

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

PJM Interconnection, L.L.C.

)

Docket No. ER25-785-000

**COMMENTS OF THE
ORGANIZATION OF PJM STATES, INC.**

On December 20, 2024, PJM Interconnection L.L.C. (“PJM”) filed revisions to its Open Access Transmission Tariff (“Tariff”) to extend the Capacity Must-Offer requirement to all resources.¹ The Organization of PJM States, Inc. (“OPSI”), respectfully submits these comments supporting PJM’s proposal.²

I. COMMENTS

A. OPSI Supports PJM’s Proposal to Sunset the Capacity Must-Offer Exemption³

PJM proposes to require all Existing Generation Capacity Resources to participate in PJM’s capacity auctions beginning with its next capacity auction scheduled for July 2025.⁴ PJM’s Tariff currently states that Intermittent Resources, Capacity Storage Resources, and Hybrid Resources “shall not be required to offer as a Capacity Performance Resource.”⁵ PJM proposes to sunset this provision for auctions after the 2025/2026 Delivery Year.⁶

¹ PJM Interconnection L.L.C, Extending the Capacity Must Offer Requirement to All Generation Capacity Resources, Docket No. ER25-785 (Dec. 20, 2024) (“Must-Offer Filing”).

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

³ Throughout this filing, references to capacity resources that should be required to offer into the capacity market do not apply to Reliability Must Run (RMR) units whose capacity is proposed to be separately included in the supply stack pursuant to PJM’s proposal in ER25-682-000.

⁴ Must-offer Filing at 27.

⁵ PJM, Tariff, Attachment DD 6.6A(c).

⁶ Must-Offer Filing, Attachment A, PJM Tariff, Attachment DD 6.6A (c).

On September 27, 2024, OPSI wrote a letter to the PJM Board of Managers describing the impacts to consumers from the Base Residual Auction for the 2025/2026 Delivery Year and offering recommendations to address flaws with PJM’s capacity construct that harm consumers.⁷ One of the actions OPSI recommended the PJM Board take before the next auction is to ensure there is a must-offer requirement for all capacity resources.⁸ OPSI stated that leaving the must-offer exemption in place could lead to an inaccurate assessment of supply scarcity in the PJM region and allow for the exercise of market power.⁹ OPSI opined that the must-offer exemption for these resources undermined a key component of PJM’s capacity construct, which requires consumers to buy capacity and generators to sell capacity.

On November 21, 2024, PJM presented its final proposal on capacity market changes filed in Docket ER25-682.¹⁰ However, at that time, PJM stated it was not recommending any changes to the must-offer exemption in its package of capacity market reforms.¹¹ OPSI responded to several items PJM deemed to be beyond the scope of the ER25-682 filing in another letter to the PJM Board of Managers, again calling on PJM to “eliminate technology class-based must offer exemptions.”¹² PJM stated in defense of its decision not to pursue elimination of the must-offer exemption for generation and storage resources that it would likely face discrimination arguments and that it believes that a sub-annual capacity market design would more naturally allow for the

⁷ OPSI, Letter to the PJM Board of Managers, (Sept. 27, 2024) available at: <https://opsi.us/wp-content/uploads/2024/09/OPSI-BRA-RESPONSE-LETTER-2024.09.27.pdf> (September OPSI Letter).

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ PJM, Consultation with Members Regarding Future 205 Filing on Capacity Market, presented to the PJM Members Committee (Nov. 21, 2024) available at: <https://pjm.com/-/media/committees/groups/committees/mc/2024/20241121/20241121-item-03a---1---member-consultation-regarding-future-205-filing-on-capacity-market---presentation.ashx> (“Updated 205 Presentation”).

¹¹ *Id.* at slide 19.

¹² OPSI, Letter to the PJM Board of Managers (Nov. 21, 2024) (“November OPSI Letter”) available at: <https://opsi.us/wp-content/uploads/2024/11/OPSI-RPM-Proposal-Letter-2024.11.21.pdf>.

removal of this exemption.¹³ In response, OPSI asked for the PJM Board to “state its commitment to move to a sub-annual capacity market design and publish its plan to implement this reform as soon as possible” because leaving this issue unaddressed could create artificial scarcity and lead to unjust and unreasonable rates.¹⁴

On December 9, 2024, the PJM Board indicated that PJM had communicated its desire to stakeholders to make a filing to remove the must-offer exemption.¹⁵ While reserving its judgment on this issue, the PJM Board indicated its support for PJM staff further exploring this issue.¹⁶ After considering feedback on this item, PJM presented a proposal to remove the must-offer exemption on December 13, 2024.¹⁷ PJM also presented as part of this proposal changes to the Market Seller Offer Cap (“MSOC”) to allow resources to include Capacity Performance Quantifiable Risk (“CPQR”) as a standalone component of their offers and to segment their offer caps based on how their risk changes at various output levels.¹⁸ On December 17, 2024, OPSI again supported the elimination of the must-offer exemption in a letter to the PJM Board,¹⁹ and the PJM Board of Managers indicated their support for PJM’s December 13th proposal.²⁰

As indicated several times over the past few months, OPSI supports the elimination of the capacity market must-offer exemption for generation and storage resources. Exempting these

¹³ Updated 205 Presentation at slide 27.

