

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

PJM Interconnection, L.L.C.)	Docket Nos. EL19-58-007
)	ER19-1486-004
)	(Consolidated)

**REQUEST FOR REHEARING OF
PJM INTERCONNECTION, L.L.C.**

PJM Interconnection, L.L.C. (“PJM”), pursuant to section 313 of the Federal Power Act, 16 U.S.C. § 825*l*, and the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rule 713, 18 C.F.R. § 385.713, submits this request for rehearing of the Commission’s December 22, 2021 order on voluntary remand in these proceedings.¹

I. INTRODUCTION

PJM appreciates that the Remand Order affirmed many of the reserve market enhancements that were part of PJM’s comprehensive reserve market reforms designed to strengthen the reliable operation of the PJM system and efficacy of its reserve markets.

PJM requests rehearing of the Remand Order, however, given that:

- the Remand Order reverses the Commission’s prior orders,² on the same record and in disregard of much of PJM’s extensive evidence in this proceeding;
- the Remand Order departs, without adequate explanation, from the Commission’s prior holdings, including when it first approved an operating reserve demand curve for PJM, that costs of resources procured to alleviate shortages should be reflected in transparent market prices whenever it makes sense to do so, and that payments made only to individual resources and recovered in uplift fail to send clear market signals; such action leaves unsettled the Commission’s policy principles governing price formation and raises a potential barrier to future reserve pricing reforms that seek to follow the Commission’s prior price formation decisions; and

¹ *PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,209 (2021) (“Remand Order”).

² *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,153 (“May 2020 Order”), *order on reh’g*, 173 FERC ¶ 61,123 (2020) (“November 2020 Order”).

- the Remand Order should, at minimum, have held that there was enough presented on this record to find that PJM's current reserve pricing *may be* unjust and unreasonable, warranting hearing, settlement, or other means of resolving material questions of fact before making an ultimate decision under Section 206; such a more deliberate approach is consistent with how the Commission has addressed similar complex issues in the past.³

PJM expresses these concerns because, while it appreciates the Commission's endorsement of the important reserve market enhancements that the Remand Order did affirm, PJM remains concerned whether the existing Operating Reserve Demand Curves ("ORDCs") and Reserve Penalty Factors are adequate to ensure the proper reserve market response. PJM therefore respectfully requests that the Commission, at a minimum, reconsider the challenged holdings in the Remand Order, which could unduly impede future proceedings or stakeholder processes to ensure PJM's reserve market satisfies the Commission's price formation policies. Accordingly, as an intermediate option, the Commission should set this matter for hearing and settlement, and thus enable productive progress on the remaining critical issues of reserve market reform, without the impediment of the Remand Order's blanket reversal of the Commission's prior holdings on the ORDCs and Reserve Penalty Factors. In addition and should the Commission not reverse the Remand Order as requested herein, at the very least it should make clear that its holding is limited and is not intended to restrict PJM and its stakeholders from continuing to bring before the Commission (whether pursuant to section 205 or section 206 of the Federal Power Act) concerns regarding whether its present operating reserve demand curves are just and reasonable or are in need of reform.

³ See, e.g., *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 (2006).

Lack of Reconciliation of the Remand Order with May 2020 and November 2020 Orders

Absent any such mitigation of its findings, the Remand Order's departure from the May 2020 Order and November 2020 Order falls well short of the reasoned decision-making required for administrative agency action. In those prior orders, the Commission found, based on substantial evidence, that the pre-existing ORDCs and Reserve Penalty Factors are unjust and unreasonable. Yet, based on the exact same evidentiary record, and without conducting any further evidentiary procedures to resolve any conflicts that the current Commission might perceive with its prior orders,⁴ the Remand Order proceeds directly to holding that there is *not* substantial evidence that the current ORDCs and Reserve Penalty Factors are unjust and unreasonable. This fundamental reversal on a basic finding of fact cannot have stemmed from different facts, because no new facts were received. To avoid a justifiable charge in this context that the Remand Order is arbitrary and capricious, the Commission should have addressed the extensive record PJM and others presented that the pre-existing ORDCs and Reserve Penalty Factors were unjust and unreasonable, and the detailed findings in its prior orders that the pre-existing ORDCs and Reserve Penalty Factors *are* in fact unjust and unreasonable. The Remand Order falls far short of that standard by, among other things, failing to reconcile its finding with those of its prior orders.

⁴ See, e.g., Motion of Respondent Federal Energy Regulatory Commission for Voluntary Remand at 2, *Am. Muni. Power, Inc. v. FERC*, Nos. 20-1372, et al., (D.C. Cir., Aug. 13, 2021) (“Then-Commissioner (now Chairman) Glick dissented from three of the four orders on review, and Commissioner Clements (who joined the Commission only in time to vote on the fourth order) dissented from the March 9, 2021 Compliance Rehearing Order. *Further review of the orders, under the leadership of a new Chairman, has motivated a reconsideration of the Commission’s prior determination.*” (emphasis added)).

Lack of Sufficient Consideration of Evidence That Current ORDCs Are Unjust and Unreasonable.

As to the ORDCs, PJM presented a comprehensive case detailing and quantifying forecast uncertainties in load, interchange, and resources directly affecting the need for reserves, and showed that the pre-existing ORDCs do not capture those uncertainties. PJM then showed that, consistent with that demonstrated mismatch between reserve uncertainty and reserve market pricing: (i) operators were using their out-of-market practice of biasing forecast demand upward to (evidently and at least in part) make up for insufficiencies in the reserves provided through the market, and (ii) a high percentage—at times nearly half—of Synchronized Reserve compensation was through out of market uplift payments. The May 2020 Order reasonably found that well-supported narrative compelling, citing “evidence of a serious flaw;”⁵ “strong evidence of a flaw in the existing reserve market design;”⁶ and “that the shortcomings of its reserve market pricing are substantial and warrant revision.”⁷ The May 2020 Order accordingly found that PJM had shown that its current reserve market is unjust and unreasonable.⁸ The November 2020 Order affirmed that finding, and rebutted the very same intervenor showings and arguments that the Remand Order would later rely upon to reach the opposite conclusion.⁹

Lack of Reconciling the Current \$850 Penalty Factor with the Current \$2000 Energy Market Price Cap

The Remand Order’s reversal of the preceding orders’ findings that the current Reserve Penalty Factors are unjust and unreasonable similarly fails basic tenets of reasoned

⁵ May 2020 Order at P 75.

⁶ *Id.* at P 77.

⁷ *Id.* at P 83.

⁸ *Id.* at P 74.

