150 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

PJM Interconnection, L.L.C. Docket Nos. ER15-738-000
ER15-739-000
(not consolidated)

ORDER GRANTING REQUEST FOR WAIVER AND REJECTING TARIFF FILING

(Issued February 20, 2015)

1. On December 24, 2014, PJM Interconnection, L.L.C. (PJM), made two filings to address its resource adequacy concerns for the 2015/2016 delivery year. In Docket No. ER15-738-000, pursuant to section 205 of the Federal Power Act (FPA),[1] PJM requests waiver of section 5.4(c)(3) of the PJM Open Access Transmission Tariff (Tariff), Attachment DD, to allow PJM to retain approximately 2,000 megawatts (MWs) of capacity it would otherwise be required to release during the Third Incremental Auction for the 2015/2016 delivery year (Waiver Request). In Docket No. ER15-739-000, pursuant to section 205 of the FPA,[2] PJM proposes changes to its Tariff to permit it to enter into, and recover the costs of, capacity agreements secured outside of its capacity market auctions for the 2015/2016 delivery year (Tariff Proposal).

2. For the reasons discussed below, we grant PJM's Waiver Request, effective February 23, 2015, and reject PJM's Tariff Proposal without prejudice.

I. Background

3. Under PJM's Reliability Pricing Model (RPM), PJM conducts a Base Residual Auction three years in advance of each delivery year, in which it procures the majority of the capacity it will require for that delivery year, less the portion satisfied through self-supply.[3] PJM also conducts three scheduled incremental auctions during the period

[1] 16 U.S.C. § 824d (2012).

[2] *Id.*

[3] PJM Tariff, Attachment DD, §§ 2.5, 5.4(a).

between the Base Residual Auction and the delivery year.[4] Under its existing rules, PJM states that it is required to release, or sell, capacity back to the market in its incremental auctions in the event that its forecasts demonstrate that its procured capacity exceeds its reliability requirement for the relevant delivery year.[5]

A. Waiver Request (Docket No. ER15-738-000)

4. PJM states that its capacity auctions have been successful in securing enough capacity resources for the 2015/2016 delivery year to satisfy its reliability requirement, i.e., its Installed Reserve Margin (IRM). As relevant here, section 5.4(c)(3)(i) of Attachment DD of the Tariff requires PJM to seek agreements to release prior capacity commitments if the PJM Region Reliability Requirement or Locational Deliverability Area Reliability Requirement used in the most recent prior auction exceeds the applicable reliability requirement. PJM states that, based on its completed peak load forecast for the 2015/2016 delivery year, and applying the factors required by the Tariff, it will be required to offer to release approximately 2,000 MWs of capacity previously committed for the 2015/2016 delivery year.[6]

5. PJM argues that the release of this previously committed capacity threatens the resource adequacy of its system, should its concerns relating to the availability of demand response resources and capacity performance materialize. PJM states that the release of the 2,000 MWs of capacity would make a reliability scenario like that it experienced in January 2014 even worse if it recurred next winter, given the high level of generation retirements (over 14,000 MWs) already expected for the 2015/2016 delivery year. Moreover, PJM is concerned that the recent federal appellate decision in *EPSA*,[7]

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[4] *Id.* §§ 2.34, 5.4(b). The Base Residual Auction for the 2015/2016 delivery year was conducted by PJM in May 2012. The First Incremental Auction opened on September 9, 2013, with the results posted September 20, 2013. The Second Incremental Auction opened on July 14, 2014, with the results posted July 25, 2014. PJM will conduct a third and final incremental auction in late February 2015.

[5] *Id.* § 5.4(c)(3).

[6] When PJM conducted the Base Residual Auction in May 2012, it established an IRM of 15.6 percent for the 2015/2016 delivery year. That IRM plus PJM's peak load forecast for the delivery year results in a total installed capacity level of 179,809 MWs. The 15.6 percent IRM is selected, in part, to accommodate the risk that peak conditions could be more extreme than normal. *See* Kormos Aff. at P 13.

[7] *Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014) (*EPSA*). The effectiveness of this opinion is currently stayed, and on January 15, 2015, the U.S.

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addressing the Commission's demand response policies, and a related complaint filed by FirstEnergy Service Company,[8] could pose a risk that PJM might be unable to compensate those committed demand resources, or treat them as capacity resources, during the 2015 summer peak season.[9]

6. PJM explains that the current resource commitment, including demand resources and energy efficiency resources, for the 2015/2016 delivery year is 187,375 MWs, which provides a reserve margin of 20.5 percent. However, PJM estimates that demand resources account for 11,257 MWs of that resource commitment. PJM states that if those demand resource commitments were unavailable, the level of resources committed for the 2015/2016 delivery year would drop to 176,118 MWs. This would produce a reserve margin of only 13.2 percent, well below the established IRM of 15.6 percent. According to PJM, a loss of approximately 7,500 or more MWs of the current demand resource commitment would place the PJM region below the established IRM of 15.6 percent needed to assure reliable service to loads during next summer's peak season.[10]

7. PJM explains that the established IRM provides a cushion against loads that are higher than a normal peak, or against forced outages that are higher than the most likely outage rate. PJM argues that a "simultaneous occurrence of worse than normal weather and worse than normal outages, therefore (as might occur, for example, if substantial parts of the region suffered extreme heat with highs above 95 degrees on multiple successive workdays), would erode the cushion provided by the approved IRM."[11] Furthermore, a reserve margin of only 13.2 percent would not accommodate those contingencies. As PJM explains, the 15.6 percent reserve margin is supported by analyses showing that it would be expected to result in no more than one loss of load event in ten years. By contrast, a reserve margin of only 13.2 percent would be expected to result in a loss of load event every 4.5 years. Thus, a reserve margin of 13.2 percent would present serious risk that PJM could not serve all loads if the region experienced more severe conditions that, while not routine, can still be reasonably expected from time

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Solicitor General, on behalf of the Commission, filed for a writ of certiorari with the U.S. Supreme Court to review *EPSA*. That petition is currently pending.

