

**PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED
MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112**

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

Essential Power OPP, LLC <i>et al.</i>)	
Complainants)	
)	
v.	)	Docket No. EL23-53-000
)	
PJM Interconnection, L.L.C.)	
Respondent)	

**ANSWER, MOTION TO DISMISS OR SUMMARILY DISPOSE COMPLAINT,
AND REQUEST FOR CONFIDENTIAL TREATMENT OF
PJM INTERCONNECTION, L.L.C.**

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In accordance with Rules 212, 213 and 217 of the Commission’s Rules of Practice and Procedure,¹ and the Notice of Extension of Time issued on April 21, 2023, PJM Interconnection, L.L.C. (PJM) submits this Answer to the Complaint filed by a group of Complainants calling themselves the “Nautilus Entities.”² Complainants own or operate natural gas-fired generation facilities located in Maryland and New Jersey.

Complainants, unlike other generators across PJM, failed to meet their obligations as Capacity Resources to respond to Emergency Actions declared by PJM during Winter Storm Elliott.³ As required by the PJM Tariff and Operating Agreement (OA), Complainants were

¹ 18 C.F.R. §§ 385.212, 213 & 217 (2023).

² See Essential Power OPP, LLC, *et al.*, Complaint of Nautilus Entities, Docket No. EL23-53-000 (March 31, 2023) (Complaint). Complainants are Essential Power OPP, LLC (OPP), Essential Power Rock Springs, LLC (Rock Springs), and Lakewood Cogeneration, L.P. (Lakewood) (collectively, Nautilus Entities or Complainants).

³ Winter Storm Elliott was an unusually severe winter storm that struck the PJM Region between December 23 and 24, 2022. Winter Storm Elliott presented extraordinary reliability challenges by causing an extremely rapid drop in temperatures at a time of record-breaking high holiday loads and widespread performance failure by Capacity Resources. See PJM, *Winter Storm Elliott Info*, <https://www.pjm.com/markets-and-operations/winter-storm-elliott> (collecting PJM’s public statements addressing Winter Storm Elliott’s impact on PJM’s operations and markets).

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assessed Non-Performance Charges for each Performance Assessment Interval (PAI) in which they failed to perform during the two-day storm. Specifically, Complainants should be penalized with the Non-Performance Charges PJM has assessed because:

- Rock Springs’s time-to-start parameter (notification time plus start time) was so long that it could not have operated during the December 23 PAI and the first two hours of the December 24 PAI. Rock Springs otherwise failed to procure gas in the key periods.
- Both OPP and Lakewood either failed to procure gas in the key periods, or failed to operate because of emissions limitation issues in the key periods. Non-Performance Charges are proper.

For these straightforward alone, the Complaint fails.

Complainants nevertheless request “relief from the planned imposition, by PJM, of Non-Performance Charges on OPP and Rock Springs for certain Settlement Intervals during two [PAIs], one on December 23, 2022 . . . and one on December 24, 2022.”⁴

The Complaint has no merit. Putting aside the tortured interpretation of the tariff, the Complaint reduces to what is essentially a *post hoc* challenge to the prudence of PJM’s Emergency Actions during Winter Storm Elliott that fundamentally conflicts with the core purpose of the Capacity Performance reforms the Commission adopted in response to the 2014 Polar Vortex.⁵ Complainants seek to impose unsustainable interpretations that are both inconsistent with the plain

⁴ Complaint at 1.

⁵ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (Capacity Performance Order), *order denying clarification, granting reh’g in part, granting complaint in part & directing compliance filing*, 152 FERC ¶ 61,064 (2015) (July 22 Order), *order on reh’g & compliance*, 155 FERC ¶ 61,157 (2016) (Capacity Performance Rehearing and Compliance Order), *order on reh’g & compliance*, 155 FERC ¶ 61,260 (2016), *pet’n for rev. denied sub nom. Advanced Energy Mgmt. Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. 2017), *order on compliance*, Docket No. ER15-623-009 (delegated letter order issued Oct. 11, 2017), *order denying reh’g*, 162 FERC ¶ 61,047 (2018) (collectively, the Capacity Performance Orders).

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meaning of the text and contrary to the Commission’s goals under Capacity Performance. Complainants misread cherry-picked language in Manual 13⁶ to impose irrational constraints on PJM’s use of Emergency Actions that both defy Good Utility Practice and also squarely violate PJM’s Tariff and North American Electric Reliability Corporation (NERC) Reliability Standards. Moreover, Complainants’ after-the-fact excuses do not absolve their failure to perform during Winter Storm Elliot.

Winter Storm Elliott presented PJM with a series of unexpected and extraordinary reliability challenges. In the end, PJM avoided any mandatory curtailments of firm load and even managed to provide limited assistance to neighboring systems that were shedding load. PJM accomplished this despite equally unexpected and extraordinary performance failures by Complainants and other Capacity Resources. These failures could have had life and death consequences had events played out differently. As it was, PJM operators preserved reliability while contending with unprecedented difficulties and uncertainties that were exacerbated by Complainants’ non-performance. In short, *the lights stayed on* despite extremely stressed conditions brought about by Capacity Resources failing to meet their obligations.

Capacity Resources knowingly accept the risk of Non-Performance Charges when they accept substantial payments to perform as Capacity Resources. The Tariff was explicitly designed to give generators powerful incentives not to repeat the severe performance failures that occurred during the 2014 Polar Vortex.⁷

⁶ PJM Manual 13: Emergency Operations (Nov. 3, 2022), <https://www.pjm.com/-/media/documents/manuals/archive/m13/m13v86-emergency-operations-11-03-2022.ashx>. References to all PJM Manuals herein are to the versions in effect during Winter Storm Elliott.

⁷ See, e.g., Capacity Performance Order at P 158 (finding that PJM’s proposed Non-Performance charges would “provide incentive to capacity sellers to invest in and maintain their resources”); Capacity Performance Rehearing and Compliance Order at P 26 (“[W]e affirm our

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Section 10A of Tariff Attachment DD establishes straightforward expectations and consequences for the conduct of Capacity Resources during emergencies.⁸ PAIs are automatically triggered when a PJM-declared “Emergency Action is in effect.”⁹ The Tariff defines “Emergency Action” as “any action for locational or system-wide capacity shortages,”¹⁰ such as the capacity shortages during Winter Storm Elliott. A Capacity Performance Resource is “obligated to deliver energy . . . as scheduled and/or dispatched by the Office of Interconnection during [PAIs].”¹¹ If it “falls short of the expected performance” for “all or any part of a clock-hour during the emergency,” it is subject to a Non-Performance Charge that is used to fund bonus payments to Market Participants that fulfill or exceed their obligations.¹² In certain narrowly-defined circumstances, “Capacity Performance Resources that fail to meet this obligation” may be “excused pursuant to Tariff, Attachment DD, section 10A(d).”¹³

Complainants’ failure to perform throughout a two-day extreme weather emergency cannot be excused by claiming PJM’s Emergency Actions during Winter Storm Elliott were invalid, or by asserting there was no emergency, or that their performance was not actually needed to address that emergency.

finding that PJM showed that these revisions are needed to provide adequate incentives for resources to perform during the most critical periods of the delivery year.”).

⁸ See Tariff, Attach. DD, § 10A (Charges for Non-Performance and Credits for Performance).

⁹ *Id.* § 10A(a).

¹⁰ Tariff § 1 (Definitions).

¹¹ Tariff, Attach. DD, § 5A(a).

¹² *Id.* § 10A(a).

¹³ *Id.* § 5A(a).

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First, those decisions do not and cannot belong to Complainants. It is PJM’s core duty under the Operating Agreement to “[d]irect the operation” of the facilities in the PJM Region to “maintain” and “secure reliability and continuity of service and other advantages of pooling on a regional basis,” and that duty carries with it the discretion “necessary to manage, alleviate or end an Emergency.”¹⁴ Nothing in the Tariff contemplates second-guessing PJM’s operational decisions. The Commission cannot grant the Complaint without undermining the fundamental bargain that was struck in adoption of Capacity Performance. Moreover, the Complainants urge the Commission to become the Monday morning quarterback and super-operator of the grid, which are both roles the Commission has been careful to avoid in the past. The regulatory process will rapidly unwind with perpetual litigation, and reliability will be undermined, should the Commission choose to disregard the real-time flexibility Regional Transmission Operators (RTOs) must have to manage emergencies and substitute its judgment with the luxury of perfect hindsight. Moreover, given the Complaint’s criticism of PJM’s assistance to its neighbors, who were facing even more dire circumstances, granting the Complaint would also chill cooperation between neighboring systems in future emergencies.

Second, the Complaint misreads the Tariff as well as Manual 13. Complainants’ chief arguments turn on how certain Tariff requirements are interpreted. First, Complainants claim that the Tariff provides for a *post hoc* “needs” determination after PAIs occur to determine if the PJM operators correctly decided during the PAIs to schedule or not schedule a unit. Second they claim

¹⁴ OA, §§ 10.4(vi), (vii), (xvi), and (xx); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish Cnty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

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that units that were neither included in the Day-Ahead commitment nor the Reliability Assessment and Commitment (RAC) and were not subsequently contacted by PJM operators by telephone requesting them to run, should be considered to have been “not scheduled” by PJM and thus excused from Non-Performance Charges. Neither claim has merit.

The plain meaning of the Tariff language regarding dispatch decisions—and simple common sense—forecloses Complainants’ argument. The claim that a unit is “not scheduled” for the purposes of Capacity Performance unless it was actually scheduled to run based on its offer submittal, or individually *called on the telephone* by PJM operators and specifically asked if it can run, is nonsensical. It flies in the face of the express terms of the Tariff, which provide that during emergencies, operators may rely upon the “operating parameter limitations submitted in the resource’s offer.”¹⁵ Indeed, Non-Performance Charges are to be assessed under the Tariff when PJM does not schedule a unit to operate solely due to such operating parameter limitations. Complainant’s contorted reading would render meaningless the detailed information submittal obligations of the PJM Manuals requiring generators to update their status during emergencies.

Complainants’ arguments regarding Manual 13 are equally flawed. They assert that “Section 2.3.2 of Manual 13 on Emergency Operations requires that PJM curtail all non-firm exports before PJM implements Emergency Actions.”¹⁶ But that section plainly states that “PJM dispatchers may find it necessary to vary the order of application to achieve the best overall system reliability” and further explains that “it is unlikely that some Steps would be implemented” depending on various circumstances.¹⁷ The complainants simply ignore these caveats and try to

¹⁵ Tariff, Attach. DD, § 10A(d).

¹⁶ Complaint at 42.

¹⁷ Manual 13, § 2.3.2 at 30.

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transform Manual 13 into a rigid rule book that cannot be adapted to particular emergency circumstances. This position defies both the plain language of the Manual and its practical application. The curtailment language in Manual 13 cannot mean what Complainants claim, because their construction not only defies Good Utility Practice and common sense, but also ignores mutual assistance policies established by this Commission and NERC, and directly conflicts with numerous unambiguous directives in the Tariff, NERC reliability standards, and Manual 37.¹⁸

Third, Complainants' arguments that the PJM operators should have decided not to schedule their units based largely on economic considerations are also unavailing. Claims challenging dispatch decisions are expressly foreclosed under Operating Agreement Schedule 1, section 1.8.2.¹⁹ And even if the claim were not foreclosed, Complainants' contentions would still fail because they have not made out even a *prima facie* case. They fail to supply crucial data regarding their costs and ignore the fact that PJM was then engaged in emergency dispatch procedures.

Fourth, Complainants assert that "the Commission should give little to no deference to PJM's exercises of discretion in connection with the December 23 PAI[s] and the December 24 PAI[s], particularly its determinations on whether a given unit was 'needed' during a specific

¹⁸ See *infra* at IV.H.1 (citing, *inter alia*, Attachment 1 to NERC Standard EOP-011-1, § 2.3; NERC Standard IRO-014-3 R7; OA, Sch. 1, §§ 1.6.2(vi) & 1.7.11; Manual 37 § 1.1); Aff. of Michael Bryson, Ex. PJM-006 at P 14 n.29. Tariff Attachment K-Appendix incorporates the provisions of Schedule 1 of the Operating Agreement into the Tariff for ease of reference. See Tariff, Attach. K-App'x Preface, <https://agreements.pjm.com/oatt/4454>. Thus, for convenience, all references in this Answer to Schedule 1 of the OA should be understood to also refer to the corresponding identical provision in Attachment K-Appendix, and vice versa.

¹⁹ See OA, Sch. 1, § 1.8.2.

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Settlement Interval.”²⁰ This claim is wildly at odds with the fact that the “Good Utility Practice” standard, applicable to evaluating Emergency Actions, is highly deferential towards decisions made by system operators. Further, as would be expected, under the Commission’s decisions, it is during emergencies that the deference given to a utility’s decisions is at its zenith. If Complainants claim that the actions of operators during emergencies should be given “little or no deference” were accepted, operators would be incentivized during emergency conditions to avoid using otherwise available and effective tools that might seem more vulnerable to *post hoc* legal challenges. Complainants’ argument shortsightedly elevates legally “safer” measures to the ultimate detriment of reliability.

Fifth, Complainants assert that the levels of Non-Performance charges they are required to pay for having assumed (but failing to meet) their Capacity Performance obligations “bears no reasonable relationship to any costs or burdens caused by the Nautilus Entities, and therefore should be precluded by FERC.”²¹ This claim is patently unsustainable. The level of the Non-Performance Charges assigned to Complainants is consistent with the terms of the Tariff and, as such, is the amount Complainants may be charged under the filed rate doctrine. Further, the level of charges is fully consistent with Capacity Performance. In particular, the charges do not exceed the annual stop-loss cap level. Indeed, they do not even exceed the amount associated with the proposed monthly stop-loss that was removed from PJM’s original proposal because of concerns it would unduly undermine Capacity Performance by not being onerous enough.

²⁰ Complaint at 37, 45.

²¹ *Id.* at 52.

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PJM recognizes that there remain valid issues associated with the lack of synchronization between the natural gas nomination cycles and the real time nature of electric system dispatch. This lack of synchronization is not new and existed at the time these unit owners submitted their bids into the capacity base residual auction. PJM has raised the issue of improving gas/electric coordination in numerous dockets before the Commission.²² However, this case is not the forum to resolve those issues nor should the system operators be required to serve as fuel managers for approximately 800 gas, diesel, and coal-fired generators in the PJM region. The Commission has most recently, as part of its recommendations from the NERC/FERC investigation of Winter Storm Uri, assigned gas/electric coordination to NAESB. PJM has been actively participating in that process. The issues associated with nomination of gas supplies and its relationship to system dispatch are valid, but are also nationwide in scope. The Complaint should not be used as a vehicle to litigate those generic nationwide issues, which are beyond the scope of this proceeding

For each of the foregoing reasons, and others detailed below, the Commission should dismiss or summarily dispose of the Complaint as a matter of law.²³ To the extent any portion of the Complaint survives summary disposition, the Commission should deny the Complaint on the merits because it fails to meet the burden of proof under the Federal Power Act (FPA) and Commission precedent.²⁴ There is no need for the Commission to commence hearing procedures,

²² *See, e.g.*, PJM Interconnection, L.L.C., Comments and Responses of PJM Interconnection, L.L.C., Docket No. AD18-7-000 at 6-7 (Mar. 9, 2018) (listing proposed steps to enhance grid resilience including establishing “improved coordination and communication requirements between RTOs and Commission-jurisdictional natural gas pipelines”); PJM Interconnection, L.L.C., Initial Comments of PJM Interconnection, L.L.C. on the United States Department of Energy Proposed Rule, Docket No. RM18-1-000 at 29 (Oct. 23, 2017).

²³ *See infra* Part III.

²⁴ *See infra* Part IV.

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grant discovery rights, or take any other action beyond granting PJM's pending request for the initiation of global settlement judge procedures.

I. DOCUMENTS SUBMITTED

PJM is submitting the following exhibits to support this Answer.

1. Timeline of PJM's Actions Related to Winter Storm Elliott (Exhibit 1).
2. Affidavit of Donald Bielak (Exhibit 2): Mr. Bielak, Senior Manager – Dispatch at PJM, explains that PJM had learned the lessons of recent winter reliability events and was well prepared for Winter Storm Elliott. He discusses PJM's comprehensive winter preparedness procedures, the specific measures PJM undertook in advance of winter 2022/23 (including communications with neighboring systems and natural gas pipelines), and PJM's actions leading up to its declaration of emergency procedures on December 23, 2022. Mr. Bielak notes that, although the overwhelming majority of generators indicated compliance with PJM's winter preparedness guidelines, many failed to operate to their stated minimum operating temperatures. Mr. Bielak further discusses the lack of accurate data provided by generators concerning their fuel supply.
3. Affidavit of Joseph Mulhern (Exhibit 3): Mr. Mulhern, Lead Engineer, Market Coordination for PJM, discusses PJM's preparation of load forecasts for December 23 and December 24, 2023. Mr. Mulhern explains that PJM's load forecasts were reasonable given the information available to PJM at the time that they were made. PJM's load forecasts for December 23 and 24 were impacted by the unprecedented combination of rapidly plunging temperatures and record-shattering holiday loads during Winter Storm Elliott. Mr. Mulhern also notes that PJM's load forecasts are disconnected from any generator's ability to perform and do not dictate whether generators will be needed, should procure fuel, or will experience forced outages.
4. Affidavit of Christopher Piong (Exhibit 4): Mr. Piong, Senior Director, Operations Planning for PJM, discusses generators' poor performance during Winter Storm Elliott. Mr. Piong explains that this poor performance was a major factor contributing to PJM's need to institute Pre-Emergency Load Management Reduction Actions and Emergency Actions. Mr. Piong also discusses generators' additional failure to follow rules designed to keep PJM operators informed regarding their availability. As Mr. Piong explains, these failures made dispatch and interchange especially difficult and contributed to the uncertainty faced by PJM operators during Winter Storm Elliott.
5. Affidavit of Paul McGlynn (Exhibit 5): Mr. McGlynn, Executive Director, System Operations for PJM, discusses PJM's compliance with the PJM Tariff, OA, Manual 13, NERC reliability standards, and Good Utility Practice throughout Winter Storm Elliott. Mr. McGlynn notes that despite PJM's best efforts, many generators unexpectedly failed to perform when they were most needed. Mr. McGlynn further explains that PJM exercised reasonable judgment given the available facts and that PJM successfully

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avoided load shedding in PJM while providing as much help as practicable to neighboring systems that were shedding firm load.

6. Affidavit of Michael E. Bryson (Exhibit 6): Mr. Bryson, Senior Vice President, Operations for PJM addresses claims that PJM acted improperly during Winter Storm Elliott by exporting power to other Balancing Areas during periods in which PJM had declared Pre-Emergency Load Management Reduction Actions and Emergency Actions, including Maximum Generation Emergency and Emergency Load Management Reduction Actions. Mr. Bryson explains that PJM acted properly and complied with its obligations to support neighboring Balancing Authorities in crisis. Mr. Bryson further notes that curtailing all non-firm exports would not have enabled PJM to avoid taking pre-emergency and emergency actions. He warns that the Complaint's misreading of the Tariff, Operating Agreement, and Manual 13 would "impose irrational and counter-productive constraints on emergency operations."
7. Affidavit of Steven T. Naumann (Exhibit 7): Mr. Naumann, former Vice President, Transmission and NERC Policy for Exelon Business Services Company, discusses PJM's ability to navigate Winter Storm Elliott without shedding load despite the extremely high rates of generator outages and derates PJM operators faced. Mr. Naumann also notes that PJM's decision to maintain non-firm exports when it had the additional resources to do so complied with Good Utility Practice, especially given the rapidly-changing weather, high generator failure rate, inaccurate and untimely information provided by generators, the fact that neighboring regions did not have excess capacity to supply to PJM if additional PJM generation tripped, and the uncertain load level.
8. PJM Protective Order

II. REGULATORY AND FACTUAL BACKGROUND

A. The Capacity Performance Reforms Shifted Performance Risk to Generators from Load and Required Generators to Perform When Needed, With Very Limited Excuses, or Pay Stringent Non-Performance Charges

PJM's capacity market is designed to ensure reliability at just and reasonable rates. Following the Polar Vortex in January 2014, during which generating resources in the PJM Region performed very poorly, PJM proposed, and the Commission accepted, capacity market reforms to incentivize committed Capacity Resources to deliver the promised energy and reserves when PJM

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calls upon them in emergencies.²⁵ Central to these reforms was a new capacity product, the Capacity Performance Resource,²⁶ which must be “capable of sustained, predictable operation such that the resource will be reliably available to provide energy and reserves in an emergency condition.”²⁷

To incent Capacity Performance Resources to deliver the capacity and reliability they are paid to provide, the Tariff provides that in emergency conditions underperforming Capacity Resources face stringent Non-Performance Charges and over-performing resources earn Bonus Payments.²⁸ The Commission found that Non-Performance Charges would “act as a strong incentive for performance,”²⁹ explaining that “if and to the extent [a Capacity Resource] fails to perform during an emergency, when it is most needed, it is appropriate that the compensation for that resource be reduced and possibly entirely forfeited.”³⁰

There are only two excuses from Non-Performance Charges, and they are “strictly circumscribed.”³¹ Specifically, a resource’s performance shortfall may be excused only if the resource (1) “was unavailable during such Performance Assessment Interval solely because the

²⁵ See *supra* note **Error! Bookmark not defined.** (listing capacity performance orders). Other regions impacted by the 2014 Polar Vortex contemporaneously enacted similar reforms, most notably the ISO New England “Pay for Performance” reforms. See *ISO New Eng., Inc.*, 147 FERC ¶ 61,172 (2014), *reh’g denied*, 153 FERC ¶ 61,223 (2015).

²⁶ This defined term has become superfluous because all Capacity Resources are subject to the Capacity Performance penalty and bonus payment structure.

²⁷ Capacity Performance Order, 151 FERC ¶ 61,208, at P 28.

²⁸ The details for applying and determining Non-Performance Charges and bonus payments are set forth in Tariff Attachment DD, section 10A. Bonus payments are also available to energy-only resources.

²⁹ Capacity Performance Rehearing and Compliance Order, 155 FERC ¶ 61,157 at P 72.

³⁰ Capacity Performance Order, 151 FERC ¶ 61,208, at P 29.

³¹ *Id.* P 167.

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resource on which such Capacity Resource . . . is based was on a Generator Planned Outage or Generator Maintenance Outage approved by [PJM]” or (2) “was not scheduled to operate by [PJM], or was online but was scheduled down, by [PJM], based on a determination by [PJM] that such scheduling action was appropriate to the security-constrained economic dispatch of the PJM Region.”³²

There is also a crucial caveat to the second exception. Attachment DD further provides that “a resource shall be assessed Non-Performance Charges to the extent it “otherwise was needed and would have been scheduled by [PJM] to perform, but was not scheduled to operate, or was scheduled down, solely due to: (i) any operating parameter limitations submitted in the resource’s offer, or (ii) the seller’s submission of a market-based offer higher than its cost-based offer.”³³ The Capacity Market Seller has thus placed limitations on the availability of the resource, thereby reducing PJM’s ability to deploy the resource to help alleviate an emergency. Any shortfall in Actual Performance below Expected Performance that would have been provided *but for* the seller’s economic choice is assessed Non-Performance Charges, regardless of whether that choice is reflected in a seller-specified parameter limitation³⁴ or in a market-based offer. As the U.S. Court of Appeals for the D.C. Circuit observed, “the Commission concluded that it is reasonable to penalize a resource for failing to operate outside of its parameter limitations. It explained that

³² Tariff, Attach. DD, § 10A(d).

³³ *Id.*

³⁴ *See, e.g.*, Answer of PJM Interconnection, L.L.C., Docket No. ER15-623, at 70 (Feb. 13, 2015) (“[P]hysical resource limitations are a design and economic choice by the resource provider. Other resource providers may have made a choice to install a more flexible or robust design. Resource providers should be exposed to the consequences of those economic design choices. When they are, the result over time will be more flexible and better performing resources—because project developers will see that better performing resources end up with more capacity revenues.”).

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‘parameter limits should not be viewed as a permanent entitlement to under-perform. Instead, those limits should be exposed to financial and market consequences.’³⁵

In other words, the Capacity Performance Tariff provision holds “resources with restrictive operating limits to the same standards as resources with fewer limitations.”³⁶ This equivalent treatment makes sense, as “a resource that is unable to produce energy or provide operating reserves during Performance Assessment [Intervals] because of parameter limitations provides less capacity value to customers than a resource that is able to perform during these [intervals].”³⁷ As a result, “a resource that fails to perform because of parameter limitations [may] receive less net capacity revenue than a performing resource.”³⁸

Due to the very limited excuses from Non-Performance Charges, Capacity Market Sellers are responsible for ensuring resource performance, and thus “bear the burden of delivering on their capacity obligation.”³⁹ As a result, when it comes to the issue of fuel procurement, “[a] natural gas generator is held responsible for arranging sufficient natural gas deliveries despite pipeline

³⁵ *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 674 (D.C. Cir. 2017) (*AEMA*); *see* Capacity Performance Order, 151 FERC ¶ 61,208 at P 45 (“Without more stringent penalties, PJM has shown there is little incentive for a seller to make capital improvements, or increase its operating maintenance for the purpose of enhancing the availability of its unit during emergency conditions”).

³⁶ *AEMA*, 860 F.3d at 674.

³⁷ Capacity Performance Order, 151 FERC ¶ 61,208 at P 441; *see* Capacity Performance Rehearing and Compliance Order, 155 FERC ¶ 61,157 at P 106 (“[I]n the capacity market, if PJM does not schedule that resource due to its parameter limits, then PJM applies a Non-Performance Charge since the resource was not available pursuant to its capacity obligation. Resources therefore run a risk in including parameter limitations in their energy market offers, and are encouraged to maximize their flexibility to perform consistent with the new capacity obligation.”).

³⁸ Capacity Performance Order, 151 FERC ¶ 61,208 at P 441.

³⁹ Capacity Performance Rehearing and Compliance Order, 155 FERC ¶ 61,157 at P 110.

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outages and this same principle should apply to all such outages.”⁴⁰ In this way, the Non-Performance Charge “holds capacity resources accountable for delivering on their capacity commitments”⁴¹ and “provide[s] incentive to capacity sellers to invest in and maintain their resources by tying capacity revenues more closely with real-time delivery of energy and reserves during emergency system conditions.”⁴²

Capacity Resources are not paid to simply exist; they are paid to be available to perform and serve PJM’s loads. Thus, Capacity Market Sellers should assume that their resources will be needed, at a minimum, any time the PJM Region is under a declared emergency for capacity shortages. If Capacity Market Sellers need to purchase natural gas and self-schedule to ensure that their Capacity Resources can be available when needed, then sellers of gas-fueled Capacity Resources should engage in such forward-looking behavior.⁴³

⁴⁰ *Id.* P 110.

⁴¹ *Id.* P 18.

⁴² Capacity Performance Order, 151 FERC ¶ 61,208 at P 158; *see also* Capacity Performance Rehearing and Compliance Order, 155 FERC ¶ 61,157 at P 88 (“Capacity sellers need to make the investment and maintenance decisions ahead of time to reduce the probability that they will consistently, and for prolonged periods, be unable to deliver energy during Performance Assessment Hours.”).

⁴³ Generators have recognized that the Capacity Performance rules require that “the generator must manage its fuel supply risks and ensure it is able to perform when called to do so by PJM.” *See* Answer of Direct Energy to PJM Interconnection, L.L.C.’s Motion for Leave to Answer, Docket No. ER19-664-000, at 3 (Feb. 14, 2019); *see also* Pilog Aff., Ex. PJM-004, at P 13 (“Resources also have the ability to avoid potential Non-Performance Changes by self-scheduling their resources in advance of potential pre-emergency or Emergency Actions resulting in PAIs. Accordingly, if a generating unit were concerned that it might not be able to respond in a timely fashion to a dispatch order during extreme weather conditions, but the unit could be brought on line over time to perform during a future PAI, the unit may propose an operating schedule and the PJM operators will attempt to accommodate their request. This is certainly not the behavior that Capacity Performance was intended to elicit, but it is an available strategy for minimizing the risk that units will not meet their Capacity Performance commitments.”).

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Capacity Performance also offers a carrot to perform, in addition to the Non-Performance Charge stick. Resources that over-perform receive “bonus” payments,⁴⁴ “provid[ing] the appropriate incentives for all resources to perform when they are needed most.”⁴⁵ Bonus payments are derived from the collected Non-Performance Charges.⁴⁶ The Commission found this “redistribution of capacity revenues from under-performing resources to over-performing resources provides the appropriate incentives for all resources to perform when they are most needed.”⁴⁷

The Non-Performance Charges and bonus payments are “a tariff-defined mechanism that establishes a transparent, operative framework to provide an incentive for resource reliability.”⁴⁸ They work in tandem toward the overarching goal of Capacity Performance: ensuring all Capacity Resources are available and providing energy or reserves when needed, while reallocating non-performance risk from consumers to capacity suppliers.⁴⁹ Stated differently, PJM’s Tariff rules

⁴⁴ See Tariff, Attach. DD, § 10A(g) (“Revenues collected from assessment of Non-Performance Charges for a Performance Assessment Interval shall be distributed to each Market Participant, whether or not such Market Participant committed a Capacity Resource or Locational UCAP for a Performance Assessment Interval, that provided energy or load reductions above the levels expected for such resource during such interval.”).

⁴⁵ Capacity Performance Order, 151 FERC ¶ 61,208, at P 182.

⁴⁶ See Tariff, Attach. DD, § 10A(g); see also Capacity Performance Order, 151 FERC ¶ 61,208, at P 182 (“Regarding PJM’s proposal to allocate Non-Performance Charge revenues to over-performing resources, we find PJM’s proposal to distribute these penalties to generators to be just and reasonable.”).

⁴⁷ Capacity Performance Order, 151 FERC ¶ 61,208, at P 182.

⁴⁸ *Id.* P 15.

⁴⁹ See, e.g., *id.* P 5 (“[A] resource adequacy construct that fails to provide adequate incentives for resource performance can threaten the reliable operation of PJM’s system and force consumers to pay for capacity without receiving commensurate reliability benefits”); Capacity Performance Rehearing and Compliance Order, 155 FERC ¶ 61,157 at P 27 (“PJM’s proposed revisions to the capacity market penalty structure reallocate a significant portion of this performance risk to capacity resource owners and operators.”); *id.* P 109 (citing *ISO New Eng.*

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penalizing under-performance and rewarding over-performance are designed so that customers get the reliability they pay for and generators' capacity revenues are tied "more closely with real-time delivery of energy and reserves during emergency system conditions."⁵⁰

B. PJM Maintains A Comprehensive Winter Preparedness Regime That Is Continually Refined In Response to Guidance from Reliability Regulators and Lessons Learned from Extreme Weather Events in PJM and Other Regions

The January 2014 Polar Vortex not only prompted the Capacity Performance market reforms described above, but also prompted PJM to develop and maintain a comprehensive program for addressing winter preparedness to reliably meet the needs for power and reserves on the PJM system.⁵¹

Through enhancements to its Tariff and Manuals, PJM has strengthened its winter preparedness program by defining clear generator preparedness expectations and requiring greater transparency from generators concerning their cold weather preparations. These enhancements are an on-going process. PJM updates its winter preparedness process in response to lessons learned from other serious winter events over the last decade, including Winter Storm Uri, which caused over two hundred deaths and as much as \$130 billion in economic losses in Texas alone.⁵²

Inc., 147 FERC ¶ 61,172, at P 71 (2014) (recognizing that each non-performance excuse "represent[s] a reallocation of nonperformance risk from capacity suppliers to consumers).

⁵⁰ Capacity Performance Order, 151 FERC ¶ 61,208 at P 158.

⁵¹ *See* Bielek Aff., Ex. PJM-002, at P 5.

⁵² *See, e.g.*, FERC - NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States at 9-10 (Nov. 2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>.

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1. PJM’s Winter Assessments

PJM prepares load forecasts—including the annual Winter Assessment—and shares the results with its stakeholders. As discussed in the Bielak Affidavit, the 2022/2023 Winter Assessment identified no reliability issues.⁵³ PJM also prepared a “high load” sensitivity study that similarly identified no “unexpected or uncontrollable issues.”⁵⁴ PJM thus appeared to be well-positioned to meet demand in extreme winter conditions.

2. Winter Preparation of Generating Units

PJM maintains robust procedures to ensure generators are aware of its winter preparedness expectations. A key requirement for generators is the “Cold Weather Preparation Guideline and Checklist” (Checklist) found in Attachment N to PJM Manual 14D.⁵⁵ Generators must verify each year that their represented resources have completed enumerated Checklist items (or substantially equivalent alternatives).⁵⁶ As noted in the Bielak Affidavit, almost every generator responded to PJM’s corresponding data requests, and only a small number indicated noncompliance.⁵⁷

PJM also issues all generation resources an annual data request to collect fuel switching capability, fuel supply and inventory, and emissions/environmental baseline information.⁵⁸ Generating Unit minimum operating temperatures are also validated annually as part of the PJM Cold Weather checklist.⁵⁹ During the winter season, PJM issues periodic data requests to all

⁵³ Bielak Aff. at P 6.

⁵⁴ *Id.*

⁵⁵ *Id.* P 11.

⁵⁶ *Id.* P 12.

⁵⁷ *Id.* P 13.

⁵⁸ *Id.* P 14.

⁵⁹ *Id.* P 15.

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thermal generation resources regarding fuel and non-fuel consumables used in power production.⁶⁰

An additional data request is issued annually to all generation resources to collect plant-specific data relative to cold weather operations.⁶¹ The Bielak Affidavit describes the additional measures PJM undertakes to ensure generators and other PJM members are aware of PJM's winter preparedness expectations.⁶²

3. Gas Industry Collaboration

PJM's winter preparedness also entails active engagement with the gas industry.⁶³ During the winter months, the PJM Gas Electric Coordination Team conducts weekly operational calls with every major interstate natural gas pipeline within the PJM service territory to assess mutual

⁶⁰ *Id.* P 14.

⁶¹ *Id.* P 15.

⁶² *See id.* PP 9-20.

⁶³ *See id.* PP 21-25. PJM acknowledges that gas/electric coordination and scheduling practices could be better synchronized. In fact, PJM has called on FERC in many proceedings to prioritize gas/electric coordination issues. *See* PJM Interconnection, L.L.C., Comments and Responses of PJM Interconnection, L.L.C., Docket No. AD18-7-000 at 6-7 (Mar. 9, 2018) (listing proposed steps to enhance grid resilience including establishing “improved coordination and communication requirements between RTOs and Commission-jurisdictional natural gas pipelines”); PJM Interconnection, L.L.C., Initial Comments of PJM Interconnection, L.L.C. on the United States Department of Energy Proposed Rule, Docket No. RM18-1-000 at 29 (Oct. 23, 2017). However, the need for better coordination of scheduling practices cannot be solved by PJM alone—this is a national issue as the Commission has recognized. *See Coordination of the Scheduling Processes of Interstate Nat. Gas Pipelines & Pub. Utils.*, Order No. 809, 151 FERC ¶ 61,049 at P 9 (2015) (“Several events over the last few years, such as the Southwest Cold Weather Event and the extreme and sustained cold weather events in the eastern U.S. in January 2014, show the crucial interrelationship between natural gas pipelines and electric transmission operators and underscore the need for improvements in the coordination of wholesale natural gas and electric markets.” (footnotes omitted)). It does not justify the Complainant’s attempt to require PJM operators to also serve as fuel managers overseeing fuel procurement for approximately 800 of gas, diesel, and coal-fired generators in the PJM footprint. Consistent with the Capacity Performance construct, this responsibility lies in the first instance with the unit owners themselves.

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system conditions.⁶⁴ PJM also submits Annual Fuel Data Requests to collect information on generator fuel availability and gas supply and transportation contracts.⁶⁵ Between November and March, the PJM Gas Electric Coordination Team conducts daily reviews of the interstate pipeline bulletin boards to assess pipeline operating conditions and identify supply risks.⁶⁶

4. Existing Arrangements With Other Reliability Coordinators

PJM engages with neighboring Reliability Coordinators regarding operations during emergency conditions, and has joint operating and or joint coordination agreements with Midcontinent Independent System Operator, Inc. (MISO), Tennessee Valley Authority (TVA), New York Independent System Operator, Inc. (NYISO), Duke Energy Progress, LLC (Duke), and VACAR South RC (VACAR).⁶⁷ PJM discusses a variety of metrics, including peak load estimates, reserve requirements, and estimated loads during daily conference calls with the neighboring Reliability Coordinators.⁶⁸ These calls took place in the period leading up to and during Winter Storm Elliott.⁶⁹

5. Weather and Load Forecasting

PJM employs state of the art forecasting tools and processes. Three widely used vendors send PJM hourly weather forecast data covering temperature, effective temperature, temperature humidity index, heat index, wind speed, wind direction, humidity, and cloud cover.⁷⁰ PJM systems

⁶⁴ *Id.* P 22.

⁶⁵ *Id.* P 24.

⁶⁶ *Id.*

⁶⁷ *Id.* P 26.

⁶⁸ *Id.* P 27.

⁶⁹ *Id.*

⁷⁰ Mulhern Aff., Ex. PJM-003, at P 13.

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use a weighted average of the three vendor forecasts based on recent observed performance.⁷¹

Vendors also provide additional periodic weather reports on, among other things, wind turbine icing and high wind cut-out risks.⁷² All reports are sent to control room staff, operations support staff, and Dispatch leadership, on either a daily or as needed basis determined by the vendor.

PJM uses multiple tools to visualize this weather data. A custom in-house weather dashboard presents temperature, effective temperature, wind speed, cloud cover, and other parameters for weather stations and forecast zones for the current and next six days.⁷³ The dashboard features charts that compare vendor forecasts and show the 24-hour temperature change, along with daily written reports on forecasted weather conditions in each major PJM zone.⁷⁴

PJM forecasts load using a suite of neural network and pattern matching models.⁷⁵ Weather parameters such as temperature and effective temperature (which is based on temperature and wind speed) serve as direct inputs into the load models.⁷⁶ A custom in-house load forecast dashboard presents weather forecast data and load forecasts from multiple models and shows how weather and load behaved on similar days.⁷⁷ A dashboard with maps of the United States and parts of Canada shows real-time temperature, radar, dew point, and infrared and forecasted temperature deviations from normal for the current day and next 14 days.⁷⁸ A custom Dispatch interactive

⁷¹ *Id.*

⁷² Bielak Aff. at P 13.

⁷³ Mulhern Aff. at P 18.

⁷⁴ *Id.*

⁷⁵ *Id.* P 16.

⁷⁶ *Id.*

⁷⁷ *Id.* P 19.

⁷⁸ *Id.*

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mapping tool shows weather radar and satellite; temperature, wind speed, dew point, and relative humidity observations; local storm reports; National Weather Service bulletins; and a variety of severe conditions.⁷⁹

6. Cold Weather Advisories and Cold Weather Alerts

When winter emergency conditions appear imminent, PJM issues either a Cold Weather Advisory or a Cold Weather Alert. The Bielak Affidavit outlines the actions that generators and PJM are expected to take upon declaration of a Cold Weather Advisory.⁸⁰ An important component in PJM operators' decision-making process is the data supplied by generators in Markets Gateway and eDART, which generators are obligated to update upon issuance of the Cold Weather Advisory. PJM will compare the data to the forecasted temperatures and determine if there will be any limiting factors for the generation fleet and prepare accordingly.

PJM issues Cold Weather Alerts when emergency conditions are more immediately expected.⁸¹ Though PJM Manual 13 contains guidelines regarding when a Cold Weather Alert will be declared, PJM operators are ultimately vested with the authority to exercise judgment in light of the surrounding factors.⁸² The Bielak Affidavit outlines the requirements for generators and PJM after PJM declares a Cold Weather alert.⁸³ Perhaps the most critical of these obligations is for generators to provide various information to PJM operators, who rely on it to make dispatch

⁷⁹ *Id.*

⁸⁰ *See* Bielak Aff. at PP 28-29.

⁸¹ *Id.* P 30.

⁸² *See id.* PP 30-31.

⁸³ *See id.*

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and scheduling decisions. If generators fail to provide accurate information, operators' ability to manage an emergency may be compromised, as occurred during Winter Storm Elliott.

7. PJM Staffing and Training

A crucial element of PJM's winter preparedness is the training of its staff. PJM staff participates in the drills and other training events held for generators.⁸⁴ In addition, PJM conducts annual training, monthly load shed drills, pre-winter and summer Emergency Procedures drills to train operators on proper load shedding procedures and to maintain their load shedding skills.⁸⁵

PJM took steps to assure that adequate staff was available during Winter Storm Elliott, notwithstanding the impending Christmas holiday. Beginning on December 23, PJM brought in additional control room, support, and management staff that remained on duty or available around the clock throughout the entirety of the cold weather event.⁸⁶ PJM also activated the Operations Event Response Team (OERT), a cross-divisional group of internal PJM employees (including participants from Dispatch Leadership and other PJM departments) formed to prepare for and respond to operational events.⁸⁷

8. PJM's Status in the Period Leading Up to the Emergency Declarations on December 23 and December 24, 2022

Based on PJM's modeling and the data it received from generators, PJM entered the period before Winter Storm Elliott in the reasonable belief that it had more than enough capacity to serve customers during what was expected to be a severe storm. As became apparent as conditions worsened, however, the information PJM's operators received from generators regarding winter

⁸⁴ *Id.* P 32.

⁸⁵ *Id.*

⁸⁶ *Id.* P 33.

⁸⁷ *Id.* P 34.

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preparedness and unit operating parameters was often substantially inaccurate.⁸⁸ PJM issued a Cold Weather Advisory for Western PJM starting at 7:00 AM on December 20, and a Cold Weather Alert for Western PJM on December 21. PJM also issued an RTO-wide Cold Weather Advisory on December 22, 2022, and an RTO-wide Cold Weather Alert on December 23, 2022.⁸⁹ As discussed below in Part IV.B. and in the Pilog Affidavit, Capacity Resources should have been taking steps to update their unit operating parameters in response, but they often did not.

PJM operators lacked vital information needed to make dispatch decisions during Winter Storm Elliott because of the widespread failure of generators to provide accurate information regarding the operating parameters of their units.⁹⁰ In particular, many owners of gas-fired generators did not provide updates regarding the availability of natural gas needed for fuel.⁹¹ The lack of accurate and timely information from many generators continued to be a problem throughout the entire cold weather period.

C. Widespread Generator Performance Failure Exacerbated Extraordinary System Conditions During Winter Storm Elliott

On December 23, 2022, the PJM region experienced the most rapid temperature drop it had seen in a decade, an abrupt 29°F decrease over 12 hours.⁹² Although PJM correctly forecasted Winter Storm Elliott would bring freezing temperatures, the sudden temperature drop was more rapid than any other in the last decade. The rate at which temperatures fell, together with the fact

⁸⁸ *Id.* P 35.

⁸⁹ *Id.*

⁹⁰ *Id.* P 36.

⁹¹ *Id.*

⁹² Mulhern Aff., Ex. PJM-003, at P 28.

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that the drop occurred during what is normally the milder part of winter, distinguishes Winter Storm Elliott from other large storms.⁹³

PJM's algorithm-based load forecast model had never seen the conditions that occurred on December 23 with the confluence of unprecedented cold temperature drops, the holiday, and the weekend.⁹⁴ In some parts of PJM, the difference between the high and low temperature on December 23 was one of the greatest in recorded history.

Operators knew there was a great deal of uncertainty in the load forecast and, as a result, operated conservatively, making a conscious decision to carry a large amount of additional capacity.⁹⁵ Mindful of the potential for unpredictable impacts, PJM conducted a detailed review of its load forecast beforehand. Actual Winter Storm Elliott conditions were extreme, but within the outer bounds of what PJM prepared for.⁹⁶ The under-forecasts for December 23 and 24 were attributable to a once-in-a-decade unfavorable combination of severe cold and blizzard conditions unusually early in the winter season, and outlier holiday impacts.⁹⁷

PJM's forecasted load for December 23 was 126,968 MW. PJM was confident in its operating plans given the approximately 158,000 MW showing available for PJM dispatch. This was based on the data provided by the generators themselves. PJM was confident it was guarding against potential uncertainty by having substantially more capacity available than normally

⁹³ *Id.*

⁹⁴ *Id.* PP 16, 28

⁹⁵ *Id.* P 30; *see also* Winter Storm Elliott Frequently Asked Questions (Apr. 12, 2023), at 5 (WSE FAQs), <https://www.pjm.com/-/media/markets-ops/winter-storm-elliott/faq-winter-storm-elliott.ashx>.

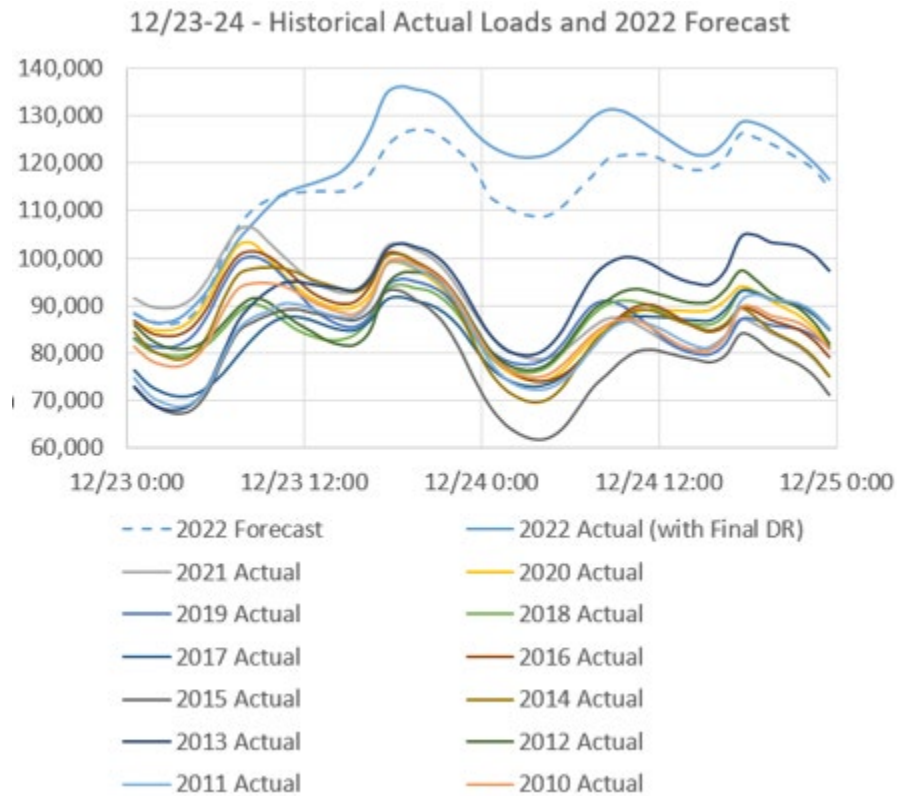
⁹⁶ *See* WSE FAQs, *supra* note 95, at 5.

⁹⁷ *Id.* P 28.