⁹ See November 2020 Order at PP 13-18.

decision-making. The weight of the evidence clearly showed that: (1) the Reserve Penalty Factor acts as a cap on how much the market is willing to pay for a reserve product; (2) if the cost to acquire reserves needed to avoid a shortage exceeds the Reserve Penalty Factor, the market will not procure sufficient reserves; and (3) absent operator action to assign reserves that are more costly than the Reserve Penalty Factor cap, the market would otherwise allow a reserve shortage to occur. Accordingly, the record evidence shows that the current Reserve Penalty Factor of \$850/MWh is too low, given that other Commission rules permit the energy component of energy market prices to rise to \$2,000/MWh. The Remand Order never comes to grips with this mismatch.

Adoption of a New and Unworkable Standard for Whether a Market Design Is Unjust and Unreasonable.

The Remand Order also erred in establishing a new standard for finding market designs unjust and unreasonable—that the complained of problem must not just be apparent but the flaw must occur with sufficient frequency to warrant correction. The Commission’s adoption of such a standard is contrary to its prior practice and an about-face from its prior rejection of such a standard in the November 2020 Order in this proceeding.¹⁰ The Remand Order failed to acknowledge and justify that new standard.

Lack of Reconciliation With the Commission’s Orders on Just and Reasonable Price Formation

The Remand Order also fails to address PJM’s argument that the significant disconnect between the current Reserve Penalty Factor and the current permissible maximum locational marginal prices (“LMPs”) result in uplift payments, undermining the transparency of the reserve market clearing prices, and fails to explain why the

¹⁰ November 2020 Order at P 81.

Commission's policy and precedent favoring transparent price signals can be discounted in this case.

Lack of Foundation for Reversing the Forward Energy and Ancillary Services Offset

The Remand Order also erred in reversing its prior requirement for a forward-looking energy and ancillary services ("EAS") offset for use in PJM's capacity market. The Remand Order does not consider, and consequently underestimates, the impact on ancillary services revenues from the reserve market reforms that the preceding orders accepted and that the Remand Order re-affirms. The Remand Order thus falls short of reasoned decision-making on this question as well, and on rehearing should preserve the switch to a forward-looking EAS offset.

Given the substantial issues outlined above, the Commission should have proceeded with restraint, such as by conducting additional proceedings. At a minimum, PJM requests that the Commission acknowledge these unresolved issues and encourage PJM and its stakeholders to work to further address the identified issues, as the Commission expressly did with forward-looking EAS offset, and to not foreclose alternative reserve market enhancements (such as revised demand curves or penalty factors) based upon the premise that the market has not proven itself unworkable.

II. REQUEST FOR REHEARING

A. The Remand Order Erred in Reversing the Commission's Earlier Findings that the Current ORDCs Are Unjust and Unreasonable.

The Remand Order erred in holding that there was not substantial evidence to find the current ORDCs unjust and unreasonable.¹¹ The issue before the Commission was

¹¹ See Administrative Procedure Act, 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice

whether the ORDCs as currently designed reasonably reflect the reliability value of reserves procured above the Minimum Reserve Requirement (“MRR”). The operative issue is not *whether* to assign positive value to reserves above the MRR—PJM’s current ORDC already does so. Rather, the issue is *how* to reasonably value reserves above the MRR, and does PJM’s current ORDC design provide such reasonable valuation for the PJM Region?

Evidence in the record demonstrated that the current ORDC *does not* reasonably reflect, in market prices, the reliability value of procuring reserves above the MRR:

- Inherent uncertainties in wind resource forecasts, solar resource forecasts, load forecasts, interchange forecasts, and expected thermal plant outages are the factors that most influence whether reserves will fall short of the MRR, but the current ORDC is not designed to address (i) those uncertainties; (ii) the probability that they will cause reserves to fall below the MRR; or (iii) the value in preventing reserves from falling below the MRR.¹²
- For example, the current ORDC assigns a positive price to only 190 megawatts (“MW”) of reserves above the MRR, but observed wind forecast error alone in PJM has averaged 160 MW;¹³ thus the ORDC largely ignores (and fails to price) the effects of the uncertainties (including not only wind output but also solar output, load, thermal outages, interchange) that could cause the PJM Region to fall below the MRR.
- The current ORDC design also includes a contingent step for procuring reserves above the MRR that is triggered only when PJM enters “Conservative Operations” that entail atypical restrictions on market participants’ use of the bulk power system, which thus fails to price reserves needed on an ongoing basis to meet documented uncertainties.¹⁴

made.” (citation omitted); *Office of Consumers Couns. v. FERC*, 783 F.2d 206, 227 (D.C. Cir. 1986) (ruling that the Commission’s factual conclusions must be supported by substantial evidence demonstrating that reasoned consideration was given to each of the pertinent factors underlying agency’s decision).

¹² See *PJM Interconnection, L.L.C.*, Enhanced Price Formation in Reserve Markets of PJM Interconnection, L.L.C., Docket No. ER19-1486-000, at 56 (Mar. 29, 2019) (“March 29 Filing”); *id.*, Attachment F (Affidavit of Dr. Patricio Rocha Garrido on Behalf of PJM Interconnection, L.L.C.) ¶¶ 8-11 (“Rocha Garrido Aff.”).

¹³ See March 29 Filing at 35-37; *PJM Interconnection, L.L.C.*, Answer of PJM Interconnection, L.L.C., Docket Nos. ER19-1486-000, et al., Attachment D (Reply Affidavit of Dr. Patricio Rocha Garrido on Behalf of PJM Interconnection, L.L.C.) ¶ 27, Table 2 (“Rocha Garrido Reply Aff.”) (June 21, 2019) (“PJM Answer”).

¹⁴ See March 29 Filing at 25; PJM Answer at 14.

- PJM operators are regularly taking out-of-market action to bias dispatch schedules to mitigate load and resource forecast uncertainties and thus in part effectively substitute for reserves, but those actions are not reflected in market prices.¹⁵
- Further exemplifying the shortcomings in the current market mechanism for procuring and compensating reserves, a large share of the revenue for Synchronized Reserves comes not from the market, but from out-of-market uplift.

