

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

PJM Interconnection, L.L.C.

)

Docket No. ER23-1609-000

PROTEST OF THE ORGANIZATION OF PJM STATES, INC.

On April 11, 2023, PJM Interconnection, L.L.C. (“PJM”), filed changes to its Open Access Transmission Tariff (“Tariff”) pursuant to section 205 of the Federal Power Act (“FPA”) to revise the Reliability Pricing Model (“RPM”) auction schedule for Delivery Years 2025/2026 through 2028/2029.¹ PJM requests an effective date of June 10, 2023. The Organization of PJM States, Inc. (“OPSI”) timely intervened in this proceeding on April 14, 2023.

For the reasons below, OPSI opposes PJM’s filing and urges the Commission to reject the filing as not just and reasonable.²

I. THE COMMISSION SHOULD REJECT PJM’S PROPOSAL

PJM indicates that it needs to address presumed reliability concerns during the energy transition through 2030.³ It proposes to do this through a forthcoming filing to modify its capacity market construct.⁴ This is not sufficient justification to find PJM’s proposal just and reasonable.

¹ *PJM Interconnection L.L.C.*, “Section 205 Filing to Delay Upcoming RPM Auctions, Request for Waiver to Amend Pre-Auction Activity Deadlines for Impacted Delivery Years, and Request for Expedited Action” Docket No. ER23-1609-000 (April 11, 2023) (“PJM Filing”).

² OPSI’s following members support these comments: the Delaware Public Service Commission, the Public Service Commission of the District of Columbia, the Illinois Commerce Commission, the Kentucky Public Service Commission, the Maryland Public Service Commission, the New Jersey Board of Public Utilities, the North Carolina Utilities Commission, the Pennsylvania Public Utility Commission, the Tennessee Public Utility Commission, and the Virginia State Corporation Commission. The following OPSI members abstained in the vote on this filing: the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, and the Public Service Commission of West Virginia.

³ PJM Filing at 2.

⁴ *Id.* at § II.

Further, PJM characterizes its filing as a request for waiver, but the filing does not meet three of the four requirements it must satisfy.⁵ The request is not limited in scope because it seeks to delay four consecutive years of auctions, without describing why this is the shortest delay needed. It does not address a concrete problem because it relies on a single study and assumes that PJM will file acceptable reforms in the future.⁶ And it is very likely that PJM's requested waiver may have undesirable consequences as described below, the most important of which is that the region will lose important forward price signals.

A. PJM's Filing is deficient.

Under section 205 of the Federal Power Act, PJM must show that its tariff revisions are just and reasonable. PJM is not required to show the existing tariff is unjust and unreasonable.⁷ Despite this, PJM ask the Commission to accept its proposal based on its argument that reliability challenges have rendered its current construct unjust and unreasonable. PJM states that because it will file reforms in the future, it is just and reasonable for the Commission to accept PJM's revisions now.⁸ When the sole predicate of the justness and reasonableness of a section 205 filing is that the existing structure may be unjust and unreasonable to the extent that markets must be halted, that point must be proven.

⁵ *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,153, at P 12 (2018) (“The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.”).

⁶ *See infra* at § I.C.

⁷ *City of Winnfield v. FERC*, 744 F.2d 871, 874-75 (D.C. Cir. 1984) (“§ 205, unlike § 206, allows the Commission to approve rate increases without a showing that current rates are unjust and unreasonable; it need only find the *proposed* rates to be just and reasonable.”).

⁸ PJM Filing at 1 and 4.

OPSI does not request that the Commission find that the delay is either more or less reasonable than the current schedule.⁹ OPSI is arguing that the proposed delay is unjust and unreasonable. Compressed auctions are unreasonable by default,¹⁰ and PJM must show that the underlying auctions are faulty for a potentially indefinite delay to be justified. As illustrated in Table 1 of PJM’s filing, the current RPM auction schedule is already delayed. This delay is attributed to FERC’s decisions and legal processes.¹¹ But now PJM seeks to delay an auction on its own, undermining the benefits of a forward auction schedule. This is the first time PJM has requested a delay that is not directly in response to a Commission order.