[8] *FirstEnergy Service Co. v. PJM Interconnection, L.L.C.*, Docket No. EL14-55-000) (FirstEnergy Complaint).

[9] Transmittal Letter at 4; Kormos Aff. at P 3.

[10] *See* Kormos Aff. at P 14.

[11] *Id*. P 15.

to time. PJM states that if, going into the delivery year, it anticipates that a reserve margin of 13.2 percent would present resource adequacy risks, then it would need to pursue prudent measures – such as supplementing capacity commitments – to prevent that reserve margin from falling below the established IRM.[12]

8. In addition to concerns with the high level of demand resources committed as capacity resources during the May 2012 Base Residual Auction, PJM explains that the results of that auction were also impacted by an expected high level of generation retirements for the 2015/2016 delivery year. PJM states that "an unprecedented amount, over 14,000 MWs, of generation retirements have [sic] been announced driven largely by environmental regulations, primarily EPA [Environmental Protection Agency] Mercury and Air Toxics Standards (MATS) and the High Electricity Demand Day Rule (HEDD) in New Jersey which have compliance deadlines of April 16, 2015 and May 1, 2015 respectively."[13] For the 2015/2016 delivery year, PJM expects 11,769 MWs of existing generation resources to retire, and 3,800 MWs of generation to be added in time for the delivery year; as a result, PJM anticipates a net loss of generation of 7,969 MWs.

9. Additionally, PJM explains that recent experiences with poor generation performance coupled with lower generation commitments discussed above raise concerns for the 2015/2016 winter season. PJM states that generation resources in its region experienced poor performance during the Polar Vortex of January 2014. According to PJM, it experienced a 22 percent forced outage rate during extreme weather in early January 2014, which was significantly worse than normal.[14] PJM maintains that such experience highlights deficiencies in the RPM market design that are failing to provide owners of capacity resources sufficient incentive to improve the performance of their generation units.[15] PJM also asserts that these concerns have added to the level of

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[12] *Id.* PP 16-17.

[13] *Id*. P 4. The State of New Jersey has separately addressed NO_x emissions rates on peak energy days – the HEDD. N.J.A.C. § 7:27–19. The rule implements performance standards on May 1, 2015, just prior to the commencement of the 2015/2016 delivery year.

[14] PJM, *Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events* 4, 24-26 (May 8, 2014), *available at* http://pjm.com/~/media/documents/reports/20140509-analysis-of-operationalevents-and-market-impacts-during-the-jan-2014-cold-weather-events.ashx.

[15] PJM submitted Tariff changes in Docket No. ER15-623-000, starting in the 2016/2017 delivery year, to ensure that committed capacity resources will perform when called upon to meet the reliability needs of the PJM region. According to PJM, that filing

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uncertainty surrounding resource adequacy for the 2015/2016 delivery year. Furthermore, PJM states that these resources also may not be eligible under PJM's current generation deactivation (i.e., retirement) rules. Those existing rules provide a mechanism to compensate for delays in deactivation for those resources needed to continue in service to address transmission system reliability issues.

10. PJM states that the substantial net reduction in generation resource commitments for the 2015/2016 delivery year, and corresponding reliance on demand resources, raises resource adequacy concerns in light of the *EPSA* decision. According to PJM, in that opinion, the U.S. Court of Appeals for the D.C. Circuit ruled that the Commission does not have the authority to approve rules on compensation in the wholesale energy market for retail customers that agree to consume less electricity. PJM maintains that the *EPSA* precedent, if not reversed by the U.S. Supreme Court, could pose a significant risk to PJM's ability to compensate end-users that commit through the capacity market to reduce their peak electricity consumption.[16] PJM also notes that the *EPSA* decision has the adverse impact of falling in the category of unforeseeable risk:

> We can reasonably foresee a scenario in which the Supreme Court decides this spring not to review *EPSA*, and FERC concludes, in light of *EPSA*, that it also lacks authority to order compensation for end-users that commit through the wholesale market to reduce peak electricity consumption. We do not need to agree that that is the correct legal conclusion, or that that is the *most likely* scenario (just as planners must be concerned with possible occurrences of extreme weather, or with higher than normal resource outages) to conclude that it is *foreseeable*. And if that scenario does unfold, then the important point from a resource adequacy perspective is that it could effectively negate or nullify the Demand Resource commitments on which the PJM Region is now depending to ensure reliable service to loads beginning in just over five months.[17]

11. To address these concerns, PJM requests that the Commission waive, solely as to the Third Incremental Auction for the 2015/2016 delivery year, certain provisions of the Tariff that require PJM in certain circumstances to offer in incremental auctions to

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did not address the 2015/2016 delivery year, because there is not enough time before that delivery year starts (on June 1, 2015) to implement the plant and infrastructure changes that are needed in the long term to improve generator performance. Kormos Aff. at P 18.