In response, the May 2020 Order appropriately found that “[PJM’s] reserve market is systematically failing to acquire within-market the reserves necessary to operate its system reliably, to yield market prices that reasonably reflect the marginal cost of procuring necessary reserves, and to send appropriate price signals for efficient resource investment.”¹⁶ The Commission recognized that the “existing ORDCs, and the various reserve requirements on which they are based, fail to reflect the universe and magnitude of the operational uncertainties with which PJM operators must contend.”¹⁷ The Commission found the “data demonstrating that PJM operators are routinely biasing market software inputs by such large quantities because, in their judgment and experience, the need for reserves to operate the PJM system reliably will far exceed the contingency-based MRRs” was “strong evidence of a flaw in the existing reserve market design.”¹⁸

The May 2020 Order also cited “[d]ata showing the average aggregated error, in MW, across the common categories—load forecast error, forced outages, solar forecast error, and wind forecast error—demonstrates that PJM faces among the highest quantity of operational uncertainty among RTOs/ISOs,” but because (unlike some other RTOs) PJM

¹⁵ See March 29 Filing at 104.

¹⁶ May 2020 Order at P 74.

¹⁷ *Id.* at P 76.

¹⁸ *Id.* at P 77.

does not employ a ramping product, “PJM faces significant operational uncertainty that is not currently reflected within its MRRs, and that PJM operators must address through biasing and other out-of-market actions.”¹⁹ In this regard, the Commission in the May 2020 Order found that “the fact that PJM operators regularly need to procure thousands of additional MW of reserves—quantities upward of 50-100% of the MRRs—is evidence of a market design that is unjust and unreasonable.”²⁰

The Commission also found that “nearly half (46.2%) of the revenue for the provision of Synchronized Reserves in PJM is paid through out-of-market, pay-as-bid uplift payments, rather than through market clearing prices.”²¹

In sum, the Commission in the May 2020 Order found that “market clearing prices should reasonably reflect the marginal cost of providing necessary reserves, and the record evidence in this proceeding indicates that PJM’s existing market design is falling short of that standard.”²² Even while recognizing that not all operator actions must be captured in market prices, the Commission found “PJM has adequately demonstrated that the shortcomings of its reserve market pricing are substantial and warrant revision.”²³ The November 2020 Order affirmed these findings, and elaborated on the grounds for denying all requests for rehearing—including the rehearing arguments regarding the ORDCs and Reserve Penalty Factors.²⁴

¹⁹ *Id.* at P 79.

²⁰ *Id.* at P 80.

²¹ *Id.* at P 82.

²² *Id.* at P 83.

²³ *Id.*

²⁴ *See* November 2020 Order at PP 6, 57-62.

The Remand Order reaches an opposite conclusion. However, as shown below, the factors and evidence the Remand Order cites do not negate the bases the May 2020 Order relied upon to find that the current ORDCs are unjust and unreasonable. The Commission should correct these errors on rehearing,²⁵ or at a minimum set this matter for hearing and settlement proceedings based on a threshold finding that the current ORDCs and Reserve Penalty Factors may be producing unjust and unreasonable results and warrant further investigation.

First, the Remand Order does not address²⁶ PJM's extensive showing and discussion of the forecast uncertainties that drive the need for reserves.²⁷ The Remand Order also does not address a key fact cited by the Commission's prior orders: those well-documented uncertainties can substantially exceed the maximum reserve level of the current ORDC.²⁸ In other words, forecast errors in load, variable resource performance,

²⁵ See *Petro Star Inc. v. FERC*, 835 F.3d 97, 102-03 (D.C. Cir. 2016) (“[T]he Commission’s failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious. Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *La. Pub. Serv. Comm’n v. FERC*, 184 F.3d 892, 897 (1999) (“[T]he Commission’s 180 degree turn away from [its previous decision] was arbitrary and capricious. For the agency to reverse its position in the face of a precedent it has not persuasively distinguished is quintessentially arbitrary and capricious.”).

²⁶ See 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Petro Star*, 835 F.3d at 102-03 (“Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)).

²⁷ See March 29 Filing at 6-7, 25-26, 33-39; Rocha Garrido Aff. ¶¶ 8-16; March 29 Filing, Attachment E (Affidavit of Christopher Pilog on Behalf of PJM Interconnection, L.L.C.) ¶¶ 8-20 (“Pilog Aff.”); March 29 Filing, Attachment C, Exhibit 1 (Hogan and Pope ORDC Report) at 13; PJM Answer at 8-16; PJM Answer, Attachment A (Reply Affidavit of Drs. William W. Hogan and Susan L. Pope on Behalf of PJM Interconnection, L.L.C.) ¶¶ 3-4; Rocha Garrido Reply Aff. ¶¶ 2-13.

²⁸ See May 2020 Order at P 79; November 2020 Order at P 39.

and interchange could under certain confluences exceed the level of reserves that PJM is allowed to procure in the reserve market under the current ORDC.

Second, by not addressing the critical role of forecast uncertainty, the Remand Order incorrectly evaluates the relevance of the operator dispatch bias that PJM documented in the record. PJM's evidence stressed that its operators face the very same forecast uncertainties in load and resources that reserves are intended to address, and specifically showed, through affidavit testimony, that part of the reason dispatchers increase the demand component in their scheduling actions is an out-of-market means to mitigate the forecast uncertainties beyond whatever mitigation the reserve market may provide.²⁹ The Remand Order dismisses this evidence, based largely on a criticism that it focuses only on "positive" bias, i.e., when dispatchers bias demand level up, without also considering that demand may sometimes be biased down.³⁰ This response ignores the point of the evidence. When operators over-forecast system needs, the system does not require additional reserves, and an over-forecast, all else equal, can happen as often as an under-forecast. The issue *in this case* is what happens when operators *do* under-forecast system needs. PJM's evidence included explicit affidavit testimony from PJM's Director of dispatch that dispatch operators' upward bias acts as a functional alternative to reserves—addressing and mitigating the same forecast uncertainties—and that such upward bias is frequent and can be extensive.³¹ Those facts, coupled with PJM's showing that there is a great deal of forecast uncertainty that the current ORDC cannot encompass, makes a strong

²⁹ Rocha Garrido Aff. ¶¶ 8-16; Pulong Aff. ¶¶ 8-12.

³⁰ Remand Order at P 38.

³¹ Pulong Aff. ¶¶ 8-20.

case, as the May 2020 Order found,³² that—when PJM does need reserves—it is relying to a notable degree on an out-of-market supplement to the unduly limited in-market procurement tool (i.e., the ORDCs). Moreover, the November 2020 Order directly addressed and refuted the claim that substantial instances of downward bias mean the ORDCs are not unjust and unreasonable.³³ As the November 2020 Order correctly explained, “[t]he downward and upward biasing occur during different intervals;” and the relevant fact is that “during many other intervals, PJM’s operators must bias demand upward to prepare for numerous, sizable operational uncertainties not reflected in PJM’s current contingency-based ORDCs.”³⁴

Third, the Remand Order unduly dismisses³⁵ PJM’s showing that it is possible that in 29.1% of all five-minute intervals in 2018, PJM would have been short reserves absent the positive bias applied in the scheduling engines for those intervals.³⁶ PJM acknowledged this was a “worst-case scenario level of reserves because the original positive bias would have had to result in additional commitment recommendations from the IT [Security Constrained Economic Dispatch (“SCED”)] that the operator took action on.”³⁷ But where a focused analysis shows that absent application of bias, the system could have been short reserves in as many as 29.1% of the five-minute intervals, and that the average amount of increased demand applied in such cases was 1,471 MWs, that is still powerful evidence that positive bias seems to be needed to avoid reserve shortages to a

³² May 2020 Order at P 81.

