

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

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PJM Interconnection, L.L.C.	)	Docket Nos.	ER15-623-000
	)		ER15-623-001
	)		EL15-29-000
	)		
Essential Power Rock Springs, LLC,	)		EL15-41-000
Essential Power OPP, LLC, and	)		
Lakewood Cogeneration, L.P. v.	)		
PJM Interconnection, L.L.C.	)		

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**REQUEST FOR REHEARING OF THE ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §385.713, and Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 8251, the Illinois Commerce Commission (“ICC”) hereby submits this request for rehearing of the Commission’s *Order on Proposed Tariff Revision* issued on June 9, 2015 (“June 9 Order”)<sup>1</sup> in the above captioned dockets.

On December 15, 2014, the ICC filed a Notice of Intervention in Docket No. ER15-623-000, and on December 16, 2014, the ICC filed a Notice of Intervention in Docket No. EL15-29-000. The ICC is, therefore, a party to this proceeding.

**I. BACKGROUND**

This request for rehearing focuses on elements of the filings made by PJM on December 12, 2015, regarding revisions to the PJM capacity market construct: in particular, the June 9 Order has approved modifications to the existing construct that will adversely affect the ability of

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<sup>1</sup> *PJM Interconnection LLC, et al.*, 151 FERC ¶ 61,208 (2015).

PJM and the Commission to ensure that unnecessary barriers to market entry are not raised, and to maintain a program of robust market power mitigation to ensure competitive outcomes in circumstances where markets would not otherwise produce the competitive outcome.

On December 12, 2014, PJM Interconnection, L.L.C. (“PJM”) filed in Docket No. ER15-623-000 proposed modifications to its Reliability Pricing Model (“RPM”) capacity construct to establish a new capacity performance resource product on a phased-in basis (“Capacity Performance Filing”). PJM also filed, in Docket No. EL15-29-000, revisions to energy market provisions of both its operating agreement and its tariff that PJM identified as necessary to conform with the Capacity Performance Filing. (“Energy Market Filing”) (Collectively, “December 12 Filings”).

On January 21, 2015, the ICC filed comments on PJM’s proposal.<sup>2</sup> Among other things, the ICC noted that the Capacity Performance Filing went far beyond addressing the specific issues that likely contributed to poor generator performance, and that the Capacity Performance Filing represented an extensive revision and, in some of its elements, an unnecessary reworking of the RPM.<sup>3</sup> The ICC also noted that the proposed changes were not developed via the typical stakeholder process and, therefore, merit greater Commission scrutiny.<sup>4</sup>

The ICC’s comments focused on elements of PJM’s proposal affecting two overarching principles: (1) ensuring that unnecessary barriers to market entry are not raised, and (2) maintaining a program of robust market power mitigation to ensure competitive outcomes in

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<sup>2</sup> See, Motion to File Comments Out of Time and Comments of The Illinois Commerce Commission, Docket No. ER15-623-000, January 21, 2015. (“January 21 Comments”).

<sup>3</sup> January 21 Comments, at 4.

<sup>4</sup> January 21 Comments, at 4.

circumstances where markets would not otherwise produce the competitive outcome.<sup>5</sup> Finally, the ICC's comments supported the position of the Organization of PJM States, Inc. urging the Commission to order further stakeholder processes and evidentiary hearings to fully evaluate several of PJM's proposed changes.<sup>6</sup>

On January 30, 2015, in Docket No. EL15-41-000, Essential Power Rock Springs, LLC, Essential Power OPP, LLC, and Lakewood Cogeneration, L.P. filed a formal complaint against PJM challenging the application of certain PJM rules and notices that required generators to submit certain binding elections based on timeframes submitted by PJM within the revisions contained in PJM's December 12 Filings.

The December 12 Filings precipitated a large number of comments and protests, both for and against various elements of the capacity performance proposal. On February 13, 2015, PJM filed an answer to a number of comments that were filed by parties ("February 13 Answer").

On March 31, 2015, the Commission's Office of Energy Market Regulation issued a notice to PJM stating that the Capacity Performance Filing was deficient ("Deficiency Letter"). The major focus of the Deficiency Letter was PJM's proposed revisions to the market power mitigation rules and the associated competitiveness of capacity offers. On April 10, 2015, in Docket No. ER15-623-001, PJM filed a response to the Deficiency Letter.

On May 13, 2015, PJM filed replies to certain protests and comments filed by parties in response to PJM's April 10, 2015, response to the Commission's Deficiency Letter.

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<sup>5</sup> January 21 Comments, at 5.

<sup>6</sup> January 21 Comments, at 4-5.