[16] *Id.* P 9.

[17] *Id.* P 10.

release prior capacity commitments. First, PJM asserts that the waiver it seeks is of limited scope since it will apply only to the Third Incremental Auction for the 2015/2016 delivery year. Second, PJM asserts that the waiver is needed to address a concrete issue, that is, the risk posed by the *EPSA* decision regarding the over 11,000 MWs of demand resources committed in the PJM region for the 2015 summer peak season, which begins in just over five months. Third, PJM asserts that granting the waiver will not harm third parties. Rather, retention of some capacity would prevent possible adverse reliability consequences to load if PJM were to try to manage next year's peak with resources well below the level previously determined necessary. Finally, PJM argues that payment for the capacity it seeks to retain will not impose an excessive burden on load, but, on the contrary, represents appropriate payment for the capacity that is needed to ensure reliable service.

B. Proposed Tariff Revisions (Docket No. ER15-739-000)

12. PJM proposes tariff revisions granting PJM the authority to enter into out-of-market capacity contracts for all or part of the 2015/2016 delivery year. Under its proposal, PJM would be authorized to procure additional resources to address resource adequacy concerns specific to the 2015/2016 delivery year. PJM's proposed tariff section states:

> [PJM] may procure, outside an RPM Auction, agreements for capacity from planned or existing generation resources not otherwise committed for that Delivery Year (or the relevant part thereof) but solely to the extent such agreements are needed to help ensure that the PJM Region satisfies applicable reliability standards for resource adequacy, taking into account contingencies or concerns affecting Generation Capacity Resources and/or Demand Resources previously committed for such Delivery Year. Any such agreement shall be subject to approval by the Commission, taking into consideration the extent to which the agreement satisfies the above standards.[18]

13. PJM states that, under its proposal, it would enter into these capacity contracts with existing resources that have announced their retirement and/or with planned resources which have not yet come into service.[19] PJM states that it would not

[18] PJM Tariff, Attachment DD, proposed § 5.14 b-1.

[19] Although PJM's Tariff currently provides for reliability-must-run agreements, these agreements are (1) intended to address transmission reliability issues and not possible capacity shortfalls, and (2) do not apply to the acceleration of new capacity projects. PJM Tariff, § V.

necessarily look for those resources to be available for the full delivery year, but that, for example, a planned resource could accelerate its in-service date to cover the prior winter period, or a retiring resource could extend its service life to cover the subsequent summer period. Costs for these contracts would be recovered from Load Serving Entities on a pro rata basis based on their respective capacity obligations.[20]

14. PJM proposes that agreements it enters into be subject to approval by the Commission under FPA section 205, as limited by the purposes described in its filing, "i.e., to ensure that the PJM Region can continue to satisfy during the 2015/2016 delivery year the applicable reliability standards on resource adequacy, taking into account contingencies or concerns affecting previously committed Capacity Resources."[21] PJM states that limiting Commission review to those considerations will streamline the review process.

15. PJM states that, although it has secured capacity commitments for the 2015/2016 delivery year in excess of the required 15.6 percent IRM, it questions the availability of the committed resources. First, PJM estimates that 11,257 MWs of Demand Resources will remain committed at the start of the 2015/2016 delivery year. PJM is concerned that the *EPSA* decision and the pending *FirstEnergy* Complaint may cause PJM to be unable to compensate those resources during the summer 2015 peak season. Second, PJM states that the high number of upcoming retirements combined with performance issues experienced during the past winter raises a resource adequacy concern for the 2015/2016 winter. PJM states that if Demand Resources were made unavailable, the system experienced a peak statistically expected 10 percent of the time, and there were a level of forced outages like that seen last winter (22 percent), then load would exceed capacity by over 2,600 MWs.[22]

16. PJM states that a special auction in addition to those provided by the Tariff would offer little advantage because (1) it would be difficult to match PJM's seasonal needs with resources' periods of availability, and (2) there are few uncommitted resources available that could participate as supply in a special auction, thus creating market power issues.[23]

[20] PJM Transmittal at 11-12.

[21] *Id.* at 11.

[22] *Id.* at 10 (citing Kormos Aff. at P 20).

[23] PJM Transmittal at 11.

II. Notice of Filings and Responsive Pleadings

17. Notice of PJM's filings was published in the *Federal Register*, 80 Fed. Reg. 216 (2015), with interventions and protests due on or before January 14, 2015, in Docket No. ER15-738-000, and on or before January 20, 2015, in Docket No. ER15-739-000.[24] Notices of intervention and timely-filed motions to intervene were submitted by the entities noted in the appendices to this order.[25] In addition, motions to intervene out-of-time were submitted, in Docket No. ER15-738-000, by the Delaware Public Service Commission (Delaware Commission) and the New Jersey Division of Rate Counsel (New Jersey Counsel), on January 16, 2015, and by the Duquesne Light Company (Duquesne) and the Illinois Commerce Commission (Illinois Commission), on January 21, 2015. Motions to intervene out-of-time were submitted, in Docket No. ER15-739-000, by Duquesne, the East Kentucky Power Cooperative, Inc. (EKPC), and the Illinois Commission, on January 21, 2015.