³³ November 2020 Order at P 39.

³⁴ *Id.*

³⁵ Remand Order at P 39.

³⁶ *See* Pilon Aff. ¶¶ 12-17.

³⁷ Pilon Aff. ¶ 16.

significant degree, even if that is something less than the very high frequency, and very large extent, shown in the 2018 analysis. As the November 2020 Order correctly observed on this same issue, even if there are times when PJM operators’ upward biasing of demand does not lead to additional unit commitments, “[t]he frequent use of biasing in large MW quantities is itself evidence of a problem as the market fundamentals are not providing sufficient reserves such that operators have to intervene to ensure reliability.”³⁸

The Remand Order thus errs in dismissing this evidence on the basis that PJM has not shown that the identified intervals led to an actual avoided reserve shortage—which would require that the reserve market in fact fail before it can be improved—and in failing to distinguish its own prior statements on this precise criticism.³⁹

Fourth, the Remand Order similarly begs the question when it opines that PJM’s reserve prices not covered by the current ORDC *should be* almost zero, because substantial reserves are provided by on-line units with unloaded capability. This ignores the question at hand, i.e., how to define and price *the demand* for reserves.⁴⁰ The Commission cannot mandate a supply portfolio with unloaded reserve capability, and PJM does not have the luxury of assuming that supply when defining demand. The question is thus not what is a particular supplier’s incremental cost for reserves, but rather what is a reasonable *value to the system* of reserves. PJM’s ORDC, which carefully, and appropriately, ties the

³⁸ November 2020 Order at P 45.

³⁹ See *Petro Star*, 835 F.3d at 102-03 (“[T]he Commission’s failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious.” (citations and internal quotation marks omitted)).

⁴⁰ See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Petro Star*, 835 F.3d at 102-03 (“Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy*, 419 F.3d at 1198 (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)).

diminishing value of reserves to the diminishing level of forecast uncertainty, addresses the demand question at issue. By contrast, observing that some suppliers currently have low marginal costs of providing reserves fails to address the need for proper valuation of reserves. By shifting the focus to individual sellers' costs, the Remand Order seems to lose sight of the relevant question here—how best to define the demand for, and value of, reserves. The Commission did not take such a position in its many orders endorsing single-clearing price markets,⁴¹ or in its order accepting PJM's pre-existing ORDC.⁴² The Remand Order presents no reason for this focus on whether individual market participants might experience revenues above their low marginal costs in lieu of defining what constitutes a sound market design consistent with the Commission's prior clear guidance on just and reasonable price formation.

Fifth, the Remand Order rests on the unsteady footing of the Independent Market Monitor's ("IMM") insistence that reserves above the Maximum Reserve Requirement should have zero value.⁴³ But that view is belied by the current ORDC, which already procures reserves above the MRR.⁴⁴ And the IMM undermines the Commission's reliance on his argument because an essential component of the IMM's recommendation is to episodically shift the ORDC to a higher MRR.⁴⁵ In the IMM's approach, therefore,

⁴¹ See e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 195 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at PP 221-24, *reh'g denied in pertinent part*, 109 FERC ¶ 61,157, at PP 204-06 (2004); *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,013, at PP 34, 36 (2005); *New England Power Pool*, 100 FERC ¶ 61,287, at P 71 (2002); *Cent. Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062, at 61,223-24, *order on reh'g*, 88 FERC ¶ 61,138 (1999).

⁴² See *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057 (2012).

⁴³ Remand Order at P 41 (citing *PJM Interconnection, L.L.C.*, Protest of the Independent Market Monitor for PJM, Docket Nos. ER19-1486-000, et al., at 13-14 (May 15, 2019) ("IMM Protest")).

⁴⁴ March 29 Filing at 35-36.

⁴⁵ IMM Protest at 15-17.

reserves above the MRR have no value *until* you redefine the MRR on an ad hoc basis *to give them value*. The Remand Order never mentions this important corollary to the IMM statements it cites to justify a zero price for reserves above the current ORDC.⁴⁶

B. The Remand Order Erred in Reversing the Commission’s Earlier Findings that the Current Reserve Penalty Factor Is Unjust and Unreasonable.

The Remand Order erred by reversing the Commission’s prior findings that the existing \$850/MWh Reserve Penalty Factor is unjust and unreasonable—findings that the Commission had found to be supported by record substantial evidence.⁴⁷ In reversing its prior findings, the Commission failed to engage in reasoned decision-making.⁴⁸

1. The Remand Order erred in maintaining a reserve market design that prevents clearing prices from reflecting the marginal cost of reserves required to be procured to meet applicable minimum reserve requirements.

The Remand Order erred in not confronting PJM’s argument and evidence that the current \$850/MWh level of the Reserve Penalty Factor prevents reserve market clearing

⁴⁶ See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Office of Consumers Couns.*, 783 F.2d at 227 (ruling that the Commission’s factual conclusions must be supported by substantial evidence demonstrating that reasoned consideration was given to each of the pertinent factors underlying agency’s decision).

⁴⁷ See Remand Order at P 28.

⁴⁸ See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)) *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1303-04 (D.C. Cir. 1992) (for an agency order to pass scrutiny under the arbitrary and capricious standard, a reviewing court must be able to “discern a reasoned path . . . to the decision [the Commission] reached.”); see also *E. Tex. Elec. Coop. v. FERC*, 218 F.3d 750, 755 (D.C. Cir. 2000) (same); *Sithe/Independence Power Partners, L.P. v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999) (to meet the arbitrary and capricious standard, the Commission must demonstrate that it made a reasoned decision based on substantial evidence and its path of reasoning must be clear).

prices from reflecting the marginal cost of reserves necessary to meet applicable reserve requirements.⁴⁹

The dollar level of the Reserve Penalty Factor is an important component in ensuring reserve market clearing prices reflect the marginal cost of reserves necessary to meet applicable minimum reserve requirements. The Reserve Penalty Factor acts as a cap on how much the market is willing to pay for a specific reserve product to meet a minimum reserve requirement and avoid a reserve shortage. As such, the Reserve Penalty Factor limits the market clearing price for a reserve product. Accordingly, if the marginal cost of the reserves necessary to avoid a shortage exceeds the Reserve Penalty Factor, the market will not procure sufficient reserves, and absent out-of-market operator action, the market will allow a reserve shortage to occur.