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necessary. Based on submitted Generator Availability Data, PJM believed it had almost 29 GW of reserve capacity available to absorb load and generating contingencies and to support neighboring systems.⁹⁸

At the same time, 2022 holiday weekend load proved to be an extreme outlier in both magnitude and timing.⁹⁹ The actual hourly load was 136,010 MW on December 23 and 131,113 MW on December 24.¹⁰⁰



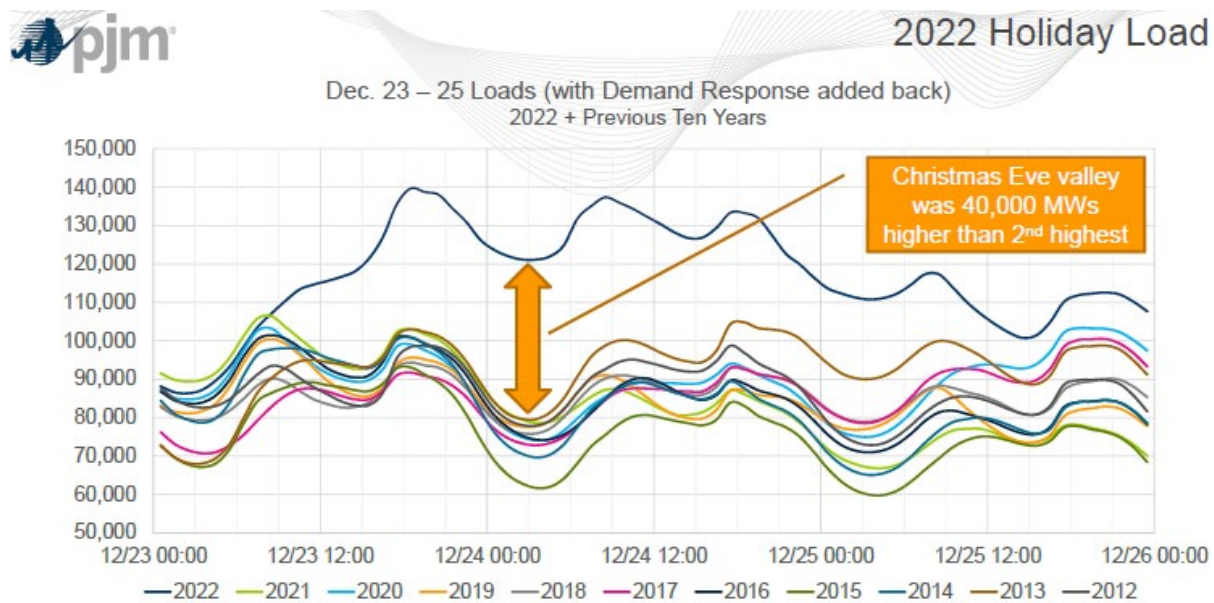
⁹⁸ *Id.* P 30.

⁹⁹ *Id.* P 32.

¹⁰⁰ *Id.*

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Load also stayed unusually high overnight and in the early morning of December 24.¹⁰¹ The “Christmas Eve Valley” was 40,000 MW higher than the second highest over the last decade.¹⁰² In fact, the Christmas Eve load “valley” was higher than any peak load on that date in a decade.¹⁰³



It is also noteworthy that PJM load forecasts were back to their “normal” levels of accuracy immediately before and after Winter Storm Elliott.¹⁰⁴ This indicates that the Winter Storm Elliott forecast was an outlier attributable to the anomalous combination of record-breaking temperature drops and demand levels never before seen over the Christmas holiday.

Winter Storm Elliott also created serious reliability issues across the Eastern Interconnection. It is estimated that Winter Storm Elliott impacted two-thirds of the United States and “contributed to” millions of customer outages. Like PJM, neighboring systems experienced

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See* WSE FAQs, *supra* note 95, at 3; Mulhern Aff. at P 32.

¹⁰⁴ *Id.* P 42.

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the rapid onset of freezing temperatures coupled with unprecedented high holiday loads that were not predicted by forecasting models. As NERC has stated, “utilities in parts of the southeast were forced to engage in rolling blackouts and the bulk power system in other regions was significantly stressed.”¹⁰⁵ Furthermore, “[i]n addition to the load shedding in Tennessee and the Carolinas, multiple energy emergencies were declared and new demand records were set across the continent. And this was in the early weeks of a projected ‘mild’ winter.”¹⁰⁶

For example, the TVA and VACAR portion of the SERC region experienced cold weather and heavy loads and faced various stages of energy emergencies.¹⁰⁷ TVA was forced to engage in load shedding on December 23 and 24 for the first time in its ninety-year history. TVA set an all-time winter peak power demand record of 33,425 MW. A normal winter peak for TVA is around 24,000 MW. Duke had a load under-forecast that was in some respects larger than PJM. At times the forecast was off by approximately 10% for Duke Energy Carolinas LLC and about 5%-6% for Duke Energy Progress LLC.¹⁰⁸ Duke was also forced to resort to load shedding on December 24 that impacted 500,000 customers.¹⁰⁹

¹⁰⁵ See NERC, *FERC, NERC to Open Joint Inquiry into Winter Storm Elliott* (Dec. 28, 2022), <https://www.nerc.com/news/Pages/FERC,-NERC-to-Open-Joint-Inquiry-into-Winter-Storm-Elliott.aspx>.

¹⁰⁶ *Id.*

¹⁰⁷ See Mulhern Aff. at P 43.

¹⁰⁸ See S&P Global Market Intelligence, *Holiday 2022 Winter Storm Raises Reliability, Generation Diversity Questions* (Mar. 27, 2023), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/holiday-2022-winter-storm-raises-reliability-generation-diversity-questions-74685081>.

¹⁰⁹ See Robert Walton, *Duke Energy Apologizes for Winter Storm Outages as FERC, NERC Open Investigation Into Grid Failures*, UtilityDive (Jan. 4, 2023), <https://www.utilitydive.com/news/duke-energy-apologizes-for-winter-storm-outages-as-ferc-nerc-open-investig/639583/>.

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Southwest Power Pool, Inc. (SPP) likewise had a 9% error rate in its Winter Storm Elliott forecast. SPP also set a winter peak demand record of 47,157 MW and, in SPP’s own words, “[t]he presence of extreme wind chill without adequate historical data impacted [SPP’s] ability to determine its impact on load.”¹¹⁰ In MISO, “[a]bnormally high load forecasting errors occurred due to a lack of historical data for similar extreme conditions in December.”¹¹¹ Peak load on December 23 was 105,916 MW compared to forecast peak of 100,033 MW, a 5.5% error.¹¹²

The Electric Reliability Council of Texas (ERCOT) has stated that its load forecasts were “too low going into [Winter Storm Elliott], cold weather intrusion was deeper and quicker than the national weather models were forecasting, load forecasting models overplayed the reduction in demand due to the holiday, and that there was a “[l]ack of comparable historic load data without loadshed . . . for the load forecast models to reference.”¹¹³ Actual demand was 8% higher than ERCOT’s forecasted peak demand for December 22. ERCOT has estimated that 11 GW of thermal generation, 4 GW of wind, 1.7 GW of other resources was out of service on December 23. Just as PJM would later do, ERCOT obtained an FPA section 202(c) emergency order from the Department of Energy to allow needed resources to exceed otherwise applicable environmental

¹¹⁰ See S&P Global Market Intelligence, *How the Holiday 2022 Winter Storm Confounded Grid Operators’ Forecast Models* (Apr. 6, 2023), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/holiday-2022-winter-storm-raises-reliability-generation-diversity-questions-74685081>.

¹¹¹ See MISO, *Overview of Winter Storm Elliott December 23, Maximum Generation Event* (Jan. 17, 2023), <https://cdn.misoenergy.org/20230117%20RSC%20Item%2005%20Winter%20Storm%20Elliott%20Preliminary%20Report627535.pdf>.

¹¹² See S&P Global Market Intelligence, *supra* note 108.

¹¹³ See ERCOT, *Item 7: Review of Winter Storm Elliott* (Feb. 28, 2023), <https://www.ercot.com/files/docs/2023/02/21/7-Review-of-Winter-Storm-Elliott.pdf>.

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limits on December 23.¹¹⁴ Lastly, Louisville Gas & Electric Co. and Kentucky Utilities were forced to shed load to 53,000 customers on December 23 after underestimating peak load for that day by as much as 16%.¹¹⁵

D. Many Capacity Resources, Including Complainants, Failed to Fulfill Their Performance Obligations When PJM Most Needed Them

1. Capacity Performance Failures Were Widespread and Unexpected

PJM reasonably expected generators to operate at a much higher standard than they achieved even taking account of the difficult weather conditions. Under Capacity Performance, generators must be available to PJM for dispatch when called during emergencies. As explained above, generators are excused from performing only in very narrow circumstances. The onus is not on PJM to arrange dispatch to accommodate gas nomination practices or to agree to keep generators whole that acquire gas if they are not called; rather, generation owners decide what measures are needed to avoid Non-Performance Charges and to place themselves in a position to receive bonus payments.¹¹⁶ This includes the option of self-scheduling resources if generation owners are unsure if PJM will call them but wish to be certain of being online if an emergency occurs. Further, based on the information provided to PJM by generators during the previous fall, most generators were ready for winter conditions. Notably, as discussed previously, the vast

¹¹⁴ See U.S. Dep't Energy, *Federal Power Act Section 202(c): ERCOT December 2022*, <https://www.energy.gov/ceser/federal-power-act-section-202c-ercot-december-2022>.

¹¹⁵ See Ryan Van Velzer, *LG&E/KU Underestimated Energy Demand Ahead of Winter Storm Elliott*, Louisville Public Media (Jan. 26, 2023), <https://www.lpm.org/news/2023-01-26/lge-ku-underestimated-energy-demand-ahead-of-winter-storm-elliott>.

¹¹⁶ See Pilon Aff. at P 13 (“To be clear, under Capacity Performance, a unit is *not* excused from being assessed Non-Performance Charges because: (i) it lacks fuel; (ii) the cost of available fuel is very expensive; (iii) it cannot obtain natural gas in a timely manner because of pipeline nomination cycles; or (iv) the unit faces operational challenges due to cold weather conditions. These are not acceptable excuses under the Capacity Performance construct.”).

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majority of generators indicated in the Checklist response required by Attachment N to Manual 14D concerning the winter preparedness that they were compliant. Managing the gas nomination cycles remains the responsibility of Capacity Resource unit owners. Challenges with the synchronization of the gas nomination cycles and dispatch directives are not new. They existed at the time the unit owners submitted their bids to serve as Capacity Resources and should have been taken into account through arrangements with LDCs and others for gas storage, no notice service, installation of dual fuel facilities and other measures to limit their performance risk.

Notwithstanding their Capacity Performance commitments and representations made to PJM, many generators failed to respond when called upon by PJM to operate or submitted parameter limitations in their offers to PJM that were inconsistent with PJM's needs.¹¹⁷ In many cases, units failed to update their parameters even after direction from PJM. Nor did these generators avail themselves of the option to self-schedule in advance of the emergency even though PJM had issued Cold Weather Advisories and declared Cold Weather Alerts. Capacity resource outages reached approximately 35,000 MW on December 23, and 46,000 MW on December 24.¹¹⁸ This even exceeded the level of outages experienced by PJM during the 2014 Polar Vortex. And Complainants were among the culprits. Complainants' units experienced significant levels of forced outages due to fuel related issues or emission limits.¹¹⁹

In addition, many generators failed to provide timely updates regarding operating parameters and potential fuel restrictions as required by Manual 13¹²⁰ which contributed

¹¹⁷ *See id.* P 22.

¹¹⁸ *Id.* P 25.

¹¹⁹ *Id.* P 37.

¹²⁰ *See* Manual 13, § 3.3.1 (Cold Weather Advisory). (When a Cold Weather Advisory is issued, a generator must "[u]pdate Markets Gateway and eDART by entering unit specific

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significantly to the difficulties of the operators in committing resources in an orderly fashion. It was not uncommon for PJM operators to learn that a gas-fired Capacity Resource that, on paper, was available could not run when dispatched due to a lack of fuel until dispatch instructions were actually issued.¹²¹ In fact, over 92% of outages were reported to PJM with either less than an hour's notice or no notice.¹²² And again, Complainants were among the units that fell into this category.¹²³

Notwithstanding exemplary performance by many generators, poor generation performance was also evident in manifold ways and had a negative cascading impact. In addition to the forced outages expected by operations, approximately 6,000 MW of steam generation was called but was not online as expected for the morning peak on December 24.¹²⁴ Overall, over 16,000 MW of generation that was committed in the Day-ahead Market failed to perform.¹²⁵ The high generator outage rates also limited PJM's ability to replenish pond levels for pumped storage hydro prior to the morning peak on December 24.¹²⁶ Taken together, PJM faced approximately 57 GW of generator unavailability for the morning peak on December 24. PJM operators could not have reasonably anticipated this level of failure by Capacity Resources.¹²⁷

operation limitations associated with cold weather preparedness . . . includ[ing] . . . [f]uel supply and inventory concerns.”); *Id.* § 3.3.2 (Cold Weather Alert) (noting that when a Cold Weather Alert is declared, generation dispatchers must “contact PJM Dispatch if it is anticipated that spot market gas is unavailable, resulting in unavailability of bid-in generation.”).

¹²¹ Pulong Aff. at P 33.

¹²² *Id.*

¹²³ *Id.* P 53. One unit that was already operating went off line. *Id.*

¹²⁴ *Id.* P 23.

¹²⁵ *Id.* P 25.

¹²⁶ *Id.*

¹²⁷ *Id.*

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2. Capacity Resources' Poor Performance Was a Major Factor in PJM's Decision to Extend Emergency Actions Through the Evening Peak on December 24, 2022

The performance failures of the generator sector generally and the failures of Complainants individually had a profound impact on PJM's decision-making during the period following the December 24 morning peak. This was especially so because since PJM was facing many other uncertainties including that: (i) the load forecast had significantly understated the last two peaks and the reasons why the usually reliable forecast process was not working were unclear; (ii) production area freeze-offs and gas pipeline curtailments had occurred and it was uncertain when natural gas operations would return to normal; and (iii) PJM reasonably believed that the morning peak it had just experienced would have been about 7,000 MW higher without Load Management. As explained in detail below and in the affidavit of Mr. Bryson, considering the totality of the circumstances, extending the Pre-Emergency/Emergency Load Management Actions and Maximum Generation Emergency Action was prudent and consistent with the Good Utility Practice Standard.¹²⁸

PJM will not speculate as to whether its operators might have ended the Emergency Actions sooner if generator performance had been better over the previous 24 to 36 hours. It is clear, however, that the generator sector's poor performance, including that of Complainants', was a major driving factor behind the decision to extend those procedures and was a factor that PJM would have been reckless to ignore. Some generators performed well during Winter Storm Elliott. But the performance of generators such as Complainants that appear not to have taken their Capacity Performance obligations seriously and failed even to keep PJM informed as to their status

¹²⁸ See Bryson Aff.

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added tremendously to the operators' concerns regarding the December 24 evening peak. In this area, as with many other aspects of the Complaint, the Commission should review the facts in light of the information operators had available at the time rather than second guessing their actions through perfect 20/20 hindsight

III. MOTION TO DISMISS OR SUMMARILY DISPOSE OF COMPLAINT

The Complaint is fatally flawed for reasons that demand dismissal or summary disposition under Rule 217. A motion for summary disposition should be granted when there is "no genuine issue" of material fact left in dispute.¹²⁹ The Commission's rules do not address motions to dismiss, but the Commission will dismiss complaints that fail to state a claim upon which relief can be granted as described in Federal Rules of Civil Procedure 12(b)(6).¹³⁰ The Complaint fails either standard and PJM is indifferent as to which rule the Commission chooses to reject the Complaint.

Complainants seek to avoid paying Tariff-required Non-Performance Charges that are the direct consequence of Complainants' failure to provide generation capacity in response to PJM's Emergency Actions during Winter Storm Elliott. Complainants' arguments depend mainly on whether their interpretations of the Tariff are correct. Other arguments raised by Complainants challenge PJM's dispatch decisions and assert, in essence, that the level of Non-Performance Charges is excessive given their transgressions. Finally, Complainants' allege that PJM is entitled

¹²⁹ 18 C.F.R. §385.217(b).

¹³⁰ *BP Am. Inc.*, 47 FERC P 61 at P 21 n.46 (2014); *see High Prairie Pipeline, LLC v. Enbridge Energy*, 149 FERC P 61,004 at PP 9-10 (2014) ("The Commission did not grant summary disposition; the commission dismissed the complaint....").

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to “little or no deference” in decision-making during Winter Storm Elliott. None these claims is valid.

The Complaint fails to state a cognizable claim because Complainants’ request for relief is foreclosed by the filed rate doctrine and the corollary rule against retroactive ratemaking.¹³¹ It presents a direct collateral attack on the longstanding Capacity Performance regime that the Commission has no authority to grant.

A. The Tariff Provisions Governing Nonperformance Penalties Operate Automatically and Do Not Contemplate Complainants’ Unprecedented Collateral Attacks on Operators’ Decisions to Declare Emergency Actions

Nothing in the Tariff, Operating Agreement, or Manuals permits Complainants to collaterally attack PJM’s real-time decision to take Emergency Actions in a Complaint to the Commission. The Tariff is clear: when PJM declares an Emergency Action, PAIs are automatically triggered and Non-Performance Charges are calculated according to the Tariff’s strictures.¹³² And while certain narrowly-defined exceptions to the Tariff’s Non-Performance Charges rules exist, Complainants make no attempt at pleading these exceptions.

While Complainants face substantial performance charges, they were also paid substantial sums of money by PJM’s customers to provide capacity and nevertheless failed to perform at the very time it was most important to meet their obligations as Capacity Resources. Significant penalties for non-performance are entirely consistent with the intent of the Capacity Performance

¹³¹ See, e.g., *San Diego Gas & Elec. Co.*, 99 FERC ¶ 61,364, at P 8 (2002) (“The filed rate doctrine bars the Commission from imposing an after-the-fact surcharge above the rate on file for the services already performed. Its corollary, the rule against retroactive ratemaking bars the Commission from adjusting current rates to make up for over-or-under collection of costs in prior periods.”); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 699 (D.C. Cir. 1995) (“The [filed rate] doctrine’s corollary . . . is the rule that agencies may not alter rates retroactively.”).

¹³² Tariff, Attach. DD (Reliability Pricing Model), §10A(a).

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reforms.¹³³ To the extent the Complainants seek to diminish their Non-Performance Charges as a form of equitable relief grounded in policy arguments or financial hardship, the Complaint must be dismissed. The Commission is bound to enforce the strict terms of the Tariff even when it leads to “harsh consequences,” lest it violate the filed rate doctrine and undermine enforcement of the FPA.¹³⁴ “The filed rate doctrine and the rule against retroactive ratemaking leave the Commission *no discretion* to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.”¹³⁵

Moreover, the procedure the Complainants demand is unprecedented. In past cases when PAIs were called, there was no *ex post* review of operator actions, and the amount of the Performance Shortfalls were based on operator actions and decisions that occurred during the PAIs. No *post hoc* review was ever performed when PAIs were triggered in October 2019 (\$8.2 million), June 2022 (\$1.1 million), and October 2022 (none).¹³⁶ Thus, even if the Commission were to conclude that the Tariff is ambiguous regarding the permissibility of *post hoc* review, the

¹³³ See *supra* Part II.A.

¹³⁴ *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 132 (1990) (“[S]trict adherence to the filed rate has never been justified on the ground that the carrier is equitably entitled to that rate, but rather that such adherence, despite its harsh consequences in some cases, is necessary to enforcement of the Act.”); *accord, e.g., AT&T v. Cent. Office Tel., Inc.*, 524 U.S. 214, 223 (1998) (explaining that the filed rate doctrine applies regardless of any benefit or harm to a particular customer); *see, e.g., Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981) (finding that the “Commission itself has no power to alter a rate retroactively”) (footnote omitted)).

¹³⁵ *Old Dominion Elec. Coop., Inc. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (citing *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 794-97 (D.C. Cir. 1990)).

¹³⁶ See PJM, *PAI Settlements*, (Mar. 2022), <https://www.pjm.com/-/media/committees-groups/committees/mic/2020/20200415/20200415-item-08bperformance-assessment-event-settlement-paper-october-2019.ashx>; Monitoring Analytics, LLC, *State of the Market Report for PJM (Q3 2022)*, at 404 (Nov. 10, 2022), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2022/2022q3-som-pjm.pdf.

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fact that this has never occurred before is evidence that such reviews are not permitted in the normal course.¹³⁷ And, as we next explain, the Tariff is not ambiguous on this point: on the contrary, it expressly forecloses Complainants' request for Commission review.

B. The Complaint Is Foreclosed by Operating Agreement Schedule 1, Section 1.8.2 and Commission Precedent

PJM's Answer and supporting Exhibits demonstrate that Complainants have not asserted any valid basis to challenge PJM's unit dispatch or scheduling decisions made during Winter Storm Elliott. On the contrary, PJM's Emergency Actions complied with, and were required by, the Tariff, Operating Agreement, NERC's mandatory reliability standards, and Manuals.¹³⁸ But the Commission need not reach or decide any of those arguments because the Complaint is foreclosed by Operating Agreement Schedule 1, section 1.8.2 and foreclosed by the Commission's decision in *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,338 (2006).

Operating Agreement Schedule 1, Section 1.8.2 provides that disputes concerning PJM's dispatch decisions should be made directly to PJM, not to the Commission. Section 1.8.2 states

¹³⁷ The Commission interprets clear tariff language based exclusively on a tariff's express terms. It only looks to extrinsic evidence, including course of performance, if the express terms of a tariff are ambiguous. *See Cities of Bethany v. FERC*, 727 F.2d 1131, 1144 (D.C. Cir. 1984) (parties' course of performance under a contract may give meaning to otherwise unclear contract terms); *MME Energy, Inc.*, 123 FERC ¶ 61,251, at P 80 (2008) (“[E]vidence [such as course of performance] is only considered to ascertain the intent of the parties when the intent has been imperfectly expressed in ambiguous language and is not admissible to contradict or alter express terms.”); *Nicole Gas Prod., Ltd.*, 105 FERC ¶ 61,371, at P 10 (2003) (“Extrinsic evidence (which may include the parties' course of performance) is admissible to ascertain the intent of the parties when the intent has been imperfectly expressed in ambiguous contract language, but is not admissible either to contradict or alter express terms.”), *rev'd on other grounds, Columbia Gas Transmission Corp. v. FERC*, 404 F.3d 459 (D.C. Cir. 2005). In past cases when PAIs were called, there was no *ex post* review of operator actions, and the amount of the Performance Shortfalls were based on the operator actions and decisions that occurred during the PAIs.

¹³⁸ *See infra* Parts IV.D-IV.G.

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that “[c]omplaints arising from or relating to [the selection, scheduling or dispatch of resources] shall be brought to the attention of [PJM].”¹³⁹ Section 1.8.2(d) provides that PJM’s market participants shall not be entitled to any “form of reimbursement from [PJM] or any other Market Participant for any loss, liability or claim, including any claim for lost profits, incurred as a result of a mistake, error or other fault by [PJM] in the selection, scheduling or dispatch of resources.”¹⁴⁰ The Complainants’ request for relief falls squarely within the scope of this provision, and is foreclosed by it, because they “submit that . . . four factors [including the prevailing levels of locational marginal prices], in the aggregate, strongly support the conclusion that neither OPP nor Rock Springs was ‘needed’ by PJM during any Settlement Interval between 12:00 and 22:00 on December 24, and is therefore exempt from Non-Performance Charges for those Settlement Intervals.” To address this claim, the Commission would have to decide that the operator’s determination of need, i.e., that PJM would have dispatched the unit had they been available, was incorrect.

The Commission’s decision in *PPL EnergyPlus* confirms this reading of the Operating Agreement and supports the rejection of Complainants’ argument. There, the Commission rejected a generator’s complaint that its unit should have been called sooner by PJM’s operators during a reliability emergency related to the overload of a single transmission line.¹⁴¹ The generator argued that its unit should have been dispatched before PJM called a Maximum Emergency Generation Event and started to purchase emergency power and not afterwards, in

¹³⁹ OA, Sch. 1, § 1.8.2(a).

¹⁴⁰ *Id.* § 1.8.2(d).

¹⁴¹ *PPL EnergyPlus*, 117 FERC ¶ 61,338 at PP 2, 33.

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violation of the Operating Agreement.¹⁴² The Commission dismissed the generator’s claim stating: “PJM and the signatories to the Operating Agreement, including PPL, have agreed that disputes concerning these matters *not* lead to the retroactive unraveling of PJM’s market dispatch decisions leading to re-creation of hypothetical prices based on potentially different dispatch decisions.”¹⁴³ This finding applies equally to Complainants’ claims here.

Further, PJM’s longstanding rationale for including this provision in the Operating Agreement, as explained by the Commission, underscores why it should be applicable in this case:

As PJM correctly notes . . . the parties’ claim limitation agreement recognizes the day-to-day stress of system operations and the need, on PJM’s part, to exercise judgment in making dispatch decisions, particularly in emergencies. Because such dispatch decisions are made in real-time, such decisions cannot be reversed and trying to recreate monetary damages for potential errors would be difficult and inappropriate.¹⁴⁴

The “stress” faced by the PJM operators and the “need for judgement” during Winter Storm Elliott dwarfs the issues faced by the operators in *PPL EnergyPlus*, where the emergency conditions affected only a small part of the PJM system. This rationale thus applies with even greater force to the facts in this proceeding given the severity of the situation that PJM faced.

Complainants’ desire to insert themselves into PJM’s reliability decisions as an RTO also cannot be reconciled with Order No. 2000.¹⁴⁵ A FERC-prescribed “minimum characteristic” of any RTO is that it must “have exclusive authority for maintaining the short-term reliability of the

¹⁴² *Id.* PP 3-4.

¹⁴³ *Id.* P 33.

¹⁴⁴ *Id.*

¹⁴⁵ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish Cnty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

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grid that it operates” including “the right to order the redispatch of any generator connected to the transmission facilities it operates if necessary for the reliable operation of the transmission system.”¹⁴⁶ This redispatch authority for reliability was clearly intended to encompass—in fact was focused on—emergency situations:

We clarify that we intend the authority for generator redispatch to be used by the RTO to prevent or manage emergency situations, such as abnormal system conditions that require automatic or immediate manual action to prevent or limit equipment damage or the loss of facilities or supply that could adversely affect the reliability of the electric system, or to restore the system to a normal operating state.¹⁴⁷

Further, the Commission found that PJM satisfies the redispatch authority requirement, stating “PJM has the right to order the redispatch of any generator connected to the transmission facilities it operates if necessary for the reliable operation of the transmission system.”¹⁴⁸

C. The Errors in Complainants’ Tariff Interpretations are Apparent Without Recourse to Extrinsic Evidence and Do Not Merit Hearing Procedures

The Commission will “first ‘consider . . . whether the [tariff] unambiguously addresses the matter at issue. If so, the language . . . controls for [the Commission] must give effect to the

¹⁴⁶ 18 C.F.R. §§ 35.34(j)(4), 35.34(j)(4)(ii). Similarly, Order No. 888’s “ISO Principles” required that PJM have the “primary responsibility in ensuring short-term reliability.” *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 31,731 (1996) (“An ISO should have the primary responsibility in ensuring short-term reliability of grid operations”), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Pol’y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

¹⁴⁷ *Id.* at 875.

¹⁴⁸ *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,061, at 61,233 (2001).

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unambiguously expressed intent of the parties.”¹⁴⁹ Further, “[i]n construing a tariff, it is appropriate to look at the four corners of the tariff and consider the instrument as a whole.”¹⁵⁰ Complainants’ misreading of the Tariff is manifestly obvious from the provisions themselves. And, even if they were not entirely clear on their face, their meaning is reinforced by other Tariff provisions. There is no need for the Commission to go beyond the Tariff by holding a hearing or by instituting any other process in order to reject Complainants’ claims.

As summarized at the outset, Complainants should be penalized with the Non-Performance Charges PJM has assessed because:

- Rock Springs’s time-to-start parameter (notification time plus start time) was so long that it could not have operated during the December 23 PAI and the first two hours of the December 24 PAI. Rock Springs otherwise failed to procure gas in the key periods.
- Both OPP and Lakewood either failed to procure gas in the key periods, or failed to operate because of emissions limitation issues in the key periods. Non-Performance Charges are proper.

By its terms, section 10A(d) does not contemplate an *ex post* review of operator decisions. After a PAI is ended, it cannot be reasonably contended that a unit can be “not scheduled” or, even

¹⁴⁹ *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208 (D.C. Cir. 2011) (“tariff” bracketed in original) (quoting *Colorado Interstate Gas Co. v. FERC*, 599 F.3d 698, 701 (D.C.Cir.2010) quoting *Ameren Servs. Co. v. FERC*, 330 F.3d 494, 498 (D.C.Cir.2003)).

¹⁵⁰ *S. Natural Gas Co. v. FERC*, 780 F.2d 1552, 1558 (11th Cir. 1986); *see Nw. Pipeline Corp. v. FERC*, 61 F.3d 1479, 1486 (10th Cir. 1995). “Where the language used is clear and unambiguous, its interpretation needs no extrinsic evidence as to intent. . . .”; *Columbia Gas Trans. Corp.*, 27 FERC ¶ 61,089, at 61,166 (1984) (“Only where an ambiguity is established under the foregoing analysis do extrinsic factors come into play.”).

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more incredibly, be placed “online” in the past and then “scheduled down.” Similarly, for a unit to be excused because it was “not scheduled” or “scheduled down” there also has to be “a determination by the Office of the Interconnection that such scheduling action was appropriate to the security constrained economic dispatch.” This cannot mean that PJM must reconstruct its entire dispatch for an operating day after that day is already over. Moreover, Attachment DD, Section 10A(c) bases the calculation of Capacity Performance shortfalls on “the performance expected of [a] committed Capacity Resource.” Clearly, the operators cannot have “expect[at]ions” of future performance after the date when the performance has already occurred. This provision can only be read as referring to operator actions occurring contemporaneously with the PAIs.

Complainants’ assertion that not being included in the operating day set-up and not being subsequently contacted by PJM operators by telephone requesting dispatch, should be considered as a deliberate decision by PJM that the unit is “not scheduled,” should also be rejected based on the plain words of the Tariff. Complainants’ interpretation runs afoul of Tariff language specifying that, to be excused, the reason why the unit was not scheduled *cannot be* “any operating parameter limitations submitted in the resource’s offer.” Essentially, the Tariff says that the PJM operators can make their scheduling and dispatch decisions based on the “operating parameter submitted” while Complainants contend that the only PJM operator decisions that matter are those made after the PJM operators have actually talked to the generation dispatcher and asked for the unit to start.

IV. ANSWER TO THE COMPLAINT

Chairman Phillips recently emphasized in testimony before the United States Senate that reliability “is—and always must be—job number one” for the Commission. That is also PJM’s primary purpose. PJM’s foremost obligation as a FERC-jurisdictional Transmission Provider and

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RTO, registered NERC Balancing Authority Transmission Operator, and Reliability Coordinator, is to maintain reliability. The Tariff, Operating Agreement, PJM Manuals and other authorities all recognize that PJM must have the flexibility to do what is needed in reliability emergencies.

Complainants failed to meet their obligations as Capacity Resources during Winter Storm Elliott, a major interregional emergency that stressed PJM and its surrounding Balancing Authorities. Complainants now face substantial nonperformance charges as a result. In an effort to escape those charges, Complainants seek to second-guess PJM’s reliability decisions to avoid the consequences of their own role in exacerbating the emergency. Complainants even go so far as to claim there was no emergency at all. To be perfectly clear, Complainants’ complete failure to meet their obligations as Capacity Resources during Winter Storm Elliott was unacceptable, dangerous, and neither attributable to PJM nor excusable because of any action PJM did or did not take.

Witnesses testifying on behalf of PJM discuss in detail the applicable Tariff, Operating Agreement, and Manual provisions and other rules governing PJM’s actions during emergencies.¹⁵¹ These rules confer on PJM considerable discretion and flexibility in responding to emergencies.¹⁵² Moreover, PJM’s emergency decisions are “binding on all Market Participants until [PJM] announces that the actual or threatened Emergency no longer exists.”¹⁵³

PJM’s supporting witnesses explain how each of PJM’s major actions during Winter Storm Elliott complied with all applicable requirements and was reasonable on the merits. In the face of “incredibly challenging” and rapidly-deteriorating conditions, PJM used this authority wisely and

¹⁵¹ See McGlynn Aff., Ex. PJM-005, at PP 14-28.

¹⁵² *Id.* at PP 17-19, 23; see also *infra* Section IV.A.3.

¹⁵³ Tariff, Attach. K-App’x, § 1.7.11; OA, Sch. 1, § 1.7.11.

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“did not shed a single megawatt of load on December 23 and December 24.”¹⁵⁴ As PJM’s witnesses explain, PJM operators “fully satisfied their compliance obligations in advance of, and for the entire duration of, Winter Storm Elliott.”¹⁵⁵

A. PJM Has Broad Discretion to Declare Emergencies, and the Prudence of PJM’s Real-Time Decisions During Emergencies Is Subject to Great Deference Under the Good Utility Practice Standard

Complainants have a heavy burden of proof in this proceeding and they fail to carry it. Complainants do not identify or demonstrate compliance with any standard of review. Good Utility Practice is the correct standard for evaluating the reasonableness of utility decisionmaking. That standard is explicitly set forth in the Tariff and Operating Agreement, but is mentioned nowhere in the Complaint. Nor does the Complaint acknowledge or confront the Commission’s specific application of the Good Utility Practice standard in the context of prudence challenges. The Complaint fails under both lines of precedent for several reasons.

- First, the Good Utility Practice standard is highly deferential on its face, and that deference is exceptionally broad in the context of emergency management.
- Second, where, as here, Complainants retroactively challenge the prudence of PJM’s past decisions, they must do so “in light of the facts known at the time the decision was made.”¹⁵⁶ That constraint is fatal because it renders the *post hoc* analysis offered by the Complainants’ witnesses irrelevant as a matter of law.
- Third, PJM’s flexibility to respond to emergencies under Good Utility Practice is powerfully reinforced in the Tariff, Operating Agreement, and Manuals.

Finally, in addition to the manifest legal flaws in the Complaint, it also undermines public policy. As previously discussed, Complainants’ request for retroactive invalidation of PJM’s

¹⁵⁴ *Id.* PP 8, 13.

¹⁵⁵ *Id.* (“I also feel certain that if [Complainants’] restrictive and unrealistic interpretation of Manual 13 was adopted it would seriously inhibit PJM operators’ ability to keep the lights on.”).

¹⁵⁶ *E.g.*, Tariff § 1 (defining Good utility Practice); OA § 1 (same).

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actions during emergencies is not only unprecedented, but also barred by the Operating Agreement and Commission precedent for good reasons.¹⁵⁷ If operators are not accorded a high degree of flexibility to implement their best technical judgment in emergencies, they may avoid using available and effective tools that seem more vulnerable to *post hoc* legal challenges to the ultimate detriment of reliability.

1. The Good Utility Practice Standard Affords Great Deference to Public Utilities, and Commission Precedent Broadens that Deference in Emergency Conditions

The Good Utility Practice standard was adopted by the Commission’s *pro forma* Open Access Transmission Tariff in Order No. 888, and that definition is incorporated verbatim into the Tariff and Operating Agreement. It reads:

“Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region; including those practices required by Federal Power Act, section 215(a)(4).¹⁵⁸

This standard is highly deferential on its face: it does not require utilities to choose the best or most agreeable options;¹⁵⁹ and it does not overturn mistaken decisions based on erroneous

¹⁵⁷ See *supra* Part III.A.

¹⁵⁸ Tariff § 1; OA § 1.

¹⁵⁹ See *Tenaska Clear Creek Wind, LLC*, 182 FERC ¶ 61,084, at P 41 (2023) (“[E]ven if Tenaska is correct that a less expensive alternative existed, Good Utility Practice affords SPP discretion in selecting among alternatives, and SPP was not obligated to adopt it under the terms of its Tariff.”); *Sierra Pac. Power Co.*, 106 FERC ¶ 61,155, at P 23 (2004) (“[W]hile it is certainly preferable for utilities to reach agreement, the absence of agreement by itself does not constitute a violation of good utility practice.”); *Metzenbaum v. Columbia Gas Transmission Corp.*, 4 FERC

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information.¹⁶⁰ Commission precedent also confirms that system operators are accorded especially broad flexibility under the Good Utility Practice standard when making decisions in emergency conditions.¹⁶¹

¶ 61,277 (1978) (agreeing “that courts in passing upon discretionary action should endeavor to put themselves in the position of the actors in the transaction, and not be ready to find that the course actually pursued was blameworthy because the results were unfortunate”).

¹⁶⁰ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,050, at P 44 (2013) (finding that “an error [in certain calculations required by the tariff] does not, by itself, demonstrate a violation of Good Utility Practice”).

¹⁶¹ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,129, at P 37 (2018) (“We find that it is appropriate for MISO to have discretion to respond to operational circumstances related to reliability concerns.”); *Big Sandy Peaker Plant, LLC*, 154 FERC ¶ 61,216, at P 50 (2016) (“The Commission has recognized that it may be appropriate to provide operational and reliability-related discretion to independent system operators, and to not second-guess their decisions [to deselect a generator.]”); *Cal. Indep. Sys. Operator Corp.*, 139 FERC ¶ 61,207, at PP 48-50 (2012) (finding good cause for *post hoc* waiver of CAISO tariff restrictions inconsistent with actions taken during an emergency where (1) “[t]he Commission believes that CAISO, in this emergency situation, took the actions it believed were necessary in order to ensure the reliability of the grid” and that (2) “CAISO set prices it thought necessary to encourage generation to be available to prevent the blackout from spreading further and to restore power in the SDG&E area as quickly as possible.”); *N. Nat. Gas Co.*, 103 FERC ¶ 61,083, at P 14 (2003) (“The Commission gives pipelines much discretion regarding when and how they respond to system emergencies.”); *Equitrans, Inc.*, 65 FERC ¶ 61,132, at P 4 (1993) (“[W]e have traditionally allowed pipelines considerable discretion in managing operational emergencies that threaten the integrity of the system.”); *Re Consol. Gas Supply Corp.*, 2 P.U.R.4th 202 (1973) (“We find that there was an emergency, and that what management did under the circumstances was reasonable.”); *Mun. Light Bds. v. Bos. Edison Co.*, 53 F.P.C. 1545, 1565 (1975) (“Since emergencies usually allow no time for consultation or debate the judgment must be made by the electric utility involved. The judgment, however, must be one which a reasonable man acting in good faith might have made under the circumstances then known and within the time which appeared to be available for action.”), *aff’d sub nom. Towns of Norwood v. F.P.C.*, 546 F.2d 1036 (D.C. Cir. 1976).

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2. The Good Utility Practice Standard’s and the Commission’s Prudence Doctrine Require Past Decisions to be Reviewed “in light of the facts known at the time the decision was made”

A core feature of the Good Utility Practice standard is the requirement that past decisions are evaluated only “in light of the facts known at the time the decision was made.”¹⁶² The Commission’s application of this principle is particularly strong in the context of prudence review, which is essentially what the Complaint demands. The Commission’s prudence decisions underscore that it is inappropriate to second guess past decisions with the advantage of perfect hindsight.¹⁶³ Complainants ignore this constraint by attempting to demonstrate, after the fact, that PJM could have navigated the Winter Storm Elliott emergency in a different way that might have allowed them to avoid Non-Performance charges. However, the potential for alternate outcomes is simply irrelevant under the Good Utility Practice standard.

¹⁶² Tariff § 1 (defining Good utility Practice); OA § 1 (same); *see, e.g., Salt Creek Solar, LLC*, 180 FERC ¶ 61,116, at P 68 (2022) (“The Tariff’s definition of Good Utility Practice affords SPP discretion to exercise reasonable judgment in light of the facts known at the time it makes a business decision.”).

¹⁶³ *See, e.g., Pac. Gas & Elec. Co.*, 173 FERC ¶ 61,045, at P 179 (2020) (citation omitted) (“Even if a decision turns out to be incorrect in hindsight, the Commission’s task is to review the prudence of a utility’s actions and the costs resulting from the particular circumstances existing either at the time the costs were incurred or when the utility became committed to incur those expenses.”); *J. William Foley Inc. v. United Illuminating Co.*, 142 FERC ¶ 61,125, at P 19 (2013) (quoting *New Eng. Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985)), *aff’d sub nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986)) (“Foley fails to provide any evidence bearing upon the prudence (or imprudence) of any specific costs . . . , such as whether they were ‘costs which a reasonable utility management . . . would have made, in good faith, under the same circumstances, and at the relevant point in time.’ . . . Foley must do more than, in hindsight, second-guess utility management decisions based on the resulting costs.”); *Ind. Mun. Power Agency v. FERC*, 56 F.3d 247, 289 (D.C. Cir. 1995) (citing *Ohio Power Co.*, 39 FERC ¶ 61,098 (1987)) (“The Commission has long used its prudence and market rate tests to enforce the just and reasonable provision of section 205”); *New Eng. Power Co.*, 31 FERC ¶ 61,047, at 61,086 (granting full cost recovery for a terminated nuclear generation project because the utility prudently considered, among other things, the best interests of its customers at that time to reduce dependence on imported oil during an oil shortage).

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PJM took timely and necessary actions to address volatile and extreme conditions during Winter Storm Elliott. The reasonableness of PJM’s actions must be evaluated in light of what was known at the time the decisions were made and not based upon a *post hoc* determination of what PJM might have decided had its operators possessed perfect knowledge and an extended period to deliberate. Mr. Naumann explains why Complainants’ approach is “fundamentally misguided”:

[P]ost hoc economic analyses and other varieties of “Monday morning quarterbacking” are irrelevant to the question of whether operators acted reasonably and in accordance with Good Utility practice with the knowledge they had at the time they had to make decisions. While post event analyses are useful to better understand the event, and can be used to improve rules and processes *going forward*, they cannot upset real-time decisions.¹⁶⁴

In short, Complainants fail to meet the standard of review because it is not enough for them to point to information that operators might have weighed differently, or to devise an alternative set of actions or dispatch decisions that might have addressed an emergency situation more efficiently. Complainants’ contention that a determination of whether a generator was actually “needed”¹⁶⁵ can and should be made after the fact flips the Good Utility Practice standard on its head and risks incentivizing operators to prioritize the assessment of “need” above successful emergency management. Even if Complainants arguments had merit—and they do not—they are simply not relevant under Good Utility Practice or prudence review.

¹⁶⁴ Naumann Aff., Ex. PJM-007, at P 29 (citations omitted).

¹⁶⁵ Complaint at 37.

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3. The Tariff, Operating Agreement, and Manuals Expressly Provide PJM With Enhanced Flexibility to Respond to Emergencies

The Operating Agreement affords PJM an extraordinary degree of operational flexibility to manage Emergencies.¹⁶⁶ Section 1.7.11 grants PJM the exclusive responsibility “for declaring the existence of an Emergency, and for directing the operations of Market Participants as necessary to manage, alleviate or end an Emergency,” and it further instructs that PJM’s directives “shall be binding on all Market Participants until [PJM] announces that the actual or threatened Emergency no longer exists.”¹⁶⁷ Section 1.7.15 similarly provides that “[c]onsistent with Good Utility Practice, [PJM] shall be authorized to direct or coordinate corrective action, whether or not specified in the PJM Manuals, as necessary to alleviate unusual conditions that threaten the integrity or reliability of the PJM Region, or the regional power system.”¹⁶⁸ Moreover, the Commission has specifically held that “PJM, as the independent transmission operator, needs to have discretion to dispatch resources as necessary to meet load and ensure reliability depending on the circumstances affecting the grid at a particular point in time.”¹⁶⁹

¹⁶⁶ The Operating Agreement defines an “Emergency” as “(i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel; or (iii) a condition that requires implementation of emergency procedures as defined in the PJM Manuals.” OA § 1.

¹⁶⁷ OA, Sch. 1, § 1.7.11. As discussed *supra* in Part III.C, this section recognizes a hierarchy of authority, stating that PJM’s actions during Emergencies “shall be carried out in accordance with this [Operating] Agreement, the NERC Operating Policies, Applicable Regional Entity reliability principles and standards, *Good Utility Practice*, and the PJM Manuals.” *Id.* § 1.7.11 (emphasis added).

¹⁶⁸ OA, Attach. K-App’x, § 1.7.15.

¹⁶⁹ *PPL EnergyPlus*, 117 FERC ¶ 61,338, at P 33; *see supra* Part II.B (detailing this precedent).

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Moreover, Manual 13, the principal source for PJM’s emergency procedures, advises that “[t]he policy of PJM is to maintain, at all times, the integrity of the PJM RTO transmission systems *and the Eastern Interconnection* and to *give maximum reasonable assistance to adjacent systems when a disturbance that is external to the PJM RTO occurs.*”¹⁷⁰ Manual 13 section 2.3.2 thus provides that PJM must be able “tak[e] actions it determines are consistent with Good Utility Practice and are necessary to maintain the operational integrity of the PJM RTO *and the Eastern Interconnection.*”¹⁷¹ Manual 13 vests with PJM the responsibility for “[d]eclaring an emergency exists or ceases to exist,”¹⁷² and it expressly preserves PJM’s broad operational flexibility during emergencies, including the ability to modify or skip the sequence of emergency procedures as necessary to address emergency situations.¹⁷³

Furthermore as PJM has already explained, Operating Agreement section 1.7.15 clearly states that PJM “shall be authorized to direct or coordinate corrective action, *whether or not specified in the PJM Manuals*, as necessary” to manage Emergencies.¹⁷⁴ Manual 13 is also clear that PJM operators have broad flexibility to modify, or skip, individual emergency procedures as

¹⁷⁰ Manual 13, § 1.1 (Policy Statements) (emphasis added).

¹⁷¹ *Id.* § 2.3.2 (emphasis added).

¹⁷² *Id.*

¹⁷³ *See id.* § 2.3.2 (Real-Time Emergency Procedures (Warnings and Actions)) (noting that “[d]ue to system conditions and the time required to obtain results, PJM dispatchers may find it necessary to vary the order of application” of measures outlined in Manual 13 “to achieve the best overall system reliability”); *id.* (“The Real-Time Emergency Procedures section combines Warnings and Actions in their most probable sequence based on notification requirements during extreme peak conditions. Depending on the severity of the capacity deficiency, it is unlikely that some Steps would be implemented.”).

¹⁷⁴ OA, Attach. K-App’x, § 1.7.15.

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necessary to address emergency situations. In arguing that PJM should be given “little to no” deference, Complainants completely ignore these standards.

PJM recognizes that it is not infallible and is not suggesting that emergency operating decisions may never be challenged. But, consistent with the broad discretion PJM has to manage Emergencies under the Good Utility Practice standard, the Operating Agreement and Attachment DD also grant PJM broad discretion to declare and manage Emergencies with binding effect on Market Participants. The Complaint does not even attempt to make the kind of evidentiary showing required to challenge PJM’s actions during Winter Storm Elliott on Good Utility Practice or prudence grounds.

4. Declining to Afford System Operators Appropriate Deference Under the Good Utility Practice Standard Would Undermine Public Policy

It would undermine public policy to enable Capacity Performance Resources to concoct *post hoc* objections to PJM’s real-time emergency management decisions without regard for the Good Utility Practice standard or PJM’s explicit authority under the Tariff and Operating Agreement. Capacity Resources would be encouraged to under-perform if they thought that future litigation presented a too-easy avenue to evade Non-Performance Charges. Making the prospect of bonus payments for over-performance less probable would likewise discourage over-performance. Creating these kinds of incentives would be particularly problematic when operators are seeking to optimize available resources to harmonize potentially competing goals such as serving internal load while providing assistance to neighboring areas experiencing difficulties – a situation faced by PJM’s operators during Winter Storm Elliott. The Commission should avoid these outcomes by following its precedent and denying the Complaint.

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B. Complainants Cannot Deflect Their Responsibilities Under Capacity Performance By Blaming PJM

Many of Complainants' arguments focus on various ways to blame PJM for their own failures under Capacity Performance. These arguments generally fall into two categories: i.e., arguments contending that Complainants should be excused from the assessment of Non-Performance Charges because (i) Capacity Performance was designed to give Capacity Resources advance notice that needed generators will be called upon to operate during a PAI; and (ii) PJM's Manuals explicitly require PJM to take certain prerequisite steps to help gas-fired generators before taking actions that trigger the commencement of PAIs. Neither theory holds water. These arguments are simply wishful thinking regarding the meaning of the Capacity Performance reforms.

