduction bids are accepted in RPM.⁶

III. THE ICC’S POSITION AND RECOMMENDATION

The ICC recommends, among other things, that PJM’s January 14 Filing proposal, including its proposed Wholesale Load Reduction (“WLR”) program, not be applied to the May 2015 base residual auction. State legislators and state regulators need time to develop and put into place the business, contractual, and regulatory arrangements necessary to enable demand response to meaningfully participate on the demand side as proposed by PJM. One way to accommodate this need for more time and still permit the May 2015 base residual auction to go forward as scheduled would be for PJM to hold back from that auction an amount of demand approximately equal to the level of demand response historically experienced in PJM’s Capacity Market and to spread that held-back demand over the subsequent incremental auctions of the 2018-2019 delivery year.

The ICC also recommends that:

⁵ January 14 Filing, at 2.

⁶ January 14 Filing at 7.

- PJM’s proposal to prohibit demand reduction bids in incremental auctions for the 2018-2019 and subsequent delivery years be rejected.
- PJM’s proposal to prohibit new demand response offers after April 1, 2015 in the incremental auctions for the 2016-2017, and 2017-2018 delivery years be rejected, or at least postponed until the legal landscape associated with *EPSA* becomes more clear.
- PJM’s proposal for Wholesale Load Reductions (“WLR”) transfers between wholesale entities should be clarified.

IV. COMMENTS

A. PJM’s Proposal Should be Rejected Because it is Built on Numerous Contingencies which make Market Participants’ Preparation and Planning for the May 2015 Exceedingly Difficult and Uncertain in the Short Time That is Available.

While the ICC appreciates the need to plan for certain contingencies, PJM’s plan presented in its January 14 Filing creates unnecessary uncertainty in the market and excessive difficulties in implementation. As an initial matter, PJM is not clear about the triggering event for its demand response proposal. At numerous places in its January 14 Filing, PJM describes the triggering event as “if the Supreme Court denies the petitions for *certiorari* review of *EPSA*”⁷ and “should the Supreme Court deny review of *EPSA*.”⁸ At other places, PJM describes the triggering event as “in the event the *EPSA* mandate issues”⁹ and “should the *EPSA* mandate issue.”¹⁰ Thus it is unclear whether the Supreme Court action would trigger PJM’s proposal or

⁷ See, e.g., January 14 Filing, at 11.

⁸ See, e.g., January 14 Filing, at 2.

⁹ See, e.g., January 14 Filing, at 2.

¹⁰ See, e.g., January 14 Filing, at 12.

whether subsequent action by the Appeals Court for the D.C. Circuit in issuing a mandate is also required. At a minimum, the triggering event needs to be clarified.

Further, PJM's proposal is built on a number of additional contingencies. First, PJM explains that it is not seeking to make its proposal effective on the date that the Supreme Court denies the petitions for *certiorari* review of *EPSA* or the date that the Appeals Court for the D.C. Circuit issues its mandate.¹¹ Rather, PJM requests that FERC authorize its revisions to become effective April 1, 2015.¹² But, PJM asks for an effective date of April 6, 2015, "if the Supreme Court has not acted on *EPSA* before the Commission issues its order on this filing."¹³ PJM states that a "nominal suspension" in that case "will allow PJM to submit a motion to continue the suspension and further defer the effectiveness of this proposal as needed to provide additional time to await the Supreme Court's order."¹⁴ PJM states an intent to abandon its January 14 Filing proposal and "proceed with the auction under existing rules governing demand response" in the event that "the Supreme Court has not yet acted as the [base residual auction] approaches."¹⁵ But, PJM has not proposed any specific cut-off date to define the phrase or the timeframe intended by "as the [base residual auction] approaches."

In addition, PJM proposes further contingencies regarding: (1) whether or not the Commission acts on PJM's pending capacity performance filing¹⁶; (2) the date on which the Commission acts on PJM's pending capacity performance filing, should the Commission so act¹⁷; (3) the effective date that the Commission authorizes for PJM's proposed revisions, if the

¹¹ January 14 Filing, at 11.

¹² January 14 Filing, at 11.

¹³ January 14 Filing, at 11-12.

¹⁴ January 14 Filing, at 12.

¹⁵ January 14 Filing, at 12.

¹⁶ January 14 Filing, at 12.

¹⁷ January 14 Filing, at 12-13.