The June 9 Order found that PJM demonstrated that its existing capacity construct must be substantially reformed.<sup>7</sup> Among other things, the June 9 Order accepted PJM's proposal to establish a default offer cap based on a formula involving the net cost of new entry ("Net CONE").<sup>8</sup> The June 9 Order also accepted PJM's proposed market power mitigation measures and the elimination of the short-term procurement provision from the RPM construct.<sup>9</sup> The Commission directed PJM to make several compliance filings.<sup>10</sup>

With respect to PJM's proposed revisions to its energy market rules, the June 9 Order found that PJM showed its energy market rules addressing operating parameters, force majeure, and generator outages to be unjust and unreasonable.<sup>11</sup> The June 9 Order accepted PJM's proposed revisions to rules related to force majeure and generator outages, accepted, in part, and rejected, in part, PJM's proposed revisions to rules related to operating parameters, and directed further modifications to the operating parameters rules.<sup>12</sup> Lastly, the June 9 Order found that PJM has not demonstrated that its rules related to maximum emergency offers are unjust and unreasonable and therefore denied this aspect of PJM's complaint.<sup>13</sup>

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

<sup>8</sup> June 9 Order, at P 11.

<sup>9</sup> June 9 Order, at P 334, P 394.

<sup>10</sup> June 9 Order, at P 2.

<sup>11</sup> June 9 Order, at P 2.

<sup>12</sup> June 9 Order, at P 2.

<sup>13</sup> June 9 Order, at P 2.

## **II. STATEMENT OF ERRORS**

- A. The Commission Erred in Eliminating Unit Specific Cost Review in PJM's Market Power Mitigation Procedure for Capacity in Violation of The Requirement that Rates Be Just and Reasonable Pursuant to Section 205 of the FPA.**
- B. Because the Commission's Simplifying Assumption that Performance Bonus Payments and Non-Performance Charges will be Calculated Based on the same Payment Rate is Unlikely to be Realized in Actuality, the Commission's Decision to Accept PJM's Proposal to Establish the Capacity Performance Resource Cap at a Level Equal to Net CONE \* B, is Arbitrary and Capricious.**
- C. The Commission Erred in Not Applying the Capacity Performance Rules to Fixed Resource Requirement Entities' Resource Plans Which Have Been Committed to as of June 9, 2015 in Violation of the Requirement that Rates not be Unduly Discriminatory Pursuant to Section 205 of the FPA.**
- D. The Commission Erred in Eliminating the Short-Term Resource Procurement (Hold-Back) Provision in Violation of the Requirement that Rates not be Unduly Discriminatory Pursuant to Section 205 of the FPA.**
- E. The Commission Erred in Authorizing Transition Auction Processes Which Can Result in the Total Commitment of Resources Far in Excess of PJM's Total Reliability Requirement Target for the 2016-17 and 2017-18 Delivery Years, in Violation of the Requirement that Rates not be Unduly Discriminatory Pursuant to Section 205 of the FPA.**
- F. The Commission Erred in Permitting Only Certain Types of Resources to Aggregate and Make Offers as Capacity Performance Resources, in Violation of the Requirement that Rates not be Unduly Discriminatory Pursuant to Section 205 of the FPA.**
- G. The Commission Erred in Rejecting PJM's Proposal for Cross-LDA Aggregation of Resources for Capacity Performance Purposes, in Violation of the Requirement that Rates not be Unduly Discriminatory Pursuant to Section 205 of the FPA.**
- H. The Commission Erred in Accepting PJM's Proposal to Prohibit All External Resources that are not Pseudo-Tied from Offering as Capacity Performance, in Violation of the Requirement that Rates not be Unduly Discriminatory Pursuant to Section 205 of the FPA.**

### III. ARGUMENT

#### **A. The Commission's June 9 Order Approved Significant Changes to PJM's RPM Market Power Mitigation Measures Despite Clear Evidence that PJM's Capacity Markets are Structurally Uncompetitive.**

The Capacity Performance Filing proposed to establish a default capacity performance Resource Cap ("CPRC") that would allow any capacity resource to make offers in RPM auctions up to the level of Net Cost of New Entry ("CONE")<sup>14</sup> without being subject to a unit-specific cost review by the independent market monitor ("IMM").<sup>15</sup> A resource that wished to make an offer above the CPRC would have its offer reviewed by the IMM to ensure its offer was supported by its costs.<sup>16</sup> PJM's rationale for modifying its capacity market power mitigation practices was that the expected new costs of improving performance and the perceived risk of non-performance justified new market mitigation practices.<sup>17</sup> Under FPA Section 205, PJM bears the burden of proof to demonstrate that its proposal is just and reasonable and PJM failed to make that showing with respect to its proposed Net CONE cap.

In its response to the Commission's Deficiency Letter, PJM modified its proposal to establish the CPRC by multiplying Net CONE by the Balancing Ratio, which is an adjustment of a capacity resource's unforced capacity to reflect its expected performance during declared performance assessment hours.<sup>18</sup> PJM proposes for the first auction to use a balancing ratio of 0.85, which represents an average of the RTO-wide balancing ratios during performance assessment hours declared for the entire PJM region over the last three years.<sup>19</sup>

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<sup>14</sup> Net CONE is a metric in which the estimated cost of building a new resource (specifically, a natural gas fired combustion turbine) is reduced by an expected amount of energy and ancillary service revenues that such a unit would be expected to generate.

<sup>15</sup> June 9 Order, at P 263.

<sup>16</sup> June 9 Order, at P 264.

<sup>17</sup> June 9 Order, at P 263.

<sup>18</sup> June 9 Order, at P 314.