¹⁴ November OPSI Letter at 5.

¹⁵ PJM Board of Managers, PJM Board Letter Outlining Support for Upcoming Interconnection and Capacity Market Filings (Dec. 9, 2024) available at: <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2024/20241209-board-letter-outlining-action-on-capacity-market-adjustments-rri-and-sis.pdf>.

¹⁶ *Id.* at 6.

¹⁷ PJM, Consultation with Members: Capacity Market Must Offer and Market Seller Offer Cap Changes, presented to the PJM Members Committee at slide 4 (Dec. 13, 2024).

¹⁸ *Id.* at slides 6-7.

¹⁹ OPSI, Letter to the PJM Board of Managers (Dec. 17, 2024) available at: <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2024/20241217-opsi-letter-re-capacity-market-must-offer-exemption.pdf>.

²⁰ PJM Board of Managers, Board Letter Regarding Must Offer, MSOC and Reliability Resource Initiative (Dec. 17, 2024) available at: <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2024/20241217-board-letter-regarding-must-offer-msoc-and-reliability-resource-initiative.pdf>.

resources from offering into PJM’s capacity auctions undermines a key tenet of PJM’s capacity construct, which requires customers to buy capacity and generators to sell capacity. As PJM demonstrates in its filing, the composition of its Generator Interconnection Queue (“Queue”) has changed dramatically since the Federal Energy Regulatory Commission (“FERC” or “Commission”) accepted PJM’s proposal to implement this exemption.²¹ The Queue is now dominated by resources that are, or will be, categorically exempted from offering into PJM capacity auctions.²²

The original rationale underpinning this exemption, that the exemption is sufficiently narrow to prevent withholding, has “eroded” in PJM’s opinion, and OPSI agrees.²³ Further, if supply continues to tighten as expected, PJM will need to be able to rely on every resource at its disposal to maintain resource adequacy. In the current resource adequacy landscape, it is not tenable to continue to exempt resources that make up 97% of PJM’s interconnection queue from contributing to its near-term resource adequacy needs. The Commission should accept PJM’s proposal.

B. The Commission Should Direct PJM to Expeditiously Begin Work on a More Granular Capacity Market Construct

Should FERC accept PJM’s proposal, PJM’s work is not done. As noted above, PJM believes a sub-annual capacity market design would more naturally align with the removal of the must-offer exemption.²⁴ OPSI agrees.

²¹ PJM Interconnection, L.L.C., 151 FERC ¶ 61,208 (2015).

²² Must Offer Filing at Figure 1.

²³ *Id.* at 19.

²⁴ *Supra* at n. 13.

In 2023, PJM conducted a review of its capacity construct through a Critical Issue Fast Path stakeholder process that resulted in reforms the Commission accepted in ER24-99.²⁵ As this process concluded, OPSI wrote to the PJM Board of Managers:

OPSI supports PJM migrating to a more granular capacity market design that could benefit all resources by enabling them to match their unique availability with the varying reliability requirements of different seasons or time periods. If the PJM Board chooses to file at FERC an annual capacity market construct, OPSI recommends the Board direct PJM Staff to prioritize the development of a more granular capacity market design with stakeholders as soon as possible.²⁶

In Comments to FERC, OPSI wrote, “OPSI supports PJM’s continued efforts to migrate to a more granular capacity market design that enables all resources to match their unique availability to the varying reliability needs of the system throughout the year. This would ensure that the price paid for capacity is more commensurate with the reliability value resources are expected to provide.”²⁷

However, since those comments were filed, PJM has not initiated a stakeholder process to further explore a more granular capacity market construct. OPSI continued to call on PJM to begin studying a more granular capacity market construct in multiple letters to the PJM Board in 2024.²⁸ Moving to a more granular capacity market construct would allow resources to reduce their risk exposure, allow PJM to more accurately identify risk, and incentivize responses to mitigate that risk.

C. PJM’s Proposal to allow a Resource’s MSOC to be Set at CPQR Incentivizes Resources to Sell Capacity

PJM also proposes to set a floor on the MSOC to allow Capacity Market Sellers to fully include their exposure to Capacity Performance risk in their capacity offers, even if this risk is

²⁵ PJM, Interconnection, L.L.C., 186 FERC ¶ 61,080 (2023).

²⁶ OPSI, Letter to the PJM Board of Managers (August 30, 2023) available at: <https://opsi.us/wp-content/uploads/2023/09/2023.08.30-OPSI-CIFP-LETTER-TO-PJM-BOM.pdf>.

²⁷ OPSI, Comments of the Organization of PJM States, Inc., Docket No. ER24-99 at 4-5 (November 9, 2023).