Commission chooses to act on the January 14 Filing¹⁸; and (4) if the Commission chooses to act on the January 14 Filing, whether or not the Commission conditionally accepts and/or requires modifications upon compliance.¹⁹

PJM's proposed Option B Tariff contingencies are extremely complex. For example, consider the following paragraph as just one exhibit:

PJM requests that Option B become effective under the following circumstances: If the Supreme Court denies *certiorari* prior to the proposed effective date of this filing and the Capacity Performance Filing becomes effective after April 1, 2015, or is rejected, PJM requests that the Option B tariff records become effective on April 1, 2015 (again, subject to the requested five-day suspension if the Supreme Court has not acted before the Commission issues its order in this case). In this circumstance, the Option B tariff records should remain in effect only until the effective date of the Capacity Performance Filing, at which time, Option A should become effective as requested above in section II.1(c).²⁰

Expecting all market participants to work their way through the complexity of PJM's January 14 Filing and discern the implications in the short time in which business decisions must be made for the May 2015 base residual auction would impose an unfair burden.²¹

The Commission itself recognized that PJM's January 14 Filing interacts with "other proposed market changes currently pending before the Commission,"²² further complicating the matter. The only thing that is clear and obvious from PJM's complex proposals and jumble of contingencies is that PJM's January 14 Filing will make market participants' planning and preparation for the May 2015 base residual auction exceedingly difficult and uncertain, particularly given the short period of time available prior to that auction. This difficulty and uncertainty will inure to the benefit of companies with generation portfolios and against

¹⁸ January 14 Filing, at 13.

¹⁹ January 14 Filing, at 13, n.18.

²⁰ January 14 Filing, at 13.

²¹ PJM's January 14 Filing alone runs 954 pages.

²² Notice of Extension of Time, ER15-852-000, (January 29, 2015).

electricity consumers. Indeed, these market uncertainties would call into question whether the results would even lead to sufficient proxy for just and reasonable rates.

For these reasons, the ICC recommends that the Commission deny PJM's January 14 Filing, at least as it would apply to the May 2015 base residual auction. If the Supreme Court denies the petitions for *certiorari* review of *EPSA* and the Appeals Court for the D.C. Circuit issues its mandate, and the Court of Appeals for the District of Columbia directs the Commission or PJM specifically to apply the *EPSA* findings to PJM's capacity market, then the Commission can direct an investigatory proceeding to tailor a solution for the demand response issue which could be applied in the May 2016 or May 2017 base residual auctions. The ICC would support this more reasonable approach.

B. If the Commission Accepts PJM's Proposal, the Proposal Should Not Be Allowed to Go Into Effect for the May 2015 Base Residual Auction Unless and Until: (1) the U.S. Supreme Court Grants *Certiorari*; (2) the Court of Appeals for the District of Columbia Issues its Mandate on the *EPSA* case; and (3) a Court Directs PJM to Apply the *EPSA* Findings to PJM's Capacity Market and, Specifically, the May 2015 Base Residual Auction.

PJM notes the current uncertainty regarding the applicability of the *EPSA* decision to PJM's capacity market.²³ PJM observes that, "should the *EPSA* mandate issue, parties likely will seek to litigate whether the holding of *EPSA* reaches organized capacity markets like RPM."²⁴ PJM acknowledges that, "determining the overall future of demand response in both energy and capacity markets, should *EPSA* stand, may require Commission action of nationwide scope."²⁵ PJM, nevertheless, asserts that its January 14 Filing is being submitted "out of caution in light of the unusual circumstances the PJM Region currently faces, given its forward capacity

²³ January 14 Filing, at 12.

²⁴ January 14 Filing, at 12.

²⁵ January 14 Filing, at 12.

market, the history of strong demand response participation in RPM, and the uncertain timing of Supreme Court action on *EPSA*.”²⁶ PJM refers to its January 14 proposal as a “stop-gap,” by which PJM means a proposal to address circumstances in which “PJM must conduct a [base residual auction] less than four months following the date of this proposal to secure capacity commitments that will not be delivered for three years hence, and that a decision of the Supreme Court denying review of *EPSA* would magnify the considerable uncertainty hanging over those impending commitments.”²⁷

To its credit, it is obvious that PJM has pondered and attempted to weigh several unknowable future outcomes. PJM asserts that “if PJM elected to take a “business-as-usual” approach to the 2015base residual auction, there is a clearly foreseeable risk that the Demand Resource offers cleared in that auction later could be nullified.”²⁸ The ICC agrees, but also notes that PJM’s January 14 Filing proposal, while perhaps seeking to mitigate that risk, creates such unnecessary confusion and uncertainties in the process that it undermines whatever benefits that may have been intended. PJM also notes that the “pending issuance of the *EPSA* mandate might significantly chill participation by demand response in the upcoming auction.”²⁹ The ICC notes that this risk is not eliminated by PJM’s January 14 Filing proposal.