Complainants argue that they should be excused from the consequences of their failures to meet Capacity Performance standards because Capacity Performance never contemplated that they would incur Non-Performance Charges unless they received advance notice from PJM. Complainants' excuses include that:

- They "relied on PJM's [inaccurate] load forecasts"¹⁷⁵ and that the load forecasts "signaled" that their units would not be needed on December 23 and 24.¹⁷⁶
- PJM did not initiate "intermediate steps . . . that are meant to head off the need for an Emergency Action, and especially the need for PJM to rely on intra-day gas purchases in order to maintain reliability during cold weather events."¹⁷⁷

¹⁷⁵ Complainants recently restate this assertion. *See* Answer to the Motion to Dismiss at 26-27 (Complainants "are reliant on PJM to perform its obligations in full, including making reasonably accurate load forecasts . . .").

¹⁷⁶ Complaint at P 27.

¹⁷⁷ *Id.* at 56.

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- PJM did not schedule units in advance to accommodate Complainants’ preferred gas purchasing practices.

According to Complainants: “PJM justified [its] strict approach [under Capacity Performance] in part, on the fact that it had adopted . . . advisories, alerts, and procedures . . . , and that these advisories, alerts, and procedures could be relied on to forestall Emergency Action in most cases, and to avoid leaving natural gas-fired generators unreasonably exposed to Non-Performance Charge liability.”¹⁷⁸ In fact, Capacity Performance obligations are *not* conditioned upon PJM having given advance commitments to operate or to accommodating generators’ preferred gas purchasing practices. Capacity Performance places the onus on generators to take whatever steps they deem appropriate to be available to PJM when called during emergency conditions.

Capacity Performance has only two narrow exceptions and relying upon PJM’s load forecast, the initiation of “intermediate steps” or calling upon a unit at a time that is not consistent with its preferred gas purchasing practices, are not among them. Complainants’ contention that being held accountable for meeting their Capacity Performance obligations should be a function of whether PJM “signals” or provides other advanced notice to units that they will be needed, could hardly be more divorced from what Capacity Performance actually requires. The goal of Capacity Performance was “to ensure that resources will perform during the most critical periods of the delivery year.”¹⁷⁹ It was structured “to incent resource owners to be able to respond when called upon during a Performance Assessment Hour.”¹⁸⁰ Requiring that PJM provide notice to generators

¹⁷⁸ *Id.* at P 26.

¹⁷⁹ *Id.* at P 11.

¹⁸⁰ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,213, at 26 (2016)

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days or even hours in advance during an emergency is antithetical to its design and would defeat its purpose.

In fact, under Capacity Performance, the Commission was concerned with “signals” of another sort. As stated in the Capacity Performance Rehearing Order, “[it is critical that the capacity market rules send the *proper long-term investment signals* to ensure capacity that can meet the reliability needs of the region.”¹⁸¹ Had Complainants’ heeded this signal, they might have been able to meet their Capacity Performance obligation as did many other generators. In fact, assessing Non-Performance Charges against Complainants and other generators that failed to meet their Capacity Performance obligations will provide the incentives to make necessary future investments to enhance generator availability during emergencies.

However, Complainants assert that measures to address Capacity Performance obligations such as “pricing the [Capacity Performance] risk into capacity offers, buying gas day-ahead on the chance that an Emergency Action might be called, foregoing capacity payments altogether –are not *viable solutions*.”¹⁸² In fact Complainants go even farther and claim “under the existing rules, *there is no good way* for natural gas-fired generators to avoid the financially burdensome Non-Performance Charges that are imposed for non-performance during an Emergency Action.”¹⁸³ Apparently, the only “viable” or “good” approaches that would be acceptable to Complainants are ones that shift most of the fuel security risk under Capacity Performance to customers in the PJM region. But this is not how Capacity Performance was designed to work. Under Capacity Performance, “*resources* are able to reflect fuel security costs as the availability of fuel is an

¹⁸¹ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157, at P 103 (2016)

¹⁸² Nautilus Answer to Motion to Dismiss at 27 (emphasis added).

¹⁸³ *Id.* at 29 (emphasis added).

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integral component of resource performance.”¹⁸⁴ Resources decide what measures are needed to be compliant and include those costs in their bids. Or, if they decide not to take any steps to mitigate risks, they bear the consequences. Finally, it is also noteworthy that Complainants list of potential measures to address Capacity Performance risk does not even mention installing additional oil burning capability on their units—an approach that worked well during Winter Strom Elliott for many companies with gas-fired generating units.

Ultimately, Complainants’ claim that taking steps to meet Capacity Performance standards are too expensive to justify the desired performance levels is simply an attempt to relitigate claims already decided on appeal of the Commission’s Capacity Performance orders. In *Advanced Energy Mgmt.*,¹⁸⁵ petitioners argued that “the Commission did not adequately consider the costs and benefits of PJM’s [Capacity Proposal] proposal.”¹⁸⁶ The Court rejected this claim finding that the “net savings may be substantial”¹⁸⁷ and that, in any event, the Commission “does not have to find net savings.”¹⁸⁸ Ultimately, the Court “defer[red] to the Commission’s weighing of the various considerations and ultimate ‘policy judgment.’”¹⁸⁹

C. PJM’s Load Forecasts Were Reasonable Given the Facts Available at the Time that They Were Made

Complainants blame what they characterize as “inaccurate” PJM load forecasts for causing PJM to skip “intermediate steps” that, if followed, might have enabled PJM to avoid the need for

¹⁸⁴ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 352 (2015)

¹⁸⁵ *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656 (D.C. Cir. 2017).

¹⁸⁶ *Id.* at 660.

¹⁸⁷ *Id.* at 662.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

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Emergency Actions and which might have allowed Complainants' units to obtain necessary gas supplies.¹⁹⁰ Complainants are wrong for several reasons but the first reason why this argument fails is that PJM's load forecast was reasonable.¹⁹¹ While actual load varied from the forecast more than is typical: actual load in PJM on December 23 and December 24 was 7% higher than forecast.¹⁹² Other regions experienced similar or even larger deviations.¹⁹³ But as explained above, the process used by PJM is extremely rigorous and is consistent with best industry practices.¹⁹⁴ PJM uses state of the art methodologies for its forecasts and obtains weather data from multiple vendors to address the risk that single source of weather data may be biased or anomalous.¹⁹⁵ In fact, Complainants do not identify any faults in PJM's load forecasting nor could they reasonably do so.

Further, as Mr. Mulhern explains, PJM was mindful that Winter Storm Elliott was an unusual and significant weather event that could have unpredictable impacts.¹⁹⁶ PJM took particular care with the pre-storm forecast and how it planned the December 23 operating day in preparation for the full force of the storm's arrival in the PJM footprint.¹⁹⁷ It is noteworthy that

¹⁹⁰ Complaint at 56; Jordan Aff. at P 23 (describing the “series of intermediate steps—like the Cold Weather Advisory, Cold Weather Alert, and the gas-electric coordination processes—before it gets to the point where it will declare an Emergency Action”); *see id.* (describing these same things as “intermediate procedures which will give Market Participants sufficient advance notice of potential emergency conditions to allow natural gas service to be purchased”).

¹⁹¹ *See, e.g.*, Mulhern Aff. P 42.

¹⁹² *Id.* P 28.

¹⁹³ *Id.* P 43.

¹⁹⁴ *See supra* Part II.B.5.

¹⁹⁵ *See id.*

¹⁹⁶ *See* Mulhern Aff. at P 26.

¹⁹⁷ *Id.* P 44.

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PJM load forecasts were at their “normal” levels of accuracy immediately before and after Winter Storm Elliott.¹⁹⁸ This is a clear indication that the unusual under-forecasts for December 23 and 24 were not caused by flaws in PJM’s forecasting procedures.¹⁹⁹ To the contrary, the Winter Storm Elliott forecast was an outlier attributable to the anomalous combination of record-breaking temperature drops and demand levels never before seen over the Christmas holiday.

D. Complainants Misinterpret the PJM Tariff, Operating Agreement, and Manuals

Many of Complainants’ arguments are rooted in fundamental misinterpretations of the Tariff, Operating Agreement, and PJM Manuals. Complainants misunderstand both PJM’s substantive obligations and the relevant standard for evaluating PJM’s conduct during the Winter Storm Elliott event. The plain text of the Tariff and PJM Manuals, as applied to the undisputed facts, vitiate Complainants’ claims. Further, contrary to Complainants’ contention that PJM should be entitled to “little to no discretion” regarding its actions to address the capacity emergency, the Operating Agreement makes clear that PJM’s decisions are entitled to substantial deference under the “Good Utility Practice” standard. As shown *infra*, the actions taken by PJM during the event were entirely reasonable given the circumstances that PJM faced.

1. Complainants Grossly Misconstrue the Tariff

Section 10A(d) of the Tariff governs the assessment of Performance Shortfalls during a PAI, describing the conditions in which a generator is deemed to have incurred Performance Shortfall deficiencies. Complainants try to avoid paying Non-Performance Charges by offering illogical interpretations of the following two consecutive sentences:

¹⁹⁸ *Id.* P 41.

¹⁹⁹ *Id.*

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- “[A] Capacity Resource or Locational UCAP of a Capacity Market Seller or Locational UCAP Seller *shall not be considered* in the calculation of a Performance Shortfall for a Performance Assessment Interval *to the extent* such Capacity Resource or Locational UCAP *was unavailable* during such Performance Assessment Interval *solely because* the resource on which such Capacity Resource or Locational UCAP is based was on a Generator Planned Outage or Generator Maintenance Outage approved by the Office of the Interconnection, or was *not scheduled to operate* by the Office of the Interconnection, or was *online but was scheduled down*, by the Office of the Interconnection, based on a determination by the Office of the Interconnection that such scheduling action was appropriate to the security constrained economic dispatch of the PJM Region.”²⁰⁰
- “Such a resource *shall* be considered in the calculation of a Performance Shortfall if it *otherwise was needed and would have been scheduled* by the Office of the Interconnection to perform, *but was not scheduled to operate, or was scheduled down, solely due* to: (i) any operating parameter limitations submitted in the resource’s offer, or (ii) the seller’s submission of a market-based offer higher than its cost-based.”²⁰¹

For ease of reference, the first sentence will be referenced as the “Approved Unavailability Provision” because it describes when units may be excused from Non-Performance Charges because their unavailability was approved by PJM. The second sentence will be referred to as the “Otherwise Needed Provision” because it describes units that fit within the Approved Unavailability Provision but that remain subject to Non-Performance charges based on additional criteria.

In reading both the Approved Unavailability and Otherwise Needed Provisions together, it is clear that a unit “not scheduled” can still be responsible for Non-Performance Charges without regard to whether PJM directly contacted the unit after its submittal of a bid in an attempt to schedule it. For example, if the operating parameters submitted by the unit required 36 hours’ advance notice but the unit was needed within 4 hours to address emergency conditions, PJM could

²⁰⁰Tariff, Attach. DD, § 10A(d) (emphasis added).

²⁰¹ *Id.*

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determine that based on the submitted operating parameters, the unit would be unavailable when needed.

2. The Tariff Forecloses Complainants' Arguments

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Commission precedent is absolutely clear. Tariffs should be interpreted based on their express terms and when they are clear on their facts they should be enforced as written.²¹³ Here, Complainants’ contend that the terms “scheduled” and “not scheduled” in the Approved Unavailability Provision are ambiguous, *i.e.*, they are not “fully clarified.” That is incorrect. The meaning of the term “scheduled” is clear on its face. For a control area, a unit is “scheduled” when it is placed into the dispatch. This can occur though a decision made by the system operator or units may self-schedule their resources. But a unit cannot be scheduled in the past. An operator cannot decide after the fact—much less months later—to schedule or not schedule a unit. The decision to “not schedule” or to “schedule down” the resource as described in the Approved Unavailability and Otherwise Needed Provisions only makes sense if the referenced “security constrained economic dispatch of the PJM Region” occurs when those decisions are made.

Commission precedent is similarly clear. Tariffs are to be interpreted based on their express terms, and unambiguous terms are to be enforced as written.²¹⁴ Here, Complainants’ contend that the terms “scheduled” and “not scheduled” in the Approved Unavailability Provision are ambiguous, *i.e.*, they are not “fully clarified.” That is incorrect. The meaning of the term “scheduled” is clear on its face. For a control area, a unit is “scheduled” when it is placed into the dispatch. This can occur though a decision made by the system operator or units may self-schedule their resources. But a unit cannot be scheduled in the past. An operator cannot decide after the

²¹³ See *Cal. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,168 at P 7 (2012) (“The plain language of the tariff controls — not an interpretation based on a claim that the provision is ambiguous.”).

²¹⁴ See *Cal. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,168 at P 7 (2012) (“The plain language of the tariff controls — not an interpretation based on a claim that the provision is ambiguous.”)

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fact—much less months later—to schedule or not schedule a unit. The decision to “not schedule” or to “schedule down” the resource as described in the Approved Unavailability and Otherwise Needed Provisions only makes sense if the referenced “security constrained economic dispatch of the PJM Region” occurs when those decisions are made.

Further, if the two provisions were somehow deemed to be ambiguous, Commission precedent would require them to be interpreted in light of extrinsic evidence. In this case, the extrinsic evidence, including related tariff provisions, policy considerations, and course of performance is overwhelmingly against Complainants’ interpretation. Attachment DD, Section 10A(c) provides that: “[f]or each Performance Assessment Interval, [PJM] shall determine whether, and the extent to which, the actual performance of each Capacity Resource and Locational UCAP has fallen short of the performance expected of such committed Capacity Resource, and the magnitude of any such shortfall.”²¹⁵ The “performance expected” under this passage can only mean the performance expected by PJM operators during the emergency that triggered the PAIs. It would be absurd to suggest that what the operators “expected” from generators during an emergency should be identified several months later. The operators need to make their decisions in real-time and cannot make any decisions unless they understand the available generation options at the moment of decision.

In fact, taking Complainants’ misguided arguments to their logical extreme, generators would never be assessed Non-Performance Charges unless PJM actually experienced a load shedding event. As long as load was somehow met—regardless of how poorly an individual generator performed in relation to its commitments—all generators not meeting their operational

²¹⁵ Tariff, Attach. DD, § 10A(c).

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commitments could simply claim they were not actually needed because there was no loss of load.²¹⁶ Reading the Tariff in this manner would eviscerate the Capacity Performance reforms.

As the Commission explained in approving the Capacity Performance mechanism, “PJM’s proposed Non-Performance Charge, and the mechanics by which it will be applied, will provide incentive to capacity sellers to invest in and maintain their resources by tying capacity revenues more closely with real-time delivery of energy and reserves during emergency system conditions.”²¹⁷ Complainants’ tariff interpretation does just the opposite: it divorces the generator’s performance in supplying real time energy and resources from the emergency system conditions that actually occurred and instead, using 20/20 hindsight, allows generators to avoid all penalties by claiming they might not have been scheduled or might have been scheduled down under some idealized theoretical dispatch.

c. Complainants Misconstrue Tariff Provisions That Define When Units Are Excused from Non-Performance Charges Because They Were “Not Scheduled” by PJM

Complainants further misconstrue Tariff Attachment DD, Section 10A(d) by applying a definition of “schedule” from the Merriam-Webster Dictionary meaning to “appoint, assign or designate for a particular time.”²¹⁸ Specifically, Complainants assert:

²¹⁶ Complainants also ignore the basic premise of their own argument. They claim that an *ex post* “need” determination can excuse performance predicated on their assertion that the tariff provision discussing need “modifies and clarifies” the meaning of “scheduling.” Yet, as discussed above, whether a unit was scheduled or not scheduled is a question of fact based on the actions and determinations of the PJM operators during the event. A decision to “schedule” a unit or, by the same token, a decision *not* to “schedule” a unit, is necessarily a real-time event. If the unit did not run over a given time interval, it is not possible to go back in time and cause the unit to run in the past.

²¹⁷ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 158 (2015).

²¹⁸ Complaint at 47.

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Applying this definition to the term used in Section 10A(d), “scheduled” by PJM during real-time operations requires that PJM take action to identify a generating unit, and then direct it to operate at a particular time and in a manner that is consistent with the reliable operation of the broader PJM-operated transmission system. If PJM does not call on a generating unit that was not otherwise scheduled to operate, then PJM has “not scheduled” that unit, and under the terms of the OATT, the unit is exempt from Non-Performance Charges for any interval before it was called on by PJM.²¹⁹

This interpretation wildly contravenes Section 10A(d)’s plain meaning. Complainants isolate one word in a passage, *i.e.*, “schedule,” assign it a definition not based on electric industry practices, and proceed to make a sweeping conclusion that would likely exempt the bulk of the units that were not available during the PAIs due to frozen equipment or lack of fuel from the assessment of Non-Performance Charges. Read in context, however, this interpretation is obviously flawed. Complainants’ cramped reading simply ignores the requirement stated in the Otherwise Needed Provision that units “not scheduled” by PJM are excused from the assessment of Non-Performance Charges *only* when they are not scheduled for a specific reason, namely “based on a determination by [PJM] that such scheduling action was appropriate to the security-constrained economic dispatch of the PJM Region.”

Stated otherwise, just because PJM “does not call on a generating unit that was not otherwise scheduled to operate” during a PAI event does not mean that the *reason* why the unit was not called upon to operate during the PAI event was a “determination by [PJM] that such scheduling action was appropriate to the security-constrained economic dispatch of the PJM Region.” As the Otherwise Needed Provision makes clear, a determination to “not schedule” a resource is *not* deemed to have been “appropriate to the security constrained dispatch” as used in the Provisional Excuse Provision if the reason for not being scheduled was “solely due to (i) any

²¹⁹ *Id.*

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operating parameter limitations submitted in the resource’s offer, or (ii) the seller’s submission of a market-based offer higher than its cost-based.”

Generators are required to update their parameters in Markets Gateway and the status of their units in eDART after an advisory or alert has been issued.²²⁰ PJM’s operators rely upon the information submitted.²²¹ PJM is under no obligation to check in by phone or otherwise to confirm that generation owners are providing accurate information. Similarly, a unit’s market offer in excess of its cost-based offer might not be economic compared to other options available to the PJM operators. Again, the PJM operators have the information before them—without reaching out to unit owners by telephone—to make dispatch decisions. PJM operators need not reach out directly to the units for confirmation of those offer submittals in order to make dispatch decisions. Nor would it be realistic to expect them to do so for hundreds of units when the system is experiencing emergency conditions.

Complainants’ reliance upon Manual 13 is also misplaced. Complainants appear to argue that after PJM declares a Maximum Generation Emergency Action, unless PJM has interactions with a specific resource—either through the generator’s submittal of bids to provide emergency energy or through a direct contact initiated by PJM—that the unit has been “not scheduled” for the purpose of avoiding the assessment of Non-Performance Charges.²²² Per Complainants, “[f]or purposes of this argument, the key point is that Manual 13 contemplates that PJM must take action to direct the operation of a generator in order for it to be deemed to be ‘scheduled.’”²²³

²²⁰ Manual 13 § 3.1; Pulong Aff. at PP 17, 29.

²²¹ *Id.* PP 17, 29.

²²² *See* Complaint at 48.

²²³ *Id.*

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This argument fails because it improperly conflates the “security constrained economic dispatch” described in Attachment DD, Section 10A(d) of the Tariff with the process for selecting resources during a Maximum Generator Emergency Action. In fact, none of the provisions in Attachment DD, Section 10A(d) of the Tariff relate to the process for selecting supply sources *after* a Maximum Generation Emergency Action has been declared. When a Maximum Generation Emergency Action is declared, PJM does *not* dispatch resources under the typical “security constrained economic dispatch” algorithm. As Manual 13 provides, “[t]he purpose of the Maximum Generation Emergency Action is to increase the PJM RTO generation above the maximum economic level. It is implemented whenever generation is needed that is greater than the highest incremental cost level.”²²⁴ The two dispatch mechanisms thus are very different.

The “security constrained economic dispatch” described in Attachment DD, Section 10A(d), in contrast to procedures for dispatching resources after declaration of a Maximum Generation Energy Action, does not require PJM to seek emergency bids or to contact resources directly. Rather, PJM already has the offers submitted by Capacity Resources necessary in the Day-Ahead and Real-Time markets to utilize for the “security constrained economic dispatch.”

3. Complainants Wrongly Assert that PJM Failed to Follow Its Emergency Operations Manual by Issuing Cold Weather Alerts and Not Providing Gas-Fired Generators With Advance Notice that PJM Wished to Dispatch Them

Complainants contend that after PJM calls a Cold Weather Alert it is obligated under Manual 13 to provide at least one day’s advanced notice to a gas-fired generator it wishes to dispatch and to specify a time when the unit must be available to follow PJM dispatch signals.²²⁵

²²⁴ Manual 13, § 2.3.2 at 32.

²²⁵ Complaint at 23.

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As Complainants state, “[t]he Cold Weather Alert procedures specify that PJM will contact specific natural gas-fired generators, at least a day in advance, to let them know that they will be needed to operate; if no such notice is provided by PJM, generators may assume that they will not be needed by PJM to address cold weather conditions.”²²⁶ Complainants also claim that PJM acted inconsistently with Manual 13 by invoking emergency procedures affecting their units after calling Cold Weather Alerts on December 23 and 24, 2022, but then not giving the Complainants’ units the one-day advance notice that would have made it easier for them to procure gas prior to real-time operations.²²⁷

Complainants continue to misinterpret Manual 13 and focus on the following provision at section 3.3.2:

PJM Dispatch will notify the generator owner that the unit is required to be online and ready to follow PJM Dispatch signals at XX:XX hrs. on XX day for reliability. The unit parameters and the offer will then be confirmed and the unit will be offer capped with the schedule being ‘locked in’ as indicated in PJM’s Manual for Energy & Ancillary Services Market Operations (M-11). PJM Dispatch will inform the gen owner to run for the greater of:

- The unit’s Min Run time OR
- The duration that PJM requires the unit to run for reliability reasons.²²⁸

Complainants take this provision out of context, however, and ignore the provision immediately preceding it that limits its application to a specific set of circumstances, namely:

PJM Dispatch reviews the load forecast, interchange forecast, the increased MW unavailability from the tables below and generator Times to Start (Start-Up + Notification in Markets Gateway) to confirm if the Day Ahead Market will be able to clear sufficient generation that can be on-line to meet the reliability needs of the system for the operating day. *If sufficient generation cannot be cleared in the Day*

²²⁶ *Id.* at 22.

²²⁷ *Id.*

²²⁸ PJM Manual 13 at § 3.3.2.

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*Ahead market based the start-up + notification time, the following processes will be used to commit generation in advance of the Day Ahead Market:*²²⁹

Complainants do not allege—and cannot allege because it did not occur—that the predicate for the notice provision they rely upon was ever met: PJM operators *never* determined that the Day Ahead Market could not clear sufficient resources to meet reliability needs. And, in fact, the Day Ahead Market did clear for both December 23 and 24, 2022 with sufficient resources to meet anticipated load.²³⁰ In short, the provision Complainants rely on has no application here and thus could not possibly supply a basis for excusing the assessment of Non-Performance Charges against Complainants’ plants.

Moreover, the Manual 13 provision Complainants rely on would not have excused their generators from the assessment of Non-Performance Charges even if PJM’s operators had determined that the Day-Ahead Market was not expected to clear sufficient resources to meet load. As explained *infra* at Part IV.G.2, Manual 13 expressly grants PJM’s operators the flexibility to determine which steps and the order of steps to take in addressing emergency conditions.

E. Complainants Claims that the OPP and Rock Springs Units Should Be Excused from Non-Performance Charges Related to PAIs Occurring After 12:00 on December 24 Does Not Withstand Analysis

Complainants contend that certain of their units were not “needed” after 12:00 on December 24 and thus should not be assessed any Non-Performance Charges. They claim that based on four factors “neither OPP nor Rock Springs was ‘needed’ by PJM during any Settlement

²²⁹ *Id.*

²³⁰ *See* Bielak Aff. at P 39 (“On a day ahead basis, PJM calculated 29 GW of *additional operating capacity* in excess of what was already scheduled to meet the demand for the operating day. Based on this, no generation maintenance outages were recalled.”).

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Interval between 12:00 and 22:00 on December 24²³¹ Complainants stress, in particular, that “the relevant zonal LMPs for OPP and Rock Springs were not only below, but, in most Settlement Intervals, far below the cost-based offers for those facilities”²³² In other words, Complainants assert PJM had no grounds to dispatch the OPP and Rock Springs units beginning at 12:00 on December 24 based upon economic factors and system operational requirements. As such, the claim is expressly foreclosed by the Tariff. Further, even considered on the merits, Complainants clearly have failed to carry their burden of proof under FPA section 206.

1. Claims that Second-Guess PJM’s Scheduling and Dispatch Decisions Are Foreclosed Under the Operating Agreement and Inconsistent with Order No. 2000

Complainants claim PJM should not have dispatched the OCC and Rockland units after 12:00 on December 24.²³³ This argument can be rejected without even reviewing Complainants’ factual claims. As discussed in Part III, *supra*, claims grounded in an assertion that PJM should have scheduled or dispatched units in a particular manner during the emergency are expressly foreclosed by Operating Agreement Schedule 1, Section 1.8.2.

Complainants’ desire to insert themselves into reliability decisions also cannot be reconciled with Order No. 2000.²³⁴ PJM is an RTO under Order No. 2000. A FERC-prescribed

²³¹ Complaint at 52.

²³² *Id.* at 51.

²³³ See *PPL EnergyPlus, LLC*, 117 FERC ¶ 61,338 at P 33 (2006) (“PJM and the signatories to the Operating Agreement . . . have agreed that disputes concerning [dispatch related] matters not lead to the retroactive unraveling of PJM’s market dispatch decisions leading to re-creation of hypothetical prices based on potentially different dispatch decisions.”).

²³⁴ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish Cnty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

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“minimum characteristic” of an RTO is that it must “have exclusive authority for maintaining the short-term reliability of the grid that it operates” including “the right to order the redispatch of any generator connected to the transmission facilities it operates if necessary for the reliable operation of the transmission system.”²³⁵ This redispatch authority for reliability was clearly intended to encompass—in fact was focused on—emergency situations:

We clarify that we intend the authority for generator redispatch to be used by the RTO to prevent or manage emergency situations, such as abnormal system conditions that require automatic or immediate manual action to prevent or limit equipment damage or the loss of facilities or supply that could adversely affect the reliability of the electric system, or to restore the system to a normal operating state.²³⁶

Further, the Commission found that PJM satisfies the redispatch authority requirement, stating “PJM has the right to order the redispatch of any generator connected to the transmission facilities it operates if necessary for the reliable operation of the transmission system.”²³⁷ It would defy logic that the Commission would adopt a policy requiring RTOs to have “exclusive authority for maintaining the short-term reliability” including the “authority for generator redispatch . . . to prevent or manage emergency situations,” and then not give them any deference for how they use that authority. In fact, it would be counter-productive because it would chill the willingness of

²³⁵ 18 C.F.R. §§ 35.34(j)(4), 35.34(j)(4)(ii). Similarly, Order No. 888’s “ISO Principles” required that PJM have the “primary responsibility in ensuring short-term reliability.” *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 31,731 (1996) (“An ISO should have the primary responsibility in ensuring short-term reliability of grid operations”), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Pol’y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

²³⁶ Order No. 2000 at 845.

²³⁷ *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,061, at 61,233 (2001).

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operators in RTOs such as PJM to issue redispatch orders during emergencies if they believed that every decision could be meticulously reexamined with the benefit of 20/20 hindsight.

2. Complainants Fail to Carry Their Burden of Proof or Persuasion Under FPA Section 206

Under FPA Section 206, Complainants carry the burden of proof.²³⁸ This requires that they establish a *prima facie* case to move forward.²³⁹ Their allegations regarding the reasons why PJM supposedly should not have scheduled the OCC and Rockland units, however, clearly fail to meet this standard.

The Commission has explained that “[t]he test for prima facie evidence is whether there are facts in evidence which if unanswered would justify [persons] of ordinary reason and fairness in affirming the question which the plaintiff is bound to maintain.”²⁴⁰ Complainants allege four factors that they say provide “strong evidence that any given generator is not ‘needed’ by PJM to address an emergency condition.” These factors are that (i) “supplies of reserves [were] consistently above the minimum level of those reserves needed by PJM,” (ii) “LMPs ha[d] fallen dramatically to only a fraction of what they were during peak intervals,” (iii) “LMPs [were] below

²³⁸ *RENEW Northeast, Inc. v. ISO New Eng., Inc.*, 182 FERC ¶ 61,085 at P 48 n. 117 (2023) (citing *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs. Into Mkts. Operated by Cal. Indep. Sys. Operator Corp. & Cal. Power Exchange*, Opinion No. 536, 149 FERC ¶ 61,116, at PP 45-49 (2014), *on reh’g*, 153 FERC ¶ 61,144 (2015), *aff’d sub nom. MPS Merchant Servs., Inc. v. FERC*, 863 F.3d 1155 (9th Cir. 2016) (“The party with the burden of proof bears the burden of production, or the need to provide sufficient evidence to establish a prima facie case.”)) (denying complaint for failing to meet burden of proof); *see also Nantahala Power & Light Co.*, 19 FERC ¶ 61,152, at 61,276 (1982) (“The test for prima facie evidence is whether there are facts in evidence which if unanswered would justify [persons] of ordinary reason and fairness in affirming the question which the plaintiff is bound to maintain.”).

²³⁹ 16 U.S.C. § 824e; *see RENEW Northeast*, 182 FERC ¶ 61,085 at P 48 n.117 (denying complaint for failing to meet burden of proof to establish a *prima facie* case and listing relevant authorities).

²⁴⁰ *San Diego Gas & Elec. Co.*, Opinion No. 536, 149 FERC ¶ 61,116, at P 46.

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the cost-based offers that OPP and Rock Springs maintain on file with PJM,” and (iv) “PJM was also engaged in exports to adjoining BAAs.”²⁴¹ Complainants stress that “[w]hen zonal LMPs fall below a unit’s cost-based offer, that is a strong indication that the zone’s load is being served adequately by other, lower-cost facilities” even during a Maximum Generation Emergency because “[b]ids accepted by PJM are Emergency Purchases and will set the Locational Marginal Price.”²⁴²

Complainants’ presentations fail to make out a *prima facie* case for several reasons. First, although Complainants state that the LMPs in the vicinity of their units were below their cost-based offers “on file with PJM,” they do not support this claim with any data. At a minimum, they should provide information that shows the claimed levels of their cost-based offers and the levels of the LMPs. Further, they do not provide any explanation regarding how the production cost element of their cost-based bid will be calculated. The gas cost is an input into calculation and it is not clear how Complainants would determine their cost of gas since, apparently, they could not buy any.

Even more fundamentally, Complainants confuse normal operations that use a security constrained economic dispatch with the manner in which generators were being dispatched during Emergency Actions. A Maximum Generation Emergency Action is implemented “to increase the PJM RTO generation above the maximum economic level.”²⁴³ PJM operators were entitled to call upon Complainants plants to meet reliability needs during the Emergency Actions as they deemed necessary consistent with Good Utility Practice.

²⁴¹ Complaint at 50.

²⁴² *Id.* at 51 (alteration in original) (quoting Manual 13, § 2.3.2).

²⁴³ Manual 13, § 5.2 at 93.

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Finally, PJM’s dispatch decisions were reasonable given the circumstances PJM faced on December 24, 2022. Consistent with Good Utility Practice, PJM sought to bring additional generation on line and retain generation that was operating because of operators’ legitimate concern regarding PJM’s ability to meet the evening peak on December 24, 2022. Uncertain weather conditions, poor generator performance that fell far below PJM’s expectations, and growing concerns about production area problems and pipeline disruptions all contributed to the need for actions taken by the PJM operators.

**F. Complainants’ Claim that PJM is Entitled to “Little to No Deference”
Regarding Operator Actions Taken During Emergencies is Without Basis; the
“Good Utility Practice” Standard Affords PJM Substantial Deference
Especially in Addressing Emergency Conditions**

Complainants contend that “the Commission should give little to no deference to PJM’s exercises of discretion in connection with the December 23 PAI and the December 24 PAI, particularly its determinations on whether a given unit was ‘needed’ during a specific Settlement Interval.”²⁴⁴ Complainants’ only rationale for this assertion is that PJM’s handling of the emergency was somehow “highly flawed” and that PJM committed “many missteps during the time period at issue.”²⁴⁵ Complainants do now, however, cite any Tariff or Operating Agreement provisions or point to any Commission precedent. In fact, the Good Utility Practice standard under the PJM Operating Agreement provides PJM with broad deference regarding decisions to declare emergencies and how to address them.

As discussed above in Part IV.A.1, the Good Utility Practice standard established in Order No. 888 is highly deferential to actions taken by utilities provided that there is *some* reasonable

²⁴⁴ Complaint at 37, 45.

²⁴⁵ *Id.* at 37.

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basis for their decisions. Decisions are deemed to comply with Good Utility Practices notwithstanding that a superior option may have been available²⁴⁶ or that certain elements were shown to have been in error.²⁴⁷ Further, under long-standing precedent, system operators are accorded especially broad deference in reviewing the reasonableness of decisions made under emergency conditions.²⁴⁸ The deference normally provided under the Good Utility Practice standard should be even greater in this proceeding given that the Tariff and Operating Agreement give PJM so much discretion regarding Emergencies and Emergency Actions. In particular, as discussed *supra* at Part IV.A.2 and the Naumann Affidavit, the reasonableness of PJM's actions must be evaluated in light of what was known at the time the decisions were made and not based upon a *post hoc* determination of what PJM might have decided had it possessed perfect knowledge and an extended period to deliberate.

In short, the Good Utility Practice standard properly places a heavy burden on attempts to challenge operational decisions. Complainants, by contrast, seek to turn this well-established standard on its head by opening the door to litigation whenever any reason can be offered to second-guess operators. The Commission should reject their attempt.

²⁴⁶ See *Tenaska Clear Creek Wind*, 182 FERC ¶ 61,084, at P 41; *Salt Creek Solar, LLC*, 180 FERC ¶ 61,116, at P 68 (2022) (“The Tariff’s definition of Good Utility Practice affords SPP discretion to exercise reasonable judgment in light of the facts known at the time it makes a business decision.”); *Sierra Pac. Power*, 106 FERC ¶ 61,155, at P 23.

²⁴⁷ See *Midwest Indep. Transmission Sys. Operator*, 143 FERC ¶ 61,050, at P 44; see also *Metzenbaum*, 4 FERC ¶ 61,277.

²⁴⁸ See, e.g., *Cal. Indep. Sys. Operator*, 139 FERC ¶ 61,207, at PP 48-50; *PPL*, 117 FERC ¶ 61,338 at P 33 (“PJM, as the independent transmission operator, needs to have discretion to dispatch resources as necessary to meet load and ensure reliability depending on the circumstances affecting the grid at a particular point in time.”); *N. Nat. Gas*, 103 FERC ¶ 61,083, at P 14 (2003); *Equitrans*, 65 FERC ¶ 61,132, at P 4 (1993); *Re Consol. Gas Supply*, 2 P.U.R.4th 202; *Mun. Light Bds.*, 53 F.P.C. 1545 at 1565; see also *Midcontinent Indep. Sys. Operator*, 164 FERC ¶ 61,129 at P 37; *Big Sandy Peaker Plant*, 154 FERC ¶ 61,216 at P 50.

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The Commission’s prudence precedent reflects a similar deference to reasonable operational decisions and the same recognition that it is inappropriate to second guess such decisions with the advantage of perfect hindsight.²⁴⁹ Complainants’ unsupported claim that PJM is entitled to “little or no deference” is incompatible with these precedents.

Subjecting PJM operational decisions to freewheeling *post hoc* second guessing would create deleterious and chilling incentives for operators during emergencies. Operators are clearly authorized—as they should be—to use their judgment to make difficult real-time decisions to preserve reliability. These decisions must necessarily be made in the face of significant uncertainty and without the benefit of 20/20 hindsight. An already challenging task would become even harder if operators have to worry about their decisions being systematically scrutinized whenever they might have substantial economic consequences. Operators should never be distracted by concerns about potential future litigation over the Non-Performance Charge implications of their reliability decisions.

G. PJM’s Decisions to Support Neighboring Systems in Distress When Feasible Complied With the Tariff, Operating Agreement, NERC Requirements, Manual 13, and Good Utility Practice

Complainants assert that the “levels of net exports [to Tennessee Valley Authority (TVA) and Mid-Continent Independent System Operator (MISO), representing only PJM’s southern and western interfaces, are completely inconsistent with capacity emergency conditions.”²⁵⁰ Specifically, they claim that by providing exports at times when Emergency Actions were in place

²⁴⁹ See, e.g., *Pac. Gas & Elec*, 173 FERC ¶ 61,045, at P 179; *J. William Foley*, 142 FERC ¶ 61,125, at P 19; *Ind. Mun. Power Agency*, 56 F.3d 247 at 289; *New Eng. Power Co.*, 31 FERC ¶ 61,047, at 61,086.

²⁵⁰ Complaint at 42.

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was inconsistent with Manual Section 2.3.2 “requir[ing] that PJM curtail all non-Firm exports before PJM implements emergency actions.”²⁵¹ Complainants’ claim fails on numerous grounds.

1. Manual 13 Does Not and Cannot Prohibit Exports to Neighboring Systems During Emergencies

Manual 13 cannot plausibly be read as establishing an absolute prohibition on PJM’s ability to assist neighboring systems that are, or that are in danger of, shedding load as Complainants seem to suggest. As discussed *supra* at Part IV.A and in multiple PJM Exhibits,²⁵² Manual 13 is replete with statements confirming that operators have broad discretion to deviate from the Manual 13 procedure when necessary to preserve reliability. Complainants overlook that language and focus solely on isolated excerpts to offer an interpretation of Manual 13 that imposes binding prerequisites on PJM’s operational flexibility. The Commission must reject this attempt to handcuff PJM’s operational flexibility during emergencies.

Manual 13 unambiguously recognizes that reliability is PJM’s paramount obligation. Section 1.1 of Manual 13 begins by declaring that “the policy of PJM is to maintain, at all times, the integrity of the PJM RTO transmission systems and the Eastern Interconnection and to give maximum reasonable assistance to adjacent systems when a disturbance that is external to the PJM RTO occurs.”²⁵³ PJM must take actions “it determines are consistent with Good Utility Practice and are necessary to maintain the operational integrity of the PJM RTO and the Eastern Interconnection.”²⁵⁴

²⁵¹ *Id.*

²⁵² *See id.* P 17; Naumann Aff. at P 15.

²⁵³ Manual 13, § 1.1.

²⁵⁴ *Id.*

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Manual 13 states that “[t]he PJM Manuals are the instructions, rules, procedures, and guidelines established by PJM for the operation, planning, and accounting requirements of PJM and the PJM Energy Market.”²⁵⁵ Manual 13 refers to “expected” behaviors, not compulsory conduct, and it affirms that “PJM dispatchers have the flexibility of implementing the emergency procedures in whatever order is required to ensure overall system reliability. PJM dispatchers have the flexibility to exit the emergency procedures in a different order than they are implemented when conditions necessitate.”²⁵⁶

Similarly, section 2.3.2, which addresses “Real-Time Emergency Procedures (Warnings and Actions),” preserves PJM’s operational flexibility during emergencies. Section 2.3.2 provides that “[d]ue to system conditions and the time required to obtain results, PJM dispatchers may find it necessary to vary the order of application [of Warnings and Actions in real time] to achieve the best overall system reliability.”²⁵⁷ PJM can therefore “deviate from or change the order of the above actions [pertaining to Maximum Generation Emergency Action] as/if necessary.”²⁵⁸ A specially highlighted “Note” in section 2.3.2 emphasizes that “[t]he Real-Time Emergency Procedures section combines Warnings and Actions in their most probable sequence based on notification requirements during extreme peak conditions. Depending on the severity of the capacity deficiency, it is unlikely that some Steps would be implemented.”²⁵⁹

²⁵⁵ *Id.* at 9.

²⁵⁶ *Id.* § 2.3.

²⁵⁷ *Id.* § 2.3.2.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

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In addition, Manual 13 repeatedly states that, “[a] NERC EEA2 is issued when the following has occurred: Public appeals to reduce demand, voltage reduction, interruption of non-firm load in accordance with applicable contracts, demand side management/active load management, *or* utility load conservation measures.”²⁶⁰ PJM witness Michael Bryson attests that this language in particular must mean that Manual 13 “does not mandate that Maximum Generation Emergency Action or a Pre-Emergency/Emergency Load Management Reduction Action may be taken only when all non-firm exports are curtailed.”²⁶¹ He adds that section 2.3.2 has a specific procedure for determining whether to cut transactions to other Balancing Authorities if PJM has declared a Maximum Emergency Action. This provision gives such transactions a priority almost as high as native load which, contrary to Complainants’ reading, must mean that “there cannot be a mandatory requirement that PJM must cut all non-firm exports before taking an Emergency Action.”²⁶²

As for cold weather events, Manual 13 advises that “PJM confers with generator owners [during Cold Weather Alerts] and if appropriate, directs them to call in or schedule personnel in sufficient time to ensure that all combustion turbines and diesel generators that are expected to

²⁶⁰ Manual 13, § 2.3.2 (Step 2 - Emergency Load Management Reduction Action) at 30 (emphasis added); *id.* (Step 7 - Deploy All Resources) at 37; *id.* (Step 9 - Voltage Reduction Action) at 40; *id.* § 2.5 (Transmission Security Emergency Procedures) (Step 2 - Emergency Load Management Reduction Action) at 90; *id.* (Step 7 - Deploy All Resources) at 98; *id.* (Step 9 - Voltage Reduction Action) at 100 (emphasis added); *see also id.* § 2.3.2 (Step 2 - Emergency Load Management Reduction Action) (Note 4, EEA Levels) at 30 (stating that a NERC EEA2 “may be issued,” rather than “is issued”); *id.* § 2.5 (Transmission Security Emergency Procedures) (Note 4, EEA Levels) at 91 (same).

²⁶¹ Bryson Aff. at P 14.

²⁶² Bryson Aff. at P 15.

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operate are started and available for loading when needed for the morning pick up.”²⁶³ Other PJM Manuals likewise reflect the broad range of PJM’s discretion to take appropriate actions during emergencies. PJM Manual 37 states that “PJM Members are responsible for . . . [t]aking any action, as requested or directed by PJM, to manage, alleviate, or end an Emergency or other reliability issue.”²⁶⁴

There are good and obvious reasons for the Tariff, Operating Agreement, and Manual 13 to give PJM broad flexibility during emergencies. As Mr. Naumann explains, preserving reliability can be extremely challenging “when system operators face severe conditions, especially where decisions need to be made within a short period of time and circumstances are rapidly changing.”²⁶⁵ It therefore, “should be no surprise that operators may take actions in real-time to address difficult problems that others may question after the fact as being overly conservative or uneconomic.”²⁶⁶ That is exactly what Complainants seek to do here. But it is critical to remember that during emergencies, “delaying actions can result in unnecessary loss of load” and it is vitally “important for operators to be proactive—i.e., stay ahead of potential problems, not reactive after problems occur—to ensure reliability, especially during periods of severe stress.”²⁶⁷ Simply stated, “operators have to make decisions based on current conditions, expected conditions, and the uncertainty of various elements of the system with an eye to preventing loss of load. They

²⁶³ Manual 13, § 3.3.2 (Cold Weather Alert).

²⁶⁴ PJM Manual 37: Reliability Coordination (Mar. 23, 2022), <https://www.pjm.com/-/media/documents/manuals/archive/m37/m37v19-reliability-coordination-03-23-2022.ashx>

²⁶⁵ Naumann Aff. at P 6.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

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must have flexibility.”²⁶⁸ Manual 13 expressly provides PJM with this flexibility. The Commission should reject Complainants’ attempt to radically re-interpret Manual 13 to take PJM’s flexibility away.

Finally, Manual 13 expressly provides if the “net result of cutting off-system capacity sales would put the Sink Balancing Authority into load shed then PJM will not curtail the transactions unless it would prevent load shedding in PJM.”²⁶⁹ As shown in Mr. Bryson’s affidavit, TVA and Duke-Carolinas were, in fact, shedding load at certain times when Emergency Actions were in effect.²⁷⁰ Load shedding at the levels that Complainants apparently endorse would undoubtedly have resulted in more customers in TVA and Duke-Carolinas being without power during extreme winter conditions.

Lastly, PJM’s decisions with respect to non-firm exports and Load Management were also entirely reasonable on their merits. Mr. Naumann testifies:

For example, given the quickly changing weather and the large amount of gas-fired generation then unavailable, inaccurate and untimely information provided by generators, the fact that neighboring regions did not have excess capacity to supply to PJM if additional PJM generation tripped, and the uncertainty of the level of load, maintaining non-firm exports when PJM had additional resources to do so must be considered Good Utility Practice. If some generators that were delivering energy had tripped or were forced to derate, or load unexpectedly increased, PJM could then interrupt non-firm exports and utilize the energy from the remaining generators that are on-line to maintain service to PJM load. Similarly, PJM operators had to consider the probability that generators would not start when called upon or that start-up would be delayed. . . . Having generation running and synchronized, as well as additional generation available for such contingencies is, by definition, Good Utility Practice.²⁷¹

²⁶⁸ *Id.* P 16.

²⁶⁹ Manual 13, § 2.3.2.

²⁷⁰ *See* Bryson Aff. at PP 32-33.

²⁷¹ Naumann Aff. at P 16.

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**2. NERC Reliability Standards Require PJM to Assist Neighboring Systems
in Emergencies When it Can Do So**

It is not mere charity for neighboring systems to help each other during emergencies. Assistance by neighboring grid operators provides mutual benefits to consumers within interconnected control areas. This is a primary benefit of pooled and interconnected utility operations.

Moreover, assisting neighbors is not simply good policy or an honored industry tradition. In many instances, including this case, assistance *must* be provided to a neighbor facing load shedding whenever possible without causing load shedding in the assisting region.²⁷² Specifically, as a NERC-registered Reliability Coordinator, PJM is legally required by Reliability Standard IRO-014-3 to assist neighboring Reliability Coordinators that request help after implementing their emergency procedures. Reliability Standard IRO-014-3, R7 mandates that “[e]ach Reliability Coordinator *shall* assist Reliability Coordinators, if requested and able, provided that the requesting Reliability Coordinator has implemented its emergency procedures, unless such actions cannot be physically implemented or would violate safety, equipment, regulatory, or statutory requirements.”²⁷³ By its own terms, IRO-014-3 explicitly designates a failure to comply with R7 as a “High” Violation Risk Factor, and a “Severe” Violation Severity Level, indicating the extraordinary importance of strict compliance and the extraordinary risk of non-compliance.²⁷⁴

²⁷² *See id.* P 25.

²⁷³ NERC Standard IRO-014-3 – Coordination Among Reliability Coordinators, <https://www.nerc.com/pa/Stand/Technical%20Rationale%20fro%20Reliability%20Standards/IR O-014-3.pdf> (emphasis added).

²⁷⁴ *Id.*

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Furthermore, when reviewing compliance with IRO-014-3, R7, the applicable Reliability Standard Audit Worksheet (RSAW) specifies that the Compliance Enforcement Authority must “verify the entity provided such assistance,” and “[i]f assistance was available and not provided, review evidence to verify that such actions could not be physically implemented or would violate safety, equipment, regulatory, or statutory requirements.”²⁷⁵ Separate and apart from its requirements as a Reliability Coordinator, PJM is also a NERC-registered Transmission Operator, and independently bound by an identical requirement to assist fellow TOPs within its Reliability Coordinator Area under TOP-001-5, R7. The Tariff establishes that PJM “shall . . . [a]dminister . . . agreements for the transfer of energy in conditions constituting an Emergency in the PJM Region or in an interconnected Control Area, and the mutual provision of other support in such Emergency conditions with other interconnected Control Areas”²⁷⁶ Further, the Operating Agreement specifies that PJM “shall . . . [c]oordinate the curtailment or shedding of load, or other measures appropriate to alleviate an Emergency, in order to preserve reliability in accordance with NERC, or Applicable Regional Entity principles, guidelines and standards, and to ensure the operation of the PJM Region in accordance with Good Utility Practice and this Agreement.”²⁷⁷ Additional mutual assistance provisions are set forth in PJM’s coordination agreements with its neighbors and in Manual 13 itself.²⁷⁸

²⁷⁵ NERC Reliability Standard Audit Worksheet IRO-014-3 – Coordination Among Reliability Coordinators, https://www.nerc.com/pa/comp/Reliability%20Standard%20Audits%20Worksheets%20DL/RSAW%20IRO-014-3_2017_v4.docx

²⁷⁶ Tariff § 1.6.2.