<sup>19</sup> June 9 Order, at P 317; PJM's *Response to Deficiency Letter* in Docket No. ER15-623, at 7.

Presently, if the IMM determines that the capacity market fails a three pivotal supplier test, offers from certain classes of existing resources are capped by a determination of the individual resource's avoidable costs.<sup>20</sup> This market power mitigation measure, combined with a must-offer requirement from existing resources, has been an essential element protecting PJM's capacity construct from the exercise of market power. The Commission erred in significantly diluting this protection from the exercise of market power and the Commission should restore it with some modifications, as necessary, to address the increased risk faced by resources under Capacity Performance.

The market power mitigation measures approved by the Commission in the June 9 Order are not adequate to protect against the exercise of market power and, therefore, are not just and reasonable. Those measures create a strong incentive for capacity resources to set offers at the CPRC, because only prices above that level are subject to mitigation by the IMM. The ICC's concerns are echoed by Chairman Bay's dissent to the June 9 Order. Specifically:

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 temptation to exercise market power in the auction will be considerable. This would be less of a problem if one could count on the salutary benefits of competition. But, as PJM and the Market Monitor recognize, this market is structurally non-competitive. And the mitigation rules that are usually the safety net in such markets have largely been removed.<sup>21</sup>

PJM's desire for a simple, flexible market mitigation approach is understandable. This simplicity, however, cannot come at the expense of ratepayer protections and just and reasonable rates. If it is necessary for the IMM to implement complex market power mitigation practices to

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<sup>20</sup> June 9 Order, at P 262.

<sup>21</sup> June 9 Order, Bay Dissent, at 4-5.

achieve that outcome, then so be it. The pursuit of simplicity cannot trump the FPA requirement that rates must be just and reasonable.<sup>22</sup> As noted by the ICC in its comments, not all resources will need to incur additional expenses to meet the requirements of a Capacity Performance Resource.<sup>23</sup> It may be appropriate for the calculation of the avoidable costs to take into account some costs for the increased performance risk a capacity resource is exposed to as a Capacity Performance Resource. However, to eliminate the existing market power mitigation measures for all offers under the default offer cap, which measures were specifically developed to address the structurally uncompetitive capacity market in PJM, is a serious error.

The June 9 Order has approved significant changes to RPM market power mitigation measures despite clear evidence that PJM's capacity markets are structurally uncompetitive. These changes will likely result in rates that are unjust and unreasonable, in violation of Section 205 of the FPA. Accordingly, the ICC requests rehearing of the Commission's decision to eliminate unit specific avoidable cost review as an element of PJM's market mitigation process.

**B. The Inconsistencies Between the Data and the Time Horizons used in the Calculation of the Balancing Ratio used in the CPRC Calculation and the Performance Assessment Hours used in the NPC Determination Undermine the June 9 Order's Approval of a CPRC that is not Based on a Unit-Specific Review, is Arbitrary and Capricious and is not Sufficiently Supported by the Record.**

The analysis used by the Commission does not support its decision to allow PJM to establish a CPRC on a basis other than PJM's present method of unit specific review. The Commission's analysis assumes that a unit with low avoidable costs ("Low ACR Resource") will weigh the benefits of participating in PJM's capacity market versus foregoing the capacity

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<sup>22</sup> Federal Power Act ("FPA"), 16 USC §824d(a).

<sup>23</sup> January 21 Comments, at 9.

market and participating in PJM's markets as an energy-only resource.<sup>24</sup> In the Commission's analysis, the principal trade-off made by a competitive resource is whether to commit as a capacity performance resource or simply receive Performance Bonus Payments from the energy market and forego capacity payments.<sup>25</sup> A resource will receive less in Performance Bonus Payments if it clears as a Capacity Performance Resource because it would only receive such payments for the hours that exceed its Balancing Ratio share of its total capacity obligation.<sup>26</sup> Also, a Capacity Performance Resource that fails to perform under PJM's capacity performance initiative is assessed a non-performance charge ("NPC") when it falls short of meeting its Balancing Ratio Share of its capacity obligation.<sup>27</sup>

The Commission's analysis states that a competitive resource would require the capacity payment to exceed the opportunity costs associated with forgoing some Performance Bonus Payments and taking on the risk of NPCs.<sup>28</sup> The Commission believes that if the assumption is used that the NPC and the Performance Bonus Payments are equal, an outcome occurs where the opportunity cost for a Low ACR unit to enter the capacity market is mathematically equivalent to the Net CONE times Balancing Ratio value PJM proposes to use for the CRPC.<sup>29</sup>

In this analysis, the Commission identified two key assumptions: first, that the NPC and the Performance Bonus Payment are equivalent<sup>30</sup>; and second, that the number of Performance Assessment Hours is the same as the number of estimate of Performance Assessment Hours

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<sup>24</sup> June 9 Order, at P 336.

<sup>25</sup> June 9 Order, at P 336.

<sup>26</sup> June 9 Order, at P 337.

<sup>27</sup> June 9 Order, at P 337.

<sup>28</sup> June 9 Order, at P 338.

<sup>29</sup> June 9 Order, at P 338, nn.282-283.