PJM is candid about the weakness of its January 14 proposal.³⁰ PJM states that it cannot predict “how much demand response may participate in the capacity market under these proposed rules, though it could be substantially lower under this proposal than it has been

²⁶ January 14 Filing, at 12.

²⁷ January 14 Filing, at 40. PJM’s proposal is not really a “stop-gap,” because it is not in any sense designed to be “temporary.” As a practical matter, once demand response is shifted from the supply side to the demand side, going back would be very difficult.

²⁸ January 14 Filing, at 4.

²⁹ January 14 Filing, at 4.

³⁰ January 14 Filing, at 2.

historically.”³¹ In support of this prediction that demand response may be substantially lower under PJM’s proposed rules than under current rules, PJM notes that Curtailment Service Providers (“CSPs”) “have historically accounted for a majority of the demand response registered in PJM, but would not be permitted to offer demand response directly into the PJM market under this proposal.”³²

After weighing these unknowns, PJM comes to two contradictory conclusions:

1. “PJM does not contend that the “stop-gap” rules it proposes in this submission [the January 14 Filing] are superior to the current RPM rules.”³³
2. “if the current rules under which demand response participates in the PJM market must be revised, PJM believes the rules it proposes here would preserve the reliability and economic benefits of some demand response, and would be superior to rules that do not recognize any demand response.”³⁴

The uncertainty about whether or not PJM’s January 14 filing proposal is superior to the current RPM rules for demand response provides no support for changing the rules.

While the majority of demand resources may be offered by CSPs, a large percentage is offered by load serving entities and other wholesale entities and participation by those entities may well pass the *EPISA* standard. Furthermore, even if the *EPISA* decision is upheld and subsequently applied to PJM’s capacity market, there is no certainty that it would be applied to the results of the May 2015 base residual auction. In short, it is unlikely that there would be a circumstance in which there would be “rules that do not recognize any demand response”³⁵ as

³¹ January 14 Filing, at 2-3.

³² January 14 Filing, at 3.

³³ January 14 Filing, at 2.

³⁴ January 14 Filing, at 3.

³⁵ January 14 Filing, at 3.

posited by PJM, and even less likely that such a result would apply to the May 2015 base residual auction. There will likely be some demand response offered and cleared in the May 2015 auction and retained through the 2018-2019 delivery year if the current demand resource rules are retained and there would likely be some demand response offered and cleared in the May 2015 auction and retained through the 2018-2019 delivery year if PJM's proposed rules are adopted. The amounts under the two scenarios (and their corresponding impact on market efficiency and prices) are unknowable at this time. But the uncertainty in the markets flowing from the dramatic changes in PJM's January 14 Filing that would be applied in a concentrated manner over the next few months, in conjunction with the market uncertainty being driven by other recent, related PJM filings (such as capacity performance) argues in favor of retaining stability in circumstances where change is not clearly superior or required.

For all these reasons, if the Commission chooses to accept PJM's January 14 Filing, the ICC recommends that it only be made effective for the May 2015 base residual auction if a court specifically issues an Order directing the Commission to apply the *EPSA* findings to PJM's May 2015 base residual auction.

C. There Is Not Enough Time Before the May 2015 Base Residual Auction For the States to Put in Place the Necessary Business, Contractual, and Regulatory Arrangements to Enable Demand Response to Meaningfully Participate on the Demand Side As Proposed by PJM.