PJM demonstrated that the current Reserve Penalty Factor is set too low to allow for transparent market prices and allow the market to procure reserves necessary to meet the applicable minimum reserve requirements,⁵⁰ given the Commission's requirement to

⁴⁹ See *Petro Star*, 835 F.3d at 102-03 (“[T]he Commission’s failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious. Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy*, 419 F.3d at 1198 (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)); *Process Gas Consumers Grp. v. FERC*, 866 F.2d 470, 474 (D.C. Cir. 1989) (“[W]e believe FERC failed to confront and address rationally petitioner’s concerns . . .”).

⁵⁰ March 29 Filing at 31 (“Simply, the market prices do not transparently reflect the operator actions—the operator was required to take an out-of-market action to maintain reserves, and that action resulted in uplift and associated cost-shifting.”); *id.*, Attachment D (Affidavit of Adam Keech on Behalf of PJM Interconnection, L.L.C.) ¶ 11 (“Keech Aff.”) (explaining that, where a resource’s opportunity cost of providing reserves instead of energy exceeds the \$850/MWh Reserve Penalty Factor, such “resource would not be re-dispatched for reserves by PJM’s [SCED] software and not assigned reserves. There are two possible outcomes from this: (1) system operators manually assign this unit reserves, reserve and energy prices do not reflect actual system conditions, and it is paid through uplift; or (2) there is an economic shortage because the physical capacity was available to meet the requirement but the willingness to pay for reserves (Reserve Penalty Factor) was set too low.”).

let the energy component of energy market prices rise to \$2,000/MWh.⁵¹ The record shows that, when there is reserve capacity available to meet the system's needs but at costs in excess of \$850/MWh, the Reserve Penalty Factor limits the ability for PJM's market clearing engines (i.e., SCED) to commit such resources for reserves.⁵² As a result, PJM operators must go out of market to commit resources to provide reserves because the market is not procuring a sufficient amount.

PJM argued that this was poor market design,⁵³ and the Reserve Penalty Factor must be set to a level where the market would preferentially assign reserves to resource with high opportunity costs (which are a function of the resource's costs and energy market prices) "as opposed to violating the minimum reserve requirement and degrading reliability."⁵⁴

Moreover, the Commission agreed with PJM, finding that "it is appropriate to align the Reserve Penalty Factor with the currently effective energy offer cap in order to improve the likelihood that market prices reflect the marginal cost of providing reserves and thus send appropriate price signals to Market Sellers."⁵⁵ The Remand Order's failure to respond to PJM's argument and explain its departure from its prior findings are reversible error.⁵⁶

⁵¹ See *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115 (2016), *order on reh'g & clarification*, Order No. 831-A, 161 FERC ¶ 61,156 (2017).

⁵² See March 29 Filing at 29; Keech Aff. ¶ 11.

⁵³ March 29 Filing at 28-34.

⁵⁴ Keech Aff. ¶ 10.

⁵⁵ May 2020 Order at P 155; *see also* November 2020 Order at P 81.

⁵⁶ See *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014); *Wis. Valley Improvement Co. v. FERC*, 236 F.3d 738, 748 (D.C. Cir. 2001); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970).

2. *The Remand Order erred in establishing a new standard for evaluating whether a market design is unjust and unreasonable.*

The Remand Order erred in establishing a new standard for finding market designs unjust and unreasonable—that the complained of problem must not just be apparent but also must occur with sufficient frequency to warrant correction.⁵⁷ The Commission’s adoption of such a standard is contrary to its prior practice and an about face from the November 2020 Order, which rejected application of such a standard.⁵⁸ Indeed, the Commission has made numerous findings that existing tariff provisions are unjust and unreasonable without evidence of the stated flaws occurring “with sufficient frequency.”⁵⁹ The Commission’s failure to acknowledge and justify such departure is unlawful.⁶⁰

As the Remand Order acknowledges, the Commission can rely on economic theory (in place of evidence) to support findings that tariff provisions are unjust and unreasonable,

⁵⁷ See Remand Order at PP 30 (“Here PJM does not provide support for concluding that its hypothetical situation has or is likely to occur *with sufficient frequency* that it renders PJM’s currently effective rules unjust and unreasonable.” (emphasis added)), 32 (“PJM failed to provide a factual record demonstrating that PJM operators *routinely* incur costs greater than \$850/MWh by dispatching emergency resources to maintain reserves.” (emphasis added)); see also *id.* at P 29 (“Thus, even when LMPs in the PJM region exceed \$1,000/MWh, there is *usually* reserve capacity available at a cost much less than \$1,000/MWh.” (emphasis added)).

⁵⁸ November 2020 Order at P 81 (“The Commission did not accept the \$2,000/MWh Reserve Penalty Factors on the basis of past frequency of a resource’s opportunity costs reaching \$2,000/MWh. Rather, the Commission found that, because resources can submit cost-based, price-setting offers as high as \$2,000/MWh, resources may face higher, but legitimate, opportunity costs on a more frequent basis going forward.”).

⁵⁹ See *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (D.C. Cir. 2010) (No “case law prevents the Commission from making findings based on ‘generic factual predictions’ derived from economic research and theory. Under our precedent, therefore, it was perfectly legitimate for the Commission to base its findings about the benefits of marginal loss charges on basic economic theory, given that it explained and applied the relevant economic principles in a reasonable manner.” (citation omitted)); see also, e.g., *Enable Gas Transmission, LLC*, 152 FERC ¶ 61,052, at P 66 (2015) (Acting under section 5 of the Natural Gas Act, 15 U.S.C. § 717d, the Commission imposed a tariff change “relying on the straightforward economic prediction that exposing pipelines, including Enable, to financial loss when routine maintenance interrupts primary firm service will provide the pipeline an incentive to exercise the greatest possible care to minimize outages and thus maximize the reliability of that service.”).