The evidence in support of PJM’s delay lacks affidavits or data, and the assumptions underlying its *Energy Transition in PJM: Resource Retirements, Replacements & Risk* whitepaper are not discussed.¹² PJM only provides weak assertions that delaying the auctions in Table 1 is an improvement. Moreover, relying on PJM’s whitepaper is faulty because that study assumes that market prices would not respond to reduced reserve margins.¹³ If PJM’s assertions were supported, it should have explained why the existing capacity market rules are unjust and unreasonable in a far more detailed filing based on stakeholder input and analysis. This is not what PJM brought to the Commission.

⁹ *Southwest Power Pool, Inc.*, 166 FERC ¶ 61,019, at ¶ 31 (2019) (citing *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (describing the Commission’s authority under section 205 of the FPA as “limited to an inquiry into whether the rates proposed by a utility are reasonable—and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs”).

¹⁰ *See Maryland Pub. Serv. Comm’n, et al. v. PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,276 at P 26 (2008) (Notably PJM does not seek to deviate from a three-year forward market in perpetuity, thereby recognizing that the three-year forward schedule is the default just and reasonable outcome.).

¹¹ *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,122, at P 15 (2022) (“Offsets Delay Order”).

¹² PJM Filing at 2.

¹³ *See PJM, Energy Transition in PJM: Resource Retirements, Replacements & Risk* (Feb. 24, 2023), available at: <https://pjm.com/-/media/library/reports-notice/special-reports/2023/energy-transition-inpjm-resource-retirements-replacements-and-risks.ashx>

B. Shortening the forward auction schedule is unjust and unreasonable.

PJM’s proposal undoes over 15 years of precedent in favor of a forward auction without demonstrating a clear benefit. The reasoning in the filings and orders establishing the RPM, *i.e.* PJM’s capacity market construct, is clear: Forward procurement provides price stability, improves the quality of signals that planned generation should enter, and allows resources to ensure an adequate going-forward revenue stream.¹⁴ As PJM testified for the original creation of RPM, procuring capacity in the short-term “simply does not provide a reasonable opportunity for planned generation resources to compete with existing resources, which raises market-structure concerns.”¹⁵ The practical implications of this were experienced recently in the Delmarva Peninsula. As discussed in PJM’s stakeholder process, due in part to the short time between the auction and the delivery year, resources that were expected to be offered in PJM’s Base Residual Auction (“BRA”) were not, which resulted in an unforeseen spike in prices.¹⁶

The issue of market power is also magnified by short-term procurement, and again, PJM has deviated from the justifications provided during the creation of RPM without an evidentiary basis. PJM offered expert testimony attesting that “[a] market incorporating both pricing and lead-times that support new entry will help establish transparent investment signals and should significantly reduce market power concerns.”¹⁷ In theory and practice, it’s clear that shortening the lead time between the auction and the delivery year helps incumbent resources and muddies the market signal needed to incent new generation.

¹⁴ *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079, ¶11 (2006).

¹⁵ *PJM Interconnection, L.L.C.*, Affidavit of Andrew Ott, Docket No. EL05-148 at 13 (August 31, 2005) (“Ott Affidavit”).

¹⁶ *See e.g. PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109, ¶100 (2023) (memorializing comments).

¹⁷ Ott Affidavit at 14.

Lastly, PJM’s request to delay the auctions disregards market certainty in favor of short-term convenience. Regulatory certainty is critical to the functioning of administrative markets for electricity. Over and over again, the Commission has emphasized the importance of markets being stable and certain.¹⁸ While PJM's recent Delmarva BRA proceeding necessarily disturbed certainty of the markets in the eleventh hour,¹⁹ that only occurred in the extraordinary circumstance where PJM clearly demonstrated that allowing the market to function as designed would lead to an unjust and unreasonable result. As Commissioner Christie aptly stated: “In no universe would the results of PJM’s most recent capacity auction applicable to the Delmarva Power & Light South Local Delivery Area be considered just and reasonable.”²⁰ PJM makes no clear showing here that this change to the auction schedule averts an unjust and unreasonable situation.