<sup>30</sup> June 9 Order, at P 338, n.282.

embedded in the NPC formula.<sup>31</sup> If either of these assumptions do not prove to be true, the logic underlying the Commission's analysis fails. This appears to be the situation that Chairman Bay believes to exist:

In 2011-12, PJM declared 7; in 2012-13, 5; and in 2013-14, 30. The average over the three-year period is 14. If the outlier is excluded (2013-14), the average is 6. An estimate of 30 expected performance assessment hours appears to be overly generous and, depending upon the number of actual assessment hours, may result in a partial stick.<sup>32</sup>

Since the level of the NPC is inversely related to the number of hours used in the denominator of the calculation of the NPC, an overestimate of expected performance assessment hours leads to an understated NPC. As Chairman Bay explained, even if the obvious outlier is included and the three year average of 14 is used, the NPC is equal to only 0.40 times Net CONE. Given that the CPRC is 0.85 times Net CONE, the value of the NPC will diverge from the calculation of the balancing ratio, a significant divergence from the analysis underpinning the Commission's conclusion that a default offer cap is just and reasonable. It also means that the NPC is a woefully ineffective penalty to ensure the performance of capacity resources. The Commission's approval of 30 annual performance assessment hours is even more suspect, given that PJM states that the number of emergency hours that would have occurred under PJM's Capacity Performance proposal during the winter of 2014/2015 was five.<sup>33</sup>

Since the Commission's conclusion that interaction of the levels of NPC, Performance Bonus Payments, and the Balancing Ratio are critical to supporting the default offer cap, the Commission should not have approved PJM's proposals for determining metrics that are not

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<sup>31</sup> June 9 Order, at P 338.

<sup>32</sup> June 9 Order, Bay Dissent, at 3.

<sup>33</sup> *2015 Winter Report*, PJM Interconnection (May 13, 2015), at 68. [http://www.pjm.com/mwg-internal/de5fs23hu73ds/progress?id=SYDaCYdzTR5q87XDDJRBQWG6f06Ox\\_fXXb-7OM06wTk,&dl](http://www.pjm.com/mwg-internal/de5fs23hu73ds/progress?id=SYDaCYdzTR5q87XDDJRBQWG6f06Ox_fXXb-7OM06wTk,&dl)

based upon the same time horizons. Moreover, the Commission allowed the NPC to be based on a single-year possible outlier, yet the calculation for the balancing ratio will be based upon a rolling three-year average. Given that the two figures are interrelated, the Commission should require that they be determined in a similar manner.

Significant evidence exists that there are serious inconsistencies between the data and the time horizons used in the calculation of the balancing ratio used in the CPRC calculation and the performance assessment hours used in the NPC determination. These inconsistencies undermine the Commission's conclusion that any Capacity Performance offer below the default offer cap can properly be deemed competitive.<sup>34</sup> Although the Commission states that its analyses relied on simplifying assumptions that were just and reasonable,<sup>35</sup> the reality is that the Commission's approval of PJM's proposal is arbitrary and capricious. Accordingly, the ICC seeks rehearing of the Commission's decision to approve PJM's proposal to use differing time periods for the calculation of the balancing ratio and the determination of the NPC. Barring such changes, the Commission should reinstate unit specific cost review for all resources.

**C. The Commission's Decision to not Apply Capacity Performance Modifications to the Resource Plans of Fixed Resource Requirement Entities for all Delivery Years, Including the 2016/2017, 2017/2018 and 2018/2019 Delivery Years, is Unduly Discriminatory.**

The ICC supports the Commission's decision to apply the proposed capacity performance modifications to fixed resource requirement ("FRR") entities for their resource plans.<sup>36</sup> As the Commission stated,

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<sup>34</sup> June 9 Order, at P 340.

<sup>35</sup> June 9 Order, at P 338.

<sup>36</sup> June 9 Order, at P 188, P 202.

We find it generally appropriate to apply the increased performance expectations, including more stringent consequences for failing to deliver energy or reserves during emergency conditions, to Fixed Resource Requirement entities.<sup>37</sup>

The Commission erred, however, in failing to apply its findings to the FRR entities' resource plans for the 2016/2017, 2017/2018 and 2018/2019 transition delivery years. In particular, the ICC seeks rehearing of the Commission's statement that:

We therefore accept PJM's proposal on the condition that PJM apply the capacity performance rules to Fixed Resource Requirement entities only after the conclusion of the Fixed Resource Requirement plans to which these entities are currently obligated as of the date of this order.<sup>38</sup>

The Commission's directive to apply the capacity performance rules to FRR entities only with respect to the resource plans beyond those to which FRR entities are already obligated as of June 9, 2015 means that the FRR entities would not need to take any actions to upgrade their resource portfolios for the 2016/2017 and 2017/2018 delivery years or demonstrate that those portfolios reflect the percentage of capacity performance resources that will be required of resources subject to the capacity auction requirements. Similarly, to the extent that PJM determines that an FRR entity has "obligated" itself to a FRR plan for the 2018/2019 delivery year as of June 9, 2015, such FRR entities also would escape the obligation to commit a percentage of capacity performance resources in their portfolios. In the capacity auction context, the Commission approved PJM's objective to procure capacity performance levels of reliability for at least 60 percent of the portfolio procured for the 2016/2017 delivery year,<sup>39</sup> at least 70 percent of the portfolio procured for the 2017/2018 delivery year<sup>40</sup> and at least 80 percent of the

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<sup>37</sup> June 9 Order, at P 202.