18. Answers were submitted, in Docket No. ER15-738-000, by PJM, on February 5, 2015, and, in Docket No. ER15-739-000, by the Maryland Public Service Commission (Maryland Commission) and Exelon Corporation (Exelon), on February 4, 2015, by PJM, on February 5, 2015, and by the Indiana Utility Regulatory Commission (Indiana Commission), on February 18, 2015.

A. Comments and Protests Addressing PJM's Waiver Request

19. The PJM Independent Market Monitor (Market Monitor) supports PJM's request for a one-time limited waiver. The Market Monitor argues that PJM has valid concerns about whether it will be able to rely on the full amount of resources that it has procured for the 2015/2016 delivery year and, therefore, believes that PJM should not be required to sell back 2,000 MWs of capacity in the Third Incremental Auction. The Pennsylvania Public Utility Commission (Pennsylvania Commission) supports the waiver request, but believes that the PJM proposal should be modified to allow the release of excess summer demand response resources (Extended Summer Demand Response and Limited Demand Response) because such release would mitigate the risk associated with the *EPSA* decision and would not impact winter performance risk as these resources are solely utilized in the summer months.

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[24] Notice Extending Comment Due Date, Docket No. ER15-739-000 (issued January 14, 2015).

[25] The abbreviated names and/or acronyms by which these entities are referred to in this order are noted both in the body of this order and in the Appendices.

20. Old Dominion Electric Cooperative (ODEC) supports the requested waiver, but seeks clarification that allowing the waiver will not trigger the excess commitment credits provisions of the PJM Tariff, which allow load-serving entities to receive credits for excess capacity that is offered for sale but does not clear a scheduled incremental auction. ODEC states that the Commission should clarify that any prior capacity commitments not released as a result of the waiver would be deemed to be unavailable for sale, and thus cannot be considered as capacity that did not clear the Third Incremental Auction. Additionally, ODEC states that the Commission should also clarify that the capacity subject to the waiver should be held to satisfy both summer and winter reliability needs during the 2015/2016 delivery year.

21. Electric Power Supply Association (EPSA) states that it does not oppose the waiver request as it is a relatively less disruptive approach that allows PJM to address the circumstances limited to 2015/2016 delivery year. EPSA maintains that "PJM has thoughtfully attempted to develop contingency measures and approaches to account for possible or foreseeable changes to their DR resource commitments." EPSA also argues that it is vitally important that the waiver is limited to the Third Incremental Auction for the 2015/2016 delivery year, and not set a precedent or expectation that the tariff rules dictating both RPM and incremental auction procurement and release parameters are fungible based on varying resource conditions year to year.

22. The PJM Utilities Coalition[26] (Coalition) argues that PJM's waiver request should be granted subject to additional relief. Specifically, the Coalition requests revisions addressing: (1) PJM's methodology for calculating its reliability requirement, to properly reflect potential generation failures during extreme weather events; and (2) revision of May 2015 auction parameters such that they will reflect the risk of poor performance by generators during extreme weather events, and the foreseeable risk attributable to *EPSA*.

23. Dominion Resource Services, Inc. (Dominion) requests that the Commission grant the waiver only for the amount of capacity necessary to mitigate 2015/2016 winter resource adequacy issues. Dominion further argues that risk assessments in response to *EPSA* are both premature and speculative. Dominion maintains that the prospective loss of over 11,000 MWs of demand resources currently committed to participate in the delivery year that PJM believes would represent a significant loss to its ability to meet 2015 summer peak demand is entirely speculative at this point.

[26] The Coalition comprises American Electric Power Service Corporation; Buckeye Power, Inc.; Dayton Power and Light Company; EKPC; and FirstEnergy Services Company.

24. American Municipal Power, Inc. (AMP) argues that PJM has failed to demonstrate that its waiver request is just and reasonable. AMP asserts that, even if PJM's most extreme predictions come to fruition and it cannot pay demand resources for their capacity commitments, PJM has not shown that demand resources would fail to be an essential means of meeting reliability requirements. AMP maintains that, if the Commission grants PJM's requested waiver and PJM retains the excess capacity, but the foreseeable scenarios do not come to fruition and PJM is able to rely on the demand resources, then loads would be forced to bear the cost of excess capacity at the Base Residual Auction price. Accordingly, AMP requests that the Commission reject the PJM waiver request, suspend it, or set it for hearing.

25. CPower Corporation and EnerNOC, Inc. (collectively, CSP Protestors) and the PJM Industrial Customer Coalition[27] (collectively, Joint Consumer Representatives) argue that PJM's waiver request fails to satisfy the Commission standards applicable to such requests. First, CSP Protestors argue that the requested waiver is not limited in scope, given that 1,171 MWs of generation remained un-cleared after the Second Incremental Auction, and given that PJM's waiver, if granted, will operate to withhold nearly twice this amount from the Third Incremental Auction. CSP Protestors further assert that PJM's waiver, if granted, would not remedy a concrete problem, given PJM's assumptions regarding a series of possible, but otherwise speculative, future legal determinations and outcomes. Finally, Joint Consumer Representatives argue that PJM's proposal will harm third parties because withholding 2,000 MWs of excess capacity resources from the Third Incremental Auction will lead to higher costs for consumers.