PJM states, under the proposal in its January 14 Filing, that "PJM will *not* pay retail end-users (either directly or indirectly through aggregators) for demand response cleared in RPM Auctions."³⁶ PJM also states that under its proposal, it will not provide payments to wholesale

³⁶ January 14 Filing, at 8.

entities for demand reductions.³⁷ PJM makes clear that its proposed demand bid program will only “reduce the capacity obligations of, and thus the capacity charges owed to PJM by, wholesale entities that commit to reduce the wholesale loads they are responsible for serving.”³⁸ PJM states that its new rule will “leave to LSEs, retail customers, and state regulatory authorities all arrangements regarding compensation to end-use consumers that support Wholesale Load Reductions by reducing their electricity consumption.”³⁹ PJM recognizes that actions of states and private entities will have a critical role in enabling the business arrangements that PJM envisions in its January 14 Filing. Specifically, PJM states, “some state commissions will prescribe by rule or order terms for retail customers’ role in facilitating Wholesale Load Reductions, while in other states such arrangements may be governed solely by contracts between end users and LSEs.”⁴⁰

PJM recognizes that changes to state laws may also be needed to facilitate the agent/principal arrangement proposed by PJM. PJM states that, under its proposed rules, a demand reduction bid may be submitted by a wholesale entity (by which PJM generally means a load-serving entity) “or such a bid may be submitted by an agent [of the load serving entity] authorized by state law or bilateral contract to act on the LSE’s behalf. Wholesale entities likewise may utilize agents to perform obligations and/or to exercise rights on their behalf under the tariff provisions relating to wholesale load reductions.”⁴¹ PJM states that “[t]he terms on which LSEs may obtain curtailment commitments from their end-use retail customers will be

³⁷ January 14 Filing, at 8.

³⁸ January 14 Filing, at 8.

³⁹ January 14 Filing, at 8.

⁴⁰ January 14 Filing, at 8-9.

⁴¹ January 14 Filing, at 8 (emphasis added).

established outside the PJM Tariff, and outside the Commission’s regulatory purview, in private contracts or through state laws or regulations.”⁴²

The critical issues of compensation for the providers of wholesale load reduction as well as compensation for agents (if any), and program cost recovery for LSEs are left entirely unaddressed by PJM’s proposal. PJM states only that these matters are left for LSEs, retail customers, and state regulatory authorities and state legislators to resolve.

PJM does recognize that, “[b]ecause RPM pays the clearing price to all cleared resources, each Wholesale Load Reduction will broadly benefit all capacity buyers—indeed, the benefit to other wholesale buyers will usually far exceed the benefit to the specific wholesale purchaser that bid its Wholesale Load Reduction into the auction and thereby reduced its individual capacity obligation.”⁴³ PJM states that this benefit “could theoretically be considered by retail regulators, LSEs, or other stakeholders when assessing the value of retail demand response and how that value might best be monetized through retail ratemaking to incent end users, LSEs and CSPs to maximize demand participation.”⁴⁴

These critical and complex elements, which must be in place in order for PJM’s January 14 Filing proposal to be successful, may need state legislative and/regulatory action in multiple states. This work will need to take account of legislative and regulatory calendars and cannot be completed overnight. More likely, it would not be completed for many months or even several years. The date for PJM’s May 2015 base residual auction looms in little more than three months. This timing gap is a fatal flaw in PJM’s proposal to apply the January 14 Filing to the May 2015 base residual auction and should not be ignored.

⁴² January 14 Filing, at 37.

⁴³ January 14 Filing, at 20.

⁴⁴ January 14 Filing, at 20, n.25.

D. If PJM’s January 14 Filing Proposal is Applied to the May 2015 Base Residual Auction, One Measure to Mitigate the Negative Consequences Would Be for PJM to Hold Back From that Auction an Amount of Demand Approximately Equal to the Level of Demand Response Historically Experienced in PJM’s Capacity Market and to Spread that Held-back Demand Over the Subsequent Incremental Auctions of the 2018-2019 Delivery Year.

As explained above, PJM’s January 14 Filing is exceedingly complex and contingent on multiple possible outcomes that are impossible for market participants to predict prior to the May 2015 base residual auction. Moreover, more time is needed for the business, contractual, and regulatory arrangements that are necessary to enable Demand Response to meaningfully participate on the demand side as proposed by PJM. PJM’s rules already provide for three incremental auctions for each delivery year, to be held approximately two years prior, one year prior, and four months prior to the start of the 2018-2019 delivery year.⁴⁵ Those incremental auctions could work to enable PJM’s January 14 Filing proposal, but some significant modifications would be needed.