<sup>38</sup> June 9 Order, at P 212.

<sup>39</sup> June 9 Order, at P 220, P 253.

<sup>40</sup> June 9 Order, at P 220, P 253.

portfolio procured for the 2018/2019 delivery year.<sup>41</sup> In the auction context for the 2016/2017 and 2017/2018 delivery years, the Commission stated:

PJM's proposal to acquire a mix of capacity performance and non-capacity performance Resources throughout the transition mechanism strikes an appropriate balance between the costs associated with procuring capacity performance Resources throughout the transition period with the needed reliability improvements over that same period.<sup>42</sup>

Therefore, as a result of the Commission's decision, the load that is subjected to paying the auction costs for the portfolio of resources procured in the capacity auctions for the 2016/2017, 2017/2018 and 2018/2019 delivery years, including the transition incremental auctions that will be held in July/August of 2015 to commit capacity performance resources in order to improve overall system reliability, will be required to bear the likely increased costs of that capacity performance commitment. Whereas, the load of FRR entities, which also will benefit from the improved system reliability paid for by auction participants, will not have to share in the costs of the improved system reliability for the 2016/2017 and 2017/2018 delivery years and, perhaps the 2018/2019 delivery year. Rather, the benefits of improved system reliability that will be achieved through the auction load's payments for capacity performance resources for these delivery years will accrue to the customers of FRR entities, but the customers of FRR entities will not be required to make any contributions toward those capacity performance procurement costs or to demonstrate commitment to a comparable capacity performance percentage in the FRR entity's portfolio.

Because this outcome is unduly preferential to the load of FRR entities, and unduly discriminatory toward the load subject to the transition incremental auctions for the 2016/2017

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<sup>41</sup> June 9 Order, at P 220, P 253.

<sup>42</sup> June 9 Order, at P 253.

and 2017/2018 delivery years as well as, potentially, the auction for the 2018/2019 delivery year, it is prohibited by the FPA.<sup>43</sup> For that reason, the ICC seeks rehearing and requests that the Commission apply capacity performance commitments to FRR entities that are analogous to the commitments required of capacity auction participants for each corresponding delivery year, 2016/2017, 2017/2018, and 2018/2019.<sup>44</sup>

**D. The Commission Erred in Eliminating the Short-Term Resource Procurement (Hold-Back) Provision.**

The hold-back mechanism postpones committing capacity three years forward for 2.5 percent of PJM's three year forward demand forecast and, instead, commits the capacity to meet that small percentage of load in the incremental auctions. The June 9 Order accepted PJM's proposal to eliminate the hold-back provision starting with the auction for the 2018/2019 delivery year.<sup>45</sup>

First, the Commission asserts that the hold-back program decreases reliability, arguing that committing capacity three years forward results in more reliability than committing capacity two years forward or one year forward.<sup>46</sup> One could just as reasonably argue that the more time there is between the date that a developer must commit a resource and the date that developer

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<sup>43</sup> FPA, 16 USCS § 824d(b).

<sup>44</sup> While the decision about whether or not to participate in the transitional incremental auctions which will be used to commit capacity performance resources for the 2016-17 and 2017-18 delivery years may be voluntary on the part of capacity resource owners, (*see*, June 9 Order at P 220 and P 253) the load subject to these auctions will be required to pay the costs of resources committed in these auctions. In addition, while the price for performance capacity procured in these transitional incremental auctions will be capped at 0.5 Net CONE for 2016-17 and 0.6 Net CONE for 2017-18 (*see*, June 9 Order at P 221), those caps are much higher than the clearing price set in the base residual auctions for the corresponding delivery years. Furthermore, if the target commitment quantity level for capacity performance resources is not met in these transitional incremental auctions, then the clearing price for the capacity performance resources that do clear will be set at the cap (*see*, June 9 Order at n.192). Therefore the preference given to the FRR entities (and their load) by their exemption from the capacity performance targets for the 2016-17 and 2017-18 delivery years will likely not be *de minimis*.

<sup>45</sup> June 9 Order, at P 394.

<sup>46</sup> June 9 Order, at P 394.

must deliver, the greater the number of things that could go wrong. All other things equal, a developer that needs to commit to delivery one year forward or two years forward is more likely to successfully meet that commitment than a developer that must commit three years forward. That probability difference is the fundamental underpinning of the RPM provision that permits developers committed in the three year forward base residual auction to buy out of their positions in the incremental auctions. For this reason, the Commission's statement that the hold-back reduces reliability by committing resources with short-term lead times is not supported. An equally powerful argument could be made that the hold-back increases reliability by committing resources nearer to the delivery date, therefore increasing the probability that those resources will be able to deliver on that date, and thus, increasing system reliability.