C. PJM’s proposal makes unreasonable assumptions.

PJM states that the waiver of the tariff stated deadlines is needed to effectuate the Critical Issue Fast Path (“CIFP”) stakeholder process that PJM is currently undertaking. And while PJM asks for some latitude in defining the exact delayed dates, the dates outlined in Table 2 of the filing assume that FERC will make its determination and adopt whatever PJM has yet to develop, all within a very specific timeframe. That presumption itself is suspect since the filing also indicates that PJM’s Board simply “believes enhancements [in certain areas] are necessary to improve the operation of the capacity market,”²¹ yet the filing indicates that the “current tariff

¹⁸ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 at P 59 (2017); *Astoria Generating Co. LP v. New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189 at P 141 (2012); *Calif. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,271 at P 24 (2007); *Pacific Gas Transmission Co.*, 82 FERC ¶ 61,227 (1998).

¹⁹ See *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 (2023) (Danly dissenting).

²⁰ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109 (2023) (Christie concurring).

²¹ PJM Filing at 2.

provisions in the areas may be unjust and unreasonable.”²² PJM has not demonstrated that the current tariff is unjust and unreasonable.

PJM’s citations to FERC authority that allows “flexibility” in posting an auction calendar are also inapposite.²³ The request to delay BRAs due to changes FERC made to the Energy and Ancillary Services Offset does not square with the current delay for several reasons:

- 1) PJM had proposed a specific date for the first delayed auction (June 8, 2022),
- 2) PJM had provided specific months that it would hold the other delayed BRAs,
- 3) PJM’s proposed delay to the BRAs was only about four and a half months, and
- 4) PJM’s proposed market fixes were based on a targeted direction by FERC.

In 2015, PJM also sought a delay when it was implementing provisions for Capacity Performance. There, PJM requested only a three-month delay of one auction, the Capacity Performance tariff changes were already before FERC and ready for disposition, and PJM requested the delay “only as a contingency” to accommodate an “orderly auction process.”²⁴

Unlike these previous delays, PJM here proposes only a “wholly illustrative”²⁵ schedule of future auctions, and in fact would have the Commission provide nearly unlimited discretion as to when PJM schedules an auction. This is evident in proposed Tariff language that does not specifically tie auction dates to any dates specified in a Commission order,²⁶ as asserted in the filing.²⁷ PJM’s application of the delay to multiple auctions and its failure to explain its proposed auction timeline is directly contrary to FERC’s justification for granting a delay during Capacity

²² *Id.* at 4.

²³ *Id.* at 8, n. 30 (citing Offsets Order at P 15).

²⁴ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067 at P 1-4, 10 (2015) (“Capacity Performance Order”).

²⁵ PJM Filing at 5, n. 19.

²⁶ *Id.*, Attachment B.

²⁷ *Id.*, at 8 stating: “Therefore, PJM proposes that the date for these RPM Auctions be keyed from the date of the Commission’s order on PJM’s upcoming filing.”

Performance implementation - that the delay was of limited scope.²⁸

Work Plan	
RASTF/Pre-CIFP	
Discussions	February 28 March 15
Formal Process	
Stage 1: PJM PS/IC & proposal	March 29
Stage 2: PJM and stakeholder development of the matrix (options)	April 19, 26 May 17, 30
Stage 3: PJM and stakeholders finalize proposals	June 14, 28 July 10, 27
Stage 4: Final meeting MC Meeting (MC vote)	August 23 (morning) August 23 (afternoon)
Board review	
Feedback to members	
Filing	October 1

PJM's CIFP Work Plan

PJM's assumptions about the compliance process are also unrealistic. PJM assumes that it will have the CIFP process complete with a FERC filing by October 1, despite the fact that it does not expect its Winter Storm Elliott report to be presented to stakeholders until July,²⁹ well after the CIFP is scheduled to begin finalizing solution options.³⁰ Winter risk modeling is the first key area of enhancement directed by the PJM Board.³¹

Under the current schedule, stakeholders will have less than two months to even consider,

²⁸ Capacity Performance Order at P 26.

²⁹ PJM, Winter Storm Elliott Frequently Asked Questions, at 3, available at: <https://www.pjm.com/-/media/markets-ops/winter-storm-elliott/faq-winter-storm-elliott.ashx> ("PJM will be providing a comprehensive event analysis to be published in July").