PJM states that in the 2014 base residual auction, approximately 12,300 MW of demand resources and energy efficiency resources cleared.⁴⁶ The ICC recommends that, in addition to the 2.5% holdback amount currently authorized in PJM’s tariff, an additional 12,300 MW of load be held back from the installed reserve margin requirement in the base residual auction and spread over the subsequent three incremental auctions for the 2018-2019 delivery year. This proposal should provide adequate time for the needed business, contractual, and regulatory arrangements to be developed by state legislators and state regulators and put in place by market participants.

⁴⁵ January 14 Filing, at 5, n.9.

⁴⁶ January 14 Filing, at 4-5, n.8.

If the May 2015 base residual auction goes forward under the new rules proposed by PJM in the January 14 Filing, it is likely, as PJM acknowledges⁴⁷ that achievable and proven demand response will not be in a position to offer. In this case, very little, if any, demand response will clear, the auction clearing price will be substantially higher than the efficient level, and electricity consumers will bear the burden. On the other hand, the ICC's holdback proposal would enable the May 2015 base residual auction to take place but would provide a mechanism to preserve demand response and allow it to bid into subsequent incremental auctions, once the legal landscape is clearer to the Commission, once state legislators and state regulators have had a meaningful opportunity to develop the needed changes to retail regulatory structures, and once market participants have had a meaningful opportunity to modify their business models and contractual relationships.

E. PJM's Proposal to Prohibit Demand Reduction Bids in Incremental Auctions for the 2018-2019 and Subsequent Delivery Years Should Be Rejected.

PJM's January 14 Filing states directly and succinctly that "PJM's proposal provides that WLR [Wholesale Load Reduction] and WEEL [Wholesale Energy Efficiency Load] may be bid into [base residual auctions] only."⁴⁸ PJM gives three reasons why demand response bids will not be permitted in incremental auctions, each of which is either wrong, inapplicable, or a problem of PJM's own making.

PJM's three reasons for prohibiting demand response from participating in incremental auctions are:

- "Demand bids can clear in Incremental Auctions only if PJM is procuring additional capacity in such an auction, and that has rarely happened."⁴⁹

⁴⁷ January 14 Filing, at 3.

⁴⁸ January 14 Filing, at 41.

⁴⁹ January 14 Filing, at 42.

- “there likely would be little value in clearing a demand-side bid in an Incremental Auction.”⁵⁰
- “and the stop-gap nature of this filing.”⁵¹

PJM’s assertion that “Demand bids can clear in Incremental Auctions only if PJM is procuring additional capacity in such an auction” is wrong. There is no reason why previously committed supply resources seeking to buy out of their positions in an incremental auction could not be replaced with a demand reduction bid. Indeed, PJM acknowledges elsewhere in the January 14 Filing that such a transaction would be feasible and may provide value.⁵² So, even if PJM is not procuring additional capacity in the incremental auction, demand reduction bids could still clear in that auction.

PJM’s statement that instances of PJM procuring additional capacity in the past incremental auctions are rare is correct; however, the reason for that has nothing to do with the feasibility of permitting demand reduction bids in an incremental auction. Rather, the reason why PJM has rarely been in the position of procuring additional capacity in the past incremental auctions is that PJM has greatly over-forecasted demand in the corresponding base residual auctions. PJM’s over-forecasting has even overwhelmed the 2.5% holdback amount, which would otherwise tend to lead to PJM procuring in the incremental auctions. PJM’s tendency to over-forecast could and should be corrected, regardless of what decisions the Commission makes as to PJM’s January 14 Filing. Therefore, even though PJM’s statement about the rarity of its procurements in past incremental auctions is correct, it is not a valid reason for prohibiting demand reduction bids in incremental auctions.

⁵⁰ January 14 Filing, at 42.

⁵¹ January 14 Filing, at 43.

⁵² January 14 Filing, at 44.

PJM's statement about the likely low "value in clearing a demand-side bid in an Incremental Auction,"⁵³ is also based on PJM's experience in past incremental auctions. In this instance, PJM is using the term low "value" to reflect its experience that prices in incremental auctions have generally been lower than their corresponding base residual auctions. That result also is generally the result of PJM's systemic practice of over-forecasting demand in base residual auctions. Thus again PJM's past experience of low prices in incremental auctions is not a valid reason for prohibiting demand reduction bids in incremental auctions. In any event, why not allow demand response providers to determine for themselves whether bidding in the incremental auctions is worth their while?