Second, the Commission's conclusion that the hold-back "operates to suppress market clearing prices"<sup>47</sup> is not supported by the evidence. The auction supply cost for a given delivery year is the quantity weighted average of the prices set in the base residual auction and the three incremental auctions. While the clearing price in a base residual auction with the hold-back is likely to be lower than the same base residual auction without the hold-back, it must be remembered that the demand represented by that hold-back is not simply evaporated. Rather, that demand is spread among the three incremental auctions (adjusted for reductions in PJM's load forecast). Therefore, the clearing prices in those incremental auctions are likely to be higher than they would be absent the demand represented by the hold-back. Whether the cost of the portfolio of capacity in the set of auctions with the hold back is less than the cost of the portfolio of capacity in the set of auctions without the holdback is dependent on the quantity in the

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<sup>47</sup> June 9 Order, at P 395.

respective base residual and incremental auctions. It is not price suppression if, because of the hold-back, PJM's targeted procurement quantity can be bought at a lower total cost with equal or greater reliability of delivery.

Third, as shown above, the Commission's decision in this case to eliminate the short-term resource procurement provision will result in removing demand that would otherwise be in the incremental auctions. By removing demand from the incremental auctions, the tendency and likelihood for the incremental auctions to clear at prices lower than their corresponding base residual auction will increase. The greater the frequency with which the incremental auctions clear at prices lower than their corresponding base residual auction and the greater the magnitude of that difference, the higher will be the incentives for parties to engage in the speculative behavior about which PJM raised concerns in Docket No. ER14-1461-000, and which the Commission chose to hold in abeyance pending a technical conference that has not yet been held. The measures that PJM proposed in Docket No. ER14-1461-000 to address those speculation concerns would result in excessive discouragement of legitimate and needed new entry, and, except for continuation of the short-term resource procurement provision, there does not appear to be any reasonable way to discourage speculative new entry without simultaneously discouraging legitimate, needed new entry. Accordingly, the Commission's elimination of the short-term hold-back in this case will only serve to exacerbate the problems raised by PJM in Docket No. ER14-1461-000. The only viable solution to those problems is the hold-back provision that was eliminated in the June 9 Order.

Fourth, the fact that PJM's load forecasting process has routinely over-forecasted demand over the last seven years, or more, is irrefutable. The hold-back efficiently operates to offset some of the negative effects that these consistent over-forecasting errors have on PJM's capacity

markets. In eliminating the hold-back, the Commission took no steps to replace the positive benefits that the hold-back provides as a partial offset to PJM's persistent over-forecasting. Rather, the Commission merely notes that some "load forecast adjustments" have been "recently adopted by PJM."<sup>48</sup> The Commission made no attempt to assess whether those "adjustments" will alter PJM's long record of over-forecasting and, if so, whether that alteration will be sufficient in magnitude to make up for the loss of the positive benefits the hold-back provision provides as an off-set to over-forecasting.

Finally, the elimination of the hold-back provision is unrelated to the capacity performance concerns expressed by PJM in Docket No. ER15-623-000. The Commission appears to have recognized that the elimination of the hold-back will not improve capacity performance because the Commission did not deny that the issues are unrelated.<sup>49</sup> The best response that the Commission could make to this observation regarding un-relatedness of the two issues is to state the truism that "PJM has the authority to file revisions to its tariff under section 205 of the FPA."<sup>50</sup> The Commission may not accept PJM's filed revisions to a provision like the hold-back where to do so would result in rates that are unjust and unreasonable in violation of the FPA. Rather, the Commission must reject PJM's revisions if they have not been demonstrated by PJM to be just and reasonable. For the reasons enumerated in this section, the elimination of the hold-back provision in the June 9 Order is not just and reasonable and the Commission erred in accepting PJM's proposal to eliminate that provision. Accordingly, the

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<sup>48</sup> June 9 Order, at P 396.

<sup>49</sup> June 9 Order, at P 399.

<sup>50</sup> June 9 Order, at P 399.

Commission must act to restore the hold-back provision on rehearing and restore it for the August, 2015 base residual auction and subsequent base residual auctions.

**E. While the June 9 Order Correctly Accepted PJM's Proposal for Previously Uncommitted Resources to Participate in the Transitional Incremental Auctions for the 2016-17 and 2017-18 Delivery Years, the Commission Failed to Devise any Mechanism to De-Commit Previously Committed Capacity, So the Transitional Auction Process May Result in a Total Commitment of Resources Well in Excess of PJM's Target Reliability Requirement.**

In the June 9 Order, the Commission approved PJM's proposal to conduct transition incremental auctions for the 2016/2017 and the 2017/2018 delivery years.<sup>51</sup> In particular, PJM proposed to employ transitional auctions to commit an amount of capacity meeting capacity performance requirements equal to 60 percent of its reliability requirements in the 2016/2017 delivery year and 70 percent of its reliability requirements in the 2017/2018 delivery year.<sup>52</sup> PJM proposed to permit previously committed resources to participate in these transitional auctions, thereby taking on the risks and rewards associated with the capacity performance product and abandoning the risks and rewards associated with the base capacity product. PJM also proposed to permit previously uncommitted resources to participate in these transitional auctions.