⁶⁰ See, e.g., 5 U.S.C. § 706(2)(A); *W. Deptford Energy*, 766 F.3d at 20; *Wis. Valley Improvement Co.*, 236 F.3d at 748; *Greater Boston Television*, 444 F.2d at 852.

but only where such theory is based on “reasonable economic propositions.”⁶¹ The Remand Order erroneously appears to assert that PJM did not present evidence that resources’ opportunity costs would exceed the \$850/MWh Reserve Penalty Factor “with sufficient frequency” to make PJM’s contention based on a “reasonable economic proposition.”⁶² The summary reversal of this point is not the product of reasoned decision-making. PJM demonstrated, both with economic theory and substantial evidence, that the \$850/MWh Reserve Penalty Factor could preclude the market from procuring reserves when the opportunity cost of resources capable of providing the next increment of reserve is greater than \$850/MWh,⁶³ thereby requiring out-of-market actions by PJM operators to maintain reliability.⁶⁴ The Commission recognized that this happens—just not often enough to require correction.⁶⁵ However, the frequency of an event does not affect whether such event is a “reasonable economic proposition” on which a valid economic theory can be based. The fact of the matter is there is a significant disconnect between the energy market offer cap of \$2,000/MWh and the \$850/MWh Reserve Penalty Factor.

⁶¹ Remand Order at P 30 (quoting *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 65 (D.C. Cir. 2014)).

⁶² Remand Order at P 30.

⁶³ March 29 Filing at 8, 28-34; *id.*, Attachment C, Exhibit 1 (Hogan and Pope ORDC Report) at 3 (“Implementation of the existing design, especially given changing operating conditions, yields energy and operating reserve prices in PJM that do not align with economic principles. The prices of incremental reserves and energy can deviate from incremental cost and are not consistent with the implications of first principles for determining the value of operating reserves when supply is constrained.”); PJM Answer at 31-33.

⁶⁴ *See, e.g.*, March 29 Filing at 31; Keech Aff. ¶ 11.

⁶⁵ *See* Remand Order at P 32 (“PJM failed to provide a factual record demonstrating that PJM operators routinely incur costs greater than \$850/MWh by dispatching emergency resources to maintain reserves.”).

3. *The Remand Order failed to address extensive Commission policy and precedent favoring transparent market prices. Its departure and failure to reconcile its Remand Order with those precedents does not constitute reasoned decision-making and creates considerable policy uncertainty going forward.*

The Remand Order recognized that PJM’s reserve market prices will not reflect the marginal value of reserves when the opportunity cost of the next increment of reserve exceeds the \$850/MWh Reserve Penalty Factor.⁶⁶ But, the Remand Order found this is not likely to occur with sufficient frequency to render than Reserve Penalty Factor level unjust and unreasonable.⁶⁷ However, the Commission failed to reconcile this determination with its policy and precedent in favor of transparent market prices, or justify its departure from such policy and precedent.⁶⁸

PJM explained in its initial filing⁶⁹ that the Commission has previously found that “the costs of resources procured to alleviate shortages should be reflected in transparent market prices whenever possible” and that “[p]ayments made only to individual resources and recovered in uplift fail to send clear market signals.”⁷⁰ In Order No. 719, the Commission found that rules that “do not allow for prices to rise sufficiently during an operating reserve shortage to allow supply to meet demand are unjust, unreasonable, and may be unduly discriminatory,” because they “may not produce prices that accurately

⁶⁶ See Remand Order at PP 29-30.

⁶⁷ See Remand Order at P 30.

⁶⁸ See, e.g., 5 U.S.C. § 706(2)(A); *W. Deptford Energy*, 766 F.3d at 20; *Wis. Valley Improvement Co.*, 236 F.3d at 748; *Greater Boston Television*, 444 F.2d at 852.

⁶⁹ See March 29 Filing at 32-34.

⁷⁰ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057, at P 63.

reflect the value of energy.”⁷¹ PJM demonstrated that the current Reserve Penalty Factor is set too low to allow for transparent market prices and allow the market procure reserves necessary to meet the applicable minimum reserve requirements.⁷² The Remand Order’s failure to reconcile its decision with precedent was error.

Further, the Remand Order failed to reconcile its findings with past precedent preferring price formation as a way to reduce uplift costs.⁷³ PJM explained that its proposal is consistent with the Commission’s price formation efforts because it will improve price formation by reducing how much operators will need to acquire additional reserves at higher costs than the current reserve market design allows to be reflected in price.⁷⁴ The Remand Order, however, failed to recognize the inconsistency between PJM’s reserve market shortcomings and the Commission’s previously stated goals. The Remand Order asserted that “while the Commission recognized in . . . Order No. 844, that ‘operator-initiated commitments . . . can affect energy and ancillary services prices and can result in uplift,’ . . . [t]he Commission did not establish an across-the-board policy that market rules will be deemed unjust and unreasonable if they permit uplift.”⁷⁵ While true that the Commission has not established a general policy against uplift, the Commission has articulated a preference for market design that exemplifies price formation principles and minimizes uplift costs. For example, in Order No. 719, the Commission explained that

⁷¹ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071, at P 192 (2008), *as amended*, 126 FERC ¶ 61,261, *order on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059, *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

⁷² March 29 Filing at 31; Keech Aff. ¶ 11.

⁷³ *See W. Deptford Energy*, 766 F.3d at 20.

⁷⁴ March 29 Filing at 28-34.

⁷⁵ Remand Order at P 43 (citing *Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 844, 163 FERC ¶ 61,041, at P 99 (2018)).

“the costs of resources procured to alleviate shortages should be reflected in transparent market prices whenever possible,” and that “[p]ayments made only to individual resources and recovered in uplift fail to send clear market signals.”⁷⁶

The Remand Order did not adequately explain why rejecting PJM’s proposal was a permissible departure from its long-standing price formation policies, which the Commission articulated and expressly relied upon in the May 2020 Order.⁷⁷

4. *The Remand Order erred in failing to correct the misalignment between the level of the Reserve Penalty Factor and Fixed Offer Prices for Emergency Products.*

The Remand Order erred in finding that, because the current tariff prices the costs of four actions operators may take to maintain minimum reserve requirements⁷⁸ at stated levels above the existing \$850/MWh Reserve Penalty Factor (or as multiples of the Reserve Penalty Factor), that current design does not show the \$850/MWh Reserve Penalty Factor is unjust and unreasonable.⁷⁹ As shown below, this finding is not the product of reasoned decision-making.⁸⁰

⁷⁶ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057, at P 63; see also *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators*, Staff Analysis of Uplift in RTO and ISO Markets, Docket No. AD14-14-000, at 21 (August 21, 2014) (“Failure to identify, make transparent, and price [potential causes of uplift] can result in uplift credits that undermine the effectiveness of market signals and efficient system utilization and mute investment signals.”).

⁷⁷ See *Wis. Valley Improvement Co.*, 236 F.3d at 748; *Greater Boston Television*, 444 F.2d at 852.