Finally, PJM supports its proposal to prohibit demand reduction bids in incremental auctions on the basis that its January 14 Filing has a "stop-gap nature."⁵⁴ Contrary to PJM's assertion, however, the January 14 Filing does not have a "stop-gap nature" because it is not temporary and does not include any sunset provision. The dictionary definition for "stopgap" is "An improvised substitute for something lacking; temporary expedient."⁵⁵ While PJM's January 14 Filing may pass on the first prong of this definition, it fails on the "temporary" prong of the definition. Semantics aside, if PJM's perception of urgency in drafting and filing its January 14 Filing proposal left insufficient time for PJM to develop comprehensive and workable arrangements for enabling demand reduction bids in incremental auctions, the solution is for the Commission to establish a timeframe and direct a process for the development of those necessary arrangements. PJM's proposal to simply forbid demand reduction bids in incremental auctions

⁵³ January 14 Filing, at 42.

⁵⁴ January 14 Filing, at 43.

⁵⁵ The American Heritage Dictionary, Second College Edition (1985).

should be rejected and a process should be established to develop the rules necessary for demand reduction competition in incremental auctions.

F. PJM’s Proposal to Prohibit New Demand Response Offers after April 1, 2015 in the Incremental Auctions for the 2016-2017, and 2017-2018 Delivery Years Should Be Rejected.

PJM states that it is proposing “to amend the PJM Tariff and RAA to make clear that the existing supply-side products that are provided directly by end-users or their representatives, *i.e.*, Demand Resources and Energy Efficiency Resources, ‘shall not be permitted to commit to provide capacity, whether through an RPM Auction, bilateral transaction, Self-Supply, or by any other means, for the 2016/2017 Delivery Year and subsequent Delivery Years.’”⁵⁶ By this statement, PJM means to make its proposal clear that it “will not accept new offers or commitments of Demand Resources or Energy Efficiency Resources” in incremental auctions after April 1, 2015.

PJM provides no reason for the Commission to adopt that proposal applicable to the incremental auction rules for delivery years that have not yet begun but for which base residual auctions have been held.⁵⁷ Adoption of such a provision would severely negatively impact established expectations of market participants for the incremental auctions for the 2016-2017 and 2017-2018 delivery years.

The ICC recommends that the Commission, at this time, not approve PJM’s proposal to prohibit participation by demand resources on the supply side for the 2016-2017, and 2017-2018

⁵⁶ January 14 Filing, at 39, citing proposed PJM Tariff, Attachment DD, section 1 (Options A & B).

⁵⁷ PJM does cite the impending nature of the May 2015 base residual auction and the “immediate problem” that PJM perceives with respect to demand resources offering on the supply-side in that auction (January 14 Filing, at 39). But the issue of the May 2015 base residual auction has nothing to do with the incremental auctions for the 2016-2017 and 2018-2019 delivery years.

delivery years. As PJM stated, “PJM and its stakeholders have devoted over eight years to developing the current rules on demand response and they should not be jettisoned unnecessarily.”⁵⁸ The incremental auctions for these delivery years are not as imminent as the base residual auction for the 2018-2019 delivery year. The Commission need not address this matter at this time. The second incremental auction for the 2016-2017 delivery year is currently scheduled for July, 2015 and the first incremental auction for the 2017-2018 delivery year is currently scheduled for September, 2015.⁵⁹

Until directed otherwise by direct Order from the Commission pursuant to specific direction from a court, participation by demand resources for those delivery years should be permitted to continue as currently provided for in PJM’s capacity market rules (whether through incremental auctions, bilateral transaction, Self-Supply, or by any other currently permissible means).

The market rules for RPM auctions for the 2016-2017 and 2017-2018 delivery years were established in Commission approved, final and unchallenged orders. Pursuant to those established rules, market participants have made business decisions (both participation and non-participation decisions) with respect both to the auctions that have already been held for the 2016-2017 and 2017-2018 delivery years and the future incremental auctions for those delivery years. Those business decisions include both choices to participate (or not participate) in past auctions for those delivery years as well as decisions regarding participation in the upcoming incremental auctions for those delivery years. To now change the rules, as proposed by PJM, to

⁵⁸ January 14 Filing, at 40. As explained above, PJM’s concerns about demand resources offering on the supply-side in the May 2015 BRA are not relevant to the question of whether demand resources offering on the supply-side should be prohibited in the incremental auctions for the 2016-2017 and 2017-2018 delivery years.