In approving PJM's proposal, the Commission failed to address the possibility that this design could result in the commitment of a total quantity of MWs in excess of PJM's target reliability requirement. For example, if a substantial amount of resources that have not been previously committed for a particular delivery year offer into the transitional auction for that delivery year and clear, PJM could end up with a total quantity of capacity resources far in

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<sup>51</sup> June 9 Order, at P 253.

<sup>52</sup> June 9 Order, at P 220.

excess of PJM's target reliability requirement for that delivery year. Because the Commission adopted no de-commitment procedures to address this possible outcome, electricity consumers are now exposed to even more excessive cost risk.

For example, assume that PJM's reliability requirement target for the 2016-17 delivery year is 100,000 MW and that quantity of capacity has been committed in the base auction for that delivery year. Assume also that 55,000 of the previously committed resources (100,000 MW) for this delivery year offer and clear as capacity performance in the transitional auction. Assume then that 5,000 MW of previously uncommitted resources clear in the transitional auction for the 2016-17 delivery year as Capacity Performance Resources. In this case, PJM will satisfy its objective to have at least 60 percent of its target reliability requirement met with capacity performance resources (55,000 MW of previously committed base capacity which upgrades to capacity performance in the transitional auction plus 5,000 MW of previously uncommitted capacity that also clears the transitional auction). But, PJM will have committed, in total, 5,000 MW of capacity in excess of its target reliability requirement.

The Commission had the opportunity to address this potential problem. For example, a commenter recommended that "PJM should be required to sell back any Base Capacity Resources it may not need."<sup>53</sup> In response, the Commission noted only that, under current RPM rules, "PJM is required to sell-back capacity in its Incremental Auctions in the event its load forecasts are adjusted downward."<sup>54</sup> This response, however, fails to address the problem because the issue here is not excess committed resources due to reductions in the load forecast, but rather, excess committed resources due to the possibility of previously uncommitted

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<sup>53</sup> June 9 Order, at P 254.

<sup>54</sup> June 9 Order, at P 254.

resources for a particular delivery year being committed in the transitional auction for that delivery year. The possibility of this outcome warrants development by PJM and the Commission of a method to de-commit previously committed base capacity resources. In no event should electricity consumers be required to pay for a total number of MWs of capacity greater than they would have had to pay for absent the transitional auctions. The Commission erred in not devising such processes. For this reason, the ICC seeks rehearing of the Commission's decision to approve PJM's transition auction proposal without developing a process to de-commit resources that exceed PJM's target reliability requirement.

**F. The Commission Erred in Permitting Only Certain Types of Resources to Aggregate and Make Offers as Capacity Performance Resources.**

The Commission limited the resource types eligible to aggregate and submit offers to only resources that are of the type that no amount of reasonable investment could mitigate the performance risk that the Capacity Performance framework imposes.<sup>55</sup> The Commission also agreed with PJM's contention that allowing other types of resources to submit aggregated offers would transform the RPM from an individual-unit approach to a portfolio bidding approach.<sup>56</sup>

Such a determination is in error, given that the Commission found merit in PJM's proposal 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>57</sup> The Commission found that allowing such resources to submit aggregated offers

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<sup>55</sup> June 9 Order, at P 102

<sup>56</sup> June 9 Order, at P 102.

<sup>57</sup> June 9 Order, at P 102.

will likely enhance their ability to provide reliability benefits to the PJM region and may increase competition in the capacity market.<sup>58</sup>

The Commission's distinction between these resources is not compelling. Rather, the Commission is engaging in undue discrimination towards those resources precluded from aggregating to make capacity performance offers in the RPM. Moreover, the Commission's error here deprives PJM's capacity market of the same increased reliability benefits and increased competitive environment identified by the Commission in approving other resource types to aggregate. If a Capacity Performance resource can be created more efficiently by aggregating a natural gas combustion turbine with a wind resource, rather than the combustion turbine incurring significant investments on its own, aggregating such resources should be encouraged rather than forbidden by the Commission. Rate levels are a critical component of just and reasonable rates, and if the Commission is presented with approaches that will permit the creation of Capacity Performance resources at lower costs to ratepayers and equal reliability, the Commission should approve them rather than deferring to PJM's attachment to an outmoded approach. For these reasons, the ICC requests rehearing of the Commission's decision to prohibit traditionally fueled resources from exercising the option to aggregate for purposes of submitting capacity performance offers.

**G. The Commission Erred in Rejecting PJM's Proposal for Cross-LDA Aggregation of Resources for Capacity Performance Purposes.**

The ICC supports the Commission's decision to accept PJM's proposal allowing aggregation offers between Capacity Storage Resources, Intermittent Resources, Demand

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<sup>58</sup> June 9 Order, at P 101.