⁷⁸ Specifically, operators may deploy: (1) 30-minute emergency and pre-emergency demand response; (2) one-hour emergency and pre-emergency demand response; (3) two-hour emergency and pre-emergency demand response; and (4) emergency energy from neighboring regions. See March 29 Filing at 49-50.

⁷⁹ See Remand Order at P 31 (“None of these actions show that PJM’s existing tariff is unjust and unreasonable because, as PJM explains in its filing, it sets the prices of emergency and pre-emergency demand response and emergency energy purchases at amounts that exceed the Reserve Penalty Factors by design.”).

⁸⁰ See *Wis. Valley Improvement Co.*, 236 F.3d at 748; *Greater Boston Television*, 444 F.2d at 852.

Indeed, the current misalignment of prices among different actions available to maintain reserve requirements is the point of PJM’s argument. PJM explained that its dispatchers will deploy pre-emergency and emergency load management reductions, also costing well above \$1,000/MWh, to maintain the minimum reserves required in accordance with NERC standards.⁸¹ That all those energy market actions (plus committing generation on bids up to \$2,000/MWh) are available to maintain reserve levels and avoid shortage, and each of those actions is priced higher than the Reserve Penalty Factor—which is supposed to represent the maximum price the market is willing to pay for a specific reserve product to meet a minimum reserve requirement and avoid a reserve shortage—demonstrates that there is a misalignment within the tariff that needs to be fixed.⁸² The Remand Order improperly avoided this argument.

C. In Order to Balance Timing Issues Associated with the Already-Delayed Capacity Auction and the Commission’s Prior Embrace of a Forward-Looking Energy and Ancillary Services Offset, the Commission Should Grant Rehearing of Its Directive to Restore the Historical Energy and Ancillary Services Offset for PJM’s Capacity Market and Apply It Prospectively Beginning with the RPM Auction Associated with the 2024/2025 Delivery Year.

The Remand Order erred in finding that its decision to reverse findings related to the ORDCs and Reserve Penalty Factor meant “there is insufficient evidence” to find that

⁸¹ See March 29 Filing at 49; see also Keech Aff. ¶ 12 (“While PJM does not have generation offers that meet this level every day, offers for emergency and pre-emergency demand response reach \$1,849/MWh every day. Additionally, emergency energy can be purchased from neighboring areas if needed with a cost exceeding \$2,000/MWh. PJM system operators will take these emergency actions any time they are needed to maintain Primary and/or Synchronized Reserves. Even though the probability of needing to take these actions on any given day is low and decreases with increasing levels of reserves, it is nonetheless present every day and therefore establishes the lowest maximum willingness to pay for reserves at \$2,000/MWh.”).

⁸² Cf. *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 664 (D.C. Cir. 2017) (“The Commission could find that PJM’s proposed capacity market rules were just and reasonable under section 205 even though they rendered some rules in PJM’s energy market unjust and unreasonable. Effects on other tariff provisions are not dispositive.”).

the reserve market changes will affect energy and ancillary services revenues “to such an extent that the backward-looking offset does not reasonably reflect future EAS revenues and is therefore unjust and unreasonable.”⁸³ Contrary to this finding, however, the Remand Order did reaffirm significant changes to PJM’s reserve market—changes that will result in, for example, increases in revenues: (1) for Synchronized Reserve, with the elimination of the uncompensated Tier 1 product; (2) for the new day-ahead Synchronized Reserve product; (3) for the new real-time Secondary Reserve product; and (4) from removing price capping provisions when system conditions are tight. Those changes sufficiently increase reserve revenues to continue to support the imposition of a forward-looking EAS offset used in PJM’s capacity market. In fact, continuing to utilize a historical EAS offset in light of such increases to reserve revenues will, over the long run, result in an underestimated EAS offset value and may ultimately yield an inaccurate net Cost of New Entry and the Avoidable Cost Rate used in the Reliability Pricing Model Auctions (“RPM Auctions”).

Notwithstanding, PJM requests that, to the extent the Commission grants rehearing and allows for re-application of a forward-looking EAS offset, the Commission direct such application to start with the 2024/2025 Base Residual Auction (assuming a Commission grant of rehearing by June 24, 2022). As detailed in the compliance filing submitted concurrent with this request for rehearing, PJM proposes to hold the 2023/2024 Base Residual Auction on June 8, 2022, eleven months before the start of the Delivery Year. Given that PJM is proposing an extremely condensed timeline (with proposed pre-auction auction timelines to post preliminary unit-specific EAS offsets as early as January 27, 2022) to be able to conduct the 2023/2024 Base Residual Auction on June 8, 2022, it would

⁸³ Remand Order at P 46.

not be realistic for the Commission to grant the requested rehearing and reinstate a forward-looking EAS offset in time for the 2023/2024 Base Residual Auction. This approach is reasonable because, for the 2023/2024 Delivery Year, there likely will be a not material difference between the historical and forward-looking EAS offsets as the forward markets have not had an opportunity to fully price in the changes reaffirmed by in the Remand Order. Accordingly, whether the EAS offset is historical or forward-looking in nature should not have a material effect on the 2023/2024 Base Residual Auction.

Therefore, PJM requests the Commission to exercise its equitable discretion in granting this rehearing request and direct that application the forward-looking EAS offset would not apply to the 2023/2024 Base Residual Auction, but would restart for the 2024/2025 Base Residual Auction. This approach is reasonable because the 2023/2024 Base Residual Auction is already scheduled to occur less than a year before the start of the applicable Delivery Year and thus should not be delayed any further. Such an approach would help to balance the timing issues associated with the already-delayed Base Residual Auction with the Commission's prior support for a forward-looking EAS offset.

Accordingly, to avoid further delay of the 2024/2025 Base Residual Auction, PJM respectfully requests that the Commission grant rehearing, by separate order if necessary, on this issue by June 24, 2024, which is two weeks before the proposed deadline to post preliminary EAS offsets associated with the 2024/2025 Delivery Year. To the extent the Commission grants rehearing after June 24, 2022, PJM respectfully requests that the Commission direct that application of a forward-looking EAS offset start with the 2025/2026 Base Residual Auction.

III. STATEMENT OF ISSUES AND ERRORS

Consistent with Rules 203(a)(7) and 713(c) of the Commission's regulations, 18 C.F.R. §§ 385.203(a)(7), 385.713(c), PJM provides the following Statement of Issues and Errors:

Issue 1: The Remand Order erred in holding that there was not substantial evidence to find the current ORDCs unjust and unreasonable.

The Remand Order erred in holding that there was not substantial evidence to find the current ORDCs unjust and unreasonable.