²⁸ September OPSI Letter and November OPSI Letter.

partially or wholly offset by expected Energy and Ancillary Services (“EAS”) revenues.²⁹ PJM argues that with an MSOC set at the Net Avoidable Cost Rate (“ACR”), a resource’s CPQR may not be high enough to raise its MSOC above \$0/MW-day which would require that resource to submit an offer that “may not properly reflect the non-performance risks associated with obtaining a capacity obligation.”³⁰

OPSI understands PJM’s proposal would change its MSOC to allow units to offer up to their CPQR. This proposal allows resources to offer up to their narrow incremental costs of participating in the capacity market by setting a floor of the MSOC at a unit’s CPQR, reflecting previous Commission guidance that, even if a unit may recover all of its going forward costs through EAS revenues, it remains appropriate to allow resources to have an offer cap above zero.³¹ A resource prohibited from offering narrow incremental costs in the capacity market has “little to no incentive to incur the incremental costs of taking on a capacity commitment unless it was able to offer consistently with these incremental costs.”³²

PJM’s proposal also addresses Commission concerns about the scope of PJM’s Docket ER24-98 proposal, which FERC rejected.³³ In that proposal, PJM proposed to allow a floor on the MSOC through CPQR that included broader costs that increase a resource’s capacity accreditation, even if those costs would also increase EAS market performance. The Commission found that

²⁹ Must Offer Filing at 34 (“Even though the resource-specific gross ACR calculation set forth in the Tariff provides Capacity Market Sellers with an avenue to account for CPQR, resources with high net projected EAS offsets can have a net ACR value that may be lower than the CPQR component alone, or even negative. This can lead to capacity Market Seller Offer Caps that fail to adequately reflect the cost of risks from Non-Performance Charges and are arguably confiscatory.”).

³⁰ *Id.* at 35.

³¹ PJM Interconnection, L.L.C., 186 FERC ¶ 61,097, P 39 (2023) (ER24-98-000 Order) (“While a resource may not need revenues from the capacity market to support its continued operation, the resource would still incur the incremental risks, which are borne as costs, from taking on a capacity commitment, including, for example, costs to mitigate a risk of Non-Performance Charges (e.g., making arrangements for firm fuel supplies or winterization).”)

³² *Id.*

³³ Must-Offer Filing at 43.

PJM’s ER24-98 proposal created a “subjective assessment” of what costs were includable and rejected PJM’s filing on that basis.³⁴ The present filing is narrower and limited only to CPQR costs purely associated with taking on a capacity commitment.

Separately, but importantly, OPSI’s support of allowing CPQR in certain circumstances to determine a resource’s MSOC does not necessarily mean OPSI agrees that using Net ACR to set MSOC is “arguably confiscatory.”³⁵ Resources can already recover CPQR using the status quo MSOC formula. As OPSI has previously stated, “The Commission should not be deterred by claims that ACR fails to account for CP risk.”³⁶

In *Hope Natural Gas*, the Supreme Court held that “[r]ates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid.”³⁷ In so doing, it said, “[t]he validity of an order . . . fixing rates . . . is to be determined . . . by whether the impact or total effect of the order is just and reasonable, rather than by the method of computing the rate base.”³⁸ The order should be “viewed in its entirety.”³⁹ While there is no regulated rate base at issue here, the Commission should not necessarily find that the status quo market rules are confiscatory, in this docket or elsewhere, as the PJM markets operate together, not independently. Rather, as the Commission previously indicated, in certain circumstances, it is just and reasonable to treat CPQR as a floor to the MSOC, thereby incentivizing participation in the capacity market.⁴⁰ Nevertheless, the Commission should not shift the cost of market risks onto consumers or force them to pay double for a service for which the demand is inelastic.

³⁴ ER24-98 Order at P 37.

³⁵ *Id.* at 34.

³⁶ OPSI, Initial Brief of the Organization of PJM States, Inc., Docket EL19-47-000 at 2-3 (May 3, 2021).

³⁷ *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 605 (1944)

³⁸ *Id.* at 602.

³⁹ *Id.*

⁴⁰ ER24-98 Order at P 39.

Further, OPSI wishes to reemphasize the important role of the Independent Market Monitor (IMM) in this process. CPQR is not a mechanism to allow resources to offer at any level in the capacity market in the name of an individual resource's risk assessment. Resources that seek a unit-specific CPQR should provide quantifiable information to set their level of risk. OPSI stands behind the IMM in the vital role it will play in ensuring these risk assessments are realistic, quantifiable, and objective.

II. CONCLUSION

While OPSI encourages the Commission to accept PJM's proposal, PJM has more work to do. OPSI looks forward to work on a sub-annual capacity construct along with other important reforms discussed in recent OPSI letters to the PJM Board.⁴¹

Respectfully Submitted,

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⁴¹ September OPSI Letter and November OPSI Letter.

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.

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Dated at Newark, Delaware this January 10, 2025.