³⁰ PJM, Critical Issue Fast Path – Resource Adequacy Work Plan at Slide 2 (March 29, 2023) available at: <https://www.pjm.com/-/media/committees-groups/cifp-ra/2023/20230426/20230426-item-01---20230329---rastf---cifp-work-plan.ashx> (identifying Formal Process – Stage 3: PJM and stakeholders finalize proposals on June 14, June 28, July 10 and July 27; Stage 4: MC (Members Committee) vote on August 23).

³¹ PJM Filing at 3.

let alone incorporate into any capacity market solution, the lessons learned from PJM’s Winter Storm Elliott report before final voting. Then, PJM’s illustrative schedule assumes “no material compliance filings” with FERC approval by December 1, 2023.³² If the expected – forthcoming – CIFP compliance process takes longer than PJM optimistically predicts, auctions could be delayed beyond the extended timeline PJM currently proposes in this filing. This could press the Commission into accepting a less-than-ideal capacity market construct during the CIFP compliance filing stage. Neither result would be just and reasonable.

Further, delaying the auction would not only halt market signals for new entry but may serve to keep uneconomic resources on the system. PJM’s requested delay suggests that it only intends to address the “potential for a timing mismatch” through capacity market construct changes.³³ It is silent, however, on what it intends to do during the transition years to align the generator interconnection process with the anticipated retirements. FERC recently approved generator interconnection reforms in PJM,³⁴ but those reforms are not likely to result in any appreciable improvements during the transition years leading up to 2030. PJM should consider this dynamic before it proposes any further auction delays, and as OPSI has communicated to the PJM Board of Managers.³⁵

D. PJM’s Continued Delays Harm Retail Choice Markets.

Prolonged and new delays will continue to have adverse impacts on states with retail choice. Uncertainty in capacity prices affects the ability to forecast customer bill impact and narrows the products available to customers/ratepayers in competitive retail markets.

³² *Id.* at 5, n. 19.

³³ *Id.* at 2.

³⁴ *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162 (2022)

³⁵ OPSI, Letter from Charlotte A. Mitchell to Mark Takahashi and Manu Asthana, April 20, 2023, <https://opsi.us/wp-content/uploads/2023/04/Interconnection-letter-2023.04.20.pdf>.

Competitive retail suppliers often offer multiple retail products, including fixed and flexible rate products. The uncertainty associated with actual capacity prices exposes electric customers to risks. Flexible rates can vary significantly, exposing retail customers to unexpected price swings. Given capacity market uncertainty, fixed product terms may shorten, thereby diminishing the hedging benefits inherent in these products.

II. CONCLUSION

PJM states that the purpose of the capacity market is to provide long-term price signals.³⁶ If the auctions are further delayed, there will be very little “long-term” in these forward markets. The current schedule allows the BRA schedule to catch up to its intended 3-year forward period by the 2027/28 delivery year through an auction held in May 2024, allowing PJM to pursue any needed market-construct modifications in plenty of time to include them in the three remaining auctions in the transition years leading up to 2030. Delaying the auctions as proposed in the filing allows for only one remaining 3-years forward auction prior to 2030.

The Commission should encourage PJM to work quickly towards discovering and implementing improvements to address reliability concerns. Such improvements would be expected to occur without disrupting its markets. When PJM is ready, it must present the reliability concerns as well as its solution. Halting the markets before the Commission has all of the facts before it may actually serve to delay the energy market transition that PJM’s filing suggest is forthcoming — and raise prices for consumers — as opposed to truly facilitating the transition in a just and reasonable manner. PJM’s aggressive proposal to halt even the upcoming June 2023 auction causes unnecessary compression of the forward market timeline and will endanger FERC’s ability to conduct a thorough review of the CIFP output.

³⁶ PJM Filing at 1.

Any postponement or delay of PJM’s RPM auctions should be focused and not harm consumers. PJM’s proposal—as set forth in its filing—harms consumers rendering it unjust and unreasonable under the Federal Power Act. Therefore, the Commission should reject it.

Respectfully Submitted,

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Dated: May 2, 2023

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Gregory V. Carmean

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Dated at Newark, Delaware this May 2, 2023.