26. The Illinois Commission argues that PJM's waiver request is unsupported, and that PJM fails to address the performance risk issues associated with the capacity that it has already committed for the 2015/2016 delivery year. Rather, the Illinois Commission argues, PJM's proposals focus on (1) retaining capacity resources, regardless of their reliability, that the RPM rules would otherwise require to be released; and (2) procuring additional supplemental capacity commitments with no limits on the quantity or specifications regarding the delivery reliability of those resources.

27. The Illinois Commission adds that approval of the PJM waiver request to retain approximately 2,000 MWs of over-procured capacity would eliminate the opportunity for suppliers to buy-out their obligations of previously committed capacity with replacement capacity and would preclude load-serving entities from receiving revenues that would be produced by PJM's release of over-procured capacity in the Third Incremental Auction. For those reasons, the Illinois Commission requests that the Commission reject

[27] Joined by: the Pennsylvania Office of Consumer Advocate, the New Jersey Division of Rate Counsel, and the West Virginia Consumer Advocate.

the waiver request and direct PJM to adopt and apply to capacity resources for the 2015/2016 delivery year several RPM revisions that PJM has described in Docket Nos. ER14-1461-000, EL15-29-000, and ER15-623-000, including, for example, raising the capacity resource deficiency charge. The Illinois Commission also notes that relaxing any constraining offer price cap or clearing price cap would provide a better capacity price signal for the 2015/2016 delivery year.

B. Comments and Protests Addressing PJM's Tariff Proposal

28. The Market Monitor argues that the contracts PJM seeks to enter into are unnecessary given PJM's existing authority to determine the maximum payment to be made for reliability-must-run contracts.[28] The Market Monitor further argues that PJM's filing fails to give the Market Monitor a role in the proposed contracting process regarding such matters as the negotiation, oversight, and/or verification of costs.

29. Intervenors assert that PJM's proposal raises a number of unanswered questions. The Coalition, while generally supporting PJM's approach, questions the openness and transparency of the capacity procurement process proposed by PJM. The Public Utilities Commission of Ohio (Ohio Commission) argues that PJM's proposal fails to provide sufficient information as to how it intends to recover costs it would incur. The Pennsylvania Public Utility Commission (Pennsylvania Commission) questions the need and workability of PJM's proposal in the event that: (1) *EPSA* is overturned; (2) PJM determines that it has sufficiently addressed winter deliverability issues; and/or (3) the contract price exceeds prevailing market prices.[29]

30. Dominion asserts that *EPSA* provides insufficient justification for PJM's filing since it remains pending. Dominion further asserts that PJM has failed to support its proposal to purchase capacity for the summer period.

31. Several intervenors also object to PJM's proposal as it would apply to entities participating in the Fixed Resource Requirement Alternative. The Indiana Commission argues that these entities should not be required to pay for additional capacity that they do

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[28] PJM Tariff, §§ 114-15 (addressing Deactivation Avoidable Cost Credits, as available to generators choosing to defer retirement).

[29] In addition, the Retail Energy Supply Association (RESA) (Protest at 8) argues that the need for PJM's filing is unclear given the still-pending status of *EPSA*, the likely impact of PJM's waiver request, in Docket No. ER15-738-000, the likelihood of less-anomalous extreme weather conditions for the 2015/2016 delivery year, and the continued availability of demand response in the form of peak-shaving resources.

not need. The Fixed Resource Requirement Utilities (FRR Utilities)[30] agree, arguing that entities participating in the Fixed Resource Requirement Alternative are solely responsible for meeting their capacity obligations through their respective self-supply plans, and thus are not responsible for the capacity shortfalls that PJM's filing seeks to address.

32. AMP argues that the standard under which PJM would have the Commission limit its review of the capacity contracts is unclear, noting that there is no reliability standard that requires PJM to procure a certain amount of capacity and that it is further unclear how the Commission would determine whether a particular contract is, or is not, acceptable.

33. EPSA argues that PJM's proposed out-of-market contracting approach should only be considered in the event that all market approaches have first been utilized. Calpine Corporation (Calpine) adds that resources procured out-of-market should be called on during emergency situations only, and that the energy price for any such resource should be set at the level of a 30-minute Demand Resource to minimize their impact on energy market prices. Exelon Corporation (Exelon) asserts that the out-of-market resources should only be permitted to run in emergencies since these resources will suppress energy market prices.

34. Direct Energy Business, LLC, *et al.* (Direct Energy) asserts that the Tariff Proposal does not specify a particular amount of capacity or a methodology to determine that amount, and that PJM has not provided a compelling explanation as to why additional capacity is necessary. Direct Energy adds that a cost-benefit analysis should be required along with an estimate regarding the availability of Demand Resources post-*EPSA*. Joint Consumer Representatives argue that PJM's reliance on the uncertainties related to demand resources and winter reliability is insufficient to warrant an out-of-market solution. Joint Consumer Representatives add that PJM's proposal is inappropriately based on a worst-case scenario, that *EPSA* deals only with demand resource compensation in the energy markets, and that it is unlikely that the generator performance issues experienced in January 2014 will recur during the 2015/2016 delivery year. Joint Consumer Representatives further state that PJM's proposal constitutes a discriminatory out-of-market action that would discourage market seller participation in capacity auctions for future delivery years and result in significant unforeseen costs to consumers.