²⁷⁷ OA Sch.1, § 1.6.2.

²⁷⁸ See Bryson Aff. at PP 10-12.

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In short, Complainants' interpretation of Manual 13 section 2.3.2 is not just contrary to multiple provisions of Manual 13, the Tariff, and the Operating Agreement. Their interpretation is also inconsistent with mandatory and enforceable NERC reliability standards. As Mr. Naumann states, "the standard is clear – help your neighbors if you can without endangering your system."²⁷⁹ That is yet another reason for the Commission not to accept Complainants' interpretation.²⁸⁰

3. Granting Complainant's Arguments Would Have a Chilling Effect on the Provision of Mutual Support

The Commission should also be wary of the policy implications of Complainant's request. Mutual support has been a bedrock of electric utility operations since the industry started. Good faith efforts to provide support to neighbors in distress will inevitably be chilled if system operators face the spectre of depositions and cross-examination whenever they provide such mutual support.

H. Complainants' Claim that Levels of Non-Performance Charges Assessed Against Them are Unreasonably High are Unfounded

Complainants assert that the levels of Non-Performance charges they face for having assumed (and failed to meet) their Capacity Performance obligations "bears no reasonable relationship to any costs or burdens caused by the Nautilus Entities, and therefore should be precluded by FERC."²⁸¹ As support, Complainants point to FPA section 206 and the "cost causation" principle. This claim is unavailing. The level of Non-Performance Charges assessed

²⁷⁹ Naumann Aff. at P 18.

²⁸⁰ Additional documents that are also supportive of operators actions to provide assistance during emergencies, include: (i) NERC Standard EOP-011-1 Emergency Operations, Attach. 1, § 2.1 ("Other Reliability Coordinators of Balancing Authorities with available resources shall coordinate, as appropriate, with the Reliability Coordinator that has an energy deficient Balancing Authority"); and (ii) Joint Operating Agreements or Coordination Agreements that PJM has with other areas such as NYISO, MISO, TVA, Duke, and VACAR.

²⁸¹ Complaint at 52.

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against them is consistent both with the express terms of the Tariff²⁸² and the policy decisions the made Commission in adopting Capacity Performance. Further, the number of PAIs that occurred did not exceed the Commission's reasonable expectations when it adopted Capacity Performance.²⁸³

1. Non-Performance Charges Were Intentionally Set High Enough To Incentivize Reliability Investments

As an initial matter, Complainants do not contend that the level of the Non-Performance Charges they face is mathematically incorrect under the formula set forth in PJM's Tariff. In fact, years prior to Winter Storm Elliott, Complainants could have themselves calculated the potential amount of the Non-Performance Charges they would incur based on the Non-Performance Penalty amount in the Tariff and the MW quantities they cleared as Capacity Resources under an assumed number of PAIs. Complainants thus did not incur a higher level of Non-Performance charges than contemplated under the Tariff for the number of PAIs that occurred.

Further, the Tariff elements used in the computation of Non-Performance Charges were all expressly approved by the Commission.²⁸⁴ The Commission was well aware that the components for calculating the Non-Performance Charges could lead to large assessments. In fact, the potential for large Non-Performance Charges was precisely what was intended to incentivize Capacity Resources to improve their reliability.

²⁸² As discussed above, because the determination of Non-Performance Charges is based on the terms of a tariff on file with the Commission, the filed rate doctrine governs and the level of Non-Performance Charges cannot be reduced regardless of its impacts.

²⁸³ See Tariff, Attach. DD, § 10A(f).

²⁸⁴ See *supra* note 5 (listing Capacity Performance orders).

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PJM has consistently maintained—and the Commission has agreed—that strong incentives are needed to produce the desired results in the performance of Capacity Resources. The penalty charge and concomitant potential for bonus payments associated with Capacity Performance must be sufficiently large for generators to have the necessary financial interests to incentivize performance:

For the PJM region, a stringent Non-Performance Charge is critical to ensure that sufficient incentive exists for Capacity Market Sellers to invest the increased capacity payments they will receive as a result of the Capacity Performance proposal in preparing their resources to be capable of providing energy to the system when they are most needed for reliability.²⁸⁵

The Commission agreed stating that “[w]ithout more stringent penalties [than existed before Capacity Performance], PJM has shown there is little incentive for a seller to make capital improvements, or increase its operating maintenance for the purpose of enhancing the availability of its unit during emergency conditions.”²⁸⁶

In keeping with this concept, the amount of the Non-Performance Charge Rate is derived from the Net Cost of New Entry (Net CONE) and is intended to represent “the full cost of replacement capacity for [Emergency Action hours of a commitment period.]”²⁸⁷ Setting the penalty rate in this manner “is more likely to prevent non-performing resources from receiving positive net capacity revenues over the long run,” which the Commission found “is consistent with the overall Capacity Performance market design that aims to provide incentives for resource

²⁸⁵ PJM Interconnection, L.L.C., Response to Deficiency Letter, Docket No. ER15-623-000, *et al.*, at 20 (Apr. 11, 2015).

²⁸⁶ Capacity Performance Order at P45.

²⁸⁷ *Id.* P 159.

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owners to make appropriate investments and maintain their resources.”²⁸⁸ Further, the Commission found that “a Non-Performance Charge rate based on Net CONE is likely to discourage non-performing resources from taking on capacity obligations, because over time the penalties are likely to fully offset the capacity revenues from the capacity market auctions.”

The Commission’s orders approving Capacity Performance even increased the potential amount of penalties as compared to penalty exposure under PJM’s original filing. When initially filed at the Commission, PJM’s Capacity Performance proposal included a monthly stop-loss mechanism that would limit the amount of Non-Performance Charges for any given month in which Performance Assessment Intervals occurred.²⁸⁹ After the Commission asked for additional analysis of this proposal,²⁹⁰ PJM offered to remove it and the Commission agreed.²⁹¹ The Commission found that “the monthly stop-loss limit will inappropriately increase the likelihood that a non-performing resource could earn positive net capacity revenues over the long run, and thus severely dilute the very performance incentives that the Capacity Performance design is intended to create.”²⁹²

²⁸⁸ *Id.*

²⁸⁹ *See id.* P 114.

²⁹⁰ *See id.* at P 148.

²⁹¹ Citing an analysis done by the PJM Independent Market Monitor of data from the 2013-2014 delivery year, PJM indicated that “the total Non-Performance Charge is \$13,626/MW lower with the stop-loss limit compared to what it would have been without the stop-loss limit.” *Id.* at P 149. PJM also indicated in the Deficiency Letter that it was willing to eliminate the proposed monthly stop-loss mechanism because “the monthly stop-loss limit dilutes the core incentives by allowing under-performance without consequence once a resource has reached the monthly stop-loss limit” and because the monthly stop-loss provision “reduc[es] the size of Performance Bonus Payments available to resources that exceed their commitments.” *Id.* at P 150.

²⁹² *Id.* at P 165.

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Capacity Performance is *designed* to impose significant Non-Performance Charges on resources that fail to perform as expected during emergency conditions. Creating a meaningful linkage between performance and the consequences of non-performance (as well as superior performance) is the “fundamental logic” of the Capacity Performance construct. Complainants’ claim that the amounts were too high fails to address this reasoning. “It is critical that the capacity market rules send the proper long-term investment signals to ensure capacity that can meet the reliability needs of the region.”²⁹³

2. The Level of Non-Performance Charges Assessed to Complainants Does Not Exceed the Commission’s Expectations For Possible Outcomes

The level of Non-Performance Charges assessed against Complainants is not out of line with possible outcomes contemplated when Capacity Performance was approved. This is clearly shown by two factors. First, the calculation of the Non-Performance Charge Rate assumes 30 hours of PAIs in a year. This compares with the approximately 23 hours of PAIs incurred during the Emergency Actions declared for Winter Storm Elliott. In fact, in *Advanced Energy Management Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. 2017) (*AEMA*), the D.C. Circuit noted that “[t]he penalty [for Capacity Performance] is appropriate even if the region typically experiences fewer than thirty emergency hours in a year.”²⁹⁴

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²⁹³ Capacity Performance Rehearing Order at P 103.

²⁹⁴ *Id.* at 666.

²⁹⁵

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**3. Complainants' Claims Do Not Even Attempt to Address the Commission's
Rationale for Approving PJM's Capacity Performance Proposal**

Complainants miss the mark in asserting that the assessed level of Non-Performance Charges do not comply with the cost causation principle.³⁰⁰ The Commission did not ground its approval of the Capacity Performance reforms in an attempt to strictly assign costs to particular units based on cost causation. Capacity Performance was intended to incentivize market behaviors. As the Commission noted, “the Commission does not generally require the

³⁰⁰ Complaint at 53.

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mathematical specificity of a cost-benefit analysis to support a market rule change. Rather, the Commission considers the proposal in light of the currently effective tariff and comments in support and opposition to reach its determination.”³⁰¹ In fact, the Court rejected the argument that the Commission needed to show that the benefits of Capacity Performance exceeded the associated costs holding instead that “[t]he Commission explained the important non-cost reasons for approving PJM’s proposal. It does not have to find net savings.”³⁰² Ultimately, the D.C. Circuit in *AEMA* “defer[red] to the Commission’s weighing of the various considerations and ultimate “policy judgment.”³⁰³ Complainants’ argument regarding the impact on their particular units has no bearing on the rationale upon which Capacity Performance was approved.

V. PJM SUPPORTS SETTLEMENT OF THIS COMPLAINT AND THE OTHER PENDING WINTER STORM ELLIOTT PROCEEDINGS

For the reasons set forth above in Part III, the Commission should either dismiss the Complaint for failure to make cognizable legal claims or deny the Complaint on the merits. However, as set forth in PJM’s motion to establish global settlement judge procedures, PJM recognizes the benefits of a prompt resolution to the pending claims in this and the other pending Winter Storm Elliott complaints brought against PJM, given the level of Commission resources that will be needed to resolve all of the filed Complaints.³⁰⁴ PJM thus continues to support a Commission-directed global settlement process encompassing all such complaints.

³⁰¹ Capacity Performance Order at P 49.

³⁰² *AEMA*, 860 F.3d at 662.

³⁰³ *Id.*

³⁰⁴ See Motion of PJM Interconnection, L.L.C., For Establishment of Settlement Judge Procedures, Docket Nos. EL23-53-000, *et al.*, at 3 (Apr. 14, 2023).

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VI. STATEMENTS PURSUANT TO 18 C.F.R. § 385.213(C)(2)

A. Admissions and Denials

Pursuant to 18 C.F.R. § 385.213(C)(2)(i), PJM affirms that any allegation in the Complaint that is not specifically and expressly admitted above is denied.³⁰⁵

B. Affirmative Defenses

Pursuant to 18 C.F.R. § 385.213(C)(2)(ii), PJM’s affirmative defenses are set above in this Answer and in the Motion to Dismiss.

VII. REQUEST FOR CONFIDENTIAL TREATMENT

PJM respectfully requests, pursuant to 18 C.F.R. § 388.112, non-public treatment of identified portions of this answer and its attachments that are exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and that should be withheld from public disclosure. Specifically, non-public treatment is requested for certain market sensitive information provided to PJM by Market Participants as confidential under Operating Agreement, section 18.17, which fall within the FOIA public disclosure exemption for “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” *See* 5 U.S.C. § 552(b)(4).

In accordance with 18 C.F.R. § 388.112(b)(2)(i), PJM includes with this filing, as Attachment A, a proposed form of protective agreement by which parties to this proceeding can obtain access to the non-public version of this answer and its attachments. The proposed Protective Agreement is identical in all substantive terms to the Protective Order PJM moved the Commission

³⁰⁵ 18 C.F.R. § 385.213(c)(2)(1).

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on May 24, 2023 to issue in this proceeding and eleven other related proceedings.³⁰⁶ The proposed Protective Order, by its terms, will supersede and replace the proposed Protective Agreement five days after Commission issuance of the Protective Order.

PJM is submitting a non-public version of this answer and its attachments that is marked “CUI//PRIV-HC” in accordance with Paragraph 11 of the proposed Protective Agreement. PJM asks that the marked version of this answer and its attachments be placed in the Commission’s non-public files. PJM is also submitting a public version of this answer and its attachments with the relevant confidential material redacted pursuant to section 388.112 of the Commission’s regulations.

VIII. COMMUNICATIONS

PJM requests that the Commission place the individuals listed on the signature block below on the official service list for this proceeding.³⁰⁷

IX. CONCLUSION

For the reasons set forth above, the Commission should deny the Complaint and provide no relief, interim or otherwise.

³⁰⁶ *Essential Power OPP, LLC, et al. v. PJM Interconnection, L.L.C., et al.*, Motion for Adoption of Protective Order, Docket Nos. EL23-54-000, *et al.* (May 24, 2023) (Motion).

³⁰⁷ To the extent necessary, PJM requests a waiver of Commission Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3) to permit more than two persons to be listed in the official service list for this proceeding.

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Respectfully Submitted,

/s/ Ted. J. Murphy

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, DC this 26th day of May 2023.

Respectfully Submitted,

/s/ Ted. J. Murphy

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EXHIBIT 1: Timeline of PJM's Winter Storm Elliott Response

This exhibit describes the steps that PJM took before, during, and after Winter Storm Elliott to preserve reliability in the face of unprecedented weather and load conditions, extraordinary failures and uncertainties caused by the poor performance of PJM Capacity Resources and the enormous operational complexities confronting the PJM operators in their management of the PJM system while attempting to provide mutual assistance to other regions.

- **12/20/2022 09:00:** PJM issued a Cold Weather Advisory for the Western Region Zones from 07:00 on 12/23/2022 through 23:00 on 12/25/2022.
 - Because PJM issued a Cold Weather Advisory, generators in the Western Region Zones were required to update unit specific operation limitations associated with cold weather preparedness including fuel supply and inventory concerns.
- **12/21/2022 10:00:** PJM extended the Cold Weather Advisory for the Western Region Zones from 07:00 on 12/23/2022 through 23:00 on 12/26/2022.
 - Because PJM issued a Cold Weather Alert, generation plants in the affected region were required to: review fuel supply/delivery schedules in anticipation of greater-than-normal operation of units, monitor and report projected fuel limitations to the PJM dispatcher and update the unit Max Run field in Markets Gateway if less than 24 hours of run-time is remaining and contact PJM Dispatch if it is anticipated that spot market gas is unavailable, resulting in unavailability of bid-in generation.
- **12/22/2022 17:30:** PJM expanded its Cold Weather Advisory from 07:00 on 12/23/2022 through 23:00 on 12/26/2022 to the entire RTO (originally for Western Region Zones).
 - Because PJM issued an RTO-wide Cold Weather Advisory, all PJM generators were required to update unit specific operation limitations associated with cold weather preparedness including fuel supply and inventory concerns.
 - Given the expected weather, PJM was very conservative in developing its operating plans for 12/23/2022.
 - PJM's forecast load entering 12/23/2022 was 126,968 MW.
 - PJM had approximately 158,000 MW of operating capacity in the Day-Ahead set-up for 12/23/2022. PJM believed that it was guarding against potential uncertainty by having substantially more capacity available than would normally be needed to meet the load forecast.

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- Based on submitted Generator Availability Data, PJM believed that it had almost 29 GW of reserve capacity available to absorb load and generating contingencies and to support neighboring systems.
- **12/23/2022 circa 3:00:** PJM load and generation forced outages/derates began increasing substantially.
- **12/23/2022 between 3:30 and 08:00:** Consistent with normal practices, PJM participated in regularly held conference calls with Tennessee Valley Association (TVA), VACAR South Reliability Coordinator, Mid-Continent Independent System Operator (MISO), New York Independent System Operator (NYISO) and the Florida Reliability Coordinating Council (FRCC) to discuss inter-regional coordination including peak load estimates, reserve requirements, estimated loads and anticipated daily challenges. Further, on an as-needed basis, additional calls between PJM and other regions occurred throughout the entirety of Winter Storm Elliott.
- **12/23/2022 06:30:** PJM sent 500 MW of Emergency Energy to TVA due to TVA being in an EEA3.
- **12/23/2022 circa 07:30:** PJM began contacting generators to remain online or to come on line to meet morning and evening peaks and discovered that many units shown as available in Markets Gateway and eDART could not actually perform, in particular because gas-fired units lacked fuel. In addition, in a pattern that continued throughout the entire winter storm event, many generators did not provide timely updates of their parameters in Markets Gateway and/or failed to provide timely updates of their status in eDART.
- **12/23/2022 10:14:** 100% RTO Synchronized Reserve Event – PJM deployed Synchronized Reserves to recover low Area Control Error (ACE) due to PJM reserves falling to approximately 1500 MW. PJM canceled the Synchronized Reserves at 10:25.
 - PJM experienced low ACE due to load increasing as generators tripped or failed to start. ACE is a measure of how well the Balancing Authority is matching generation to the load. If load and generation are perfectly balanced, the ACE is zero. When a generator within a Balancing Authority trips off-line the ACE goes negative.
 - “Synchronized Reserves” are “the reserve capability of generation resources that can be converted fully into energy or Demand Resources whose demand can be reduced within ten minutes from the request of the [PJM] dispatcher, and is provided by equipment that is electrically synchronized to the Transmission System.” Synchronized Reserves are supplied from both 10-minute synchronized generating resources and 10-minute demand-side response resources.
- **12/23/2022 11:00:** PJM issued a Cold Weather Alert for the entire RTO from 00:00 on 12/24/2022 through 23:59 on 12/25/2022.

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- Because PJM issued an RTO-wide Cold Weather Alert, all PJM generation plants were required to: review fuel supply/delivery schedules in anticipation of greater-than-normal operation of units, monitor and report projected fuel limitations to the PJM dispatcher and update the unit Max Run field in Markets Gateway if less than 24 hours of run-time was remaining and contact PJM Dispatch if it anticipated that spot market gas was unavailable, resulting in unavailability of bid-in generation.
- **12/23/2022 16:00:** PJM began curtailing exports.
- **12/23/22 16:11:** The first of a series of calls occurred with TVA involving potential recall of almost 2500 MW in exports. TVA indicates that implementation would push that region into EEA3 load shed. PJM works with TVA to preserve TVA exports.
- **12/23/2022 16:17:** 100% RTO Synchronized Reserve Event – PJM deployed Synchronized Reserves to recover from low ACE. PJM canceled the Synchronized Reserves at 18:09.
- **12/23/2022 17:05:** PJM requested 500 MW of shared reserves from NPCC.
- **12/23/2022 17:30:** PJM issued an EEA2 with Pre-Emergency Load Management Reduction Action covering 30 minute and 60 minute Demand Response and a Maximum Generation Action. PAI triggered.
- **12/23/2022 17:36:** PJM requested an additional 1,000 MW of shared reserves from NPCC.
- **12/23/2022 18:10:** PJM began lifting export transaction curtailments.
- **12/23/2022 22:00:** Pre-Emergency Load Management Reduction Action, Emergency Load Management Reduction Action, and EEA2 ended; all exports were reloaded.
- **12/23/2022 23:00:** PJM declared a Maximum Generation Alert/Load Management Alert, and an EEA1, starting Saturday, 12/24/2022 at 00:00. The Maximum Generation Action for 12/23/2022 ended, terminating the PAI.
 - Entire overnight period – PJM was unable to pump at any of the pumped storage facilities (approximately 6 GW).
 - Entire overnight period – The “Christmas Eve Valley” experienced in the early morning hours on 12/24/2022 was 40,000 MW higher than the next highest “valley” over the last decade and 15,000 MW higher than any peak load on that date in a decade.
- **12/24/2022 00:05:** PJM deployed Synchronized Reserves for the loss due to low ACE. PJM ends the Synchronized Reserves at 00:30.
- **12/24/2022 02:23:** PJM deployed Synchronized Reserves again as a result of a generator unit tripping off-line. PJM ends the Synchronized Reserves at 02:54.

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- **12/24/2022 02:25:** PJM received 605 MW of NPCC shared reserves from 02:25 through 04:26.
- **12-24-2022 between 3:30 and 08:00:** Consistent with normal practices, PJM participates in regularly held conference calls with Tennessee Valley Association (TVA), VACAR South Reliability Coordinator, Mid-Continent Independent System Operator (MISO), New York Independent System Operator (NYISO) and the Florida Reliability Coordinating Council (FRCC) to discuss inter-regional coordination including peak load estimates, reserve requirements, estimated loads and anticipated daily challenges. Further, on an as-needed basis, additional calls between PJM and other regions occurred throughout the entirety of Winter Storm Elliott.
- **12/24/2022 04:00:** PJM issued a call for conservation of electricity use at 04:00 through 10:00 on 12/25/2022 and curtailed exports.
- **12/24/2022 04:20:** PJM issued an EEA2 – Pre-Emergency Load Management Reduction Action and Emergency Load Management Reduction Action covering 120 minute Demand Response.
- **12/24/2022 04:26:** PJM receives 1000 MW of NPCC shared reserves from 04:26 to 04:47.
- **12/24/2022 04:28:** PJM issued an EEA2 – Maximum Generation Emergency Action. PAI triggered.
 - The purpose of the Maximum Generation Emergency Action is to increase the PJM generation above the maximum economic level. It is implemented whenever generation is needed that is greater than the highest incremental cost level.
- **12/24/2022 04:50:** Load Management starts to come into effect creating an additional PAI trigger.
- **12/24/2022 04:52:** PJM issued a Voltage Reduction Alert.
- **12/24/2022 05:23:** PJM deployed Synchronized Reserves due to low ACE. PJM ends the Synchronized Reserves at 05:51.
- **12/24/2022 06:00:** Load Management came into effect; PJM curtails Non-Firm energy exports.
- **12/24/2022 06:17:** PJM encouraged Market Participants to submit bids to sell emergency energy into PJM and issued a public appeal to conserve energy.
- **12/24/2022 06:30:** PJM received first notification that generators were having to limit their output due to federal government environmental restrictions.
- **12/24/2022 07:15:** PJM issued Voltage Reduction Warning and Reduction of Non-Critical

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Plant Load.

- **12/24/2022 07:30:** PJM conducted an SOS conference call with the PJM transmission owners to update their leadership on the situation and to indicate the potential that PJM may need to shed load.
- **12/24/2022 08:00:** Over 24% of the PJM fleet experienced forced outages at around this time. These outages decreased after 08:00, but approximately 32,000 MW of generation was still experiencing forced outages by 22:00 on 12/24/2022.
- **12/24/2022 08:30:** PJM reached morning peak of approximately 130,000 MW; at the peak there were 46,000 MW of forced outages, with PJM experiencing 200 unit trips throughout the event. Approximately 6,000 MW of steam generation was called but was not online as expected for the morning peak. Factoring in start failures, units that operated at reduced output, and lack of pumped storage, PJM was missing approximately 57,000 MW of capacity that it expected to be available at this time.
- **12/24/2022 10:00:** Non-Firm energy exports resumed.
- **12/24/2022 15:00:** All exports were reloaded.
- **12/24/2022 17:30:** DOE 202(c) Order received and implemented effective immediately through 12:00 on 12/26/2022.
- **12/24/2022 18:15:** PJM ended Voltage Reduction Warning and Reduction of Non-Critical Plant Load.
- **12/24/2022 18:34:** PJM ended the Voltage Reduction Alert.
- **12/24/2022 22:00:** All pre-emergency and emergency procedures cancelled. PJM returned to EEA0. PAIs end.
- **12/24/2022 22:38:** PJM issued a Maximum Generation Emergency/Load Management Alert for 12/25/2022.
 - The purpose of the Maximum Generation Emergency Action is to increase the PJM generation above the maximum economic level. It is implemented whenever generation is needed that is greater than the highest incremental cost level.
 - PJM issued this Maximum Generation Emergency/Load Management Alert due to uncertainties regarding whether 12/25/2022 would match the unprecedentedly high load conditions of 12/23 and 12/24/2022.
- **12/25/2022 11:10:** PJM issued a Cold Weather Alert from 07:00 through 23:00 on 12/26/2022 for the Western Region Zones only.

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- Because PJM issued a Cold Weather Alert, generation plants in the affected region were required to: review fuel supply/delivery schedules in anticipation of greater-than-normal operation of units, monitor and report projected fuel limitations to the PJM dispatcher and update the unit Max Run field in Markets Gateway if less than 24 hours of run-time is remaining and contact PJM Dispatch if it is anticipated that spot market gas is unavailable, resulting in unavailability of bid-in generation.
- **12/25/2022 22:00:** The Maximum Generation Emergency and Load Management Alert declared at 22:38 on 12/24/2022 ended, and PJM returned to EEA0. PJM's calls for conservation also end at this time.
 - The purpose of the Maximum Generation Emergency Action is to increase the PJM generation above the maximum economic level. It is implemented whenever generation is needed that is greater than the highest incremental cost level.

12/26/2022 23:00: Cold Weather Alert for Western Regions Zones ended.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Essential Power OPP, LLC *et al.*

v.

Docket No. EL23-53-000

PJM Interconnection, L.L.C.

PROTECTIVE AGREEMENT

THIS PROTECTIVE AGREEMENT (“Protective Agreement”) is made and entered into by and between PJM Interconnection L.L.C. (“PJM”), respondent in the above-captioned Proceeding, and each Participant in this Proceeding that indicates its agreement hereto by and to the extent its Reviewing Representatives execute Non-Disclosure Certificates in the form attached hereto. WHEREAS, PJM submitted documents to the Federal Energy Regulatory Commission (“Commission”) in the above captioned docket (“Proceeding”);

WHEREAS, pursuant to Section 388.112(b) of the Commission's regulations, 18 C.F.R. § 388.112(b), this Protective Agreement applies to requests for access to the non-public version of any document or portion of a document filed or produced by PJM in this Proceeding;

WHEREAS, Participant desires to obtain access to non-public information in this Proceeding;

WHEREAS, Participant has provided a signed Non-Disclosure Certificate and agrees to comply with all terms of this Protective Agreement and the Commission’s Regulations; and

WHEREAS, without waiving any claims of privilege or objections to any request for disclosure of documents, PJM agrees to disclose to Participant certain non-public information designated as privileged and/or CEII, or other Protected Materials (as defined below), pursuant to the terms of this Protective Agreement.

NOW, THEREFORE, PJM and Participant agree as follows:

1. This Protective Agreement shall govern the use of all Protected Materials filed or produced by, or on behalf of, PJM in the Proceeding. Notwithstanding any order terminating this Proceeding, this Protective Agreement shall remain in effect until terminated or modified by mutual written agreement of the Parties, by order of the Commission or court of competent jurisdiction, or by order of a Presiding Administrative Law Judge (including the Chief Judge) in a proceeding set for hearing pursuant to 18 C.F.R. § 385 Subpart E.
2. This Protective Agreement applies to the following categories of materials, all constituting Protected Materials (as defined in Paragraph 3):

(a) all materials filed or produced by PJM in the Proceeding and designated as (i) privileged, or (ii) privileged and not available to Competitive Duty Personnel (as defined below), or otherwise as Protected Materials which are customarily treated as sensitive or proprietary or if disclosed could risk of competitive disadvantage or other business injury;

(b) all materials produced by PJM in the Proceeding and designated as CEII, and

(c) all materials filed or produced in the Proceeding which reflect or disclose Protected Materials.

3. For the purposes of this Protective Agreement, the listed terms are defined as follows:

A. Participant(s): As defined at 18 C.F.R. § 385.102(b), which definition includes PJM as the respondent in this Proceeding.

B. Protected Material:³⁰⁸

i. Material (including depositions) provided by a Participant in response to discovery requests or filed with the Commission, and that is designated as Protected Material by such Participant;³⁰⁹

ii. Material provided by a Participant in the course of settlement negotiations before a settlement judge pursuant to 18 C.F.R. § 385.603, including materials provided in response to informal discovery requests, and designated by such Participant as protected;

iii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Protected Material by such Participant;³¹⁰

³⁰⁸ The Commission's regulations state that "[f]or the purposes of the Commission's filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA will be referred to as privileged material." 18 C.F.R. § 388.112(a). The regulations further state that "[f]or material filed in proceedings set for trial-type hearing or settlement judge proceedings, a participant's access to material for which privileged treatment is claimed is governed by the presiding official's protective order." 18 C.F.R. § 388.112(b)(2)(v).

³⁰⁹ See *infra* P 11 for the procedures governing the labeling of this designation.

³¹⁰ The Commission's regulations state that "[a] presiding officer may, by order . . . restrict public disclosure of discoverable matter in order to . . . [p]reserve a privilege of a participant. . . ." 18 C.F.R. § 385.410(c)(3). To adjudicate such privileges, the regulations further state that "[i]n the absence of controlling Commission precedent, privileges will be determined in accordance

- iv. Any information contained in or obtained from such designated material;
- v. Any other material which is made subject to this Protective Agreement by the Presiding Administrative Law Judge (Presiding Judge) or the Chief Administrative Law Judge (Chief Judge) in the absence of the Presiding Judge or where no presiding judge is designated, the Federal Energy Regulatory Commission (Commission), any court, or other body having appropriate authority, or by agreement of the Participants (subject to approval by the relevant authority);
- vi. Notes of Protected Material (memoranda, handwritten notes, or any other form of information (including electronic form and audio recordings) which copies or discloses Protected Material);³¹¹ or
- vii. Copies of Protected Material.
- viii. Protected Material does not include:
 - a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;
 - b. Information that is public knowledge, or which becomes public knowledge.
- ix. Additional Subcategory of Protected Material:
 - a. Highly Confidential Protected Material: A Participant may use this designation for those materials that are of such a commercially sensitive nature among the Participants or of such a private, personal nature that the producing Participant is able to justify a heightened level of confidential protection with respect to those materials. Highly Confidential Protected Material includes materials designated confidential

with decisions of the Federal courts with due consideration to the Commission's need to obtain information necessary to discharge its regulatory responsibilities." 18 C.F.R. § 385.410(d)(1)(i).

³¹¹ Notes of Protected Material are subject to the same restrictions for Protected Material except as specifically provided in this Protective Agreement.

pursuant to section 18.17 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”). Participants disclosing such information in accordance with the terms of this Protective Agreement will be deemed to not have contravened the prohibitions of this Operating Agreement provision, including without limitation the disclosure and notification requirements of Operating Agreement, Section 18.17.2,. Except for the more limited list of persons who qualify as Reviewing Representatives for purposes of reviewing Highly Confidential Privileged Materials, such materials are subject to the same provisions in the Protective Agreement as other Protected Materials.

- b. Notes of Highly Confidential Protected Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Highly Confidential Protected Material);³¹² or
 - c. Copies of Highly Confidential Protected Material.
- C. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).
- D. Non-Disclosure Certificate: The certificate attached to this Protective Agreement, by which Participants granted access to Protected Material and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Participants have read the Protective Agreement and agree to be bound by it. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for this proceeding.
- E. Reviewing Representative: A person who has signed a Non-Disclosure Certificate and who is:
- i. Commission Trial Staff designated as such in this proceeding;

³¹² Notes of Highly Confidential Protected Material are subject to the same restrictions for Highly Confidential Protected Material except as specifically provided in this Protective Agreement.

- ii. An attorney who has made an appearance in this proceeding for a Participant;
 - iii. Attorneys, paralegals, and other employees associated for purposes of this case with an attorney who has made an appearance in this proceeding on behalf of a Participant;
 - iv. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;
 - v. A person designated as a Reviewing Representative by order of the Presiding Judge, the Chief Judge, or the Commission; or
 - vi. Employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.
- F. The term “Reviewing Representative” for purposes of reviewing Highly Confidential Protected Material defined in Paragraph 3(B)(viii)(a) shall mean a person who has signed a Non-Disclosure Certificate and who is:
- i. Commission Trial Staff designated as such in this proceeding;
 - ii. Outside counsel of a Participant, i.e., an attorney who is not employed by the Participant but is retained by a Participant, who has made an appearance in this proceeding for a Participant, and their partners, associates, and staff of such outside counsel;
 - iii. In-house counsel, i.e., an attorney who is employed by the Participant, who has made an appearance in this proceeding for a Participant and who is not Competitive Duty Personnel as defined in Paragraph 3(G);
 - iv. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding; provided, however, such individual is not Competitive Duty Personnel as defined in Paragraph 3(G);
 - v. A person designated as a Reviewing Representative and is otherwise eligible to review Highly Confidential Protected Material by order of the Presiding Judge, the Chief Judge, or the Commission.

- vi. A “Reviewing Representative” for purposes of reviewing Highly Confidential Protected Material does not include Competitive Duty Personnel as defined in Paragraph 3(G).
- G. The term “Competitive Duty Personnel” shall mean any individual(s), including in-house counsel, whose scope of employment or engagement includes the marketing, sale, or purchase of electric energy or capacity (collectively, “Covered Marketing”), the direct or indirect supervision of any employee or employees whose duties include Covered Marketing, the provision of consulting services, including legal consultation or advice, to any person whose duties include Covered Marketing, or other Covered Marketing services in competition with the producing Participant, all of which are considered “Competitive Duties;” except that Competitive Duty Personnel shall not include employees of the Federal Energy Regulatory Commission, and/or any state utilities commission which is a Participant, outside counsel.
4. Protected Material, Highly Confidential Protected Material, and/or CEII shall be made available under the terms of this Protective Agreement only to Participants and only to their Reviewing Representatives as provided in Paragraphs 6-10 of this Protective Agreement. The contents of Protected Material, Highly Confidential Protected Material, CEII, or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with this specific proceeding.
5. All Protected Material, Highly Confidential Protected Material, and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7-9 of this Protective Agreement.
6. Protected Material, Highly Confidential Protected Material, and/or CEII must be handled by each Participant and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Protective Agreement. Protected Material, Highly Confidential Protected Material, and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they (or the substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person’s responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Material, Highly Confidential Protected Material, and/or CEII, but such copies automatically become Protected Material, Highly Confidential Protected Material, and/or CEII. Reviewing Representatives may make notes of Protected Material and Highly Confidential Protected

Material, which shall be treated as Notes of Protected Material if they reflect the contents of Protected Material. A Reviewing Representative shall not disclose Highly Confidential Protected Material to a Reviewing Representative that does not meet the qualifications in Paragraph 3(F).

7. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Protected Material, Highly Confidential Protected Material, and/or CEII obtained in this proceeding for a commercial purpose (e.g. to give a Participant or competitor of any Participant a commercial advantage):

- A. Covered Marketing;
- B. Direct or indirect supervision of any employee or employees whose duties include Covered Marketing; or
- C. The provision of consulting services, including legal consultation or advice, to any person whose duties include Covered Marketing.

8. If a Participant wishes to designate a person not described in Paragraph 3(E) above as a Reviewing Representative, the Participant must seek agreement from the Participant providing the Protected Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3(D) of this Protective Agreement with respect to those materials. If no agreement is reached, the matter must be submitted to the Presiding Judge, the Chief Judge, or the Commission for resolution. If a Participant wishes to designate a person not described in Paragraph 3(F) above as a Reviewing Representative for the purposes of reviewing Highly Confidential Protected Material, the Participant must request an order from the Presiding Judge, the Chief Judge, or the Commission granting such designation.

9. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Material, Highly Confidential Protected Material, and/or CEII pursuant to this Protective Agreement until three business days after that Reviewing Representative first has executed and served the applicable Non-Disclosure Certificate.³¹³ However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys designated Reviewing Representatives are

³¹³ During this three-day period, a Participant may file an objection with the Presiding Judge or the Commission contesting that an individual qualifies as a Reviewing Representative, and the individual shall not receive access to the Protected Material, Highly Confidential Protected Material, and/or CEII, as applicable, until resolution of the dispute.

responsible for ensuring that persons under their supervision or control comply with this Protective Agreement, and must take all reasonable precautions to ensure that Protected Material, Highly Confidential Protected Material, and/or CEII are not disclosed to unauthorized persons. Reviewing Representatives that are eligible to review Highly Confidential Protected Materials pursuant to Paragraph 3(F) must execute a Non-Disclosure Certificate for Highly Confidential Protected Material in the form attached hereto. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for the proceeding.

10. Any Reviewing Representative may disclose Protected Material, Highly Confidential Protected Material, and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed the appropriate Non-Disclosure Certificate. In the event any Reviewing Representative to whom Protected Material, Highly Confidential Protected Material, and/or CEII are disclosed ceases to participate in this proceeding, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3(E) or ineligible to review Highly Confidential Protected Material under Paragraph 3(F), access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the Non-Disclosure Certificate for as long as the Protective Agreement is in effect.³¹⁴

11. All Protected Material, Highly Confidential Protected Material, and/or CEII in this proceeding filed with the Commission, submitted to the Presiding Judge, or submitted to any Commission personnel, must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*.³¹⁵ Consistent with those requirements:

- A. Documents that contain Protected Material must include a top center header on each page of the document with the following text: CUI//PRIV or CUI//PRIV-HC for Highly Confidential Protected Material. Any corresponding electronic files must also include this text in the file name.
- B. Documents that contain CEII must include a top center header on each page of the document with the following text: CUI//CEII. Any corresponding electronic files must also include this text in the file name.

³¹⁴ See *infra* P 19.

³¹⁵ 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

- C. Documents that contain both Protected Material and CEII must include a top center header on each page of the document with the following text: CUI//CEII/PRIV. Any corresponding electronic files must also include this text in the file name.
- D. The specific content on each page of the document that constitutes Protected Material and/or CEII must also be clearly identified. For example, lines or individual words or numbers that include both Protected Material and CEII shall be prefaced and end with “BEGIN CUI//CEII/PRIV” and “END CUI//CEII/PRIV”.

12. If any Participant desires to include, utilize, or refer to Protected Material, Highly Confidential Protected Material, or information derived from such material in testimony or other exhibits during the hearing in this proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Participant first must notify both counsel for the disclosing Participant and the Presiding Judge (or the Commission in the absence of a Presiding Judge), and identify all such Protected Material or Highly Confidential Protected Material. Thereafter, use of such Protected Material or Highly Confidential Protected Material will be governed by procedures determined by the Presiding Judge (or the Commission in the absence of a Presiding Judge).

13. Nothing in this Protective Agreement shall be construed as precluding any Participant from objecting to the production or use of Protected Material, Highly Confidential Protected Material, and/or CEII on any appropriate ground.

14. Nothing in this Protective Agreement shall preclude any Participant from requesting the Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority, to find this Protective Agreement should not apply to all or any materials previously designated Protected Material or Highly Confidential Protected Material pursuant to this Protective Agreement. The Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority may alter or amend this Protective Agreement as circumstances warrant at any time during the course of this proceeding.

15. Each Participant governed by this Protective Agreement has the right to seek changes in it as appropriate from the Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority.

16. Subject to Paragraph 18, the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), or the Commission shall resolve any disputes arising under this Protective Agreement pertaining to Protected Material (or Highly Confidential Protected Material) according to the following procedures. Prior to presenting any such dispute to the Presiding Judge, the Chief Judge or the Commission, the Participants to the dispute shall employ good faith best efforts to resolve it.

- A. Any Participant that contests the designation of material as Protected Material (or Highly Confidential Protected Material) shall notify the Participant that provided the Protected Material (or Highly Confidential Protected Material) by specifying in writing the material for which the designation is contested.
- B. In any challenge to the designation of material as Protected Material (or Highly Confidential Protected Material), the burden of proof shall be on the Participant seeking protection. If the Presiding Judge, the Chief Judge, or the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 17 shall apply.
- C. The procedures described above shall not apply to material designated by a Participant as CEII. Material so designated shall remain subject to the provisions of this Protective Agreement, unless a Participant requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

17. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Protected Material (or Highly Confidential Protected Material). Should the Presiding Judge, the Chief Judge, or the Commission, as appropriate, determine that the information should be made public (or should not be subject to the restrictions applicable to Highly Confidential Protected Material), the Presiding Judge, the Chief Judge, or the Commission will provide notice to the designator no less than five (5) days prior to the date on which the material will become public. This Protective Agreement shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the designator files a motion with the Presiding Judge, the Chief Judge, or the Commission, as appropriate, with supporting affidavits, demonstrating why the material should continue to receive the requested protection. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, .715. No Participant waives its rights to seek additional administrative or judicial remedies after a Presiding Judge or Chief Judge decision regarding Protected

Material (or Highly Confidential Protected Material) or the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Protected Material, Highly Confidential Protected Material, and/or CEII in the files of the Commission.

18. Protected Material, Highly Confidential Protected Material, and/or CEII shall remain available to Participants until the later of 1) the date an order terminating this proceeding no longer is subject to judicial review, or 2) the date any other Commission proceeding relating to the Protected Material and/or CEII is concluded and no longer subject to judicial review. After this time, the Participant that produced the Protected Material and/or CEII may request (in writing) that all other Participants return or destroy the Protected Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Protected Material, or Notes of Protected Material, may be retained if they are maintained in accordance with Paragraph 5 of this Protective Agreement. If requested, each Participant also must submit to the Participant making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Protected Material and/or CEII. To the extent Protected Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Agreement.

19. Regardless of any order terminating this proceeding, this Protective Agreement shall remain in effect until specifically modified or terminated by the Presiding Judge, the Chief Judge, or the Commission. All CEII designations shall be subject to the "[d]uration of the CEII designation" provisions of 18 C.F.R. § 388.113(e).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Essential Power OPP, LLC *et al.*

v.

Docket No. EL23-53-000

PJM Interconnection, L.L.C.

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Material and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the Protective Agreement filed by PJM Interconnection, L.L.C. on May 26, 2023 in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement. I acknowledge that I do not meet the qualifications to review Highly Confidential Protected Materials pursuant to Paragraph 3(F) of the Protective Order and my duties and responsibilities may include “Competitive Duties” as described in the Protective Agreement. As such, I understand that I shall neither have access to, nor disclose, the contents of the Highly Confidential Protected Materials that are marked as “CUI//PRIV-HC,” any notes or other memoranda, or any other form of information that copies or discloses Highly Confidential Protected Materials that are marked as “CUI//PRIV-HC.”

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Essential Power OPP, *et al.*

v.

Docket No. EL23-53-000

PJM Interconnection, L.L.C.

NON-DISCLOSURE CERTIFICATE
FOR HIGHLY CONFIDENTIAL PROTECTED MATERIALS

I hereby certify my understanding that access to Protected Materials, and Highly Confidential Protected Materials and/or Critical Energy/Electric Infrastructure Information (CEII) in the above-captioned case is provided to me pursuant to the terms and restrictions of the Protective Agreement filed by PJM Interconnection, L.L.C. on May 26, 2023 in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, Highly Confidential Protected Materials and/or Critical Energy/Electric Infrastructure Information (CEII), any notes or other memoranda, or any other form of information that copies or discloses Protected Materials, Highly Confidential Protected Materials, and/or Critical Energy/Electric Infrastructure Information (CEII) shall not be disclosed to anyone other than in accordance with that Protective Agreement and shall be used only in connection with this proceeding. I affirm that I meet the qualifications to review Highly Confidential Protected Materials pursuant to Paragraph 3(F) of the Protective Order and my duties and responsibilities do not include “Competitive Duties” as described in the Protective Agreement.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____

Exhibit 1

Timeline of PJM's Actions Related to Winter Storm Elliott

EXHIBIT 1: Timeline of PJM's Actions in Response to Winter Storm Elliott

This exhibit describes the steps that PJM took before, during, and after Winter Storm Elliott to preserve reliability in the face of unprecedented weather and load conditions, extraordinary failures and uncertainties caused by the poor performance of PJM Capacity Resources and the enormous operational complexities confronting the PJM operators in their management of the PJM system while attempting to provide mutual assistance to other regions.

- **12/20/2022 09:00:** PJM issued a Cold Weather Advisory for the Western Region Zones from 07:00 on 12/23/2022 through 23:00 on 12/25/2022.
 - Because PJM issued a Cold Weather Advisory, generators in the Western Region Zones were required to update unit specific operation limitations associated with cold weather preparedness including fuel supply and inventory concerns.
- **12/21/2022 10:00:** PJM extended the Cold Weather Advisory for the Western Region Zones from 07:00 on 12/23/2022 through 23:00 on 12/26/2022.
 - Because PJM issued a Cold Weather Alert, generation plants in the affected region were required to: review fuel supply/delivery schedules in anticipation of greater-than-normal operation of units, monitor and report projected fuel limitations to the PJM dispatcher and update the unit Max Run field in Markets Gateway if less than 24 hours of run-time is remaining and contact PJM Dispatch if it is anticipated that spot market gas is unavailable, resulting in unavailability of bid-in generation.
- **12/22/2022 17:30:** PJM expanded its Cold Weather Advisory from 07:00 on 12/23/2022 through 23:00 on 12/26/2022 to the entire RTO (originally for Western Region Zones).
 - Because PJM issued an RTO-wide Cold Weather Advisory, all PJM generators were required to update unit specific operation limitations associated with cold weather preparedness including fuel supply and inventory concerns.
 - Given the expected weather, PJM was very conservative in developing its operating plans for 12/23/2022.
 - PJM's forecast load entering 12/23/2022 was 126,968 MW.
 - PJM had over 155,750 MW of operating capacity in the Day-Ahead set-up for 12/23/2022. PJM believed that it was guarding against potential uncertainty by having substantially more capacity available than would normally be needed to meet the load forecast.

- Based on submitted Generator Availability Data, PJM believed that it had almost 29 GW of reserve capacity available to absorb load and generating contingencies and to support neighboring systems.
- **12/23/2022 circa 3:00:** PJM load and generation forced outages/derates began increasing substantially.
- **12/23/2022 between 3:30 and 08:00:** Consistent with normal practices, PJM participated in regularly held conference calls with Tennessee Valley Association (TVA), VACAR South Reliability Coordinator, Mid-Continent Independent System Operator (MISO), New York Independent System Operator (NYISO) and the Florida Reliability Coordinating Council (FRCC) to discuss inter-regional coordination including peak load estimates, reserve requirements, estimated loads and anticipated daily challenges. Further, on an as-needed basis, additional calls between PJM and other regions occurred throughout the entirety of Winter Storm Elliott.
- **12/23/2022 06:30:** PJM sent 500 MWs of Emergency Energy to TVA due to TVA being in an EEA3.
- **12/23/2022 circa 07:30:** PJM began contacting generators to remain online or to come on line to meet morning and evening peaks and discovered that many units shown as available in Markets Gateway and eDART could not actually perform, in particular because gas-fired units lacked fuel. In addition, in a pattern that continued throughout the entire winter storm event, many generators did not provide timely updates of their parameters in Markets Gateway and/or failed to provide timely updates of their status in eDART.
- **12/23/2022 10:14:** 100% RTO Synchronized Reserve Event – PJM deployed Synchronized Reserves to recover low Area Control Error (ACE) due to PJM reserves falling to approximately 1500 MW. PJM canceled the Synchronized Reserves at 10:25.
 - PJM experienced low ACE due to load increasing as generators tripped or failed to start. ACE is a measure of how well the Balancing Authority is matching generation to the load. If load and generation are perfectly balanced, the ACE is zero. When a generator within a Balancing Authority trips off-line the ACE goes negative.
 - “Synchronized Reserves” are “the reserve capability of generation resources that can be converted fully into energy or Demand Resources whose demand can be reduced within ten minutes from the request of the [PJM] dispatcher, and is provided by equipment that is electrically synchronized to the Transmission System.” Synchronized Reserves are supplied from both 10-minute synchronized generating resources and 10-minute demand-side response resources.
- **12/23/2022 11:00:** PJM issued a Cold Weather Alert for the entire RTO from 00:00 on 12/24/2022 through 23:59 on 12/25/2022.