⁵⁹ <http://www.pjm.com/markets-and-operations/rpm/rpm-auction-user-info.aspx>.

remove options that were clearly and indisputably available when prior business decisions were made would be extremely disruptive to business participation and the markets. Commitments made by market participants were entered into under, and in reasonable reliance on, market rules the Commission approved. The same is true for decisions not to make commitments in prior auctions in reliance on future opportunities to participate in incremental auctions. The Commission should not disrupt that balance of business and market certainty unless specifically directed by a higher authority. To purposefully undermine markets in such a way does not comport with the goal of competitive working markets as a proxy for just and reasonable rates under the Federal Power Act.

Accordingly, the ICC recommends that the Commission not approve, at this time, PJM's proposal to prohibit new offers or commitments of Demand Resources or Energy Efficiency Resources in incremental auctions after April 1, 2015.

G. PJM's Proposal for WLR Transfers Between Wholesale Entities should be Clarified.

PJM proposes that:

A WLR Provider may transfer all or part of its WLR commitment for a Delivery Year as to WLR Load in a Zone or sub-Zonal LDA to another Wholesale Entity acting as a WLR Provider in the same Zone or sub-Zonal LDA, provided that the transferee WLR Provider is the Load Serving Entity that shall serve such WLR Load, through notice of such transfer provided by both the transferor and transferee WLR Providers to the Office of the Interconnection in the form and manner specified in the PJM Manuals. From and after the effective date of such transfer, and to the extent of such transfer, the transferor WLR Provider shall be relieved of its WLR commitment and credit requirements, shall not be liable for WLR compliance charges, and shall not be entitled to the capacity obligation reduction otherwise provided by section I hereof; and the transferee WLR Provider, to the extent of such transfer, shall assume such WLR commitment, credit requirements, and obligation for compliance charges and shall be entitled to the capacity obligation reduction provided by section I as to such WLR Load.⁶⁰

⁶⁰ Proposed Schedule 6.2 (J).

From the above provision, it is clear that PJM intends for the transfer of WLR commitments between LSEs to be optional from the perspective of the potential transferor. It is not clear whether or not the transfer, in PJM's view, must also meet the approval of the transferee. If all LSEs were free to accept or reject new customers, then this would not be an issue. It would be implied by the Transferee's acceptance of the customer that all parties concurred on the issue of transferring the WLR commitments. In Illinois, however, and possibly other states, the traditional utilities have a legal obligation to accept all eligible retail customers.

Therefore, if PJM's proposal is accepted in whole or in part, it should be clarified that the transfer of WLR commitments is contingent on the concurrence of the transferor and the transferee. It should be further clarified that the decision by the transferor and the transferee may be governed by state law. In any event, such decisions should not be governed by the FERC or the PJM tariff, as that would constitute the same regulation of retail sales that *EPSA* arguably prohibits, and would defeat the stated underlying purpose of the stopgap proposal.

V. CONCLUSION

WHEREFORE, for the reasons set forth above, the ICC recommends that the Commission reject PJM's proposal to apply its January 14 Filing proposal to the May 2015 base residual auction. If PJM's proposal is permitted to go forward for the May 2015 base residual auction, the ICC recommends that PJM be directed to hold back from that auction an amount of load approximately equal to the level of demand response historically experienced in PJM's Capacity Market and to spread that held-back demand over the subsequent incremental auctions of the 2018-2019 delivery year.

The ICC also recommends that:

- PJM's proposal to prohibit demand reduction bids in incremental auctions for the 2018-2019 and subsequent delivery years be rejected;

- PJM’s proposal to prohibit new demand response offers after April 1, 2015 in the incremental auctions for the 2016-2017, and 2017-2018 delivery years be rejected, or at least postponed until the legal landscape associated with *EPSA* becomes more clear; and
- PJM’s proposal for WLR transfers between wholesale entities should be clarified.

The ICC further requests any and all other appropriate relief.

Respectfully submitted,

/s/

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ILLINOIS COMMERCE COMMISSION

Dated: February 11, 2015

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 11th day of February, 2015.

Respectfully submitted,

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On behalf of the
ILLINOIS COMMERCE COMMISSION