Resources, and Energy Efficiency Resources for capacity performance purposes.<sup>59</sup> The ICC also supports the Commission’s decision to accept PJM’s aggregation proposal for environmentally-limited resources, and resources from different entities, so long as the associated bilateral arrangements are reflected in PJM’s system.<sup>60</sup> The ICC agrees with the Commission that “there may be value in permitting aggregation across Locational Deliverability Areas.”<sup>61</sup>

Despite the Commission’s finding regarding the value of aggregation across Locational Deliverability Areas, the Commission, nevertheless, rejected PJM’s proposal to permit such aggregation. In particular, the Commission found that PJM “failed to show how this provision is necessary and appropriate”<sup>62</sup> and that PJM “has not demonstrated why Capacity Emergency Transfer Limits should not be taken into account for purposes of aggregating a Capacity Performance offer.”<sup>63</sup>

The Commission erred in rejecting outright PJM’s proposal for aggregation across Locational Deliverability Areas, which the Commission correctly found would be a valuable program. Rather than rejecting PJM’s proposal outright, the Commission should accept it subject to submission of a compliance filing from PJM addressing the Commission’s concerns regarding Capacity Emergency Transfer Limits. Alternatively, the Commission could accept PJM’s aggregation proposal as it applies to all Locational Deliverability Areas that clear in the auction at the same price, i.e., where constraints that limit the ability to transfer capacity are not binding.

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<sup>59</sup> June 9 Order, at P 101.

<sup>60</sup> June 9 Order, at P 101.

<sup>61</sup> June 9 Order, at P 103.

<sup>62</sup> June 9 Order, at P 103.

<sup>63</sup> June 9 Order, at P 103.

The effect of the Commission’s decision to reject PJM’s cross-LDA aggregation proposal will be to limit the ability of Capacity Storage Resources, Intermittent Resources, Demand Resources, and Energy Efficiency Resources, environmentally-limited resources, and resources from different entities, to compete with local incumbent resources. This unnecessary limitation on competition will have the effect of increasing auction prices and, consequently, electricity consumer costs. In short, the value available from cross-LDA aggregation--which the Commission acknowledged--will not be realized. As such, this approach is not just and reasonable. For these reasons, the ICC requests rehearing of the Commission’s rejection of PJM’s proposal for cross-LDA aggregation.

**H. The Commission Erred in Accepting PJM’s Proposal to Prohibit All External Resources that are not Pseudo-Tied from Offering as Capacity Performance.**

With respect to External Generation Capacity Resources, PJM proposed that in order to be eligible to submit an offer as a capacity performance resource, an external resource would be required to represent that it meets the criteria for obtaining an exception to the Capacity Import Limit as contained in section 1.7A of the Reliability Assurance Agreement Among Load Serving Entities.<sup>64</sup> As the Commission recognized, that eligibility condition would require an external resource to commit, at the time of submitting a capacity performance offer, to pseudo-tie its resource into the PJM market by the beginning of the relevant delivery year.<sup>65</sup> The Commission accepted PJM’s proposed requirements for external resources, finding them “necessary to ensure that external resources are accountable for their individual performance when PJM’s system is experiencing Emergency Actions.”<sup>66</sup>

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<sup>64</sup> June 9 Order, at P 57.

<sup>65</sup> June 9 Order, at P 96.

<sup>66</sup> June 9 Order, at P 96.

Because the Commission accepted PJM's proposal to phase out base capacity resources and to transition to a portfolio of 100 percent capacity performance resources by the 2020-2021 delivery year, the effect of the Commission's decision with respect to external resource eligibility will mean that all external resources that have not pseudo-tied by that time will be ineligible to participate in PJM's RPM program. This outcome, in effect, nullifies the capacity import limit established in the Commission's 2014 Order in *PJM Interconnection L.L.C.*, 147 FERC 61,060 (2014). In that Order, the Commission rejected recommendations from intervenors that the pseudo-tie requirement be made a requirement for all external resources seeking to participate in RPM auctions.<sup>67</sup> The Commission determined that imposing pseudo-tie requirements on all external resources would limit competition from external resources that provide offsetting benefits.<sup>68</sup>

In contrast, in its June 9 Order, the Commission completely reverses its 2014 findings and conclusions and fails entirely to acknowledge the offsetting benefits provided by external resource participation in PJM's capacity market that were previously recognized. Unnecessarily restricting the participation from external resources, as the Commission's June 9 Order does, negatively impacts competition in the market and provides discriminatory preference to internal PJM resources. Such limitations on the ability of external resources to compete as capacity performance resources will impose unnecessary costs on electricity consumers. For these reasons, the ICC requests rehearing of the Commission's decision in the June 9 Order to require all external resources seeking to submit a capacity performance offer to be pseudo-tied into PJM.

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<sup>67</sup> *PJM Interconnection L.L.C.*, 147 FERC 61,060. (2014), at 21.

<sup>68</sup> *PJM Interconnection L.L.C.*, 147 FERC 61,060. (2014), at 21.

#### IV. CONCLUSION

WHEREFORE, for the reasons explained above, the ICC seeks rehearing of the Commission's June 9 Order with respect to the issues enumerated in Section II above. The ICC further requests any and all other appropriate relief.

Respectfully submitted,

*/s/Christine F. Ericson*

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ILLINOIS COMMERCE COMMISSION

Dated: July 8, 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 8<sup>th</sup> day of July, 2015.

Respectfully submitted,

*/s/Christine F. Ericson*

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On behalf of the  
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