- Because PJM issued an RTO-wide Cold Weather Alert, all PJM generation plants were required to: review fuel supply/delivery schedules in anticipation of greater-than-normal operation of units, monitor and report projected fuel limitations to the PJM dispatcher and update the unit Max Run field in Markets Gateway if less than 24 hours of run-time was remaining and contact PJM Dispatch if it anticipated that spot market gas was unavailable, resulting in unavailability of bid-in generation.
- **12/23/2022 16:00:** PJM began curtailing exports.
- **12/23/22 16:11:** The first of a series of calls occurred with TVA involving potential recall of almost 2500 MW in exports. TVA indicates that implementation would push that region into EEA3 load shed. PJM works with TVA to preserve TVA exports.
- **12/23/2022 16:17:** 100% RTO Synchronized Reserve Event – PJM deployed Synchronized Reserves to recover from low ACE. PJM canceled the Synchronized Reserves at 18:09.
- **12/23/2022 17:05:** PJM requested 500 MW of shared reserves from NPCC.
- **12/23/2022 17:30:** PJM issued an EEA2 with Pre-Emergency Load Management Reduction Action covering 30 minute and 60 minute Demand Response and a Maximum Generation Action. PAI triggered.
- **12/23/2022 17:36:** PJM requested an additional 1,000 MW of shared reserves from NPCC.
- **12/23/2022 18:10:** PJM began lifting export transaction curtailments.
- **12/23/2022 22:00:** Pre-Emergency Load Management Reduction Action, Emergency Load Management Reduction Action, and EEA2 ended; all exports were reloaded.
- **12/23/2022 23:00:** PJM declared a Maximum Generation Alert/Load Management Alert, and an EEA1, starting Saturday, 12/24/2022 at 00:00. The Maximum Generation Action for 12/23/2022 ended, terminating the PAI.
 - Entire overnight period – PJM was unable to pump at any of the pumped storage facilities (approximately 6 GW).
 - Entire overnight period – The “Christmas Eve Valley” experienced in the early morning hours on 12/24/2022 was 40,000 MW higher than the next highest “valley” over the last decade and 15,000 MW higher than any peak load on that date in a decade.
- **12/24/2022 00:05:** PJM deployed Synchronized Reserves for the loss due to low ACE. PJM ends the Synchronized Reserves at 00:30.
- **12/24/2022 02:23:** PJM deployed Synchronized Reserves again as a result of a generator unit tripping off-line. PJM ends the Synchronized Reserves at 02:54.

- **12/24/2022 02:25:** PJM received 605 MW of NPCC shared reserves from 02:25 through 04:26.
- **12-24-2022 between 3:30 and 08:00:** Consistent with normal practices, PJM participates in regularly held conference calls with Tennessee Valley Association (TVA), VACAR South Reliability Coordinator, Mid-Continent Independent System Operator (MISO), New York Independent System Operator (NYISO) and the Florida Reliability Coordinating Council (FRCC) to discuss inter-regional coordination including peak load estimates, reserve requirements, estimated loads and anticipated daily challenges. Further, on an as-needed basis, additional calls between PJM and other regions occurred throughout the entirety of Winter Storm Elliott.
- **12/24/2022 04:00:** PJM issued a call for conservation of electricity use at 04:00 through 10:00 on 12/25/2022 and curtailed exports.
- **12/24/2022 04:20:** PJM issued an EEA2 – Pre-Emergency Load Management Reduction Action and Emergency Load Management Reduction Action covering 120 minute Demand Response.
- **12/24/2022 04:26:** PJM receives 1000 MW of NPCC shared reserves from 04:26 to 04:47.
- **12/24/2022 04:28:** PJM issued an EEA2 – Maximum Generation Emergency Action. PAI triggered.
 - The purpose of the Maximum Generation Emergency Action is to increase the PJM generation above the maximum economic level. It is implemented whenever generation is needed that is greater than the highest incremental cost level.
- **12/24/2022 04:50:** Load Management starts to come into effect creating an additional PAI trigger.
- **12/24/2022 04:52:** PJM issued a Voltage Reduction Alert.
- **12/24/2022 05:23:** PJM deployed Synchronized Reserves due to low ACE. PJM ends the Synchronized Reserves at 05:51.
- **12/24/2022 06:00:** Load Management came into effect; PJM curtails Non-Firm energy exports.
- **12/24/2022 06:17:** PJM encouraged Market Participants to submit bids to sell emergency energy into PJM and issued a public appeal to conserve energy.
- **12/24/2022 06:30:** PJM received first notification that generators were having to limit their output due to federal government environmental restrictions.
- **12/24/2022 07:15:** PJM issued Voltage Reduction Warning and Reduction of Non-Critical Plant Load.

- **12/24/2022 07:30:** PJM conducted an SOS conference call with the PJM transmission owners to update their leadership on the situation and to indicate the potential that PJM may need to shed load.
- **12/24/2022 08:00:** Over 24% of the PJM fleet experienced forced outages at around this time. These outages decreased after 08:00, but approximately 32,000 MW of generation was still experiencing forced outages by 22:00 on 12/24/2022.
- **12/24/2022 08:30:** PJM reached morning peak of approximately 130,000 MW; at the peak there were 46,000 MW of forced outages, with PJM experiencing 200 unit trips throughout the event. Approximately 6,000 MW of steam generation was called but was not online as expected for the morning peak. Factoring in start failures, units that operated at reduced output, and lack of pumped storage, PJM was missing approximately 57,000 MW of capacity that it expected to be available at this time.
- **12/24/2022 10:00:** Non-Firm energy exports resumed.
- **12/24/2022 15:00:** All exports were reloaded.
- **12/24/2022 17:30:** DOE 202(c) Order received and implemented effective immediately through 12:00 on 12/26/2022.
- **12/24/2022 18:15:** PJM ended Voltage Reduction Warning and Reduction of Non-Critical Plant Load.
- **12/24/2022 18:34:** PJM ended the Voltage Reduction Alert.
- **12/24/2022 22:00:** All pre-emergency and emergency procedures cancelled. PJM returned to EEA0. PAIs end.
- **12/24/2022 22:38:** PJM issued a Maximum Generation Emergency/Load Management Alert for 12/25/2022.
 - The purpose of the Maximum Generation Emergency Action is to increase the PJM generation above the maximum economic level. It is implemented whenever generation is needed that is greater than the highest incremental cost level.
 - PJM issued this Maximum Generation Emergency/Load Management Alert due to uncertainties regarding whether 12/25/2022 would match the unprecedentedly high load conditions of 12/23 and 12/24/2022.
- **12/25/2022 11:10:** PJM issued a Cold Weather Alert from 07:00 through 23:00 on 12/26/2022 for the Western Region Zones only.
 - Because PJM issued a Cold Weather Alert, generation plants in the affected region were required to: review fuel supply/delivery schedules in anticipation of greater-than-normal operation of units, monitor and report projected fuel limitations to the

PJM dispatcher and update the unit Max Run field in Markets Gateway if less than 24 hours of run-time is remaining and contact PJM Dispatch if it is anticipated that spot market gas is unavailable, resulting in unavailability of bid-in generation.

- **12/25/2022 22:00:** The Maximum Generation Emergency and Load Management Alert declared at 22:38 on 12/24/2022 ended, and PJM returned to EEA0. PJM's calls for conservation also end at this time.
 - The purpose of the Maximum Generation Emergency Action is to increase the PJM generation above the maximum economic level. It is implemented whenever generation is needed that is greater than the highest incremental cost level.
- **12/26/2022 23:00:** Cold Weather Alert for Western Regions Zones ended.

PUBLIC VERSION

Exhibit 2

Affidavit of Donald Bielak

PUBLIC VERSION

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

Essential Power OPP, LLC, <i>et al.</i>)	
Complainants)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Coalition of PJM Capacity Resources)	
Complainant)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

**AFFIDAVIT OF DONALD BIELAK
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

A. Introduction

1. My name is Donald Bielak. My business address is 2750 Monroe Blvd., Audubon, Pennsylvania, 19403. My current title is Senior Manager – Dispatch at PJM Interconnection, L.L.C. (PJM). I am preparing this Affidavit to discuss PJM’s general procedures in preparing for winter conditions, the particular steps taken to prepare for the winter of 2022/2023 and the status of the anticipatory steps taken by PJM for addressing cold weather conditions up to when PJM first declared emergency procedures on December 23, 2022.
2. I joined PJM in September of 2004 and have been continuously employed full-time by PJM since January of 2007. As Senior Manager – Dispatch, I am responsible for the oversight and operation of the Valley Forge and Milford Control Centers. This function includes ensuring the reliable operation of the power grid, in accordance with all PJM and NERC reliability standards pertaining to the functions of Reliability Coordinator, Balancing Authority, and Transmission Operator. In addition, I am responsible for ensuring the efficient economic dispatch of the system under the existing PJM market rules and neighboring Joint Operating Agreements. In this capacity, I was working remotely during the daytime hours of December 23 and then in the PJM Control Room for the period from 18:00 on December 23, through 08:00 on December 24 and then from 14:00 through 23:00 on December 24, managing PJM operators’ successful efforts to keep the lights on in PJM. PJM operators repeatedly had to make difficult reliability decisions in real time while in the midst of unprecedented system conditions and significant uncertainties that were

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exacerbated by generator failures. Because of PJM employees' actions, PJM was able to keep the lights on even in the challenging system conditions. PJM did not shed a single megawatt ("MW") of load on December 23 and December 24. Prior to serving as Senior Manager – Dispatch, I served as an Engineer in the Engineering Support Department, as a Sr. Engineer in the Markets Coordination Department, as a Reliability Engineer, and then as Manager – Reliability Engineering.

3. As the Manager for the Reliability Engineering Group, I managed the group responsible for coordinating day-ahead and real-time operating plans between PJM, its members Transmission Owners and Generation Owners, and our neighboring entities. As a Reliability Engineer prior to this, I performed these functions directly. In my previous engineering positions, I supported the Energy Management System (EMS) and the Security Constrained Economic Dispatch (SCED) application. I hold a Bachelor of Science degree in Electrical Engineering, a Master of Science degree in Electrical Engineering, and a Master of Science degree in Engineering Management, all from Drexel University.
4. Safely maintaining system reliability is the most fundamental goal of electric system operations. The availability of reliable electricity is an absolute necessity in the modern world. In fact, the impacts of having to direct firm load shed in winter conditions can be devastating. For example, during Winter Storm Uri in February 2021, it was reported that more than 4.5 million people in Texas lost power.¹ In some cases, outages were experienced for as long as four days during a period of below-freezing temperatures. It was determined that at least 210 people died during this event and that most of these deaths were connected to the power outages. Hypothermia, carbon monoxide poisoning, and medical conditions exacerbated by freezing conditions were leading causes. In addition, it was estimated that the outages caused direct and indirect losses to the Texas economy of between \$80 to \$130 billion.² As I discuss below, PJM has developed comprehensive procedures for winter preparedness in addition to standard procedures to reliably operate through emergency conditions.
5. PJM undertakes extensive preparation for winter conditions.³ This includes obtaining information from generators regarding the expected capabilities of their units during cold weather conditions and the extent to which units have been weatherized to withstand low temperatures and windy conditions. PJM works to make generators aware of what is expected of them and provides training for generators, other stakeholders, and PJM

¹ See FERC - NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States at 9 (Nov. 2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>.

² *Id.* at 10.

³ See, e.g., Generation Resource Cold Weather Preparation (Oct. 7, 2022), <https://www.pjm.com/-/media/committees-groups/committees/oc/2022/20221007/item-16---generation-resource-cold-weather-preparation.ashx> (summarizing the verification and preparation requirements in the PJM Tariff and Manual 14).

PUBLIC VERSION

personnel.⁴ In addition, PJM Operations performs an annual winter assessment, which is communicated via the PJM Stakeholder process.⁵ Further, PJM performs an annual fuel security study that examines extreme winter conditions.⁶ Study results are reviewed via the stakeholder process and posted as part of the meeting materials. This fuel security study examines load levels as high as the ninety-ninth percentile, recognizes common mode generator outages, and simulates fuel disruptions beyond those PJM has previously experienced. PJM also coordinates with natural gas suppliers and neighboring Balancing Areas (BAs).⁷ PJM also conducts winter drills (discussed *infra*), and recommends generator owners engage in certain testing at the beginning of winter during December (as discussed in greater detail in the Pulong Affidavit).

B. PJM Winter Assessment

6. As it has for previous winters, PJM conducted a winter assessment prior to winter 2022/23. The base case for the winter assessment is a 50/50 load forecast, designed to be as close to the actual load as possible with equal probabilities of over-forecasting and under-forecasting, rather than a worst-case forecast. No reliability issues were identified in this study which used an expected peak value of 136,867 MW. In addition, PJM examined a separate scenario in which load is at the 90/10 extreme level.⁸ Under this study, the case data for the 2022/2023 Winter Load Forecast (not including losses) was 143,782 MW and discrete generation outages were 16,510 MW which is based on historical forced outage

⁴ PJM Manual 14D: Generator Operational Requirements (Dec. 21, 2022), § 7.5 (Cold Weather Generation Resource Preparation), <https://pjm.com/-/media/documents/manuals/m14d.ashx>; *id.*, Attach. N (Cold Weather Preparation Guideline and Checklist).

⁵ *See, e.g.*, Operations Assessment Task Force 2022-23 Winter Study (Nov. 3, 2022), <https://www.pjm.com/-/media/committees-groups/committees/oc/2022/20221103/item-15---winter-oatf-review.ashx>.

⁶ *See, e.g.*, PJM, Fuel & Energy Security Update (Nov. 3, 2022), <https://www.pjm.com/-/media/committees-groups/committees/oc/2022/20221103/item-14---fuel-security-and-energy-update.ashx>.

⁷ *See* PJM Manual 13: Emergency Operations (Nov. 3, 2022), § 3.6 (Inter RTO Natural Gas Coordination Procedure), <https://pjm.com/-/media/documents/manuals/archive/m13/m13v86-emergency-operations-11-03-2022.ashx> (describing PJM coordination procedures with other Regional Transmission Organizations and with interstate pipeline suppliers.).

⁸ *See* PJM Manual 38: Operations Planning (Jan. 26, 2022), Attach. A (OATF Scope), <https://pjm.com/-/media/documents/manuals/archive/m38/m38v15-operations-planning-01-26-2022.ashx> (“Discrete unit outages for the study period will be determined based on an average obtained from unavailable generator MW (maintenance and unplanned) on ten days from the previous comparable season that are at or near the load level to be studied.”).

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rates. The study concluded that there were no reliability concerns at those elevated load levels.⁹

7. PJM also performed sensitivity studies assuming (1) almost all wind and solar generation would be unavailable and (2) there would be disruptions on gas pipelines. No reliability issues were identified.¹⁰
8. PJM considered the cumulative impacts of the 90/10 load case sensitivity study, low wind and solar sensitivity study and the pipeline disruption study. The cumulative impact of all three sensitivity studies was presented to the PJM System Operations Subcommittee on October 28, 2022. That presentation indicated that, taking account of all three sensitivity studies, the PJM 30-minute reserve requirement of 3.0 GW would be met plus there would be an additional reserve margin of 14.0 GW available.¹¹ This analysis did not rely on firm imports to serve load, but rather took a more realistic approach by modeling the net exports that PJM provides to the Eastern Interconnection because PJM is typically a net exporter of non-firm energy. PJM thus used an average of interchange values from the 10 peak days of the previous season to arrive at a net RTO interchange of 3,574 MW (exporting) in the Winter 2022/23 study. PJM also projected 7.6 GW of Winter pre/emergency load management (demand response) which was accounted for in reduced load projections. However, even when the projected impact of demand response was ignored, PJM's studies showed PJM could meet the 30-minute reserve requirement and still have an additional 6.4 GW reserve margin.

C. Generation Winter Preparation Requirements and Notices

9. PJM's winter preparation process considers NERC Guidelines, previous Bulk Electric System (BES) cold weather reports,¹² technical conferences, and Regional Entity workshops. PJM reviews the reports and guidelines before evaluating the PJM system, processes, and documentation to ensure applicable recommendations and potential improvements are addressed. PJM also reviews best practices and lessons learned from previous winters and shares its findings with PJM Members to ensure winterization

5. ⁹ See Operations Assessment Task Force 2022-23 Winter Study (Nov. 3, 2022), *supra* n.

¹⁰ *See id.*

¹¹ *Id.*

¹² *E.g.*, FERC and NERC Staff Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011 (Aug. 2011), <https://www.ferc.gov/sites/default/files/2020-04/08-16-11-report.pdf>; NERC, Polar Vortex Review (Sept. 2014), https://www.nerc.com/pa/rrm/January%202014%20Polar%20Vortex%20Review/Polar_Vortex_Review_29_Sept_2014_Final.pdf; FERC and NERC Staff Report on the South Central United States Cold Weather Bulk Electric System Event of January 17, 2018 (July 2019), https://www.nerc.com/pa/rrm/ea/Documents/South_Central_Cold_Weather_Event_FERC-NEC-Report_20190718.pdf; FERC - NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States (Nov. 2021), *supra* n.1.

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supplies and equipment are in place prior to the winter season. PJM Manuals are continuously updated to ensure PJM Members provide the critical data needed to assess the PJM system.

10. As described in PJM Manual 14D, Section 7.3.5,¹³ PJM issues a data request to all generation resources to collect fuel switching capability, fuel supply and inventory, and emissions/environmental baseline information. This requirement is reviewed at the PJM Operating Committee in the fall.¹⁴ In addition, Generating Unit minimums are validated annually as part of the PJM Cold Weather checklist eDART data request which in 2022 was open from November 7 to December 15. This requirement is also reviewed at the PJM Operating Committee in the fall.
11. Section 7.5.2 of Manual 14D¹⁵ discusses Attachment N to Manual 14D, which is a “Cold Weather Preparation Guideline and Checklist” (Checklist). Attachment N was developed in response to the generator forced outages and start failures that occurred within the PJM footprint during the January 2014 Polar Vortex. The purpose of the Checklist is to identify and prioritize components, systems, and other areas of vulnerability that may experience freezing problems or other cold weather operational issues. It is intended to help generators mitigate such problems during cold weather events. The Checklist addresses areas such as training, personnel preparation, staffing, equipment preparation, fuel and environmental preparation, actions to be taken when cold weather is forecasted, actions during cold weather events, lessons learned after cold weather events as well as link to numerous documents that provide industry guidance.
12. More specifically, generator representatives are directed, between November 1 and December 15 of each year to verify via eDART that their represented resources have completed the items on the checklist or a substantially equivalent checklist the generator has developed. PJM enforces compliance with the Checklist submittal requirement by sending each generator data requests. The obligation to confirm or update eDART submissions regarding the Checklist remains in effect at least through February 28, for periods in which PJM issues a Cold Weather Advisory. 99% of all generators responded.

¹³ Manual 14D, § 7.3.5 (Fuel, Emissions, and Operational Data Reporting).

¹⁴ See Generation Resource Cold Weather Preparation (Oct. 7, 2022), <https://www.pjm.com/-/media/committees-groups/committees/oc/2022/20221007/item-16---generation-resource-cold-weather-preparation.ashx>.

¹⁵ Manual 14D, § 7.5.2 (Generation Resource Cold Weather Checklist) (“Attachment N of this Manual M14D contains the PJM generation resource Cold Weather Preparation Guideline and Checklist. This Checklist, or a similar one developed and maintained by the Generation Owner, should be used annually prior to the local National Oceanic and Atmospheric Administration (NOAA) first frost date to prepare its generation resources for extreme cold weather event operation. Between November 1st and December 15th of each year, the Generation Owner’s representative shall verify via eDART that the represented generation resources have completed the items on the checklist, or a substantially equivalent one developed by the Generation Owner.”).

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Generators overwhelmingly indicated that they complied with the criteria for winter preparedness described in the PJM Guideline and Checklist.

13. In addition to the annual fuel and emissions data request described above, PJM also issues periodic data requests to all thermal generation resources during the winter season to collect additional information regarding fuel and non-fuel consumables used in power production.¹⁶ Between October 3, 2022, and February 26, 2023, PJM issued weekly fuel and non-fuel consumable data requests to all thermal generators. This data was aggregated and reviewed internally by a cross-functional team to maintain situational awareness. The aggregated data was also posted publicly on the PJM Operating Committee website to raise awareness of fuel inventory trends.¹⁷
14. PJM issues an additional, annual data request to all generation resources to collect plant-specific data relative to cold weather operations. PJM commenced this practice in 2019 in response to recommendations in the 2019 FERC and NERC Staff Report on the MISO cold weather event in January 2018.¹⁸ An updated data request asking for additional information from renewable resources was issued in 2021 to account for lessons learned and recommendations from the Electric Reliability Council of Texas (ERCOT) associated with Winter Storm Uri. For winter 2022/23, two additional questions were added to the data request to verify a generating facility's cold weather operating temperature limit and minimum start-up temperature.¹⁹
15. Section 7.5.1 of Manual 14D recommends that generators that have not operated in the eight weeks leading up to December 1 complete a resource operational exercise in December to evaluate their ability to operate in cold weather conditions.²⁰ Attachment N to Manual 14D also includes hyperlinks to various webpages with NERC "lessons learned" reports and training presentations, a NERC Reliability Guideline, and other winter reliability materials.

¹⁶ See Manual 14D, § 7.3.5.

¹⁷ See, e.g., PJM Fuel Supply Update (Feb. 9, 2023), <https://pjm.com/-/media/committees-groups/committees/oc/2023/20230209/20230209-item-13---fuel-supply-overview.ashx>; PJM Fuel Supply Update (Nov. 3, 2022), <https://pjm.com/-/media/committees-groups/committees/oc/2022/20221103/item-16---fuel-supply-overview.ashx>.

¹⁸ 2019 FERC and NERC Staff Report: The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018, https://www.nerc.com/pa/rrm/ea/Documents/South_Central_Cold_Weather_Event_FERC-NEC-Report_20190718.pdf.

¹⁹ See Manual 13, § 3.3.1 at 54; Manual 14D, §7.3.5 at 75.

²⁰ Manual 14D, § 7.5.1 (Generation Resource Optional Exercise) ("In preparation for winter operations, PJM recommends that Generation Owners self-schedule any of their generation resources that have not operated in the 8 weeks leading up to December 1st to determine whether they are capable of reliably operating on both primary and alternate fuel and responding to PJM's dispatch instructions.").

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16. In addition to sending data requests to generators and monitoring their responses, PJM took a number of actions prior to the winter of 2022/2023 to ensure generators were aware of performance expectations prior to and during cold weather conditions. Measures included:
 - September 29, 2022 Systems Operations Subcommittee, “Generation Resource Cold Weather Preparation” presentation, including, *inter alia*, Manual 14D, Attachment N checklist requirement and Manual 14D Cold Weather Exercise.
 - October 28, 2022 System Operations Subcommittee, “DTS Update,” presentation reminding stakeholders, *inter alia*, of November 3, 2022 Winter Emergency Procedures Drill.
 - November 3, 2022 Winter Emergency Procedures Drill.
 - December 8, 2022 Operating Committee, Presentation regarding “Cold Weather Advisory Process,” explaining expected generator actions in response to declaration of Cold Weather Advisory by PJM.
 - December 16-18, 2022 Cold Weather Advisory Drill.
17. PJM conducted its annual Winter Emergency Procedures Drill on November 3, 2022, for the winter 2022/2023. Information about the drill scenario is contained in the Emergency Procedures External Drill Packet and the Emergency Procedures Internal Drill Script. PJM offers an eLearning module each year in support of the drill. This online training course, available via the PJM Learning Management System (LMS), provides an overview of the emergency procedures that participants may encounter during the drill exercise. Information about this online training, including links to the course materials, is contained in the Emergency Procedures Refresh Training with Content Links document.
18. The Cold Weather Advisory Drill was held for the first time from December 16 through December 18, 2022. The Cold Weather Advisory Drill was designed to familiarize generators with the Cold Weather Advisory procedures added to the PJM Manuals in Fall 2022 in direct response to the recommendations set forth in the Winter Storm Uri Report and to allow generators time to prepare before PJM issues a Cold Weather Alert. In particular, this drill emphasized the procedures for updating cold weather operating limits for generators during a Cold Weather Advisory.
19. NERC also held a Winter Preparations Webinar on September 1, 2022.

D. Gas Industry Collaboration

20. PJM engages extensively with the natural gas industry. Prior to each winter season, PJM, along with fellow members of the ISO/RTO Council (IRC) Electric Gas Coordination Task Force, meets with all of the major interstate pipelines, the Interstate Natural Gas Association of America (the national pipeline trade organization), as well as the Natural Gas Supply Association, to review the upcoming winter and discuss mutual preparedness activities.

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21. The PJM Gas Electric Coordination Team also conducts weekly operational calls during the winter months (November through March) with all of the major interstate natural gas pipelines in the PJM service territory. These interstate pipelines serve generation resources directly and also serve local gas distribution companies (LDCs), which in turn serve a smaller subset of PJM generators behind the LDC citygates. The purpose of these calls is to assess mutual system conditions. This includes reviewing load forecasts for both the electric and gas systems, any system outages that might impact service to generators, active and pending pipeline capacity restrictions, and any gas generation or gas nomination anomalies.
22. PJM also actively participates in the NAESB Gas Electric Harmonization Forum, which focuses on continuing efforts to address key lessons learned from Winter Storm Uri. PJM also routinely participates in gas electric drills and tabletop exercises with various strategic regional entities including individual interstate gas pipelines, local gas distribution companies, and through collaboration with neighboring transmission providers through the IRC Electric Gas Coordination Task Force and Eastern Interconnect Planning Collaborative (EIPC).
23. To better understand generator natural gas contract risks, PJM collects information regarding fuel availability through annual fuel data requests (via eDART), which ask generators to provide PJM information on their gas supply and transportation contracts. Additionally, the PJM Gas Electric Coordination Team conducts daily reviews during the winter months (November through March) of the interstate pipeline bulletin boards to assess pipeline operating conditions and identify potential natural gas supply risks to the natural gas-fired generation fleet. Daily gas risk assessment reports are prepared and shared with PJM Dispatch personnel to provide operational awareness.
24. PJM surveyed the PJM Member Transmission Owners to conduct a critical load review of gas production, processing, and transmission facilities, and to determine the level of protection such facilities should be accorded in the event of system stress or load shed. PJM considers electric powered gas compressor stations as critical load and collected data on the PJM Member Transmission Owner load shed plans and how gas infrastructure is treated. Manual 13, Section 2.3.2, Step 10²¹ provides guidance on this topic and notes that critical load should be considered in PJM Member Transmission Owner load shed plans.

²¹ Manual 13, § 2.3.2, Step 10 (Manual Load Dump Action), at 43 (“Member Load shed plans must recognize priority and critical load including: Essential health and public safety facilities such as hospitals, police, fire facilities, 911 facilities, wastewater treatment facilities; Facilities providing electric service to facilities associated with the Bulk Electric System including off-site power to generating stations, substation light and power; Critical gas infrastructure used to supply gas pipeline pumping plants, processing and production facilities; and Telecommunication facilities. Plans should be reviewed and updated at least annually including Attachment F of M-13.”).

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E. Existing Arrangements With Other Reliability Coordinators

25. PJM maintains close arrangements with other Reliability Coordinators on emergency operations. Specifically, PJM has joint operating and or joint coordination agreements with Midcontinent Independent System Operator, Inc. (MISO), Tennessee Valley Authority (TVA), New York Independent System Operator, Inc. (NYISO), Duke Progress, and VACAR South RC (VACAR). As explained in Section 5.1 of PJM Manual 37, “the coordination agreements detail requirements to which both parties are committed to preserve reliability. The agreements address a wide range of topics, including . . . emergency operations, [and] provide for the ongoing cooperation between the signatories by the establishment of joint operating committees that meet periodically to discuss and resolve operational issues.”²² PJM Manual 37 further provides that if an emergency situation is in progress, or imminent, PJM will provide notification to neighboring Reliability Coordinators by phone or conference call and enter a message on the Reliability Coordinators Information System (RCIS).²³ If the situation is of a magnitude that coordinated action or assistance may be necessary, Manual 37 requires that there be a conference call on the NERC hotline, or on a commercial teleconferencing service.²⁴
26. Moreover, peak load estimates, reserve requirements and estimated loads are discussed during a daily 03:30 AM conference call. Participants on this call include TVA, VACAR, MISO, PJM, and the Florida Reliability Coordinating Council (FRCC). PJM conducts a similar call with NYISO and MISO at 05:00 AM and 8:00 AM each morning, respectively. Load projections, reserves and anticipated daily challenges are discussed on these calls.

F. Cold Weather Advisories and Cold Weather Alerts

1. Cold Weather Advisories

27. As noted in section 3.3.1 of Manual 13, PJM issues Cold Weather Advisories when possible “to provide an early notice that forecasted temperatures may call for a Cold Weather Alert. The early notification of an Advisory is intended to provide PJM members ample time to gather information required by NERC standards EOP-011, Emergency Preparedness and Operations, IRO-010 RC Data Specification and Collection, and TOP-003 Operational Reliability Data.”²⁵ Upon issuance of a Cold Weather Advisory, generators are expected to take the following actions:

²² PJM Manual 37: Reliability Coordination (Mar. 23, 2022), § 5.1 (Agreements with Neighboring Reliability Coordinators), <https://pjm.com/-/media/documents/manuals/archive/m37/m37v19-reliability-coordination-03-23-2022.ashx>.

²³ *Id.* § 5.2.2 (Required Notifications).

²⁴ *Id.*

²⁵ Manual 13, § 3.3.1 (Cold Weather Advisory).

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- Prepare to take freeze protection actions such as erecting temporary windbreaks or shelters, positioning heaters, verifying heat trace systems, or draining equipment prone to freezing.
 - Review weather forecasts to determine any forecasted operational changes, and notify PJM of any changes.
 - Update Markets Gateway and eDART by entering unit specific operation limitations associated with cold weather preparedness. Such operation limitations include: generator capability and availability; fuel supply and inventory concerns; fuel switching capabilities; environmental constraints; and generating unit minimums (design temperature, historical operating temperature, or cold weather performance temperature).
28. After declaring a Cold Weather Advisory, PJM takes additional steps to ensure reliability, such as scheduling additional generation and accounting for a higher forced outage rate during cold weather operations. An important component in PJM's decision-making is the data supplied by generators. PJM will compare the data to the forecasted temperatures and determine if there will be any limiting factors for the generation fleet and prepare accordingly. Natural gas-fired units should reflect any fuel restrictions when updating their unit offer parameters within Markets Gateway, and eDART and should report unplanned outages if they are unable to run.

2. Cold Weather Alerts

29. The purpose of the Cold Weather Alert is to prepare personnel and facilities for expected extreme cold weather conditions. PJM will generally initiate a Cold Weather Alert for all or part of PJM when the forecasted weather conditions approach minimum or actual temperatures of 10°F or below, but this is not a hard and fast guideline.
30. PJM may issue Cold Weather Alerts when warmer temperatures are forecasted if PJM anticipates increased winds or if PJM projects that spot market gas may not be available to gas-fired generators during load pick-up periods. Coordination and communication with the applicable natural gas transmission pipelines, in conjunction with neighboring RTOs/ISOs, is implemented to help ensure that the availability of the natural gas needed for generation resources is assessed and that contingency plans are developed, if necessary. In deciding whether and when to issue a Cold Weather Alert, PJM relies upon historical experience, information supplied by the pipelines and information supplied from the generator owners. Pursuant to Manual 13 section 3.3.2, PJM takes the following steps when a Cold Weather Alert is called:
- Generation dispatchers update their unit parameters, including the Start-up and Notification, Min Run Time, Max Run Time, Eco Min, Eco Max, etc. in Markets Gateway. This includes updating performance limited schedule parameters as indicated in Manual 11 Section 2.3.4.

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- Generation dispatchers report to PJM Dispatch any and all resource limited facilities as they occur via Markets Gateway, as described in Section 6.4, and update PJM Dispatch as appropriate.
- Generation dispatchers with dual fuel determine whether alternate fuel will be made available to PJM for dispatch. If made available, any known alternate fuel resource limitations will be communicated via Markets Gateway.
- Generation dispatchers, based on direction received from PJM, call in or schedule personnel in sufficient time to ensure that all combustion turbines and diesel generators that are expected to operate are started and available for loading when needed for the morning pick up. This includes operations, maintenance, and technical personnel that are necessary to gradually start all equipment during the midnight period. The units are brought on at engine idle, where possible, and loaded as necessary to maintain reliability. Once units are started, they remain on-line until the PJM dispatcher requests the units be shut down. Combustion Turbine units running to provide Synchronized Reserve are monitored closely for situations in which fuel and delivery may be hampered. Each generator owner attempts to start their most troublesome or unreliable units first.
- Generation dispatchers review their combustion turbine capacities, specifically units burning No. 2 fuel oil that do not have sufficient additive to protect them from the predicted low temperature.
- Generation dispatchers review fuel supply/delivery schedules in anticipation of greater than normal operation of units.
- Generation dispatchers monitor and report projected fuel limitations to PJM Dispatch and update the unit Max Run field in Markets Gateway if less than 24 hours of runtime are remaining.
- Generation dispatchers contact PJM Dispatch if it is anticipated that spot market gas is unavailable, resulting in unavailability of bid-in generation.
- Transmission/Generation dispatchers review plans to determine if any maintenance or testing, scheduled or being performed, on any monitoring, control, transmission, or generating equipment can be deferred or cancelled.
- Generation dispatchers will update the “early return time” for any Planned generator outages as indicated in Manual 10 section 2.2.2.²⁶

²⁶ PJM Manual 10: Pre-Scheduling Operations (Dec. 21, 2022), § 2.2.2 (Planned Outage Rules), <https://www.pjm.com/-/media/documents/manuals/m10.ashx>.

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G. PJM Staffing

31. PJM staff receives extensive training on system operations during cold weather conditions. PJM staff participates in the drills and other generator training events discussed above.²⁷ PJM conducts annual training, monthly load shed drills, and pre-winter and summer Emergency Procedures drills to train operators in the proper issuance of emergency procedures and coordination with members.
32. Beginning on December 23, 2023, PJM brought in additional control room, support, and management staff that remained on duty throughout the entirety of the cold weather event, including overnight hours. Personnel also supported remotely, and some were recalled from scheduled vacations. Additional control room staff assisted with excessive system operations and phone call volume. Support staff assisted with procedure adherence (including emergency procedures). Management helped with decision-making and handling additional coordination calls both internally at PJM and externally with PJM members.
33. In addition to control room staff and direct control room support staff, PJM also activated the Operations Event Response Team (OERT). The OERT is a cross-divisional group of internal PJM employees designed to help prepare for and respond to operational events and includes participants from Dispatch Leadership, Corporate Communications, State and Government Affairs, Member Relations, Generation Department, Demand Response, Market Operations, EMS Support, Legal, Transmission Services and Federal Government Policy. Subject matter experts (including those supporting load forecasts) provided guidance.

H. PJM's Status in the Period Leading Up to the December 23 and December 24 Emergency Declarations

34. Under Manual 13, PJM attempts to issue Cold Weather Advisories as far in advance as possible, typically within 3-5 days of the expected cold weather, but given fluctuating and changing weather forecasts advisories, Cold Weather Advisories could be issued up to 24 hours in advance.²⁸ The PJM Manuals do not specify a targeted timeline for issuing a Cold Weather Alert. The actual timeline for issuing Cold Weather Advisories and Cold Weather Alerts for Winter Storm Elliott (including on December 25) was as follows:
 - 12/20/2022 09:00: PJM issued a Cold Weather Advisory for the Western Region zones from 07:00 on 12/23/2022 through 23:00 on 12/25/2022.
 - 12/21/2022 10:00: PJM extended the Cold Weather Advisory for the Western Region zones from 07:00 on 12/23/2022 through 23:00 on 12/26/2022 (originally posted to end on 12/25/2022).

²⁷ See *supra* P 22.

²⁸ Manual 13, § 3.3.1.

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- 12/22/2022: 17:30: PJM expanded its Cold Weather Advisory from 07:00 on 12/23 through 23:00 on 12/26/2022 to the entire RTO (originally for Western Region zones).
 - 12/23/2022: 11:00: PJM issued a Cold Weather Alert for the entire RTO from 00:00 on 12/24/2022 through 23:59 on 12/25/2022.
 - 12/25/2022: 11:10: PJM issued a Cold Weather Alert from 07:00 on 12/26/2022 through 23:00 on 12/26/2022 for the Western Region zones only.
 - 12/26/2022: 23:00: Cold Weather Alert Ended.
35. PJM Dispatch relies on the data generators supply concerning their unit parameters. But many generators failed to update their parameters in a timely manner in accordance with the Manual 13 procedures. In particular, many owners of gas-fired generators did not provide updates regarding the availability of natural gas needed for fuel. Although many gas-fired generators were unable to obtain gas, PJM Dispatch learned about most of these fuel limitations only when PJM called the units to come online. Generators provided PJM little or no notice regarding their fuel limitations. Indeed, PJM received a significant amount of incomplete or inaccurate data from the generation fleet. PJM relied on this same data to make advance and real-time decisions.
36. However, the single largest driver of forced outages was mechanical failures. Many units simply were unable to operate to their stated minimum operating temperatures which were requested and supplied by the generation owners during the declared Cold Weather Advisory.
37. PJM did not forecast any potential capacity issues in the seven days prior to the operating day of December 23. PJM tracks and maintains generator outage margins by transmission owner zone and the RTO as a whole to ensure that enough generation is held in reserve and not unavailable on planned or maintenance outages at any given time. Long term (*i.e.*, greater than seven days out), the generator outage margin is calculated based on the long-term load forecast. Near term (today plus six days), the generator outage margin is calculated using the short-term load forecast. In the seven days leading up to December 23, the outage reserve margins exceeded 30 GW in PJM.
38. Nor did PJM forecast any potential capacity issues on a day-ahead basis leading into the December 23 operating day. On a day ahead basis, PJM calculated 29 GW of *additional operating capacity* in excess of what was already scheduled to meet the demand for the operating day. Based on this, no generation maintenance outages were recalled.
39. PJM participated in Northeast Power Coordinating Council (NPCC) CO-8 Operations Managers calls prior to, during, and after Winter Storm Elliott to discuss system operations between neighboring Reliability Coordinators. The NPCC geographic region includes the State of New York and the six New England states, along with the Canadian provinces of Ontario, Québec, and the Maritime provinces of New Brunswick and Nova Scotia.

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Projected reserves, loads, and challenges were discussed on the calls, as were additional reserves available in the event that energy would need to be shared between NPCC areas.

40. The SERC Reliability Corporation (SERC) also conducted communications between PJM and neighboring Reliability Coordination, and PJM participated and exchanged information with it. And as discussed *supra*, there are regular daily morning conference calls with TVA, VACAR, MISO, PJM, and FRCC, NYISO and MISO. These calls continued to occur during this period.
41. Regarding transmission outages, PJM initiated near-term analysis studies three business days before the start of the outage. Once the Cold Weather Alert was issued, PJM evaluated the need to recall any existing outages and/or to deny any scheduled outages. It was determined that one outage, which occurred on the Black Oak – Hatfield 500 kV line (eDART # 1053409), should be denied due to a conflict and the impending cold weather. This would allow for additional power transfer across PJM’s high-voltage transmission backbone. PJM also conducted System Operations Subcommittee conference calls with transmission owners (SOS-T) on December 23 and 24 to communicate anticipated system conditions and challenges. Further, PJM was in coordination with Transmission Owners regarding major outages that were scheduled to return. As a result of said coordination, PJM was able to work with multiple Transmission Owners to restore both a 500 kV & 765 kV transmission line on December 23, an earlier turnaround than originally estimated.

I. ROCK SPRINGS PERFORMANCE DURING WINTER STORM ELLIOTT

1. **During the December 23 PAI and the First Two Hours of the December 24 PAI, PJM Did Not Schedule Essential Power Rock Springs Solely Due to its Long Lead Times**

42. I have reviewed the Nautilus Complaint.²⁹ As I explain here, the reason PJM did not dispatch Essential Power Rock Springs, LLC (Rock Springs) Springs to operate during the Performance Assessment Intervals on December 23, 2022 and for the first two hours of the December 24, 2022 PAI (the Relevant Period) was their very limiting long lead times. The Nautilus Complainants are incorrect in asserting that “PJM did not call or dispatch Rock Springs at all on December 23, likely because the operation of Rock Springs adversely affects a constraint at the Nottingham Series Reactor . . . on the PJM system[.]”³⁰
43. As PJM operators worked diligently to maintain reliability and keep the lights on in the face of very challenging conditions, including a rapidly increasing forced outage rate occurring on December 23 through December 24, PJM could not schedule Rock Springs to operate during the Relevant Period to meet the emergency conditions solely due to the long lead times specified in their operating parameter limitations.

²⁹ See, e.g., Nautilus Complaint at 29-30.

³⁰ *Id.* at 29.

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44. Rock Springs had a range of long lead times, varying by hour, for the resources' time-to-start parameters (notification plus startup time) across both December 23 and December 24. Specifically, on December 23, 2022 as of the time the December 23 PAI started, Rock Springs reported to PJM a time-to-start of [REDACTED] hours. On the same operating day, Rock Springs's time-to-start parameter went as high as [REDACTED] hours (for the hour beginning 20:00 during the December 23 PAI). At the start of the PAI on December 24, Rock Springs's parameters reflected a time-to-start of [REDACTED] hours. These long notification plus start times carried Rock Springs's unavailability [REDACTED], and certainly [REDACTED] hours of the December 24 PAI which started at 04:25. Under these facts, for scheduling and dispatch purposes, PJM cannot count on a resource to be online and capable of providing energy until after the notification and startup time has elapsed.
45. At the times PJM would have needed to contact Rock Springs—in accordance with its operating parameter limitations—for those resources to help address emergency conditions, forecasted system conditions did not support dispatching those resources. As discussed, on the morning of December 23, PJM saw 29 GW of capacity reporting as available.³¹ Accordingly, PJM dispatchers would have needed perfect foresight of the unexpectedly fast-changing weather conditions and the unprecedented scale of forced outages to dispatch Rock Springs sufficiently in advance of the emergency conditions that PJM declared at 17:30 December 23.³² But PJM dispatchers do not have perfect foresight. Instead, they rely on the data in front of them and a reasonable expectation that Capacity Resources will fulfill their obligation to perform during emergency conditions.
46. To respond to the rapidly changing conditions, including the number of resources failed to show up with little or no warning on December 23, PJM operators called on resources with as short a lead time as possible to alleviate the conditions sooner. Even though PJM needed Rock Springs (and countless other generators) to provide energy to help alleviate the emergency conditions, PJM could not call on Rock Springs because it would take too long to arrive. System conditions can be very fast-moving as demonstrated by the unprecedented generator failure rate of the PJM fleet during this event. Had Rock Springs been available with much shorter notification plus startup times it could have helped PJM manage those rapidly evolving conditions during Winter Storm Elliott, and PJM would have dispatched its resources.
47. After the evening peak of December 23, PJM Dispatch started to evaluate all available units which could be online for the upcoming morning peak of December 24. Roughly, this was any unit with a [REDACTED]-hour or less notification plus startup time. At 06:37 on December 24, 2022, Rock Springs informed PJM by telephone that it would take [REDACTED] hours for it to come online. Five minutes later, Rock Springs called again, this time informing PJM that it would actually take [REDACTED] hours. PJM's dispatchers scheduled Rock Springs to come online, and Rock Springs confirmed this schedule. Twenty minutes after that, at

³¹ Generation resources show availability (or unavailability) through PJM's Dispatcher Application and Reporting Tool (eDART) and the Markets Gateway.

³² PJM issued a Pre-Emergency Load Management Reduction Action and Maximum Generation Action at 17:30 on December 23.

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07:02 on December 24, Rock Springs spoke to PJM and said, “Um, just wondering, uh, you guys called on our, uh, Rock Springs CTs 2, 3, and 4, and, um, we have the min runtime [REDACTED] for those units.” In that same call, PJM told Rock Springs, “we just need the megawatts” and PJM indicated it would honor that minimum run time.

48. As is discussed further below, Rock Springs never actually ran on December 24. Rock Springs’ long lead time is driven by its inherent physical characteristics, and not outside forces. That is, Rock Springs elected to commit to provide capacity from resources that take a very long time from when PJM asks them to provide energy until they are capable of doing so. Rock Springs unquestionably assumed the performance risk associated with such commitments.

2. During the Remainder of the December 24 PAIs Rock Springs Failed to Operate Because it Had No Fuel

49. Rock Springs concedes it had no fuel for all other periods of the December 24 PAI.³³ At 10:30 on December 24, Rock Springs called PJM and said, “regarding Rock Springs CT 2, 3, and 4, uh, those units were requested online for start today. There is no fuel supply available for those units right now. We’re going to have to put those in forced outage and they’ll be unavailable until Monday at 10:00 a.m.” Consistent with that communication, Rock Springs never ran on December 24. .
50. Responsibility for procuring fuel and updating its status and operating parameters in the PJM systems rests with Capacity Market Sellers such as Rock Springs. PJM does not arrange or direct fuel procurement and can only act on the information Capacity Market Sellers have provided as to their generating units.
51. PJM’s Capacity Performance rules put on Capacity Market Sellers the responsibility for Capacity Resources to perform, and the risk of Non-Performance Charges if they do not perform. In my experience, Capacity Market Sellers or their energy managers have options to mitigate resource performance risks associated with fuel supply through measures such as firm fuel supply and transmission contracts, adding dual-fuel capability to the plant, or maintaining a multi-day supply of fuel on site. But PJM does not make decisions about fuel procurement, fuel transportation, or fuel storage risk for the generators. In fact, PJM instructs its operators they are *not* to direct generators to purchase fuel. This specific instruction came out of the 2014 Polar Vortex events and subsequent litigation concerning PJM instructions to certain generation owners.³⁴

³³ The Nautilus Complaint concedes that at approximately 06:30 on December 24, “PJM called Rock Springs and asked it to operate Units 2, 3, and 4” and that, in response to that call, “Rock Springs informed PJM that it would not be available until 15:00 EPT at the earliest” because of lack of fuel. Nautilus Complaint at 30.

³⁴ *Old Dominion Elec. Coop.*, 151 FERC ¶ 61,207 (2015), *reh’g denied*, 154 FERC ¶ 61,155 (2016), *aff’d*, *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018).

PUBLIC VERSION

52. From the perspective of PJM Dispatch, when a Capacity Market Seller or its energy manager rebuffs a PJM request to run a Capacity Resource in accordance with its offer parameters (whether or not in an emergency), the resource is unavailable, and it is incumbent on the Capacity Market Seller or its energy manager to reflect that status in PJM's systems by submitting a forced outage ticket. Capacity Market Sellers are expected to provide accurate, updated information to PJM, through PJM's Markets Gateway and eDART³⁵ systems as their parameters or status change(s), so that PJM operators can make sound operating choices based on current, accurate information. PJM operators can only make decisions based on the information provided to them, and Capacity Market Sellers or their energy managers, who best know the status of their resources and their parameters, are the best source of that information.
53. During Winter Storm Elliott, PJM operators found that they did not have current, accurate information because Capacity Market Sellers were not proactively updating their units' status and parameters in Markets Gateway and eDART. Instead, PJM had many Capacity Market Sellers inform PJM of their operating status, fuel status, or operating parameter changes only when talking with PJM operators. Rock Springs fit this pattern of behavior.
54. Even though PJM issued multiple Cold Weather Advisories and Alerts, Rock Springs made no effort to procure fuel so that it could perform if needed. Rock Springs could have been in a position to meet its Capacity Performance obligations during the Performance Assessment Intervals by making the choice to self-schedule the units. Even if PJM does not dispatch a Capacity Resource, the seller can request approval from PJM to self-schedule it and be granted to the ability to come online and generate, while not subject to PJM dispatch. PJM evaluates such requests to determine whether the self-schedule will affect reliability. For example, to accommodate a self-schedule request, PJM may need to redispatch other generation resources to manage the flows generated by the self-scheduled resource. But PJM's standard for denying a self-schedule request is relatively high. If, and only if, allowing the self-scheduled resource to come online would cause uncontrollable reliability issues would PJM deny the request.
55. At a time when PJM needed every MW it could call online, Rock Springs made its facility unavailable for the entire day on December 24, 2022.
56. This concludes my affidavit.