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[30] FRR Utilities comprise American Electric Power Service Corporation, on behalf of its regulated utility affiliates, and Duke Energy Corporation, on behalf of its regulated utility affiliate.

35. ODEC argues that PJM's proposal would grant PJM unbounded authority to procure resources out-of-market, producing increased costs to load, the potential for unintended adverse consequences, and undue complexity. ODEC argues that PJM's Tariff Proposal lacks definition regarding how PJM would secure the out-of-market capacity it seeks and whether this procurement is, in fact, necessary.

36. PJM Power Providers Group (P3) agrees that market mechanisms are the optimal means of securing capacity and competitive prices, and out-of-market contracts should only be considered as a last resort. P3 states that additional capacity could suppress energy prices to the detriment of resources depending on market revenues. P3 argues that, if PJM is given the authority to procure out-of-market capacity, the Commission should require PJM to set energy prices to scarcity levels if any of the out-of-market units are lifted off of minimum load. P3 states that the parties to the out-of-market contracts should be allowed to negotiate the price, and that resources will have the option of selecting the full cost-of-service methodology of compensation.

37. Finally, Public Interest Organizations[31] argue that PJM's Tariff Proposal lacks measurable standards, particularly with respect to compensation.

C. PJM's Answers

38. PJM, in its answers, addresses intervenors' arguments relating to both its Waiver Request and its Tariff Proposal.

39. With respect to its Waiver Request, PJM offers additional support addressing the Commission's three-prong standard for granting waiver. In response to the Joint Consumer Representatives' argument that a waiver request seeking to maintain 2,000 MWs of capacity cannot be characterized as limited, PJM responds that this capacity amount represents only one percent of the resources committed for the relevant delivery year. In response to Dominion's argument that PJM's waiver request is not designed to remedy a concrete problem given the uncertainty as to future events, PJM responds that the uncertainties to which Dominion refers are an inherent feature of any planning process and cannot be ignored on that basis. Finally, in response to Joint Consumer Representatives' argument that PJM's waiver request will result in undesirable consequences for third parties by preventing capacity resources from being able to sell back their position in the Third Incremental Auction, PJM responds that its incremental

[31] Public Interest Organizations comprise Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, New Jersey Board of Public Utilities, Sierra Club, Sustainable FERC Project, and Union of Concerned Scientists.

auctions are not intended to ensure that sellers with previously committed capacity will have the opportunity to be freed of their commitments.

40. With respect to its Tariff Proposal, PJM asserts that the authority it seeks is narrow, targeted, and would only enable PJM to enter into capacity agreements that would thereafter be reviewed by the Commission as to their need and appropriateness. PJM also acknowledges that out-of-market contracts are not preferred, but are nonetheless warranted under the circumstances presented here. Finally, PJM asserts that the costs for the supplemental capacity contracts it seeks authority to enter into are appropriately allocated to all load-serving entities, including those participating in the Fixed Resource Requirement Alternative, since the reliability benefits attributable to any such agreements would inure to the benefit of all.

D. Additional Answers

41. Exelon, in its answer, reiterates a number of the intervenors' arguments summarized above regarding the asserted deficiencies in PJM's Tariff Proposal, including, among other things, PJM's unwarranted reliance on an out-of-market mechanism. Exelon argues that PJM's proposed procurement will perversely target a set of resources that includes the least reliable and most costly units in PJM that did not clear in PJM's Base Residual Auction. The Maryland Commission, in its answer, addresses related issues arising under PJM's capacity performance proposals in Docket Nos. ER15-623-000 and EL15-29-000. Finally, the Indiana Commission, in its answer, reiterates its protest argument regarding the costs of PJM's proposal as to Fixed Resource Requirement entities.

III. Discussion

A. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which these pleadings were submitted. In addition, given the early stage of these proceedings and the absence of undue prejudice or delay, we grant the unopposed, late-filed interventions submitted, in Docket No. ER15-738-000, by the Delaware Commission, the New Jersey Counsel, Duquesne, and the Illinois Commission, and the unopposed, late-filed interventions, in Docket No. ER15-739-000, by EKPC and the Illinois Commission.

43. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers submitted by PJM, in Docket No. ER15-738-000, and by the Maryland Commission, Exelon, PJM, and the Indiana Commission, in Docket No. ER15-739-000, because they assist us in the decision-making process.

B. PJM's Limited Waiver Request

44. For the reasons discussed below, we will grant a limited waiver of Attachment DD, section 5.4(c)(3) of the PJM Tariff, as applicable to the Third Incremental Auction for the 2015/2016 delivery year.

45. The Commission typically grants waivers of tariff provisions when the requesting party has shown that the waiver: (1) is of limited scope; (2) remedies a concrete problem; and (3) will not have undesirable consequences, such as harming third parties.[32] We find that these conditions have been satisfied here. First, we find that the waiver is of limited scope given that it will apply only to the Third Incremental Auction for the 2015/2016 delivery year and will affect only a finite amount of capacity which PJM has already competitively procured. We disagree with CSP Protestors' comments that PJM's waiver request cannot be characterized as limited in scope because, among other things, it involves an amount of capacity that is about twice the amount of un-cleared generation after the Second Incremental Auction. As PJM explained, this amount of previously-committed capacity is barely over one percent of the total resources committed in the RPM auctions for the 2015/2016 delivery year, and its relation to the amount left un-cleared after the Second Incremental Auction is not germane.[33] We also reject Joint Consumer Representatives' position that the waiver request is not limited in scope because it could result in the unfavorable treatment of similarly-situated parties.[34] The waiver requested in the instant case applies to all load-serving entities in PJM for the 2015/2016 delivery year, and therefore cannot be said to result in disparate treatment among similarly-situated parties.