See Administrative Procedure Act, 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Office of Consumers Couns.*, 783 F.2d at 227 (ruling that the Commission’s factual conclusions must be supported by substantial evidence demonstrating that reasoned consideration was given to each of the pertinent factors underlying agency’s decision).

Issue 2: The Remand Order never confronts PJM’s extensive showing and discussion of the forecast uncertainties that drive the need for reserves.

The Remand Order never confronts PJM’s extensive showing and discussion of the forecast uncertainties that drive the need for reserves.

See 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Petro Star*, 835 F.3d at 102-03 (“Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy*, 419 F.3d at 1198 (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)).

Issue 3: The Remand Order unduly dismisses PJM’s evidence of reliance on operator dispatch decisions to mitigate the current reserve market’s insufficiencies.

The Remand Order unduly dismisses PJM’s evidence of reliance on operator dispatch decisions to mitigate the current reserve market’s insufficiencies.

See Petro Star, 835 F.3d at 102-03 (“[T]he Commission’s failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious.” (citations and internal quotation marks omitted)).

Issue 4: The Remand Order erred in not addressing PJM’s contention that the ORDC should recognize the value to the system of reserve, and not just focus on the cost of supply.

The Remand Order erred in ignoring PJM’s contention that the ORDC should recognize the value to the system of reserve, and not just focus on the cost of supply.

See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Petro Star*, 835 F.3d at 102-03 (“Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy*, 419 F.3d at 1198 (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)).

Issue 5: While relying on the IMM’s statements, the Remand Order errs in omitting discussion of infirmities in the IMM’s position.

While relying the IMM’s statements, the Remand Order errs in omitting discussion of infirmities in the IMM’s position.

See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Office of Consumers Couns.*, 783 F.2d at 227 (ruling that the Commission’s factual conclusions must be supported by substantial evidence demonstrating that reasoned consideration was given to each of the pertinent factors underlying agency’s decision).

Issue 6: The Remand Order erred in maintaining a reserve market design that prevents clearing prices from reflecting the marginal cost of reserves required to be procured to meet applicable minimum reserve requirements.

The Remand Order erred in maintaining a reserve market design that prevents clearing prices from reflecting the marginal cost of reserves required to be procured to meet applicable minimum reserve requirements.

See, e.g., 5 U.S.C. § 706(2)(A); *Petro Star*, 835 F.3d at 102-03 (“[T]he Commission’s failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious. Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy LLC*, 419 F.3d at 1198 (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)); *Process Gas Consumers Grp.*, 866 F.2d at 474 (“[W]e believe FERC failed to confront and address rationally petitioner’s concerns . . .”).

Issue 7: The Remand Order Erred in establishing a new standard for evaluating whether a market design is unjust and unreasonable, without justifying its departure from prior practice.

The Remand Order erred in establishing a new standard for evaluating whether a market design is unjust and unreasonable, without justifying its departure from prior practice.

See, e.g., 5 U.S.C. § 706(2)(A); *W. Deptford Energy*, 766 F.3d at 20 (“It is textbook administrative law that an agency must provide a reasoned explanation for departing from precedent or treating similar situations differently.” (citations, internal quotation marks, and alterations omitted)); *Wis. Valley Improvement Co.*, 236 F.3d at 748 (“[A]n agency acts arbitrarily and capriciously when it abruptly departs from a position it previously held without satisfactorily explaining its reason for doing so.”); *Greater Boston Television*, 444 F.2d at 852 (an agency “must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored”).

Issue 8: The Remand Order failed to address policy and precedent favoring transparent market prices.

The Remand Order failed to address the Commission’s policy and precedent favoring transparent market prices.

See, e.g., 5 U.S.C. § 706(2)(A); *W. Deptford Energy*, 766 F.3d at 20 (“It is textbook administrative law that an agency must provide a reasoned

explanation for departing from precedent or treating similar situations differently.” (citations, internal quotation marks, and alterations omitted)); *Wis. Valley Improvement Co.*, 236 F.3d at 748 (“[A]n agency acts arbitrarily and capriciously when it abruptly departs from a position it previously held without satisfactorily explaining its reason for doing so.”); *Greater Boston Television*, 444 F.2d at 852 (an agency “must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored”).

Issue 9: The Remand Order erred in failing to correct the misalignment between the level of the Reserve Penalty Factor and Fixed Offer Prices for Emergency Products.

The Remand Order erred in failing to correct the misalignment between the level of the Reserve Penalty Factor and Fixed Offer Prices for Emergency Products.

See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Office of Consumers Couns.*, 783 F.2d at 227 (ruling that the Commission’s factual conclusions must be supported by substantial evidence demonstrating that reasoned consideration was given to each of the pertinent factors underlying agency’s decision).

Issue 10: The Remand Order erred in finding that there is insufficient evidence to find the backward-looking EAS offset is unjust and unreasonable.

The Remand Order erred in finding that there is insufficient evidence to find the backward-looking EAS offset is unjust and unreasonable.

See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Petro Star*, 835 F.3d at 102-03 (“Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy*, 419 F.3d at 1198 (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)).

Issue 11: The Remand Order erred in failing to reconcile the Remand Order with the May 2020 and November 2020 Orders.

The Remand Order erred in failing to reconcile the Remand Order with the May 2020 and November 2020 Orders.

See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Petro Star*, 835 F.3d at 102-03 (“Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy*, 419 F.3d at 1198 (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)).

Issue 12: The Remand Order erred in finding that there was not substantial evidence that the ORDCs and Reserve Penalty Factors are unjust and unreasonable on the very same record that the May 2020 and November 2020 Orders found contained substantial evidence that the ORDCs and Reserve Penalty Factors are unjust and unreasonable—all without adopting procedures to consider additional evidence.

The Remand Order erred in finding that there was not substantial evidence that the ORDCs and Reserve Penalty Factors are unjust and unreasonable on the very same record that the May 2020 and November 2020 Orders found contained substantial evidence that the ORDCs and Reserve Penalty Factors are unjust and unreasonable—all without adopting procedures to consider additional evidence.

See, e.g., 5 U.S.C. § 706(2)(A); *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (citation omitted)); *Petro Star*, 835 F.3d at 102-03 (“Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.” (citations and internal quotation marks omitted)); *PPL Wallingford Energy*, 419 F.3d at 1198 (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citation omitted)).

IV. CONCLUSION

PJM requests that the Commission grant rehearing of the Remand Order, as set forth above.

Respectfully submitted,

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January 21, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 21st day of January 2022.

/s/ Ryan J. Collins
Ryan J. Collins

**Attorney for
PJM Interconnection, L.L.C.**