³⁵ eDART (Dispatcher Application and Reporting Tool) is a PJM mechanism that allows generation and transmission owners to submit generation and transmission outage requests. eDART allows its users to manage their outage data by viewing the status of their outages and obtaining outage reports. *See eDart*, PJM Interconnection, L.L.C., <https://www.pjm.com/markets-and-operations/etools/edart> (last visited May 24, 2023).

PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Essential Power OPP, LLC, <i>et al.</i>)	
Complainants)	
	v.)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Aurora Generation, LLC, <i>et al.</i>)	
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Respondent)	
)	
Coalition of PJM Capacity Resources)	
Complainant)	
	v.)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

VERIFICATION

I, **Donald Bielak**, state, under penalty of perjury, that I am the Donald Bielak referred to in the foregoing document entitled “Affidavit of Donald Bielak on Behalf of PJM Interconnection, L.L.C.,” that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

Donald Bielak

Exhibit 3

Affidavit of Joseph Mulhern

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

Essential Power OPP, LLC, <i>et al.</i>)	
Complainants)	
v.)	Docket No. EL23-53-000
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v.)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

**AFFIDAVIT OF JOSEPH MULHERN
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

1. My name is Joseph Mulhern. My business address is 2750 Monroe Blvd., Audubon, Pennsylvania, 19403. I currently serve as Lead Engineer, Market Coordination for PJM Interconnection, L.L.C. (PJM). I am submitting this affidavit to support PJM’s separate Answers to the complaints filed by the “Nautilus Entities,”¹ the “ComEd Zone Generators,”² and the Coalition of PJM Capacity Resources³ that are being filed today in

¹ The Nautilus Entities are Essential Power OPP, LLC (OPP), Essential Power Rock Springs, LLC, and Lakewood Cogeneration, L.P..

² The ComEd Zone Generators are Aurora Generation, LLC, Elwood Energy, LLC, Jackson Generation, LLC, Lee County Generating Station LLC, Lincoln Generating Facility, LSP University Park, Rockford Power, LLC, Rockford Power II, LLC, and University Park Energy, LLC.

³ The members of the Coalition of PJM Capacity Resources are: Ad Hoc Committee of Certain Noteholders of Talen Energy Corp.; Clean Energy Future – Lordstown, LLC Competitive Power Ventures Holdings, LP; Hickory Run Energy, LLC; Lanyard Power Holdings, LLC; Lightstone Marketing LLC; Orion Power Holdings, LLC; Parkway Generation Operating LLC; Brunner Island, LLC, H.A. Wagner LLC, Montour, LLC, Camden Plant Holding, L.L.C., MC Project Company LLC; Talen Energy Marketing, LLC; Red Oak Power, LLC; and South Field Energy LLC.

the captioned proceedings. For ease of reference, I will use the term “Complainants” when referring to all three groups of complainants.

2. As part of my current work for PJM I am focused on facilitating accurate load forecasting by configuring and training models, optimizing input data, assessing performance, and communicating load forecast information to PJM dispatchers. My work also involves improving load, wind, and solar forecast accuracy and facilitating the successful integration of renewables by enhancing the use of forecast data, evolving business rules, and educating stakeholders.
3. Starting in 2010 I have held positions at PJM as a Senior Engineer I and II, Generation, Engineer II, Outage Analysis Technologies, and Engineer I, Operations Planning. My work in these roles has often involved load forecasting issues. As an Engineer I and II, I was responsible for performing transmission outage analysis studies, in which I used load forecast data to model the system. As an Engineer II through Senior Engineer II, I served as project manager for an extensive capital project to refresh PJM’s seven forecast applications that manage the complex flow of data for load, weather, wind, solar, and interchange forecasting. My hands-on load forecasting experience began in 2020 when assessing COVID-19 impacts on load, and expanded to include providing daily advice to Dispatch. During this time, I designed multiple tools to assess load and weather forecast error, and was instrumental in creating PJM’s load forecasts for Christmas Eve and Christmas in 2021 and Thanksgiving in 2022, all of which performed far better than the default model (by 39%, 72%, and 69%, respectively).
4. I have a Master’s Degree in Business Administration—Strategic Management from Villanova University and a Master of Engineering—Energy Systems Engineering from Lehigh University. I also have a Bachelor of Science in physics from Villanova University.
5. I was directly involved in preparing, and subsequently reviewing, the PJM load forecasts for December 23 and 24, 2022, i.e., the two days at issue in this proceeding, which are commonly known as Winter Storm Elliott.⁴
6. The purpose of this affidavit is to show that Complainants’ various claims that PJM’s load forecasts for December 23 and 24 were “inaccurate” or otherwise materially flawed are wrong. Complainants’ mischaracterizations of the quality of PJM’s forecasts reflect, at best, serious misunderstandings of load forecasting and the difficulty of anticipating conditions as exceptional as those that existed during Winter Storm Elliott.
7. I take issue with any notion that PJM “failed” at forecasting for December 23 and December 24, 2022. As I will explain, PJM’s load forecasts for the relevant days proved to be less accurate than normal for a variety of reasons. That does not change the conclusion that PJM’s forecasts were reasonable given the information available to PJM at the time that they were made. It is simply not correct to assert that PJM “failed” to fulfill

⁴ See <https://www.pjm.com/markets-and-operations/winter-storm-elliott> (collecting PJM’s public statements addressing Winter Storm Elliott’s impact on PJM’s operations and markets).

its load forecasting responsibilities in connection with Winter Storm Elliott. PJM used its state-of-the art load forecasting model and followed good forecasting practices.

8. I also think that it would be a serious mistake to conclude that the forecasts for December 23 and 24 indicate that there is some material defect in PJM's load forecasting overall. On the contrary, the weather and load conditions on December 23 and 24 could not have reasonably been anticipated because, by every objective measure, those conditions were extremely abnormal.

A. Introduction

9. Like other Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs), PJM produces a load forecast for each of its transmission zones for the next several days. Load forecasting attempts to determine how much electricity demand there will be using weather forecast data and historical observations of load and weather. Uncertainty is inherent in any forecast. This is especially true of load forecasting because of its dependence on weather forecasts, which are famously uncertain, and on unpredictable human behavior patterns.
10. PJM uses sophisticated software, combined with informed human review and frequent human intervention, to forecast load as accurately as is practicable notwithstanding the innate fallibility of any human attempt to predict the future. PJM also reviews forecast performance on a daily basis, analyzes days with significant error, and actively participates in load forecasting working groups with other ISOs and RTOs.
11. PJM diligently maintains high quality forecast systems and produces well-developed forecasts. PJM continuously strives to meet a specified accuracy threshold. PJM reviews this load forecasting metric and performance with market participants on a monthly basis.
12. While the results of the load forecasting process can provide insight into how much generation might be required on a future day, the load forecast is not all that PJM uses to make generation commitments. Reserves, operator-entered case adjustments, and additional capacity commitments are used to account for uncertainty.

B. How PJM Load Forecasts Are Created

13. PJM's hourly load forecast covers the remainder of the current day as well as the next six days. The forecasting process begins with the hourly retrieval of weather forecast data from three separate private weather companies. PJM uses three reputable vendors, because of the strong benefits doing so has for reliability and accuracy. Using multiple vendors promotes redundancy in the event of failure of one or two vendors, and by averaging the vendor forecasts together, it allows for any significant error from any one vendor's forecast to be moderated by the other forecasts. PJM operations staff pay close attention to weather vendor performance, and use a daily report to monitor and compare performance on a daily

basis. Output of this report is used to inform decisions about how much weight is given to each weather vendor in the averaging process.

14. After the vendor forecasts are combined for 28 designated weather stations in the PJM footprint, the resultant forecasts become inputs into another weighted average calculation that determines a singular weather forecast value for each hour in 10 forecast zones for each hour.
15. The zonal weather forecast dataset is then used as input into the load forecast. For this, PJM uses a load forecasting algorithm that is widely used in the industry. The system runs on in-house computers and produces a series of outputs for each transmission zone for each hour in the outlook timeframe (remainder of current day plus next six days). There are multiple outputs because the system runs a wide suite of models, including the following:
 - Models created by the algorithms designer are combined into an ensemble, where models with better recent performance are weighted higher, which then becomes PJM's default forecast before any manual adjustments are applied:
 - A neural network model that uses temperature as an input.
 - A neural network model that uses temperature as an input and is optimized for sudden changes in temperature.
 - A pattern matching algorithm that creates a load forecast by applying a weighted average to days with similar weather that occurred in the past.
 - Models created internally by PJM:
 - A neural network model that uses effective temperature (which accounts for wind speed) as an input.
 - In the summer months, this model uses temperature humidity index instead of effective temperature.
 - A neural network that replaces recent historical load and weather data with forecasted values.
16. Output from all of these models are visualized in an in-house tool called LoadCast. LoadCast is prominently displayed in the control room on the desktop of the operator responsible for making manual adjustments to the published forecast, and also used extensively by support engineers who provide advice on how to make these manual adjustments.
17. The LoadCast tool also offers the ability to manually create a load forecast by plotting individual historical days with similar temperature profiles. This mimics a legacy load forecasting approach and provides a useful sanity check to verify the output of the models.
18. PJM uses multiple tools to visualize weather data. A custom in-house weather dashboard presents temperature, effective temperature, wind speed, cloud cover, and other parameters for weather stations and forecast zones for the current day and next six days. The dashboard features charts that compare vendor forecasts and show the 24 hour change in temperature; and daily written reports describing forecasted weather conditions in each of

three major zones in PJM. A dashboard with maps of the United States and parts of Canada shows real-time temperature, radar, dew point, and infrared and forecasted temperature deviations from normal for the current day and next 14 days. A custom Dispatch interactive mapping tool shows weather radar and satellite; temperature, wind speed, dew point, and relative humidity observations; local storm reports; National Weather Service bulletins; and a variety of severe conditions.

C. How PJM Optimizes Accuracy in Load Forecasting

19. PJM Operations staff closely monitor load forecast accuracy and model performance. A company forecast metric requires that 91% of days in the calendar year have a daily average load forecast error of less than 3%. The following table summarizes compliance with that goal. Forecast accuracy in 2021 and 2022 surpassed the three preceding years, and accuracy in 2023 is 97.16% as of May 22, 2023, which is better than the past five years.

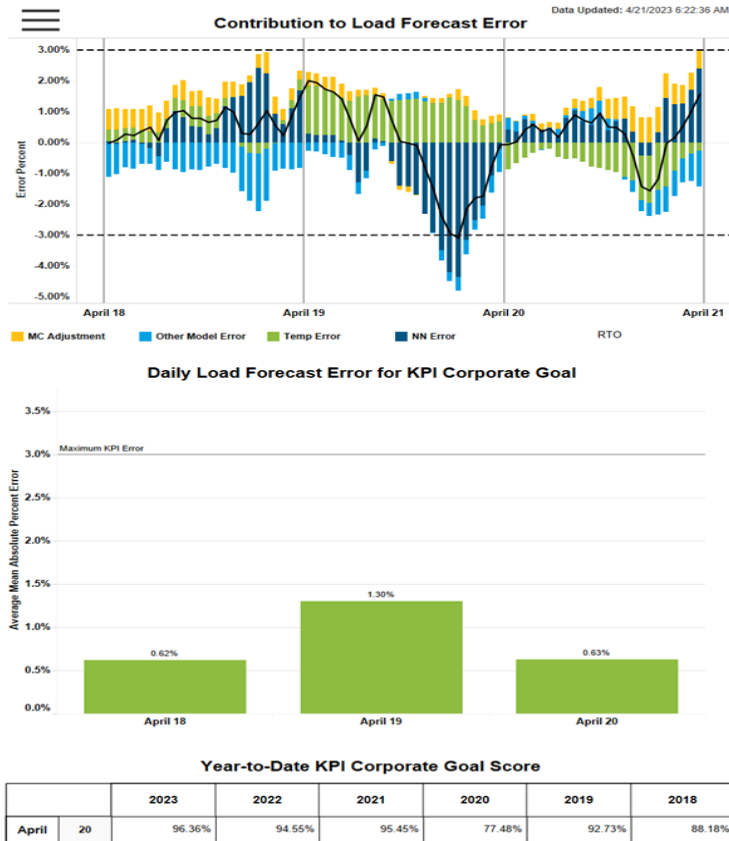
Table 1: Percentages of Days with Load Forecast Error Under 3%

2023	N/A
2022	91.51%
2021	92.60%
2020	85.52%
2019	90.36%
2018	91.23%

20. Each morning, PJM operations staff and leadership review a report of forecast performance from the previous day. The report contains the day’s load forecast score and a chart that depicts the contributions to load forecast error from weather forecast error, model error, and human adjustments. These contributions are quantified by running a backcast algorithm and computing the difference between various outputs. This information allows control room staff to observe trends, such as under- or over-forecasting that repeats at certain times of day, and correct for them in future forecasts.

21. Figure 1 below presents an example of a recent daily report addressing load forecasting errors.

Figure 1: Sample Load Forecast Error Report



D. “Training” the PJM Load Forecasting Model

22. PJM Operations staff trains the neural network models on three years of historical load and weather data. A three year term is the industry standard for model training. It appropriately balances having enough historical data to adequately capture the way load responds to a variety of weather conditions and not including obsolete data that does not reflect the current load/weather relationship. The latter concern has become more pronounced in recent years as COVID-19, energy efficiency, and increased behind-the-meter solar and data center load have all contributed to reshaping the load profile. The models then continue to learn and adapt from new data that comes in after the end of the training period.
23. The current training period spans from July 2019 to June 2022. That period went into effect in August 2022 after weeks of testing.

E. Winter Storm Elliot and PJM’s Load Forecasts

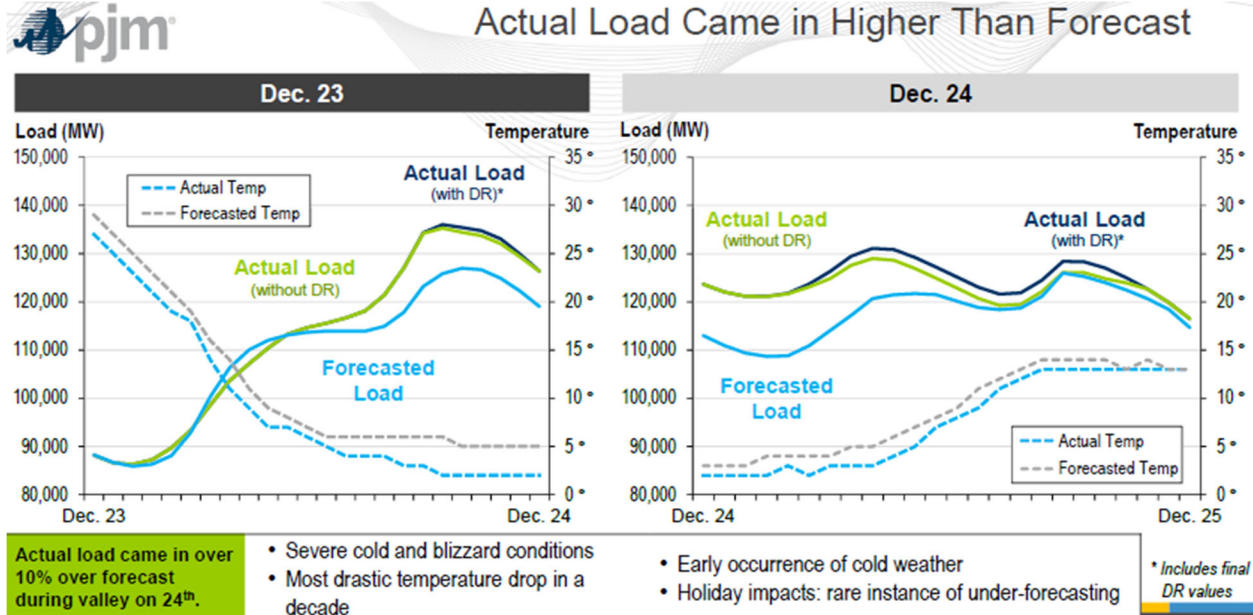
24. Winter Storm Elliott was an unusually severe winter storm that struck the PJM Region between December 23 and December 24, 2022. Winter Storm Elliott presented

extraordinary reliability challenges by causing an extremely rapid drop in temperatures at a time of record-breaking high loads for the Christmas holiday. Winter Storm Elliott had a major, and in many ways unanticipated, impact not just on PJM but on much of the rest of the Eastern Interconnection. Thus, I think that it is a mistake to suggest that Winter Storm Elliott was a routine storm that “played out as forecast.”⁵

25. Two factors beyond what PJM normally encounters were the largest contributors to the greater-than-normal difference between PJM’s load forecasts and actual load during Winter Storm Elliott.
26. First, the proximity to the Christmas holiday, and ongoing changes in patterns of human behavior during holiday periods, meant that PJM’s load forecasting model faced an unusual challenge. In particular, load has traditionally been over-forecasted by models in the days leading up to Christmas. As discussed below, PJM realized that Winter Storm Elliott could deviate from historic trends and established a higher-than-usual load forecast for early Winter. But actual load unexpectedly came in much higher than even PJM’s atypically high projection.
27. Second, the extreme weather associated with Winter Storm Elliott’s movement into and across the PJM region was outside the bounds of anything the model had seen before in its training data. Not only were the temperatures colder than any in the model’s history for the time of year, but the rate of the temperature decrease, an abrupt 29° F in just 12 hours, was faster than for any cold weather event for more than a decade (which encompasses the entire model training history of PJM’s current suite of forecasting tools). In some parts of PJM, the highest temperatures on December 24 were the coldest in recorded history for that date.
28. As shown below in Figure 2, actual loads in PJM were higher than forecast, with the evening peak on December 23 and morning peak on December 24 both underestimated by approximately 7%.

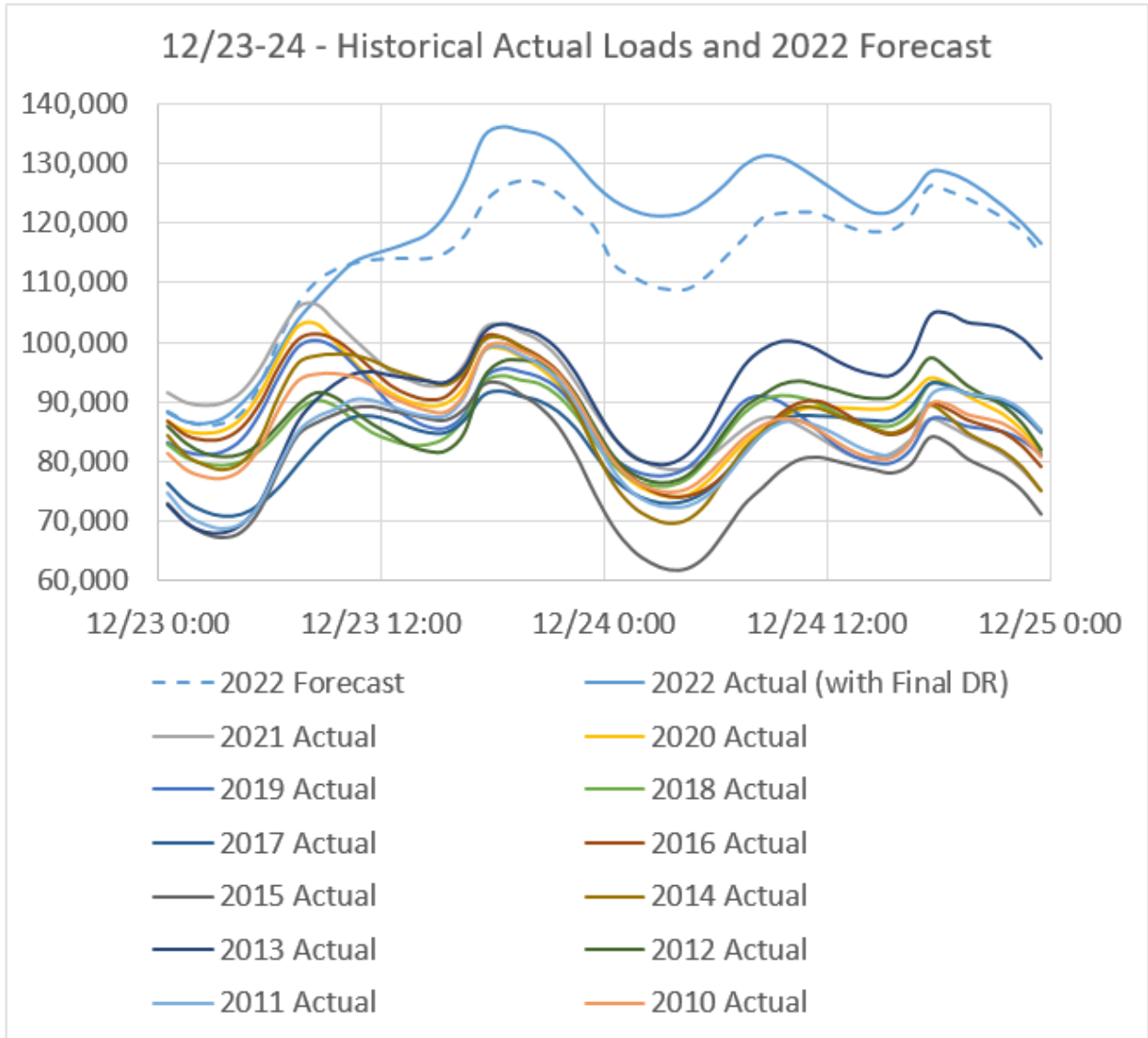
⁵ See, e.g., Complaint of The Coalition of PJM Capacity Resources (Coalition Complaint) at 8, Docket No. EL23-55 (filed Apr. 4, 2023).

Figure 2: 12/23-24 Actual Load vs. Load Forecast



29. PJM’s peak forecasted load for 18:00 on December 23 was 126,968 MW. PJM called over 155,750 MW into the operating capacity for the day. PJM reasonably believed that it was guarding against potential uncertainty as further described in Mr. McGlynn’s affidavit.
30. PJM’s peak forecasted load for 18:00 on December 24 was 126,007 MW.
31. These peak forecasts are both over 20,000 MW higher than peak loads observed on these days in the last 13 years. As a whole, PJM’s load forecasts correctly predicted very high load levels for both days, but did not capture the full magnitude of how unprecedented actual load would prove to be. The difference is captured by Figure 3 below.

Figure 3: Historical Actual Loads and Forecast for December 23 and 24



32. As Figure 3(a) demonstrates, the 2022 holiday weekend load during Winter Storm Elliott was an extreme outlier in both magnitude and timing. The actual hourly load was 136,010 MW on December 23 (hour ending 19:00) and 131,113 MW on December 24 (hour ending 09:00). Load also stayed unusually high overnight from December 23 to December 24. The “Christmas Eve Valley” in the early morning hours on December 24 was 40,000 MW higher than the next highest over the last decade. In fact, the load “valley” on December 24 was 15,000 MW higher than any peak load on that date in a decade. Figure 3(b) in turn shows PJM’s December 1 – January 15 Loads since 2012.

Figure 3(a): 2022 Holiday Weekend Load

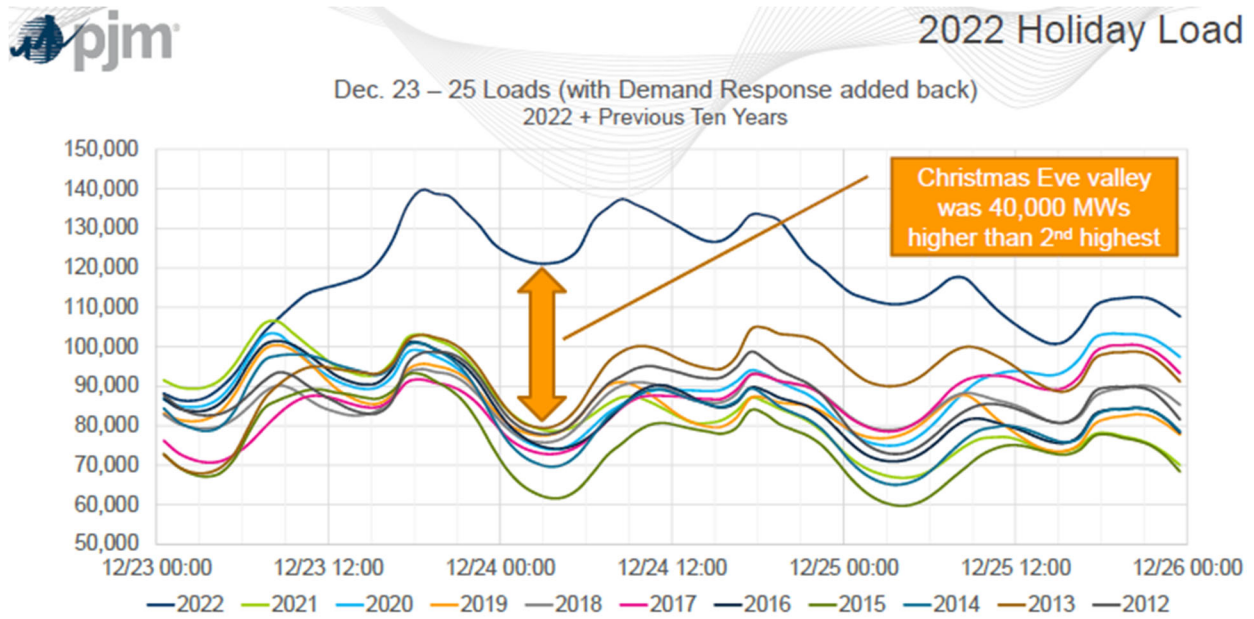
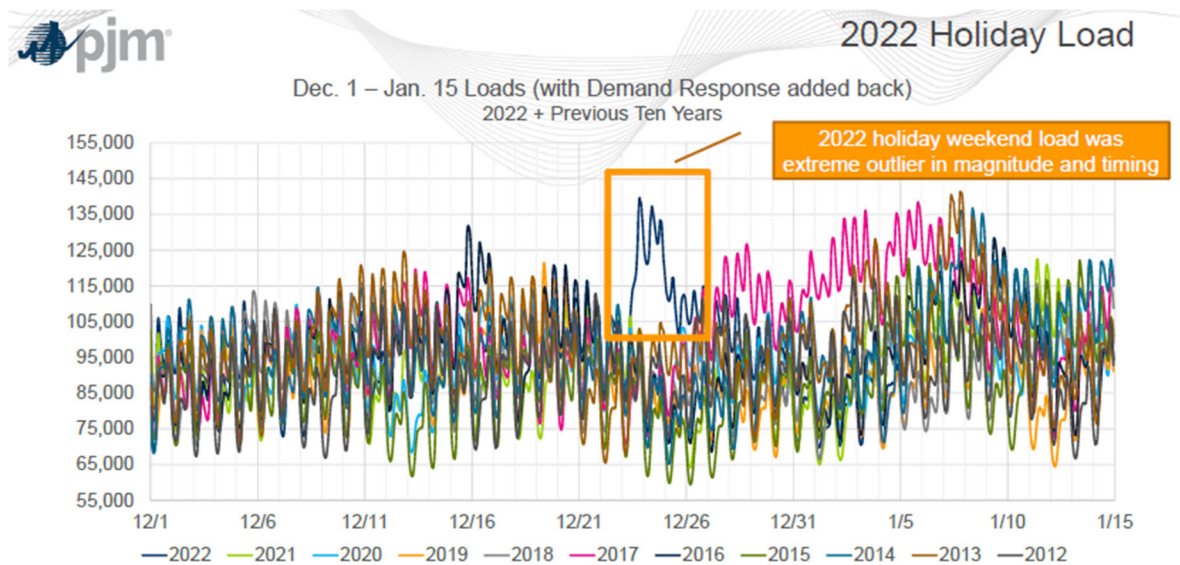


Figure 3(b): 2022 December 1 – January 15 Loads, 2012-2022

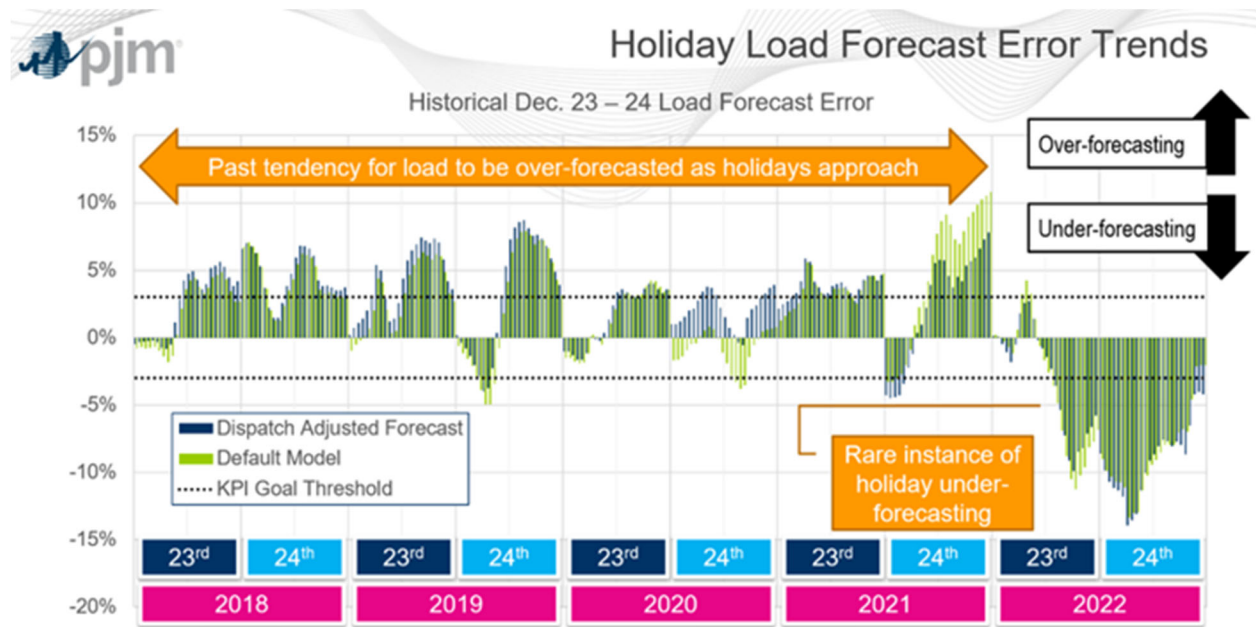


33. The load forecast for December 24 was off by less than 2% at the evening peak. But the morning peak that day was under-forecasted—partially due to a temperature forecast error, such cold temperatures (and sudden temperature drops) not existing for the early winter timeframe in the model’s history, and potentially other reasons.
34. December 24 has historically been one of the most difficult days of the year to forecast even with normal seasonal weather because of the Christmas Eve holiday. The holiday’s impact on human behavior is hard to anticipate and directly relevant historical data is

relatively scant because load on weekends differs greatly from weekdays and the last time that December 24 fell on a Saturday was 2016.

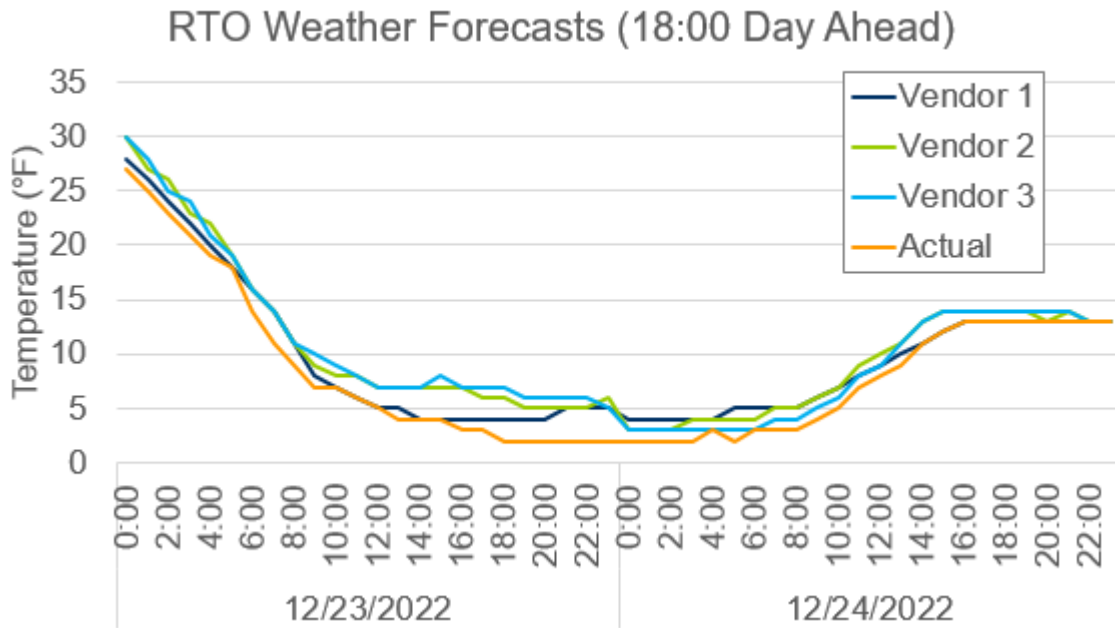
35. Figure 4 below illustrates the pattern of Christmas holiday load forecasting error over the last five years. In particular, it shows how the under-forecast for Winter Storm Elliott was a departure from usual holiday period over-forecasts.

Figure 4: Holiday Load Forecasting Error Trends



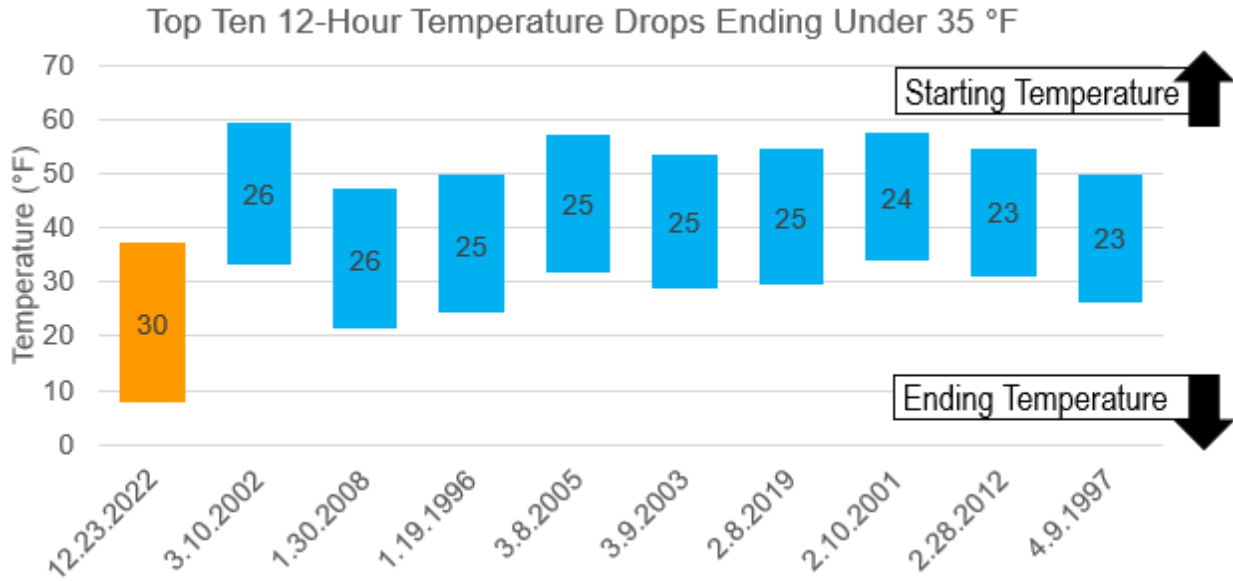
36. On December 23, actual temperatures were materially colder than predicted by PJM or any of its vendors. During the second half of the day, the RTO average was 4 degrees colder than the 18:00 day ahead forecast, with the most severe over-forecasting in the central and northeastern part of the footprint, where several cities came in 6 or more degrees colder for at least two hours (Erie, PA; Harrisburg, PA; Morgantown, WV; Pittsburgh, PA; Bowling Green, KY; Newark, NJ; Williamsport, PA; Johnstown, PA).
37. Temperatures were 1-3 degrees colder than PJM’s most conservative vendor forecast for all but two hours from 00:00 on December 23 through 13:00 on December 24. There were three consecutive hours of a three-degree temperature forecast error from late on December 23, leading to a significant valley load forecast error. A three-degree error would be expected to have a material impact on load because load is very sensitive to temperature forecast at the tail ends of the distribution.
38. Figure 5 below captures the temperature forecast error for 18:00 on December 23-24.

Figure 5: Forecast Error for December 23 – 24, 18:00



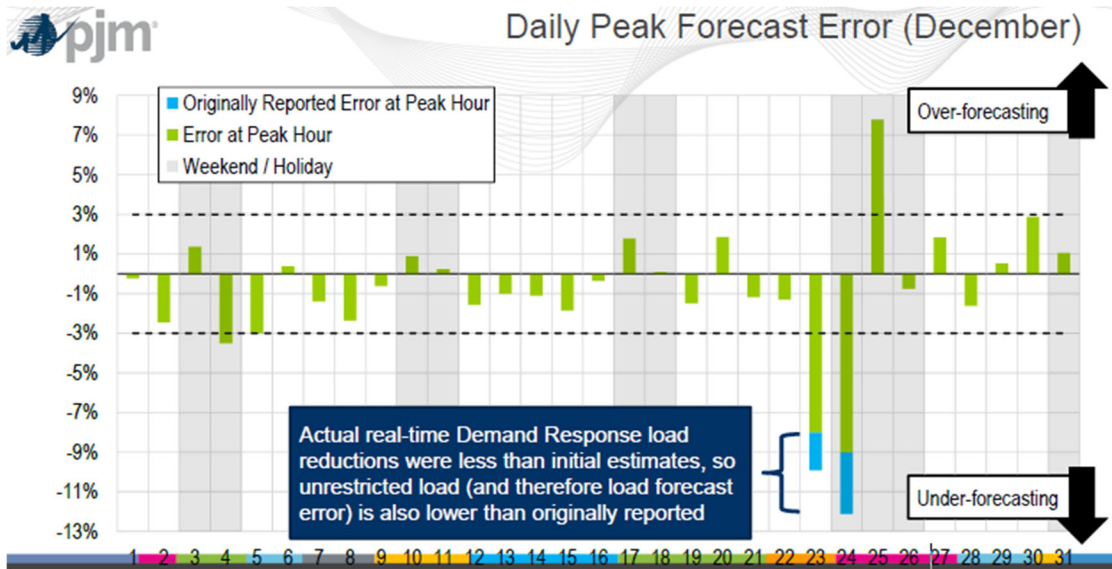
- 39. The rapidity of the temperature drop associated with Winter Storm Elliott was at least as significant as its magnitude. The twenty-nine-degree temperature drop that occurred on December 23 was the most significant temperature decrease over a 12-hour period that ended below 15°F dating back to at least 1996 and was seven degrees (i.e., 30%) greater than the temperature drop during the Polar Vortex in 2014.
- 40. Figure 6 below depicts the speed and significance of the temperature drop on December 23 compared to other drastic temperature drops since 1996.

Figure 6: Most Significant Temperature Drops Since 2014



41. In short, and as shown by Figure 7, below, exceptional weather and load conditions during Winter Storm Elliot were the principal causes of PJM’s under-forecasting. The fact that PJM’s load and temperature forecasts were at their normal levels of accuracy before Winter Storm Elliott, and returned to those levels afterwards, reinforces this conclusion.

Figure 7: December Daily Peak Forecast Error



42. Given all of these considerations, I do not think it is accurate to suggest that PJM’s load forecasts were unreasonable in light of the available weather forecasts or for any other

reason.⁶ It is overly simplistic to suggest that PJM should have been able to predict record-breaking high holiday loads without reference to the aforementioned difficulties of predicting Christmas Eve loads or the fact that forecasts have traditionally over-estimated loads at that time of year.⁷

F. PJM’s Neighbors Experienced Comparable Forecasting Difficulties During Winter Storm Elliott

43. As PJM’s separate Answers to the Complainants each discuss in detail,⁸ PJM was not the only region to encounter load forecasting challenges due to Winter Storm Elliott. The Tennessee Valley Authority, the VACAR portion of the SERC Reliability Corporation, Midcontinent Independent System Operator, Southwest Power Pool, Duke Energy, and Louisville Gas & Electric/Kentucky Utilities all under-forecasted Winter Storm Elliott loads to an extent comparable to PJM. In my view, the fact that neighboring regions produced similar under-forecasts when confronting the same set of exceptional circumstances demonstrates that PJM’s forecasts were reasonable given the information available at the time. The similarity in forecasting results also confirms my view that Winter Storm Elliott did not expose some unknown defect in PJM’s load forecasting procedures.
44. At the end of the day, PJM goes to great lengths to make its load forecasts as accurate as possible. But forecasting is an inherently uncertain activity. Forecasts will inevitably sometimes be off by a greater-than-usual amount. In my view, it was clearly the confluence of exceptional circumstances related to Winter Storm Elliott that caused PJM’s larger-than-normal under-forecasts for December 23 and 24. And as further described in Mr. McGlynn’s affidavit, given the unusual weather and forecast uncertainty, operating plans reflected the potential for higher than normal forecast error.
45. This concludes my affidavit.

⁶ See, e.g., Coalition Complaint at 11-12; Attach. 4: Aff. of Paul M. Sotkiewicz, at PP 11-26.

⁷ See, e.g., Coalition Complaint at 12 (“PJM projected temperatures for December 23 and 24 that were likely to be similar to previous winter weather events in its region, which should have been an indication to PJM that load forecasts should also be comparable.”); Sotkiewicz Aff. at P 23 (“The apparent lack of situational awareness on the part of PJM’s on-duty operations staff regarding the mismatch between the weather and load forecast is incomprehensible given the available weather and load history.”).

⁸ See Section II.C of each PJM Answer in the captioned proceedings.

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Coalition of PJM Capacity Resources)	
Complainant)	
v.)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

VERIFICATION

I, **Joseph Mulhern**, state, under penalty of perjury, that I am the Joseph Mulhern referred to in the foregoing document entitled “Affidavit of Joseph Mulhern on Behalf of PJM Interconnection, L.L.C.,” that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

/s/ Joseph Mulhern

Joseph Mulhern

PUBLIC VERSION

Exhibit 4

Affidavit of Christopher Pulong

PUBLIC VERSION

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**AFFIDAVIT OF CHRISTOPHER PILONG
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

A. Introduction

1. My name is Christopher Pilon. My business address is 2750 Monroe Blvd., Audubon, Pennsylvania, 19403. I am Senior Director, Operations Planning, of PJM Interconnection, L.L.C. (PJM). I am submitting this affidavit on behalf of PJM to discuss the overall poor performance of generators during Winter Storm Elliot. Specifically, in this affidavit I show that the poor performance by generators was a major contributing factor to the need for the Pre-Emergency Load Management Reduction Actions and Emergency Actions taken by the operators. As I discuss, not only did generators perform poorly in terms of their availability, but their failure to follow rules designed to provide transparency to PJM operators made decision-making regarding dispatch and interchange especially challenging. In addition, the actions of Complainants¹ in the above-captioned proceedings were deficient and were a contributing factor in the duration and intensity of the emergency.

¹ For clarity, this affidavit will refer to the “Nautilus Entities,” the “CZG Complainants,” and the “Coalition” when referencing arguments made by the individual complainants in Docket Nos. EL23-53-000, EL23-54-000, and EL23-55-000, respectively. Likewise, when the parties present the same or similar claims, I will refer to the “Complainants.”

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2. I joined PJM in November of 2001. Currently, as Senior Director, Operations Planning, I am responsible for the Transmission Operations Department, Generation Department and Outage Analysis Technologies Department. These departments perform near-term transmission outage analysis and approvals, generation outage analysis and approvals, facilitate annual Black Start Unit commitments, and perform gas-electric coordination activities. The teams also perform seasonal reliability assessments, support the various tools and applications utilized in these processes, and coordinate directly with the Market Services Division and System Planning Division.
 3. Previously, as Director, Dispatch, I was responsible for the oversight and operation of the Valley Forge and Milford Control Centers. This function included ensuring the reliable operation of the power grid, in accordance with all PJM and North American Electric Reliability Corporation (NERC) reliability standards pertaining to the functions of Reliability Coordinator, Balancing Authority, and Transmission Operator. In addition, I was responsible for ensuring the efficient economic dispatch of the system under the existing PJM market rules and neighboring Joint Operating Agreements.
 4. Prior to that position, I served as a Reliability Engineer and then Manager – Reliability Engineering. As Manager for the Reliability Engineering Group, I managed the group responsible for coordinating Day-Ahead and Real-Time operating plans among PJM staff, PJM Transmission Owners, PJM Generation Owners, and our neighboring entities. I performed these functions directly in my earlier role as a Reliability Engineer. I hold a Bachelor of Science degree in Electrical Engineering from Lehigh University and a Master of Business Administration degree from Villanova University.
- B. Prior to Declaring Pre-Emergency and Emergency Actions, PJM’s Operators Reasonably Believed that Most Generators Would Operate as Expected Under the PJM Tariff and Manuals**
5. Prior to the onset of Winter Storm Elliott, PJM’s operators reasonably believed that most generators would meet the performance expectations established in the PJM Open Access Transmission Tariff (Tariff) and Manuals. More specifically, when PJM surveyed the generation owners as to whether they were properly prepared for the winter season and had completed the Cold Weather Preparation Guideline and Checklist listed in Attachment N of Manual 14D, over 99.9% of the resource owners responded “yes.” Those standards are designed to promote robust generator performance during cold weather events and include explicit obligations requiring generator transparency regarding the status of their units during cold weather conditions. Unfortunately, these expectations were not realized and the performance of numerous generators fell far short of their obligations to PJM customers under the Tariff, PJM governing agreements, and PJM Manuals.
- C. PJM’s Capacity Performance Requirements**
6. Attachment DD of the Tariff establishes Capacity Performance rules that are intended “to provide greater assurance of delivery of energy and reserves during emergency

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conditions.”² The need for these Capacity Performance reforms was precipitated by the poor performance of generators within the PJM footprint that occurred during the Polar Vortex in the winter of 2013-2014. As the Commission explained, “[t]he Polar Vortex events of the winter of 2013-14, when 22 percent of the generation in the PJM region failed to respond on the peak winter day, illustrated the severity of [Capacity Resource] performance deterioration.”³ Unfortunately, as I will discuss in greater detail later, overall Capacity Resource performance during Winter Storm Elliott was even worse than during the 2014 Polar Vortex, reaching a forced outage rate as high 24% during peak periods.

7. The Capacity Performance mechanism penalizes Capacity Resources that fail to operate at expected levels during emergencies by imposing Non-Performance Charges.⁴ The amounts collected by PJM in Non-Performance Charges are then distributed to Capacity Resources whose production exceeds expected output and to generators that did not assume a capacity commitment but that operated during the emergency.⁵ The Non-Performance Charges and the opportunity for bonus payments are designed to incentivize Capacity Resources to take steps to be available when emergency conditions occur.⁶
8. Under Capacity Performance, generators decide what steps to take in order to meet their commitments. In the stakeholder process leading up to the Capacity Performance filing, there was controversy over the eligibility requirements to become a Capacity Resource. Some stakeholders argued in favor of “hard” eligibility requirements such as requirements for specific quantities of on-site fuel or firm gas delivery contracts. Other stakeholders took the position that the most efficient way to improve generator performance during emergencies was to create a robust penalty/incentive structure. They argued that this approach would enable generators to decide on the most cost-effective steps to improve reliability without being bound to a narrow set of possible solutions. Ultimately, PJM opted for the more flexible approach. As PJM explained in its Capacity Performance filing at FERC:

Capacity Market Sellers that now will face more harsh financial consequences for a failure to perform during emergencies (with no limit on when such emergencies arise) will likely need to invest in plant design changes or new equipment, or increase operating budgets to accommodate more staff, firm fuel delivery arrangements, greater inventories, or changed operating practices. PJM is not prescribing how sellers ensure their resources will perform. Rather, the market rules should allow sellers to

² *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 6 (2015) (Capacity Performance Order).

³ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 at P 11 (2016) (Capacity Performance Rehearing and Compliance Order).

⁴ Tariff, Attach, DD, § 10A(e).

⁵ *Id.* § 10A(g).

⁶ See *infra* notes 9, 10, 12, 13 and accompanying text.

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make those determinations for their resources, and then compete against other sellers making the same determinations for their resources.⁷

9. The Commission accepted the “fundamental logic of tying capacity revenues to performance during critical hours” and found that “each market seller must determine how best to meet the risks it faces.”⁸
10. The level of the potential penalty charge under Capacity Performance was deliberately set at a high level in order to create the necessary incentives for generators. As PJM explained:

For the PJM region, a stringent Non-Performance Charge is critical to ensure that sufficient incentive exists for Capacity Market Sellers to invest the increased capacity payments they will receive as a result of the Capacity Performance proposal in preparing their resources to be capable of providing energy to the system when they are most needed for reliability.⁹

The Commission agreed, stating that “[w]ithout more stringent penalties, PJM has shown there is little incentive for a seller to make capital improvements, or increase its operating maintenance for the purpose of enhancing the availability of its unit during emergency conditions.”¹⁰

11. The Non-Performance Charge Rate for Capacity Performance is derived from the Net Cost of New Entry (Net CONE) of the reference generating unit and is intended to represent “the expected full cost of replacement capacity for any [Emergency Action hours of a commitment period].”¹¹ Setting the penalty rate in this manner “is more likely to prevent non-performing resources from receiving positive net capacity revenues over the long run” which the Commission found “is consistent with the overall Capacity Performance market design that aims to provide incentives for resource owners to make appropriate investments and maintain their resources.”¹² Further, the Commission found that “a Non-Performance Charge rate based on Net CONE is likely to discourage non-performing resources from taking on capacity obligations, because over time the penalties are likely to fully offset the capacity revenues from the capacity market auctions.”¹³

⁷ *PJM Interconnection, L.L.C.*, Docket Nos. ER15-623-000, *et al.*, Transmittal Letter at 53 (Dec. 12, 2014) (PJM Capacity Performance Filing).

⁸ Capacity Performance Order at P 128.

⁹ *PJM Interconnection, L.L.C.*, Docket Nos. ER15-623-000, *et al.*, Response to Deficiency Letter at 20 (Apr. 11, 2015).

¹⁰ Capacity Performance Order at P 45.

¹¹ *Id.* P 159.

¹² *Id.*

¹³ *Id.*

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12. The narrow scope of excuses for non-performance during times of acute system need is also intended to incentivize Capacity Resource availability during extreme system conditions. In fact, Capacity Performance excuses non-performance in only two cases: (i) the unit was on an approved planned or maintenance outage, or (ii) the PJM operators made an economically-based decision within the security constrained dispatch process that a unit should not operate or, if the unit were already online, that the unit should reduce its output, provided that operators' decision was not based on seller-specified offer parameters that were incompatible with PJM's needs, and not based on the seller having submitted a market-based offer price that was higher than its cost-based offer. Many parties argued in the Capacity Performance dockets that non-performance should be excused more broadly. But the Commission resisted these efforts to soften its strict compliance regime, including PJM's proposal to excuse performance shortfalls by resources that comply with previously-approved ramping limitations.¹⁴
13. To be clear, under Capacity Performance, a unit is *not* excused from being assessed Non-Performance Charges because: (i) it lacks fuel; (ii) the cost of available fuel is very expensive; (iii) it cannot obtain natural gas in a timely manner because of pipeline nomination cycles; or (iv) the unit faces operational challenges due to cold weather conditions. These are not acceptable excuses under the Capacity Performance regime.
14. PJM's Capacity Performance proposal also provided a means for generators to recover the costs of making themselves available in emergency conditions. The reforms permitted generators to include certain costs associated with meeting Capacity Performance obligations in the unit-specific Avoidable Cost Rate (ACR) formula for setting offer caps in the capacity auction.¹⁵ Allowed expenses included costs to enhance fuel security and to winterize generating units, as well as costs associated with the risk of non-performance during Performance Assessment Intervals (PAIs). The Commission accepted these modifications, finding that the ACR "should reflect the cost of becoming a capacity resource under the new capacity market construct and that, for some resources, the overall physical and capital expenditures required to ensure performance during emergency operations are extensive, presenting additional costs which are not currently reflected in the [ACR] calculation."¹⁶ Specifically, the Capacity Performance Order accepted "revisions to the formula to include Avoidable Fuel Availability Expenses and Capacity Performance Quantifiable Risk."¹⁷ Notably, the Commission "[f]ound it reasonable that

¹⁴ PJM proposed that "a resource that followed PJM dispatch in accordance with its approved ramp rate will be excused of any Non-Performance Charges resulting from its ramping capabilities." *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,213 at P 3 (2016). The Commission, however, rejected even this modest enlargement of grounds for excusal, finding that "[p]arameter limits should not be viewed as a permanent entitlement to under-perform." *Id.* P 24.

¹⁵ See Tariff, Attach. DD, § 6.8(a).

¹⁶ See Capacity Performance Order at P 353.

¹⁷ *Id.* P 352

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resources are able to reflect fuel security costs as the availability of fuel is an integral component of resource performance.”¹⁸

15. Resources also have the ability to avoid potential Non-Performance Changes by self-scheduling their resources in advance of potential pre-emergency or Emergency Actions resulting in PAIs, or during PAIs. In such cases, the self-scheduling unit may propose an operating schedule and the PJM operators will attempt to accommodate the request. This is not necessarily the behavior that Capacity Performance was intended to elicit, but it is an available strategy for minimizing the risk that units will not meet their Capacity Performance commitments.

D. Increased Transparency of Generator Status During Emergencies

16. Other reforms developed in response to the problems encountered during the 2014 Polar Vortex relate to measures designed to assure that PJM operators have up-to-date information about the status of units in order to make the most effective dispatch and curtailment decisions. Of particular importance to PJM operators, generation owners are directed to “[d]etermine if start-up times longer than currently modeled in Markets Gateway are required and update PJM dispatch and Markets Gateway if applicable.”
17. Manual 13 also includes provisions designed to assure that PJM operators have up-to-date information about the status of generators during cold weather conditions when the risk of an emergency is elevated and when emergencies are occurring. These include the following:
 - During extreme or severe weather, the overall obligations of generators include:
 - “Participants monitor their fuel supplies, emission hours, demineralized water, cooling water, and other consumables inventories and keep PJM updated about station/units that are experiencing or projected to experience resource limitations via Markets Gateway, as described in [greater detail elsewhere in Manual 13].”¹⁹
 - “[N]atural gas-fired units should reflect [supply/transportation] fuel restrictions when updating their unit offer parameters within Markets Gateway, and report unplanned outages if they are unable to run.”²⁰

¹⁸ *Id.*

¹⁹ *See* PJM Manual 13: Emergency Operations, § 3.1 (Nov. 3, 2022), <https://pjm.com/-/media/documents/manuals/archive/m13/m13v86-emergency-operations-11-03-2022.ashx>. Because the Complainants’ plants are primarily gas-fired units and because gas-fired units were the worst performers during Winter Storm Elliott, I am focusing here on fuel availability by gas-fired generations. Reporting requirements for other fuels are addressed elsewhere in the Tariff.

²⁰ *Id.* § 6.4 at 118.

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- Following issuance of a Cold Weather Advisory, “Members are to update Markets Gateway by entering unit specific operation limitations associated with cold weather preparedness. Operating limitations include:
 - Generator capability and availability
 - Fuel supply and inventory concerns
 - Fuel switching capabilities
 - Environmental constraints
 - Generating unit minimums (design temperature, historical operating temperature or current cold weather performance temperature as determined by an engineering analysis[.]”²¹
- Following a Cold Weather Alert, generator obligations include:
 - “Generation dispatchers update their unit parameters, including the Start-up and Notification, Min Run Time, Max Run Time, Eco Min, Eco Max, etc. in Markets Gateway time, max run time, cost and price schedule.”²²
 - “Generation dispatchers monitor and report projected fuel limitations to PJM dispatcher and update the unit Max Run field in Markets Gateway if less than 24 hours of runtime remaining.”²³
 - “Generation dispatcher contact PJM Dispatch if it is anticipated that spot market gas is unavailable, resulting in unavailability of bid-in generation.”²⁴
 - “[N]atural gas-fired units should reflect these fuel restrictions when updating their unit offer parameters within Markets Gateway, and report unplanned outages if they are unable to run.”²⁵

18. Manual 13 also underscores the extent to which operators are dependent upon the accuracy of generator submittals during cold weather conditions. For example:

- During a Cold Weather Alert, “PJM Dispatch reviews [various factors including] generator Times to Start (Start-Up + Notification in Markets Gateway) to confirm if the Day Ahead Market will be able to clear sufficient generation that can be on-line to meet the reliability needs of the system for the operating day. If sufficient

²¹ *Id.* § 3.3.1 (Cold Weather Advisory) at 54 (reformatted for clarity).

²² *Id.* § 3.3.2 (Cold Weather Alert) at 58.

²³ *Id.* at 59.

²⁴ *Id.*

²⁵ *Id.* § 3.1; *id.* § 6.4 (Resource Limitation Reporting) at 118.

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generation cannot be cleared in the Day Ahead market based the start-up + notification time, [an alternative process] will be used to commit generation in advance of the Day Ahead Market.”²⁶

- If an alternative commitment process is used during a Cold Weather Alert because insufficient generation is available in the Day-Ahead Market, “[a]ny discussions on unit commitment outside of the Day Ahead Market must be predicated on the unit parameters listed in Markets Gateway which include: notification/start-up time, min run time, max run time, cost and price schedule.”²⁷

E. Recommended Unit Operational Exercise

19. PJM recommends that generation owners self-schedule their generation resources that have not operated in the eight weeks leading up to December 1 of a given year.²⁸ This provides an opportunity to determine whether they are capable of reliably operating on both primary and alternate fuels and responding to PJM’s dispatch instructions. PJM prefers resources to self-schedule in the Day-Ahead Market, but tests can also be conducted in real-time if approved by PJM Dispatch with appropriate notice.²⁹
20. PJM further recommends this exercise be conducted during the month of December, when temperatures are forecasted to be 35 degrees or lower to assist in identifying and correcting any start-up, operational, and fuel switching problems that may arise.³⁰ Suitable opportunities for generators to run this exercise were presented throughout the PJM footprint before Winter Storm Elliott occurred.³¹ PJM’s records indicate that no generation owners performed this test in December.

Dispatcher Application and Reporting Tool

21. The rules governing the Dispatcher Application and Reporting Tool (eDART) make generators responsible for providing updates of their status to PJM. Specifically, eDART allows users to manage their outage data by viewing the status of their outages and obtaining outage reports. Generation resources are required to report outages in advance

²⁶ *Id.* § 3.3.2 at 56.

²⁷ *Id.* at 58.

²⁸ Manual 14-D: Generator Operational Requirements, § 7.5.1 (Generation Resource Operational Exercise) (Dec. 21, 2022).

²⁹ *Id.*

³⁰ *Id.*

³¹ All weather stations in the PJM footprint from which PJM receives weather measurements experienced temperatures 35 degrees or lower between December 1 and 22 for at least one period of 12 consecutive hours, with 84% of stations seeing at least five of these periods. Over half of the stations experienced multiple days in a row in which temperatures did not rise above 35 degrees.

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of the operating day (when known) and in real-time through the eDART application.³² This reporting is required to include the cause of the outage as indicated in PJM Manual 14D.³³ Further, PJM also requires more detailed after-the-fact reporting of all outages in the Generator Availability Data System (eGADs) system by the twentieth day of the following month.³⁴ Generation owners may augment previous eDART submissions to reflect *additional* forced outages, but retroactive eDART changes to remove or reduce previously-submitted forced outages are not permitted.³⁵

F. Overall Generator Performance During Winter Storm Elliott Was Far Below Expectations

22. Overall, the performance of generators located within the PJM footprint was far below what PJM operators expected both in terms of the availability of units and in terms of the transparency of their status. Many generators do not appear to have taken adequate steps to achieve the winter preparedness levels expected under Capacity Performance, especially as regards gas-fired generators' generally poor efforts to ensure their own fuel security. Similarly, the almost universal response by generators that they had met the criteria specified in the Cold Weather Preparation Guideline and Checklist was not borne out by performance.³⁶ In addition, many generators failed to comply with Manual requirements that they provide updates regarding their operating parameters and availability. In fact, many units did not update parameters in advance and also failed to update their parameters during the operating day, even after specific instructions from PJM dispatch to do so. This failure greatly contributed to the challenges faced by the PJM operators.
23. For the Dec. 23, 2022 operating day, the Day-ahead Market committed over 138,639 MW, including approximately 11,000 MW of Combustion Turbines (CTs) scheduled economically and 1,270 MW committed for reliability for reliability purposes to control constraints. PJM also scheduled an additional 3,168 MW in the RAC runs. In addition, there was another 16,000 MW in CTs available for dispatch in real-time.
24. Heading into the operating day on Dec. 23, 2022, had approximately 158,000 MW of available generation to meet a forecasted load of 127,000 MW. However, the situation deteriorated rapidly.
25. Forced outages were much higher than expected. PJM started the operating day of December 23 with 12,000 MW of unplanned outages. These outages were primarily due to various equipment problems at generation facilities. PJM did expect additional

³² See Manual 14D, § 7.3.3 (Unplanned Outage); *id.* § 7.3.4 (Generating Unit Reactive Capability Reporting) at 72-73.

³³ *Id.* § 7.3.3.

³⁴ See eGADs User Guide, § 2.2.1.

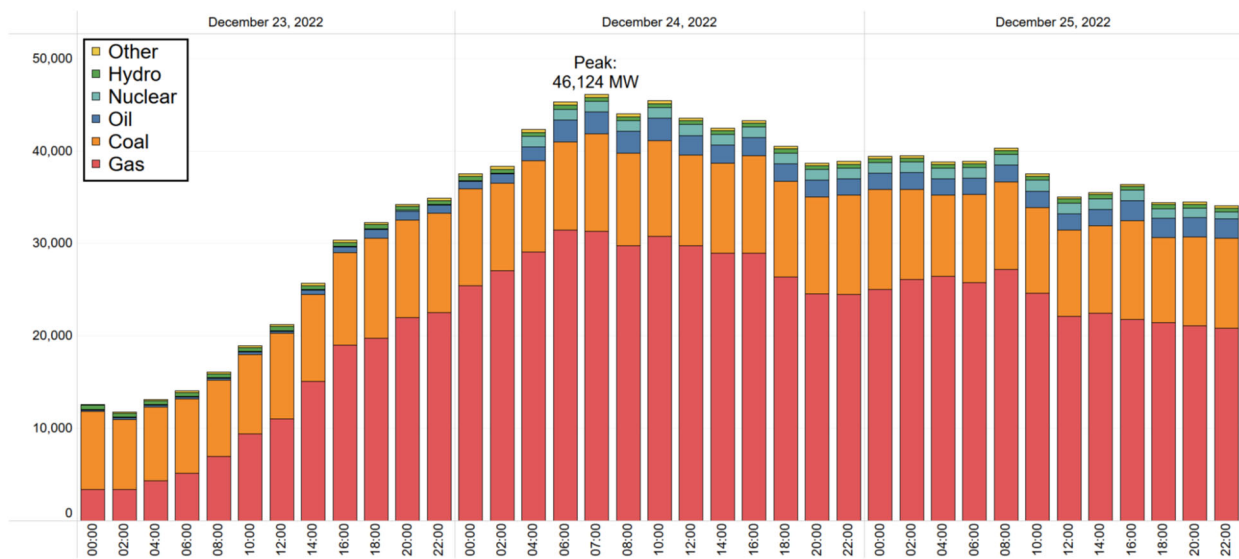
³⁵ See PJM Manual 10: Pre-Scheduling Operations, § 2.1.1 (eDART Generation MW Ticket Procedure) (Dec. 21, 2022).

³⁶ See Aff. of Donald Bielak, Ex. PJM-002 at P 13.

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unplanned generation outages due to the increasingly cold temperatures and high winds. For reference, the historic forced outage rate for winter is ~4.7%. The peak outage rate for the 2020/2021 winter was 7.9%,³⁷ and for the 2021/2022 winter, the peak outage rate was 7.6%.³⁸ For PJM's 2022/2023 OATF winter assessment, a forced outage rate of 8.5% (16.5GW) was calculated based on recent historic peak winter generator performance.³⁹ But the outages experienced during Winter Storm Elliott were much higher than historical norms. As depicted in Figure 1 below, outage levels grew steadily throughout the day on December 23 into the early morning hours of December 24 and reached a peak of 46,124 MW during hour 08:00 of the morning of December 24. Resource outages reached approximately 35,000 MW on December 23, and 46,000 MW on December 24.

Figure 1: Forced Outages/Derates by Fuel Type⁴⁰



26. As Figure 1 illustrates, outages experienced by gas-fired generators represented the largest share of the forced outage increases. About 70% of all outages were natural gas, about 16% coal, and the remainder were in “other” categories. At its highest, over 24% of the PJM fleet was experiencing a forced outage, which is higher than PJM experienced during

³⁷ PJM, Winter Operations of the PJM Grid: December 1, 2020 – February 28, 2021, 38 (Apr. 8, 2021), <https://pjm.com/-/media/committees-groups/committees/oc/2021/20210408/20210408-item-14-winter-operations-review.ashx>.

³⁸ PJM, Winter Operations of the PJM Grid: Dec. 1, 2021 – Feb. 28, 2022, 29 (Apr. 14, 2022), <https://www.pjm.com/-/media/committees-groups/committees/oc/2022/20220414/item-27---winter-operations-review.ashx>.

³⁹ See PJM, Operations Assessment Task Force 2022-23 Winter Study 3 (Nov. 3, 2022) <https://www.pjm.com/-/media/committees-groups/committees/oc/2022/20221103/item-15---winter-oatf-review.ashx>.

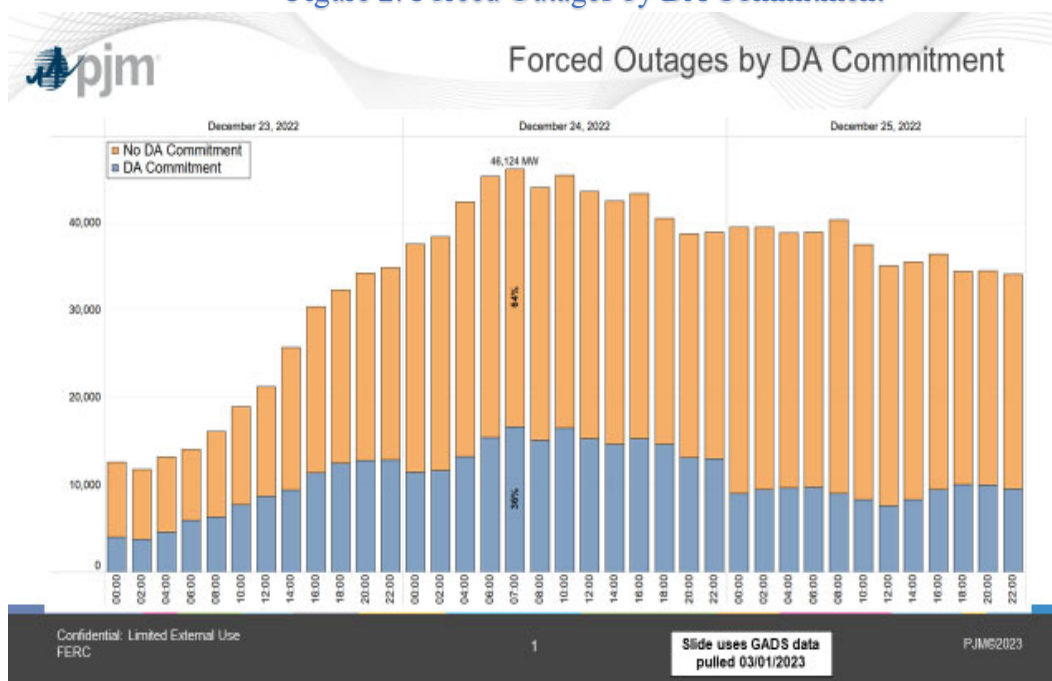
⁴⁰ See Winter Storm Elliott FERC/NERC Briefing 23 (Apr. 11, 2023).

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the Polar Vortex in 2014, when the PJM fleet had a 22% forced outage rate. After hour 08:00 on December 24, outage levels gradually decreased but approximately 39,000 MW of generation was still experiencing a forced outage at hour 22:00 on December 24, or a forced outage rate of approximately 20%--still a very high level.

27. In addition to identified forced outages, approximately 6,000 MW of steam generation was called but was not online as expected for the morning peak on December 24. Also, high generator outage rates limited PJM's ability to replenish pond levels for pumped storage hydro prior to the morning peak on December 24. Taken together, because of the poor generator performance, PJM was facing approximately 57,000 MW of generator availability for the morning peak on December 24.
28. In addition to the causes of the forced outages and the outages by fuel type, presented in Figure 2 are the outages for units based on Day Ahead commitments. This is an important piece of the puzzle to understand with respect to PJM's planning for the operating day. PJM always expects that some resources will fail. On cold weather days in particular, this expectation is incorporated into PJM's operational planning, as noted in PJM Manual 13. However, as Figure 2 shows, over 16,000 MWs of generation that was committed in the Day-ahead Market failed to perform.

Figure 2: Forced Outages by DA Commitment



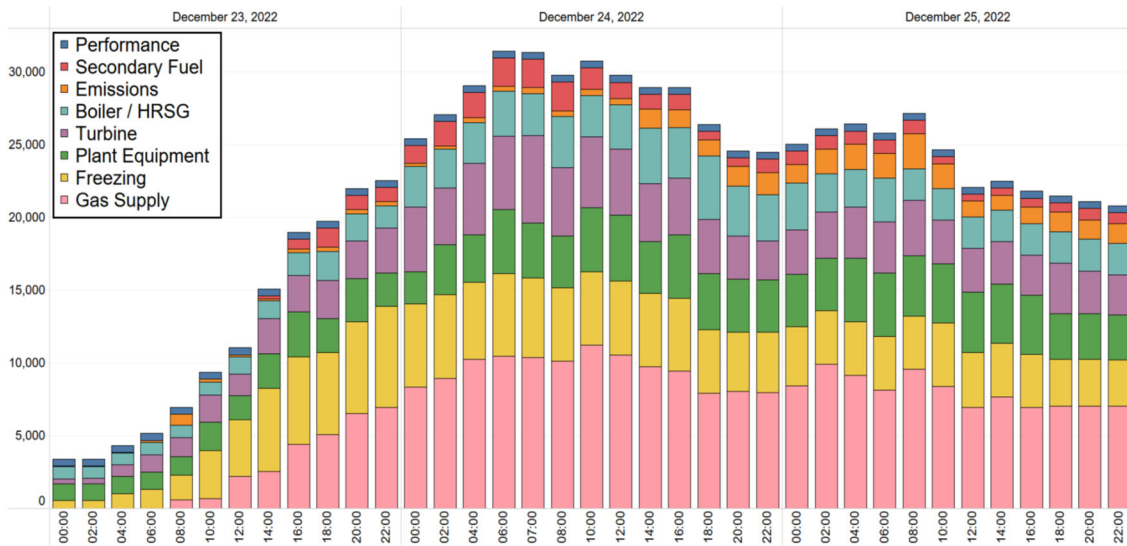
29. When scheduling replacement energy to account for the missing 16,000 MWs, PJM was relying on the unit information submitted by Generation Owners to evaluate the amount of available reserves and the timelines needed to schedule those units if/when needed, i.e., 15-minute notice, 30-minute notice, 1-hour notice, etc. As noted previously, PJM requires Generation Owners to update their parameters to reflect any changes from normal

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operating conditions so that the reserve calculations are accurate. However, in the case of Winter Storm Elliott, these parameters were not updated.

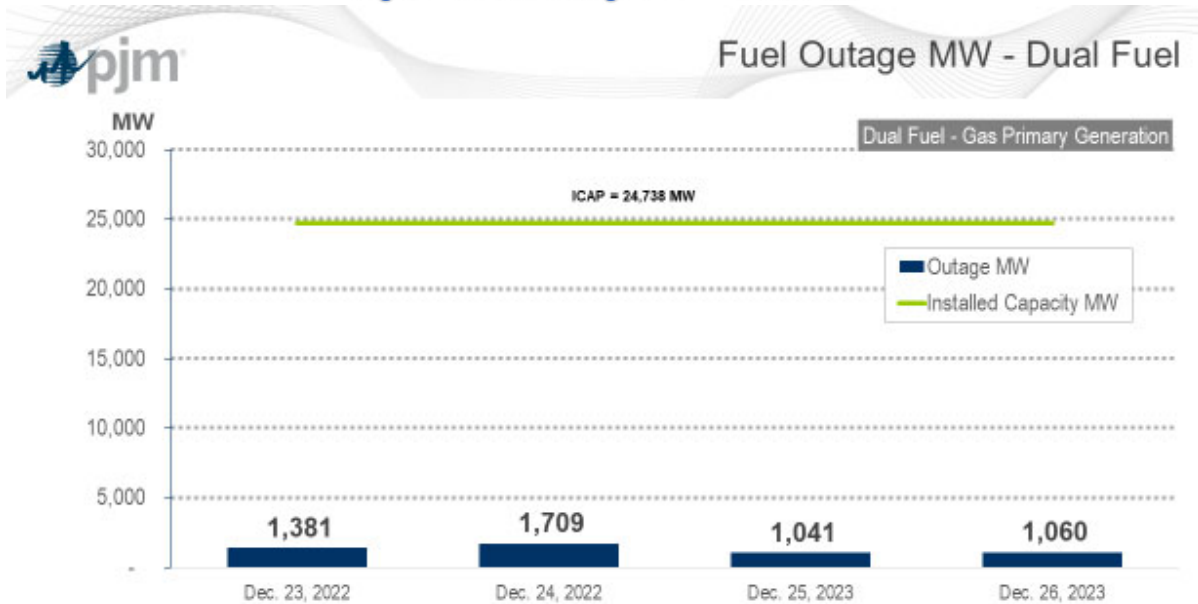
30. More specifically, the following information was not updated to align with actual operating conditions – longer notification times, extended minimum run times, inflexibility in dispatch range, etc. This was predominately related to gas-fired generators where pipeline constraints were not properly reflected in generator operating parameters, despite the ability to utilize Temporary Exceptions or Real Time Values (PJM Manual 11 Sections 2.3.4.3 and 2.3.4.4) to convey this information properly to PJM. While some of this information was at times conveyed in telephone calls (usually initiated by PJM dispatch), this was time-consuming for the PJM operators, which added to the difficulties of making operational decisions. Operators had to keep track of information conveyed to them orally that was different than what they were seeing in Markets Gateway and eDART. In fact, it was not uncommon for the operators to request generator dispatchers to update their information and either they failed to do so or did so only hours later.
31. For the December 23 operating day, only 6% (37 out of 578) of the gas-fired generators in the PJM system submitted increased notification time requirements. All others were reported as available to operate with their normal operating parameters in place. This lack of timely and accurate information led to extremely challenging conditions for the PJM System Operators that continued through the end of the day on December 25. As presented in Figure 3, the failure of so many Day-ahead Market committed units, coupled with the lack of generator parameter updates, led to a high volume of natural gas generators that had no Day-ahead Market commitment becoming forced outages due to lack of fuel.
32. The reasons for the forced outages experienced by gas units are depicted in the chart below:

Figure 3: Gas - Forced Outages/Derates by Cause⁴¹



33. As shown by Figure 4, a large share of the outages experienced by gas units were fuel supply and freezing issues related to the cold weather conditions.
34. But as also shown by Figure 4, gas-fired generators with dual fuel capability, i.e., capable of burning oil as a secondary fuel, had low outage rates due to fuel unavailability:

Figure 4: Fuel Outage MW – Dual Fuel



⁴¹ *Id.* at 24.

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35. The conversations that PJM Dispatch held with generation dispatchers confirms that natural gas availability and a lack of winter preparedness, including the generators' failure to secure sufficient natural gas supplies, was a major problem. For example, one pattern that operators observed was that units were waiting to see if PJM would call them to discuss their status and *then*, if PJM gave them a schedule, they would be willing to seek a gas supply.
36. As I discussed above, Capacity Performance was intended to place all of the fuel risk on generators to be prepared for emergency conditions. The type of behavior described in the preceding paragraph is not what was envisioned.
37. The uncertainty that PJM dispatchers had over gas supply persisted well into December 24. For example, on December 24 at 6:45, the PJM dispatcher called the generation dispatcher for a status update on the [REDACTED] [REDACTED] END CUI//PRIV units. He was advised that none of the units would be available that day but that they might be available at the beginning of the gas day at 10:00 on December 25, but the generator dispatcher was "not sure." Also, BEGIN CUI//PRIV [REDACTED] END CUI//PRIV even advised PJM on December 24 at 19:39 that it was seeking authorization to shut down units 1 to 5 due to "fuel limitations."
38. Further, PJM needed to bring on many units that had not run in months: close to 50,000 MW (approximately 175 to 200 units) in a short period and during extreme cold. Further, based on eDART data, no units that had not run in the 8 weeks prior to December 1, 2022, had conducted the operation exercise recommended in Manual 14D during the month of December.
39. Based on the generator availability data, I can only conclude that many generators, at the very least, did not take the Capacity Performance penalty/bonus incentive structure seriously. As I explained above, excuses for failure to perform under the Capacity Performance regime are very narrow: lack of fuel needed to operate does not excuse lack of timely availability. Similarly, the high number of cold weather related failures such as freezing and problems related to operating on alternative fuels suggests a lack of adequate winterization.
40. As I discussed above, the vast majority of generation fuel supply issues were an inability of gas-fired generators to obtain gas, and generators were obligated to report this information in Markets Gateway and eDART applications. However, PJM Dispatch learned of most of these fuel limitations only when PJM called the units to come online. There was little or no notification from the generators that they were fuel limited. In fact, over 92% of the outages were reported to PJM with less than an hour's notice or no notice at all. As a result, instead of being properly notified and having an opportunity to deliberate before making dispatch decisions and decisions regarding potential export curtailments as contemplated by the PJM Manuals, PJM was forced to act very quickly to maintain reliable operations based on the often hazy and unreliable information that generators provided.
41. To underscore the difficulties that the generators' poor transparency caused for PJM operators, as I mentioned before, approximately 6,000 MW of steam generators were called

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for on the morning of December 24 that were shown to be available but were not online for their expected start time during the morning peak. This should be put into perspective. The PJM system was already stretched nearly to its limits as were the Tennessee Valley Authority and Duke-Carolinas systems to the south. PJM operators were suddenly and without warning thrust into finding the non-performing 6,000 MWs in an extremely narrow window of opportunity if more drastic emergency actions were to be avoided. To further underscore the challenges that the lack of accurate and timely generation data posed, there were numerous instances where PJM operators had calls with generation dispatchers in which they specifically directed generators to update their parameters on Markets Gateway and/or to update their availability status in eDART, and *the generators still failed to meet their obligations*. Operators thus were attempting to dispatch the system and make decisions regarding interchange while being faced with data that they sometimes knew were incorrect or that showed conflicting data in the Markets Gateway and eDART applications.

G. The CZG Complainants Attempt to Reallocate the Assignment of Risk Under Capacity Performance

42. The CZG Complainants' witness, Dr. Harvey, claims that if PJM's operators had acted properly by calling over 155,750 MW of generation for the December 23, 2022 operating day, PJM should also have "[old] long start units that did not have day-ahead market schedules or RAC schedules to be prepared to come online at [a] particular time."⁴² This argument seems to suggest that the CZG Complainants were somehow treated unfairly because, in their view, PJM should have given them advance notice to operate. Likewise, the Nautilus Entities' claim that "PJM knew, or should have known given its long experience with gas supply issues, that the natural gas fired generators in PJM would need notice of PJM's potential need for their units well in advance of the weekend in order to be able to procure gas."⁴³ And the Coalition goes so far as to suggest that PJM "inhibited" generators' ability to procure fuel by under-forecasting load, not making RAC commitments in advance of starting System Wide Capacity Commitments on December 23, and other alleged failures.⁴⁴ Each of these arguments ignores Complainants and Nautilus Entities' Capacity Performance obligations. In fact, by making these arguments, they are simply providing further acknowledgment that they did not take the clear-cut requirements of Capacity Performance seriously.
43. As I discussed above, Capacity Performance assigns the risk of generator availability during emergency conditions to the generators. The only exceptions are two narrowly prescribed exceptions not relevant to the Complainants' claims. PJM called upon Complainants' generating units when they were needed during the Pre-Emergency Load Management Reduction Action and Emergency Actions that triggered PAIs and Complainants' units were not available. This is simply the risk that the Complainants bore under Capacity Performance as the Tariff and the Commission's orders make abundantly

⁴² Complaint of the ComEd Zone Generators, Test. of Dr. Scott Harvey, Ex. CZG-0001, at P 21.

⁴³ Complaint of the Nautilus Entities at 38.

⁴⁴ Coalition Complaint at 15; *see generally* Coalition Complaint at 15-23.

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clear. Complainants chose not to take the steps needed to make their units available in circumstances such as those that occurred during Winter Storm Elliott notwithstanding that other generating units, i.e., Complainants' competitors, did so. In particular, nothing stopped Complainants from including the costs of enhancing the fuel security of their units in their capacity market bids. There is nothing unfair or unreasonable about enforcing Non-Performance Charges against the Complainants as a result of their own decisions.

H. Overview of the Complainants' Contributions to the Challenges PJM Faced

44. Complainants' failure to perform contributed to the challenges faced by PJM operators during Winter Storm Elliott. Although not at the heart of the specific allegations at issue in the Complaints filed by the Nautilus Entities, the CZG Complainants, and the Coalition, I reference below additional information about specific entity performance failures for a representative sampling of the complainant entities in the three Complaints. PJM reserves the right to supplement this representative sampling with additional examples of these generators poor performance during Winter Storm Elliott. If the Commission believed such information would be of assistance in resolving this Complaint, PJM is prepared to furnish that information.
45. As to Nautilus Entities' poor performance, please reference PJM's Answer in Docket No. EL23-53, and the Bielak Declaration beginning at Paragraph 43 filed in the complaint proceedings initiated by the Nautilus Entities, the CZG Complainants, and the Coalition. Reference should also be made to the Nautilus Entities' own Complaint filed in Docket No. EL23-53 on March 31, 2023, which concedes those units' performance failures justifying the imposition of Non-Performance Charges.
46. As to the CZG Complainants, for almost all units, parameters required to be submitted in Markets Gateway were not updated in a timely manner, if at all. And in some cases, the updated parameter information that was submitted was incorrect. The collective impact of the failures of the CZG Complainants' units was significant. Of the 29,000 MW of capacity above the load forecast that PJM believed to be available going into the December 23, 2022 operating day, the CZG Complainants' units comprised 6,110 MW or 21.5 per cent. But before the calendar day was over, all of the units were reported as being unavailable. As explained by Mr. McGlynn, if these units had operated consistent with their submitted parameters, they would have been of material assistance to PJM in meeting the evening peak on December 23 and the morning peak on December 24. Moreover, the failures of the CZG Complainants' units to provide up-to-date information further complicated the already difficult decisions that operators had to make. By way of further information, please consult the Affidavits of Donnie Bielak that PJM has submitted on May 26, 2023 in connection with the complaint proceedings initiated by two of the CZG Complainants – Lee County Generating Station LLC and Lincoln Generating Facility, LLC.⁴⁵

⁴⁵ *Lee County Generating Station, LLC v. PJM Interconnection, L.L.C.*, FERC Docket No. EL23-57; *Lincoln Generating Facility, LLC v. PJM Interconnection, L.L.C.*, FERC Docket No. EL23-59.

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47. As to the Coalition, they represent a combined total of approximately 27,500 MW of installed generating capacity combined. Although that Complaint does not clearly identify all units included in the Coalition, it does identify at least sixteen different entities all of whose poor performance caused them to be “informed by PJM of PJM’s intent to assess Non-Performance Charges against them, respectively, arising from the December 23 PAIs and the December 24 PAIs.”⁴⁶ By way of further information, please consult the Affidavits of Donnie Bielak that PJM has submitted on May 26, 2023 in connection with the complaint proceedings initiated by two of the Coalition complainants – Talen Energy Marketing, LLC and Parkway Generation Keys Energy Center LLC.⁴⁷
48. This concludes my affidavit.

⁴⁶ Coalition Complaint at 4-5.

⁴⁷ *Talen Energy Marketing, LLC v. PJM Interconnection, L.L.C.*, FERC Docket No. EL23-56; *Parkway Generation Keys Energy Center LLC v. PJM Interconnection, L.L.C.*, FERC Docket No. EL23-60 (see, e.g., footnote 7 of the Docket No. EL23-60 Complaint linking that docket’s complainant to the Coalition).

PUBLIC VERSION

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

Essential Power OPP, LLC, <i>et al.</i>)	
Complainants)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Aurora Generation, LLC, <i>et al.</i>)	
Complainants)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Coalition of PJM Capacity Resources)	
Complainant)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

VERIFICATION

I, **Christopher Pilog**, state, under penalty of perjury, that I am the Christopher Pilog referred to in the foregoing document entitled “Affidavit of Christopher Pilog on Behalf of PJM Interconnection, L.L.C.,” that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

/s/ Christopher Pilog
Christopher Pilog

Exhibit 5

Affidavit of Paul McGlynn

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

Essential Power OPP, LLC et al)	
Complainants)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Aurora Generation, LLC, et al.)	
Complainants)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Coalition of PJM Capacity Resources)	
Complainant)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

**AFFIDAVIT OF PAUL F. MCGLYNN
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

1. My name is Paul F. McGlynn. My business address is 2750 Monroe Blvd., Audubon, Pennsylvania, 19403. I currently serve as Executive Director System Operations for PJM Interconnection, L.L.C. (PJM). I am submitting this Affidavit to support PJM’s separate answers to the complaints in the above-captioned proceedings that are being filed today. For ease of reference, I refer to the three groups of generators that have filed the above-captioned complaints collectively as “the Complainants.”¹
2. I have been employed by PJM since 2007. As part of my current work for PJM, I am responsible for managing the System Operation Division to ensure the secure, reliable, economic and coordinated operation of the PJM Interconnection system. In this role I direct and oversee all System Operation Division activities for the efficient and reliable operation and coordination of the PJM bulk power system including load forecasting, scheduling and dispatch of generating units, coordinating generating unit and transmission outages, scheduling power interchange transactions with neighboring systems and monitoring and control of the loading and voltages of the system within established reliability standards.

¹ For clarity, this affidavit will refer to the “CZG Complainants,” the “Coalition”, and the “Nautilus Entities” when referencing arguments unique to those parties.

3. Prior to assuming my position in System Operation, I was the senior director of System Planning for PJM Interconnection. In that role I was responsible for the development of the PJM Regional Transmission Expansion Plan (RTEP) including transmission planning, interregional planning and the analytic activities in support of the interconnection process. My responsibilities included assessing long-term transmission system adequacy and reliability, and recommending bulk transmission system expansions and enhancement options.
4. Prior to joining PJM, I was employed by PECO Energy, a subsidiary of Exelon Corporation, for 21 years where I began working as an Engineer in the Electrical Engineering Division. I was promoted to Manager of Engineering in Transmission and Substations in 1995. I transferred to System Operations in the Operations Planning Department in 1998. I was promoted to Shift Manager in System Operations in 1999 and to Manager in Operation Planning in 2001. I became Manager in Transmission control in 2003.
5. At PECO, I was responsible for engineering and designing transmission and substation equipment, including protective relay systems; providing engineering and technical support for PECO's transmission and substation organization; short-term transmission system planning studies, developing operating procedures and preparing and presenting training courses; directing the real-time operation of the Transmission System; short-term transmission planning, outage coordination, dispatcher training, procedure development and real-time control room support; and managing the real-time personnel and activities of the transmission control center.
6. I am a licensed Professional Engineer in the Commonwealth of Pennsylvania. I hold a Bachelor of Science degree in Electrical Engineering from the Pennsylvania State University and a Master of Science degree in Electrical Engineering from Drexel University.
7. I was directly involved in overseeing, and subsequently reviewing, PJM's operational decisions during "Winter Storm Elliott."² That storm precipitated a major reliability emergency both in PJM and other portions of the Eastern Interconnection on December 23 and 24, 2022.
8. The purpose of this Affidavit is to explain how PJM's actions in response to Winter Storm Elliott were consistent with the PJM Open Access Transmission Tariff (Tariff), Operating

² "Winter Storm Elliott" was an unusually severe winter storm that struck the PJM Region between December 23 and December 24, 2022. Winter Storm Elliott presented extraordinary reliability challenges by causing an extremely rapid drop in temperatures at a time of record-breaking high loads for the Christmas holiday. It had a major, and in many ways unanticipated, impact not just on PJM but on much of the rest of the Eastern Interconnection. See <https://www.pjm.com/markets-and-operations/winter-storm-elliott> (collecting PJM's public statements addressing Winter Storm Elliott's impact on PJM's operations and markets).

Agreement (OA),³ PJM Manual 13: Emergency Operations (Manual 13)⁴ and all other applicable requirements. These authorities all provide PJM with broad operational flexibility to preserve reliability within PJM, and to assist neighboring systems, in emergencies. All of PJM's efforts were reasonable attempts to contend with the confluence of unexpected and unprecedented abnormal events during Winter Storm Elliott, including the poor communications and performance by Capacity Resources.

A. PJM's Actions Successfully Met the Serious Challenges Presented by Winter Storm Elliott

9. At a time when millions of Americans in the PJM Region were preparing for the Christmas holiday, PJM recognized the impending reliability threat posed by Winter Storm Elliott. As discussed in the Bielak Affidavit, PJM initiated extensive preparatory efforts that were a call to action to PJM's generation fleet. PJM's Load Forecasts for December 23 anticipated that the coming storm could bring significant temperature drops and anticipated high loads. Operators scheduled conservatively, making a conscious decision to carry a large amount of additional capacity going into the December 23 operating day. But these efforts were insufficient because many Capacity Resources, including Complainants, unexpectedly failed to perform when they were most needed to support reliable system operations.
10. In the face of widespread and unacceptable non-performance by generators, PJM staff spent the days leading up to Christmas working tirelessly to keep the lights on. PJM operators repeatedly had to make difficult reliability decisions in real-time while in the midst of unprecedented circumstances and significant uncertainties that were exacerbated by generator failures. There was a very real risk on both December 23 and December 24 that PJM would be forced to shed load to avoid widespread outages. Winter Storm Uri is a recent reminder of how devastating the human and economic consequences of load shedding in freezing winter conditions can be.
11. PJM has included a timeline of the various actions that it took before, during and after Winter Storm Elliott. The timeline is included as Exhibit 1 to PJM's answers to the above captioned proceedings. The timeline is accurate to the best of my knowledge.
12. The PJM actions referenced in the timeline include issuing: (i) Cold Weather Advisories and Cold Weather Alerts; (ii) NERC Emergency Alerts Level 1 (EEA1) and 2 (EEA2), including Pre-Emergency Load Management Reduction Actions, Emergency Load Management Reduction Actions, loading Maximum Emergency Generation and Maximum Emergency Generation Alerts/Load Management Alerts; (iii) issuing Voltage Reduction Alerts and Voltage Reduction Warnings; and (iv) making public appeals for conservation. PJM also received requests for assistance from neighboring systems that were also experiencing capacity emergencies and had reached NERC level EEA3, i.e., load shedding.

⁴ PJM Manual 13: Emergency Operations (Manual 13). See <https://www.pjm.com/~media/documents/manuals/m13.ashx>.

These terms are all described in Manual 13 and in NERC documents. But for ease of reference, they are collected in Exhibit 1 to PJM's Answer in the captioned proceeding.

13. PJM is traditionally a net exporter of energy. But at times during Winter Storm Elliott, PJM determined that it must recall non-firm exports to neighboring systems that were themselves shedding, or on the brink of shedding, load in order to manage the risk of load shedding in PJM. At other times, on December 24, PJM itself received assistance in the form of imports from the Northeast Power Coordinating Council (NPCC).
14. Because of its actions, PJM was able to keep the lights on notwithstanding the incredibly challenging system conditions. PJM did not shed a single megawatt of load on December 23 and December 24. Consistent with Good Utility Practice, NERC reliability standards, and other legal obligations, PJM also continued to serve a critical role in supporting the reliability needs of its neighbors, despite having to recall exports to neighboring Balancing Authorities at times.

B. PJM Complied with the Tariff, OA, and Manual 13 Throughout Winter Storm Elliott

15. PJM must comply with the Tariff, OA (as informed by the PJM Manuals), mandatory NERC and regional reliability standards, and the dictates of the Good Utility Practice standard. All PJM dispatch staff are NERC-certified system operators and receive extensive training throughout the year on the reliable operation of the Bulk Electric System including, but not limited to, emergency procedures.
16. The Tariff, OA, NERC standards, and the implementing PJM Manuals ultimately exist to protect reliability. PJM's foremost obligation as a FERC-regulated Transmission Provider, as well as a registered NERC Reliability Coordinator, Balancing Authority, and Transmission Operator, is to maintain reliability.
17. PJM, like other entities with comparable reliability responsibilities, must be allowed flexibility to make operational decisions based on the information available to them in real-time. Dispatchers have to think in terms of multiple time frames simultaneously, e.g., very short time intervals, such as almost minute-by-minute, longer time frames such as hour-by-hour, and still longer time frames spanning 24 hours or longer.
18. I am familiar, as are the collective PJM Dispatch staff, with the provisions of the Tariff, OA, and Manual 13 (and other PJM Manuals) that delineate PJM's emergency reliability authority and procedures as well as the related NERC reliability standards. It is well understood by PJM's operators, but still should be noted given the position taken by Complainants in the above-caption proceedings, that these authorities all clearly provide PJM with flexibility to address emergencies. They leave PJM with broad flexibility to act as needed. They do not establish absolute prohibitions on actions that operators may take beyond making the avoidance of load shedding the operators' paramount objective.
19. Section 1.7.11 of the OA makes PJM responsible "for declaring the existence of an Emergency, and for directing the operations of Market Participants as necessary to manage, alleviate or end an Emergency," and further clearly states that a PJM "declaration that an

Emergency exists or is likely to exist . . . shall be binding on all Market Participants” until PJM “announces that the actual or threatened Emergency no longer exists.” Section 1.7.15 instructs that “[c]onsistent with Good Utility Practice, [PJM] shall be authorized to direct or coordinate corrective action, whether or not specified in the PJM Manuals, as necessary to alleviate unusual conditions that threaten the integrity or reliability of the PJM Region, or the regional power system.”