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[32] *E.g.*, *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014); *New York Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at P 20 (2014); *New York Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *New York Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *New York Power Authority*, 139 FERC ¶ 61,157, at P 28 (2012); *Demand Response Partners, Inc.*, 140 FERC ¶ 61,093, at P 13 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); and *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297, at P 13 (2008).

[33] PJM Answer at 3.

[34] CSP Protestors Comments at 4 (citing *Massachusetts Municipal Wholesale Electric Co.*, 148 FERC ¶ 61,227 (2014)).

46. Second, granting the requested waiver remedies a concrete problem. The release of approximately 2,000 MWs of committed capacity could yield a reserve margin below the established installed capacity needed to assure reliable service to loads. Moreover, given PJM's reliance on committed capacity resources, the poor performance of generating capacity resources last year, and the expected high level of generation retirements, absent granting the waiver, PJM would face increased risks of being unable to serve load. We further note that the general purpose of incremental auctions is to allow PJM to adjust the amount of committed capacity secured in prior auctions due to changed circumstances or expectations in the intervening period.[35] Under the limited circumstances presented here, a limited waiver of section 5.4(c)(3), as requested, will enable PJM to satisfy this objective.

47. Third, we find that granting the requested waiver will not have undesirable consequences, such as harming third parties. While PJM's waiver request may have cost implications – to the extent that a release of the capacity commitments at issue would lower capacity costs – notably, the capacity in question was competitively procured. Retention of this capacity will free PJM of the potential need to procure out-of-market capacity at uncertain and potentially substantial cost, and is intended to prevent significant economic harm to load in the event there is a loss of capacity for the 2015/2016 delivery year. That is, granting PJM's waiver will mitigate costs that could otherwise occur from a capacity shortfall. Granting waiver in this limited case, therefore, enables the region to preserve its reserve margin while preventing load from being required to pay substantially more for capacity.

48. We reject, as beyond the scope of this proceeding, intervenors' requests that additional rule changes be considered. Specifically, we reject the Coalition's arguments that: (1) PJM's methodology for calculating its reliability requirement fails to adequately reflect potential generation failures during extreme weather conditions; and (2) the poor performance by generators during such conditions and the risks attributable to *EPSA* should be reflected in PJM's May 2015 auction parameters. We also reject the Illinois Commission's request that PJM be directed to adopt and apply, as to the 2015/2016 delivery year, rule changes proposed by PJM in Docket Nos. ER14-1461-000, EL15-29-000, and ER15-623-000.

49. With respect to ODEC's request for clarification of section 5.12(viii) of Attachment DD of the Tariff, we note that PJM clarified that if the Commission grants the waiver, PJM will not seek to sell back that capacity in the incremental auction. Since

[35] PJM Tariff, Attachment DD, § 2.34(ii).

those resources will not be offered, the conditions for triggering an award of excess commitment credits will not be met.[36]

50. Having found the one-time waiver request appropriate, we do not find it necessary to implement other procedures, such as a hearing, as AMP requests.

C. PJM Proposal To Enter Into Additional Capacity Contracts for the 2015/2016 Delivery Year

51. For the reasons discussed below, we reject PJM's proposal to grant it tariff authority to procure additional capacity for the 2015/2016 delivery year as unreasonably vague and ill-defined. Capacity procured under the proposed Tariff provision would be in addition to the 2,000 MWs procured at competitive prices under the waiver, and PJM has not provided just and reasonable Tariff provisions that specify the criteria for determining how much additional capacity it requires, nor how to determine whether those contracts are at just and reasonable prices.

52. The proposed Tariff provision would permit PJM to enter into capacity contracts "to the extent such agreements are needed to help ensure that the PJM Region satisfies applicable reliability standards for resource adequacy, taking into account contingencies or concerns affecting Generation Capacity Resources and/or Demand Resources previously committed for such Delivery Year." The Tariff, however, contains no criteria or other method by which PJM will make the determination as to how much additional capacity it requires. Moreover, PJM provides that "any such agreement shall be subject to approval by the Commission, taking into consideration the extent to which the agreement satisfies the above standards." Without the criteria for determining how much additional capacity PJM needs, the Commission would have no basis to determine whether the contracted capacity at the rate filed is necessary and is just and reasonable.[37] Finally, as several parties note, PJM proposes an out-of-market construct to address its

[36] PJM Answer at 18. Excess capacity that PJM is unable to clear through its sell-back offers is given to load-serving entities, on a pro rata basis, in the form of excess commitment credits. These credits may be used as replacement capacity (for instance, should a load-serving entity's generator undergo a de-rating) or traded bilaterally. Tariff, Attachment DD, § 5.12(b)(viii).

[37] For example, contracts may be filed with the Commission seriatim, and the Commission would not have the ability to evaluate the proposed rates for all the projects at one time to determine which contracts are necessary.

concerns, and we find that PJM has not demonstrated, on the record here, that an out-of-market construct is necessary to address those concerns.

53. Accordingly, we find PJM has failed to justify its proposal as just and reasonable. We therefore reject the filing without prejudice to PJM refiling a fully specified and justified proposal.

The Commission orders:

(A) PJM's request for limited waiver of Attachment DD, section 5.4(c)(3) of the PJM Tariff, in Docket No. ER15-738-000, is hereby granted, as discussed in the body of this order.

(B) PJM's proposed Tariff changes, in Docket No. ER15-739-000, are hereby rejected without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

<u>Intervenors in Docket No. ER15-738-000</u>

Allegheny Electric Cooperative, Inc.
American Electric Power Service Corporation * (Coalition)
American Municipal Power, Inc. * (AMP)
Buckeye Power, Inc. * (Coalition)
CPower Corporation * (CSP Protestors)
CPV Power Development, Inc. (CPV)
Delaware Public Advocate
Delaware Public Service Commission ** (Delaware Commission)
Direct Energy Business, LLC/Direct Energy Business Marketing, LLC (Direct Energy)
Dayton Power and Light Company * (Coalition)
Dominion Resource Services, Inc. (Dominion)
Dynegy Marketing and Trade, LLC
Duquesne Light Company (Duquesne) **
East Kentucky Power Cooperative, Inc. (EKPC) (Coalition)
Electricity Consumers Resource Council (ELCON)
Electric Power Supply Association (EPSA)
EnergyConnect Inc., (EnergyConnect)
EnerNoc, Inc. * (CSP Protestors)
Essential Power Companies
Environmental Defense Fund
Exelon Corporation (Exelon)
FirstEnergy Service Company * (Coalition)
Illinois Commerce Commission (Illinois Commission) **
Indiana Utility Regulatory Commission (Indiana Commission)
Maryland Public Service Commission
Maryland Office of People’s Counsel
Monitoring Analytics, LLC, PJM’s independent market monitor (Market Monitor)
Natural Resources Defense Council
New Jersey Board of Public Utilities
New Jersey Division of Rate Counsel ** (New Jersey Counsel) (Joint Consumer Representatives)
NextEra Energy Resources, LLC
North Carolina Electric Membership Corporation
NRG Companies
Old Dominion Electric Cooperative (ODEC)
PJM Industrial Customer Coalition * (Joint Consumer Representatives)
PJM Power Providers Group (P3)

PSEG Companies
Pennsylvania Office of Consumer Advocate * (Joint Consumer Representatives)
Pennsylvania Public Utility Commission (Pennsylvania Commission)
Raven Power/Sapphire Power Companies
Retail Energy Supply Association (RESA)
Rockland Electric Company
Sierra Club
West Virginia Consumer Advocate * (Joint Consumer Representatives)

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* intervenors filing comments and/or protests
** motions to intervene out-of-time

Appendix B

Intervenors in Docket No. ER15-739-000

Allegheny Electric Cooperative, Inc.
American Electric Power Service Corporation * (FRR Utilities)
American Municipal Power, Inc. * (AMP)
American Public Power Association
Brookfield Energy Marketing LP
Buckeye Power, Inc.
Calpine Corporation * (Calpine)
CPV Power Development, Inc.
Delaware Public Advocate
Delaware Public Service Commission
Direct Energy Business, LLC/Direct Energy Business Marketing, LLC * (Direct Energy)
Dominion Resource Services, Inc. * (Dominion)
Duke Energy Corporation * (FRR Utilities)
Duquesne Light Company ** (Duquesne)
Dynegy Marketing and Trade, LLC
East Kentucky Power Cooperative, Inc. ** (EKPC)
Electricity Consumers Resource Council (ELCON)
EnergyConnect Inc.
EnerNOC, Inc.
Environmental Defense Fund * (Public Interest Organizations)
Environmental Law and Policy Center * (Public Interest Organizations)
Essential Power Companies
Exelon Corporation * (Exelon)
FirstEnergy Service Company
GDF Suez
Illinois Commerce Commission ** (Illinois Commission)
Indiana Utility Regulatory Commission * (Indiana Commission)
Linden VFT, LLC
LS Power Associates, L.P.
Maryland Office of People’s Counsel
Maryland Public Service Commission (Maryland Commission)
Natural Resources Defense Council * (Public Interest Organizations)
New Jersey Board of Public Utilities * (Public Interest Organizations)
New Jersey Division of Rate Counsel
NextEra Energy Resources, LLC
North Carolina Electric Membership Corporation
NRG Companies
Old Dominion Electric Cooperative * (ODEC)

PJM Power Providers Group * (P3)
PJM Industrial Customer Coalition
PSEG Companies
Pennsylvania Public Utilities Commission *
Public Utilities Commission of Ohio * (Ohio Commission)
Raven Power/Sapphire Power Companies
Retail Energy Supply Association * (RESA)
Rockland Electric Company
Sierra Club * (Public Interest Organizations)
Southern Maryland Electric Cooperative
Sustainable FERC Project * (Public Interest Organizations)
Union of Concerned Scientists * (Public Interest Organizations)
West Virginia Consumer Advocate Division

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* intervenors filing comments and/or protests
** motions to intervene out-of-time