20. Manual 13 is PJM’s emergency operations manual. Section 1.1 of Manual 13 emphasizes that “[t]he policy of PJM is to maintain, at all times, the integrity of the PJM RTO transmission systems and the Eastern Interconnection and to give maximum reasonable assistance to adjacent systems when a disturbance that is external to the PJM RTO occurs.” Section 2 gives PJM dispatchers, “the flexibility of implementing the emergency procedures in whatever order is required to ensure overall system reliability” including “the flexibility to exit the emergency procedures in a different order than they are implemented when conditions necessitate.” Section 2.3.2 of Manual 13 reiterates that “[d]ue to system conditions and the time required to obtain results, PJM dispatchers may find it necessary to vary the order of application [of various measures including recalling non-capacity backed off-system sales and load relief measures] to achieve the best overall system reliability.” Section 2.3.2 also expressly notes that, “[t]he Real-Time Emergency Procedures section [i.e., section 2.3.2 itself] combines Warnings and Actions in their most probable sequence based on notification requirements during extreme peak conditions. Depending on the severity of the capacity deficiency, it is unlikely that some Steps would be implemented.”
21. To be clear, Manual 13 addresses five different types of emergencies. PJM experienced a “capacity emergency” during Winter Storm Elliott. Capacity emergencies are the subject of section 2 of Manual 13. The circumstances of Winter Storm Elliott did not give rise to a circumstance where warnings/actions were warranted on a Control Zone or a subset of a Control Zone basis. As discussed *infra*, the performance of the ComEd generators would have significantly mitigated (if not eliminated) the emergency conditions in the PJM Region during the storm. I also note that section 2.2 of Manual 13 indicates that, “PJM issues capacity emergencies across the entire PJM RTO.” Load Dump Warnings/Actions were not necessary during Winter Storm Elliott.
22. In addition, NERC reliability standard IRO-014-3 R7 specifies that, “[e]ach Reliability Coordinator shall assist Reliability Coordinators, if requested and able, provided that the requesting Reliability Coordinator has implemented its emergency procedures, unless such actions cannot be physically implemented or would violate safety, equipment, regulatory, or statutory requirements.” This NERC requirement is addressed in more detail in the Bryson and Naumann Affidavits. I will say here, however, that IRO-014-3 R7 reinforces the PJM-specific authorities noted above, which also make helping neighboring systems in duress a very high priority. PJM’s operators are well-aware of this requirement, which is grounded in the utility industry’s long tradition of providing mutual assistance when facing emergencies.

23. I am also familiar with the well-established concept of “Good Utility Practice,” which is expressly referenced in some of the PJM sources that I quote above and is also generally applicable to virtually all of PJM’s operational actions under the Tariff.
24. The Tariff defines “Good Utility Practice” as “any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.” The definition also notes that “Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.” My understanding is that this is identical to the definition used in other regions under FERC’s *pro forma* Open Access Transmission Tariff.
25. PJM exercised reasonable judgment in light of the facts known at the time of its Emergency Actions during Winter Storm Elliott. PJM’s decisions accomplished the “desired result” under the Good Utility Practice standard of the reliable operation of the bulk electric system and avoiding load shedding in PJM while providing as much help as practicable to neighboring systems in duress. My understanding is that the Good Utility Practice Standard did not require PJM to use the “optimum practice, method, or act to the exclusion of all others” and that reasonably-based decisions made by the operators will be viewed as consistent with this standard. Hindsight is always 20/20. But even if there were some theoretical optimal approach that could have been used, that would not change the determination that the Good Utility Practice standard was met.
26. The fact that Emergency Actions triggered Non-Performance Charges is something that PJM operators understood. Operators also know that under the Capacity Performance construct, generators are responsible for winter preparedness (including fuel supply) and excuses for non-performance by Capacity Resources are extremely limited. Going into Winter Storm Elliott operators expected that Capacity Resources would be available consistent with the performance incentives incorporated into the Capacity Performance construct.
27. I have reviewed all three complaints, including the assertions that PJM violated Manual 13. The Complainants’ claims are not valid. They second-guess real-time operational decisions with the benefit of 20/20 hindsight. They are also based on economic arguments that operators were not, and should not have been, considering even if the information underlying those arguments had been readily available to them in real-time.
28. PJM’s operators fully satisfied their compliance obligations in advance of and for the entire duration of Winter Storm Elliott. If the Complainants’ restrictive and unrealistic interpretations of Manual 13 was adopted, it would have an adverse impact on the reliability of bulk electric system and would seriously inhibit PJM operators’ ability to keep the lights on.

C. PJM’s Actions During Winter Storm Elliott Were Reasonable and Justified in Light of the Information that Was Available to PJM Operators at the Time that They Were Making Decisions

29. This section of my Affidavit briefly discusses the actions that PJM took in connection with Winter Storm Elliott and the reasons why they were taken.⁵

1. December 23

30. PJM put generators on notice through Cold Weather Advisories and Cold Weather Alerts of the need for heightened readiness as Winter Storm Elliott approached. As noted in Exhibit 1 to PJM’s Answer, these advisories and alerts were issued between 9:00 on December 20 and 17:30 on December 22. These communications are discussed in more detail in the Bielak Affidavit. .

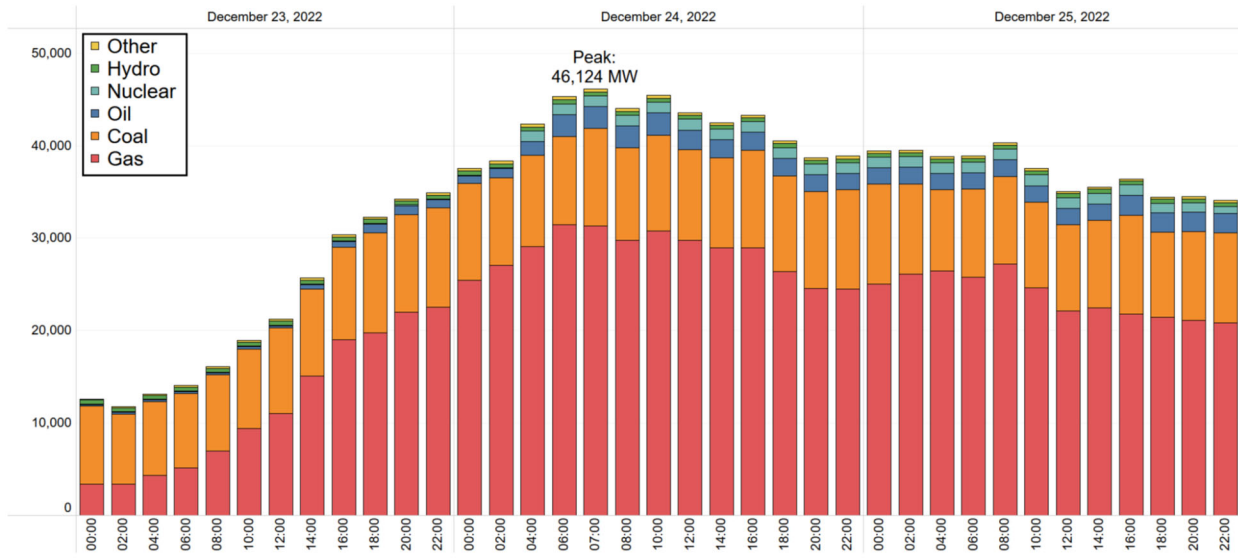
31. PJM entered the December 23 operating day in the reasonable belief, based on Markets Gateway and eDart data, that it had a substantial cushion for meeting load even taking account of potential variations in the peak load and expected higher-than-normal generation outages due to the cold weather. As explained in the Pilog Affidavit, “PJM entered the operating day on December 23, 2022 with the understanding that it had a total of approximately 158,000 MW of available generation to meet a forecasted load of 127,000 MW.”

32. Starting approximately 3:00 in the morning on December 23, generation forced outages/derates increased substantially. This happened at the same time as PJM load was increasing. PJM struggled to meet the consistently growing load inside PJM with the rapidly diminishing fleet of available generation. It also became apparent that many generators were not updating their offer parameters in Market Gateway or their status in eDart in a timely manner. On many occasions, PJM only learned of generators that were not able to operate after the operators called them to come on line. In some instances, the dispatch agent told the PJM dispatcher that the unit could not start during the same phone call requesting that unit to start. The operators thus could not rely upon what they were seeing on their screens.

33. The chart below shows the steadily rising levels of forced outages that PJM experienced through December 23. As depicted there, gas fired generators represent the largest segment of units experiencing higher outage rates. As discussed in the Pilog Affidavit, lack of natural gas as fuel was a growing problem.

⁵ I note that there is no basis for Dr. Scott Harvey’s assertion in the complaint proceeding brought by the CZG Complainants that PJM took actions because it had an ulterior motive such as a desire “to go short on PJM reserves relative to the reliability requirement in order to export more power to adjacent balancing areas.” Harvey Aff. at n. 70.

Forced Outages/Derates by Fuel Type



The increase in load occurring at the same time as the performance of the generation fleet deteriorated caused the operational situation to become increasingly dire during the afternoon of December 23. Eventually, there were about 34,500 MW of forced outages at peak load of 135,000 MW on December 23.

34. PJM experienced two spinning reserves events on December 23 to address a low Area Control Error (ACE). These events are indicative of the stress that was being placed on the system at this time. ACE is a measure of how well the Balancing Authority is matching generation to the load. If load and generation are perfectly balanced, then ACE is zero. When a generator within a Balancing Authority trips off-line the ACE goes negative.⁶ PJM experienced these events because load was increasing as generators tripped or failed to start. The December 23 spinning reserve events are depicted on the chart below in which PJM deployed Synchronized Reserves⁷ to recover the ACE:

⁶ NERC Standard BAL-002, Disturbance Control Performance, requires PJM, in its role as a registered NERC Balancing Authority, to ensure that is able to utilize its contingency reserve to balance resources and demand, and to return Interconnection frequency to within defined limits following a Reportable Disturbance. NERC defines a Reportable Disturbance as any event that causes an ACE change greater than or equal to 80 percent of a Balancing Authority’s or reserve sharing group’s most severe contingency.

⁷ PJM defines “Synchronized Reserves” as “the reserve capability of generation resources that can be converted fully into energy or Demand Resources whose demand can be reduced within ten minutes from the request of the [PJM] dispatcher, and is provided by equipment that is electrically synchronized to the Transmission System.” OA, §1 – Definitions. “Synchronized Reserves” are supplied from both 10-minute synchronized generating resources (i.e., the Spinning Reserves referenced above) and 10-minute demand-side response resources. See Manual 13, §1 at 15.

Event Start (EST)	Event End (EST)	Duration	Zone	Reason	PAI in effect
12/23/22 10:14	12/23/22 10:25	00:11:07	RTO	Low ACE	No
12/23/22 16:17	12/23/22 18:09	01:51:29	RTO	Low ACE	Yes (1730-1809)

Spinning reserve events to recover ACE do not occur often. To have one last the duration of the second event is very rare and is indicative of the extreme difficulties the system was facing as it headed into the December 23 evening peak. In fact, during my entire career in system operations, I have never before encountered an instance in which a spinning reserve event was needed for almost two hours.

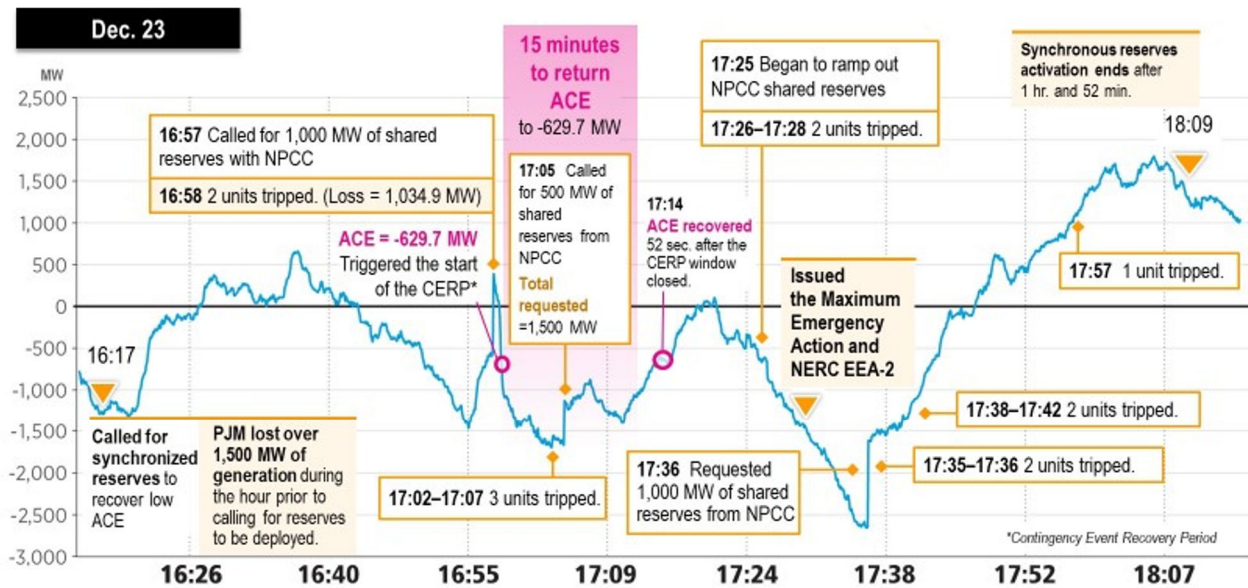
35. In addition, responses by Synchronized Reserves to Winter Storm Elliott was generally poor. The chart below captures the performance of Synchronized Reserves on December 23.

Assigned Reserve Performance

Event Start	Event End	Synch Reserve Assignment (MW)	Synch Reserve Response (units with assignment) (MW)	Shortfall to Assignment (MW)	Response to Assignment (%)
12/23/22 10:14	12/23/22 10:25	1,791	1,547	244	86.4%
12/23/22 16:17	12/23/22 18:09	1,846	945	901	51.2%

The performance of the Synchronized Reserve Units is yet another indication of the problems that generators were encountering.

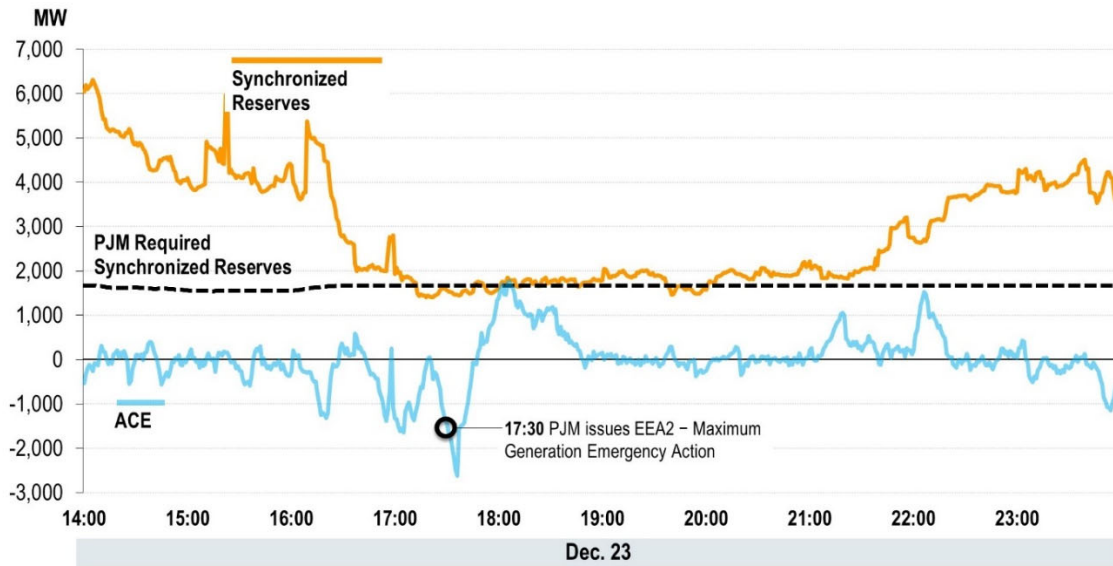
36. The chart below depicts the level of the ACE along with specific events and actions that affected it. As the chart illustrates, while PJM acted to recover the ACE as load grew, trips by multiple generators worked against those efforts. Notably, PJM ACE was dangerously low at nearly -3000 MW at a time when load was still continuing to increase. It was not until the impact of the Pre-Emergency Load Management Action and the Maximum Emergency Generation Action (that I describe below) were felt, that ACE truly recovered.



37. Given the on-going poor performance by Capacity Resources being observed in real-time, the remaining reserves available, the increasing load and the declining ACE, PJM dispatchers needed to take immediate action to address the situation. At 17:30, PJM issued a Maximum Emergency Generation Action, a Pre-Emergency Load Management Reduction Action⁸ and issued a NERC EEA2. It was apparent that reducing off-system energy interchange alone would not be able to be implemented quickly enough and, in any event, would not be adequate to address the situation. Additional relief through emergency procedures was required. Consistent with section 2.2 of Manual 13, the Pre-Emergency Load Management Reduction Action, the Maximum Generation Action and the EEA2 encompassed the entire PJM footprint.
38. As discussed in the Bryson Affidavit, the action at 17:30 was validated by the supply/demand conditions that were present at that time. Mr. Bryson shows that cutting non-firm exports alone would not have been sufficient to preserve reliability.
39. The Emergency Action's impact on ACE can also be seen in the chart below. In particular, it depicts the difficult conditions facing PJM's operators between 14:00 and the end of the day on December 23. It clearly shows how available spinning reserves on the system were being depleted, how the PJM ACE was becoming progressively harder to control, and how spinning reserves dipped below the normal target level before PJM issued its EEA2. While PJM was taking actions to recover the ACE as load grew, the tripping of multiple

⁸ PJM has three Load Management products: a thirty minute product, a sixty minute product and a 120 minute product. PJM requested the 30 minute and 60 minute Load Management product to be implemented. The 120 minute Load Management product was not requested as it would not have been effective until after the evening peak on December 23.

generators worked against those efforts. It was not until the impact of the Pre-Emergency Load Management Action and the Maximum Emergency Generation Action were felt, that ACE truly recovered.⁹



40. System conditions stabilized sufficiently by 22:00 so that PJM ended the EEA2 at that time. Both the Pre-Emergency Load Management Action and Maximum Emergency Generation Actions were cancelled and the PAIs were no longer triggered.
41. At 23:00 on December 23, PJM issued a Maximum Generation Alert/Load Management Alert and an EEA1 effective at 0:00 on December 24. PJM took this action in light of both forecasted conditions for the next day and the enormous uncertainty resulting from unprecedented system conditions that had emerged on December 23. Moreover, neighboring systems continued to face reliability challenges on the evening of December 23. For example, TVA was back in an EEA3 that evening and stayed at that level through 12:11:56 on December 24. MISO declared an EEA 2 at 18:00. The VACAR South Reliability Coordinator issued an EEA1 for DEC beginning at 20:25.
42. Simply stated, PJM had to account for the prospect that very challenging conditions would continue on December 24. As far as PJM could tell given the information available on December 23, it was very possible that historically high load levels could recur again on December 24. The poor operating performance, as well as lack of transparency, by many Capacity Resources on December 23 was a major factor weighing on the PJM operators. They were concerned that PJM might have to reach deep into its emergency procedures in order to serve load on December 24.

⁹ It should be noted that PJM is a centrally dispatch single Balancing Area. PJM tracks ACE and manages the system to comply with ACE requirements for the entire PJM region. PJM does not track separate ACE values for portions of the PJM footprint, such as the ComEd Zone. PJM dispatches all resources in the RTO to serve all load in the RTO.

2. December 24

43. Generator outage levels in PJM continued to increase early on December 24. At 08:00, over 24% of the PJM fleet (approximately 46,000 MW) was experiencing a forced outage, which is higher than the 22% level that PJM experienced during the Polar Vortex in 2014. After 08:00, outage levels gradually decreased, but approximately 35,000 MW of generation was still experiencing a forced outage at 22:00 on December 24 which was still a very high forced outage rate of approximately 20%.
44. In addition, approximately 6,000 MW of steam generation was called but was not online as expected for the morning peak on December 24. Ultimately, over 16,000 MWs of generation that was committed in the Day-ahead Market failed to perform.¹⁰ Further, high generator outage rates had limited PJM's ability to replenish pond levels for pumped storage hydro prior to the morning peak on December 24. Taken together, because of the poor generator performance, PJM was facing approximately 57,000 MW of generator unavailability for the morning peak on December 24.
45. Meanwhile, outside of PJM neighboring systems continued to face load shedding and to need assistance during the morning of December 24. VACAR South issued EEA3s for Dominion South Carolina at 05:59 on 12/24, for Duke Energy Carolinas at 06:17 on 12/24, for Duke Energy Progress at 06:40 on 12/24, and for South Carolina Public Service Authority at 07:20 on 12/24. For example, TVA shed as much as 3,200 MW on the morning of December 24. If PJM had provided less assistance than it did, the levels of load shed within that Balancing Area undoubtedly would have been higher.
46. On December 24, PJM again called for Synchronized Reserves to contend with low ACE in two cases and the loss of a unit in another case. Again, these events were unusual in terms of frequency and duration, with the third event lasting more than one hour, indicating that the PJM system was under stress. Also, as was the case the day before, the response by generators was disappointing and, unfortunately, confirmed the observations and concerns of the PJM operators regarding generation performance and how well generators would address future system threats that might arise.
47. The charts below encapsulate the disappointing results of PJM's Synchronized Reserves deployments on the morning of December 24.

¹⁰ *Id.* at P 24.

Event Start (EST)	Event End (EST)	Duration	Zone	Reason	PAI in effect
12/24/22 0:05	12/24/22 0:30	00:25:43	RTO	Low ACE	No
12/24/22 2:23	12/24/22 2:54	00:30:35	RTO	Unit Trip	No
12/24/22 4:23	12/24/22 5:51	01:27:32	RTO	Low ACE	Yes (0425—0127)

Event Start	Event End	Synch Reserve Assignment (MW)	Synch Reserve Response (units with assignment) (MW)	Shortfall to Assignment (MW)	Response to Assignment (%)
12/24/22 0:05	12/24/22 0:30	1,767	930	837	52.6%
12/24/22 2:23	12/24/22 2:54	1,665	535	1,130	32.1%
12/24/22 4:23	12/24/22 5:51	1,007	169	838	16.8%

As can be seen from the chart, the response for the Synchronized Reserves event beginning at 4:23 was especially poor with only a 16.8% response rate.

48. At 04:00 on December 24, PJM issued a call for conservation to last until 10:00 on December 25. PJM decided that this could be a useful measure on the evening of December 23 because it was apparent then that generator outages were climbing, were likely to increase further overnight, and that it could be challenging to meet the peaks on Saturday morning and Saturday evening. The call was distributed through the media and through direct communications with Transmission Owners and state regulators. PJM believes that responses to its call for conservation helped to reduce load beginning at about 07:15.¹¹
49. PJM also recalled exports, with those actions peaking at 07:00 when PJM became a net importer. High PJM system costs incentivized interchange into PJM at the same time that the non-firm transactions were recalled. Had PJM's net interchange not become positive, PJM would likely have been required to take more drastic measures such as a Voltage

¹¹ See PJM FAQs at 19.

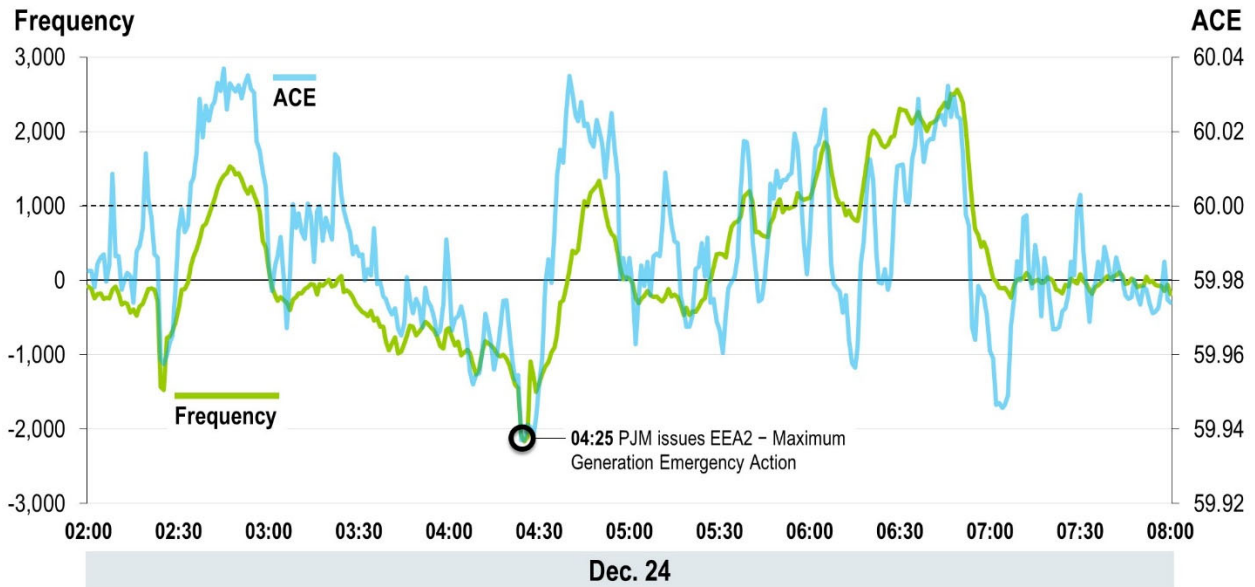
Reduction Action and a Manual Load Dump Warning to prepare for the possibility of shedding load if conditions continued to deteriorate.

50. At 04:20, PJM issued an EEA2 – Pre-Emergency Load Management Reduction Alert and an Emergency Load Management Reduction Action. In this instance, PJM requested all three Load Management products (i.e., 30 minute, 60 minute and 120 minute). This was promptly followed at 04:28 by the issuance of an EEA2 Maximum Generation Emergency Action. Load Management went into effect at 06:00.¹² Again, consistent with section 2.2 of Manual 13, these actions encompassed the entire PJM footprint. The Bryson Affidavit confirms that these actions would have been needed even if PJM cut all non-firm exports.
51. At 04:52, PJM issued a Voltage Reduction Alert, followed at 07:15 by a Voltage Reduction Warning and Reduction of Non-Critical Plant Load. PJM took these steps to give regional stakeholders notice that PJM might be forced to take drastic measures short of load shedding to address reliability problems that could emerge later in the day. Underscoring the challenges faced by the system during this time frame, PJM convened a Systems Operations Subcommittee call with the transmission owners at 7:30, at which time it advised the transmission owners to prepare for a Voltage Reduction Action and to be sure to have their load shed plans in place.
52. PJM also publicly encouraged Market Participants to submit bids to sell emergency energy into PJM at 06:17. This action reflects PJM’s all-out effort to secure as many resources as possible given the performance failures of December 23.
53. Around 06:30, PJM began receiving reports that generators were having to limit their output due to federal government environmental restrictions. PJM promptly sought relief and, at 17:30, PJM secured an order from the Department of Energy under section 202(c) of the Federal Power Act confirming that an emergency existed in PJM until Monday, December 26 at 12:00 and lifting certain emission restrictions for its duration.¹³ The DOE order was received at 17:45 on Christmas Eve and immediately implemented.
54. The chart below illustrates the ACE and Frequency on the morning of December 24 from 02:00-08:00. Both values were sliding steadily notwithstanding that PJM deployed Synchronized Reserves between 4:23 and 5:31. Further, loads were growing over this period and, as it will be recalled from the earlier discussion, PJM was faced with approximately 57,000 MW of generator unavailability for the morning peak on

¹² This the earliest time of day that Load Management can be implemented.

¹³ U.S. Dep’t Energy, *Federal Power Act Section 202(c): PJM December 2022*, DOE Order No. 202-22-4, at 1 (Dec. 24, 2022) (“[A]n emergency exists in the electricity grid operated by PJM Interconnection, LLC (PJM) due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, and other causes, and ... issuance of this Order will meet the emergency and serve the public interest.”), <https://www.energy.gov/ceser/federal-power-act-section-202c-pjm-december-2022>.

December 24. ACE and frequency began to recover after PJM entered into in EEA2 by loading Max Emergency generation and calling for Load Management to be implemented.



55. At 10:00, PJM began to restore exports to support neighbors. PJM held Load Management in anticipation of the potential for continuing generator outages which had been on an upward trajectory throughout the morning, and out of concern for being able to serve the load during the evening peak. In addition, retaining Load Management enabled PJM to allow pumped storage units that had been unable to run overnight to replenish their reservoirs so that they would be available for the evening peak. Based on the estimates supplied by the Curtailment Service Providers that administer the Load Management programs, the observed load was thought to be about 7,400 MW below what the levels that would have been experienced without Load Management. An increase in load of 7,400 MW would have posed a significant challenge for the system especially during peaks.
56. System conditions gradually began to improve during the day on December 24. But PJM operators had no guarantee in real-time that these positive trends would continue coupled with the fact noted above that Load Management was believed to be providing about 7,400 MW in load reduction. Uncertainties remained about the load forecast and whether PJM would experience another anomalously high peak in the evening. Just as important, generator outages remained at a high levels and many gas-fired generators were still having problems obtaining gas supplies even late in the day. PJM operators exercised their discretion to decide when and how to exit from emergency procedures to assure that reliability was maintained.
57. I agree with the observation made by Mr. Bryson that “[a]n overriding concern of PJM’s operators during December 24, 2022, given what had happened on December 23 and early on December 24, was whether PJM could meet the evening peak for its footprint.” PJM’s ability to allow some non-firm exports to flow during the time leading up to the evening peak was not indicative of whether PJM could meet the December 24 evening peak without Emergency Actions even if all non-firm exports were recalled. Given the unprecedented

pre-holiday loads throughout December 23, PJM was reasonably concerned that loads might be as high or higher for the December 24 evening peak as those earlier peaks. And it was clear that many gas-fired generators did not have firm gas supplies and would be expected to have difficulty obtaining short-term gas supplies. Keeping both the Maximum Generation Emergency Actions and Pre-Emergency/Emergency Load Management Reduction Actions in effect throughout the day on December 24 were reasonable measures for addressing these risks.

58. Only after it became apparent that the dire conditions of December 23 and early on December 24 had not materialized by the evening of December 24 did PJM undo its pre-emergency and emergency steps for December 24. PJM ended the Voltage Reduction Warning and Reduction of Non-Critical Plant Load at 18:15 and the Voltage Reduction Alert at 18:34. PJM ended the Maximum Generation Emergency Actions and Pre-Emergency/Emergency Load Management Reduction Actions and returned to EEA0 at 22:00.
59. At 22:38 on December 24, PJM issued an EEA1 Maximum Generation Emergency/Load Management Alert for December 25. Like PJM's other actions on December 24, this was a prudent precautionary measure. Just as PJM could not have been sure if the unprecedentedly high holiday load conditions on December 23 would recur on December 24, it had to consider the possibility that December 25 might be another historically anomalous day. PJM had barely avoided load shedding and its potentially disastrous consequences on December 23, and the PJM system also strained to meet load on the morning of December 24. It was naturally and reasonably cautious for PJM not to simply assume that everything would be back to normal on December 25.

3. December 25

60. The Exhibit 1 timeline notes that at 11:10 on December 25, PJM issued a Cold Weather Alert from 07:00 through 23:00 on December 26 for PJM's Western Region Zones¹⁴ only. This Cold Weather Alert ended as scheduled.
61. The Maximum Generation Emergency and Load Management Alert declared in the evening of December 24 also ended as scheduled at 22:00 on December 25 when PJM returned to EEA0. Similarly, PJM's call for conservation from December 24 expired as scheduled on December 25.
62. No PAIs were triggered on December 25. Accordingly, no Non-Performance Charges were assessed for that date.
63. In short, in my opinion, PJM's operational and reliability decisions fully complied with all applicable Tariff, OA, Manual 13, NERC requirements and other reliability requirements throughout Winter Storm Elliott. I believe that PJM's decisions were all reasonable and justified given the severity of the emergency, the information available at the time, and the need for PJM to be cautious to safeguard against load shedding within its footprint. I

¹⁴ <https://emergencyprocedures.pjm.com/ep/pages/regions.jsf>

therefore cannot imagine how the propriety of PJM's Emergency Actions could reasonably be challenged as a justification for excusing any of the Complainants' generators from Non-Performance Charges.

D. Had the ComEd Generators Been Available, Their Output Could have Served the Rest of PJM

64. I disagree with the CZG Generators' contention supported by their witness Dr. Harvey that "there was persistent transmission congestion that did not allow resources in ComEd to increase output to serve the rest of PJM . . . because the transmission lines from ComEd to the rest of PJM were constrained."¹⁵ As I'll describe further below the CZG Complainants try to use LMP information to obfuscate the fact that their resources were not on and operating. The resources were not on because they failed to make adequate preparations to be available during extreme cold weather conditions and could not perform when needed.
65. The CZG generators try to develop an argument that the ComEd Zone had more generation than load during Winter Storm Elliott which somehow relieves them of their obligation to perform as Capacity Resources. PJM is a centrally dispatched balancing area. PJM does not dispatch the system based on individual transmission owner zones. ComEd and other transmission zones had more on-line generation than load during Winter Storm Elliott and other transmission zones had less on-line generation than load. That is completely irrelevant in PJM which is a centrally dispatched single balancing area. As I'll describe below, PJM uses all resources within PJM, regardless of the transmission zone in which they are located to serve the load within PJM.
66. First, Dr. Harvey concedes that "[t]he PJM FTR model is not a good model for estimating the impact of ComEd generation on PJM constraints[.]"¹⁶ I agree. He relies upon a third-party's (Cambridge Energy Solutions) calculation of shift factors using the PJM Financial Transmission Rights (FTR) network model.¹⁷ Dr. Harvey correctly recognizes that this model "may be somewhat different from those in PJM's market model" and operations models.¹⁸ In fact, the FTR model does not account for the real time outages and topology changes that existed during Winter Storm Elliott. The FTR model also does not consider external factors that would impact interregional congestion patterns. Dr. Harvey's flawed use of the FTR model and conclusion that the system was too constrained to utilize resources within the ComEd Zone based on that flawed data is incorrect.
67. Second, Dr. Harvey's selection of cherry-picked data lead to a biased and invalid conclusion. It is not uncommon for there to be constraints on the PJM system. Constraints on the system are managed by changing or adjusting the topology of the system and by

¹⁵ CZG Complaint at 32-33

¹⁶ Harvey Aff. at 104.

¹⁷ *See id.* at P 66

¹⁸ Harvey Aff. at P 104..

adjusting the output of generation resources. The CZG Complainants suggest that PJM was not utilizing their resources due to the constraints on the system and as such they should be excused from PAI penalties. That is not correct. PJM was not utilizing the CZG Complainants' generator resources because they were not available. In fact, the constraints that we had on the system in the ComEd Zone in particular were due in large part to generators that had failed to start, tripped off-line or were otherwise not available during Winter Storm Elliott. Generation resources are used to manage constraints by lowering generators that aggravate a constraint and increasing the output of generators that help to relieve the flow on a constrained facility. As previously noted, many generators in the ComEd Zone including the CZG Complainant's generating resources failed to operate during Winter Storm Elliott. Had those resources been available, they would have helped to address the PJM-wide capacity emergency and they would have also helped to reduce the constraints in the ComEd Zone.

68. Although unnecessary to justify PJM's actions during Winter Storm Elliott, PJM has performed an engineering analysis using the real time Energy Management System (EMS) data from Winter Storm Elliott reflecting the system topology during the operating days. For three different representative times on the December 24 operating day, PJM's analysis utilized a real time snapshot of the system configuration which included all real time congestion, limits, flows, and topology.
69. The Elwood, Jackson Combined Cycle, Lee County, Lincoln, Aurora, University Park and Rockford facilities (6,552 MW) failed to perform at various times during Winter Storm Elliott, with most of the units having failed to perform at all. However, in PJM's after-the-fact analysis we assumed that they did operate. PJM's analysis found that on December 24, PJM's system would have reliably accommodated thousands of MW of energy from the CZG Complainants' generators had they performed, including the resources at Elwood, Jackson Combined Cycle, Lee County, Lincoln, Aurora, University Park and Rockford. As described above, the output of generating resources were adjusted to address constraints. As further described below, PJM's analysis showed that over 5,000 MW of additional resources, if available, could have been turned on to address the capacity emergency. Additional generation re-dispatch or other operating procedures may have been utilized during the event to further increase the output of these capacity resources. In summary, PJM's studies showed:
 - For the snapshot of the system as of 4:45 on December 24, PJM could have reliably accommodated a net 5,845 MW from the ComEd generators;
 - For the snapshot of the system as of 10:54 on December 24, PJM could have reliably accommodated a net 5,055 MW from the ComEd generators; and
 - For the snapshot of the system as of 16:03 on December 24, PJM could have reliably accommodated a net 5,001 MW from the ComEd generators. Notably for the analysis run at 16:03, this energy is in addition to the net 540 MW of energy being produced at this time from five units, at Aurora and Elwood, included in the two prior analyses, that had not been operating earlier in the day.

70. It is critical to remember that the CZG Complainants' generating units were either on unplanned outages and not available, or were called on by PJM to operate but failed to do so, and later entered an unplanned outage. Had these generators performed, their output would have reduced the congestion in the ComEd Zone because a number of these generators that failed to perform would have provided counterflows on the constrained facilities. Thus, had PJM been able to bring those generators into operation, it would have significantly reduced the flows on many of the constrained facilities.
71. Further, had PJM been able to dispatch those units on, it likely would have reduced the interchange from MISO. This would have further reduced the flows on many of the constrained facilities.
72. It is my opinion that if the CZG Complainants' generating units had produced net outputs determined from the studies, not to mention outputs from the numerous other generators around PJM that failed to perform, this production would have significantly mitigated the capacity deficiency PJM was experiencing. It could have mitigated (if not eliminated) the need for many if not all of the Emergency Actions PJM implemented, and it would have reduced (if not eliminated) the risk of extensive PAIs.
73. Finally, in claiming that their generations could not have been dispatched (which PJM's studies show is untrue), the CZG Complainants ignore the fact that system conditions during the evening peak on December 24 would have been different if the anomalous peak load levels that occurred for the evening peak on December 23 and the morning peak on December 24 had happened again. Had the higher peak occurred, having the CZG Complainants' generators available could have been even more critical to the reliability of the PJM system.

E. PJM Did Not Violate Requirements R5 and R3 of COM—002-4 Concerning Three-Part Communications

74. The Coalition claims that PJM violated Requirements R5 and R3 of COM—002-4. They assert that PJM's instructions were not clear, but they have presented no evidence to support that allegation.¹⁹ In addition, PJM followed all communication protocol requirements as set forth in PJM Manual 1, Section 4.5.3 Definitions, when issuing Operating Instructions per COM-002-4 R5 and other applicable NERC rules.
75. To the extent that the Coalition is claiming that discussion between PJM operators and generation dispatchers are a "command" requiring three-part communication, they are incorrect. As noted in PJM Manual 1, a discussion of general information and of potential options or alternatives to resolve Bulk Electric System operating concerns is not a command and is not considered an "Operating Instruction." Additional examples not considered to be Operating Instructions per PJM Manual 1 include confirming ratings or power flows, discussions of operational options, and discussions of generator status or

¹⁹ Coalition Complaint at 30.

availability. The examples presented in the complaint concerned generator schedules and options of schedules, and as such, were not Operating Instructions.

F. Complainants’ Arguments That PJM Acted Improperly Because it Failed to Properly Maintain Reserves in Certain Control Areas Does not Withstand Analysis

76. The CZG Complainants and Coalition contend that PJM failed to properly maintain reserve levels and claim that PJM should have curtailed both non-firm and firm exports to do so. According to Dr. Sotkiewicz, PJM violated the Tariff and Operating Agreement because “PJM allowed reserve levels fall below their requirements RTO-wide and within the Mid-Atlantic-Dominion (‘MAD’) reserve sub-zone frequently while supporting exports.”²⁰ Specifically, Complainants cite the language of Tariff, Attachment K–Appendix Section 1.10.6 (c) and Operating Agreement Schedule 1, Section 1.10.6(c), which both state that “[t]he Office of the Interconnection shall curtail deliveries to an External Market Buyer if necessary to maintain appropriate reserve levels for a Control Zone as defined in the PJM Manuals, or to avoid shedding load in such Control Zone.” The CZG Complainants claim that “because the OA trumps the manuals,” the admonition to “curtail deliveries to an External Market Buyer if necessary to maintain appropriate reserve levels” prevents PJM from relying upon Manual 13, Sections 2.3.2 and 2.5, which both prevent PJM from cutting external sales “[i]f the net result of cutting off-system capacity sales would put the sink Balancing Authority into load shed . . . unless it would prevent load shedding within PJM.”²¹
77. I disagree with Dr. Sotkiewicz’s statement that PJM “allow[ed] reserves to go short increasing the likelihood of a loss of load event in PJM.” PJM had options to address a large contingency occurring at times when level of reserves fell below the desired levels. PJM had the option to take a Voltage Reduction Action which would have made 1,701.7 MW of reserves available to PJM. At least 1,239.1 MW are available in 10 minutes or less, some of which are available in as little as 2 minutes. Also, a Voltage Reduction Action for the Mid-Atlantic-Dominion subzone would have made 1239.1 MW available in 10 minutes or less. These quantities are similar in terms of their operational characteristics to Synchronized Reserves since their source is currently operating resources synchronized to the system. Further, because this was a capacity shortage emergency and PJM had called a Maximum Generation Action, it had the ability to recall all PJM Capacity Resources being used to serve loads outside of PJM regardless of the type of transmission service, i.e., non-firm or firm, being used. Most of the exports are related to PJM Capacity Resources and thus could have been recalled by PJM if needed to serve its own customers’ requirements.
78. Also, it is worthwhile to consider the requirements of the corresponding NERC standard to place this claimed transgression into perspective. “BAL-002-003—Disturbance Control Standard – Contingency Reserve for Recovery from a Balancing Contingency Event”

²⁰ CZG Complaint, Sotkiewicz Aff. at P 100.

²¹ *Id.* at 30.

addresses, among other things, how long a Balancing Authority should take to restore reserves that have been deployed. Rule R3 provides:

Each Responsible Entity, following a Reportable Balancing Contingency Event, shall restore its Contingency Reserve to at least its Most Severe Single Contingency, before the end of the Contingency Reserve Restoration Period, but any Balancing Contingency Event that occurs before the end of a Contingency Reserve Restoration Period resets the beginning of the Contingency Event Recovery Period. [*Violation Risk Factor: Medium*] [*Time Horizon: Real-time Operations*]

For the purposes of this provision, the “Contingency Reserve Restoration Period” is defined as “[a] period not exceeding 90 minutes following the end of the Contingency Event Recovery Period,” and the “Contingency Event Recovery Period” is defined as “[a] period that begins at the time that the resource output begins to decline within the first one minute interval of a Reportable Balancing Contingency Event, and extends for fifteen minutes thereafter.” The trip of a generating unit qualifies as a “Reportable Balancing Contingency Event.”

Breaking this provision down, a Balancing Authority is supposed to restore reserves within 105 minutes²² of the triggering event but that period resets itself every time that another triggering event occurs. As I noted above, PJM experienced a large number of generator trips throughout the entire Winter Storm Elliott event. Although PJM’s practice is to restore reserve levels as quickly as possible, under the NERC standard, PJM had 105 minutes from each of those to restore reserves. For example in the context of the periods in which Dr. Sotkiewicz claims PJM was not compliant with reserves requirements, PJM would have had 105 minutes to recover its reserves but, since additional Balancing Contingency Events, *i.e.*, generator trips²³ were occurring, this period was reset over and

²² This is the sum of the 90 minute “Contingency Reserve Restoration Period” and the 15 minute “Contingency Event Recovery Period.”

²³ The definition of a Balancing Contingency Event is as follow:

Any single event described in Subsections (A), (B), or (C) below, or any series of such otherwise single events, with each separated from the next by one minute or less. A. Sudden loss of generation: a. Due to i. *unit tripping*, or ii. loss of generator Facility resulting in isolation of the generator from the Bulk Electric System or from the responsible entity’s System, or iii. sudden unplanned outage of transmission Facility; b. And, that causes an unexpected change to the responsible entity’s ACE; B. Sudden loss of an Import, due to forced outage of transmission equipment that causes an unexpected imbalance between generation and Demand on the Interconnection. C. Sudden restoration of a Demand that was used as a resource that causes an unexpected change to the responsible entity’s ACE.

(emphasis added).

over. Accordingly, PJM was compliant with this standard even accepting Dr. Sotkiewicz's claims that reserves fell below target levels.

79. This concludes my Affidavit.

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

Essential Power OPP, LLC, <i>et al.</i>)	
Complainants)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Aurora Generation, LLC, <i>et al.</i>)	
Complainants)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Coalition of PJM Capacity Resources)	
Complainant)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

VERIFICATION

I, **Paul F. McGlynn**, state, under penalty of perjury, that I am the Paul F. McGlynn referred to in the foregoing document entitled “Affidavit of Paul F. McGlynn on Behalf of PJM Interconnection, L.L.C.,” that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

/s/ Paul F. McGlynn
Paul F. McGlynn

Exhibit 6

Affidavit of Michael E. Bryson

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

Essential Power OPP, LLC, <i>et al.</i>,)	
Complainants)	
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Respondent)	
)	
Coalition of PJM Capacity Resources)	
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v.)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

**AFFIDAVIT OF MICHAEL E. BRYSON
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

A. Introduction

1. My name is Michael E. Bryson. My business address is 2750 Monroe Blvd., Audubon, Pennsylvania, 19403. I am the Senior Vice President of Operations for PJM Interconnection, L.L.C. (PJM). I am submitting this affidavit on behalf of PJM in support of PJM’s Answers to the Complaints filed by the CZG and the Coalition of PJM Capacity Resources in the captioned proceedings.

2. I earned a Bachelor of Science in general engineering from the United States Military Academy at West Point, New York, focusing on computer science and electrical engineering, and have a Master of Business Administration from Saint Joseph’s University in Philadelphia. I earned a graduate certificate in power engineering from the Worcester Polytechnic Institute.

3. Prior to my current position at PJM, I have held the positions of Executive Director of System Operations, General Manager of Dispatch Operations, and manager of the Transmission Department for the System Operations Division. I am the current chair of the Independent System Operator and Regional Transmission Organization Operating Committee. I also serve on the boards of directors of PJM Technologies, Inc., and PJM Repository Information Services, Inc. I previously served on the boards of directors of the ReliabilityFirst Corporation and Consortium for Electric Reliability Technology Solutions.

4. I am responsible for PJM's Operations Division, overseeing transmission operations for real-time systems. These operations include scheduling, transmission dispatch, generation dispatch, reliability coordination, training, and all engineering analysis required to run the system and support the critical energy management systems.
5. The purpose of my declaration is to address claims that PJM acted improperly during Winter Storm Elliott by exporting power to other Balancing Areas during periods in which PJM had declared Pre-Emergency Load Management Reduction Actions and Emergency Actions, including Maximum Generation Emergency and Emergency Load Management Reduction Actions. The CZG Complainants¹ allege that the Performance Assessment Intervals (PAIs) triggered by PJM's Emergency Actions were invalid, and requests that the Commission "eliminate the penalties assessed to the [CZG Complainants]," because, in their view, PJM's Emergency Actions during Winter Storm Elliott did not comply with the Tariff, Operating Agreement, or Manual 13.² Specifically, the CZG Complainants assert that "[1] PJM failed to curtail all non-firm exports before taking Emergency Actions, and [2] PJM incorrectly used Load Management/Demand Response to facilitate aid to adjacent control areas that triggered PAIs, in direct violation of its Tariff, Operating Agreement, and Manual 13."³ The CZG Complainants assert that "there was no emergency in the ComEd region and therefore no need for Complainants' generation facilities,"⁴ then go on to make the extraordinary claim that their failure to perform should be excused because "bringing more capacity online would have made system conditions worse."⁵ Further, the CZG Complainants say that PJM was not permitted to assist other Balancing Authorities after PJM dispatched Load Management Reduction Actions.⁶ The Coalition more or less repeats these arguments as relates to PJM's exports.⁷ The Nautilus Entities take a slightly different approach and argue that curtailing all Non-Firm exports and issuing an EEA1 is just one of four prerequisites that Manual 13 requires before PJM may take Emergency

¹ For clarity, this affidavit will refer to the "ComEd Zone Complainants," the "Coalition," and the Nautilus Entities when referencing arguments unique to those parties. Likewise, when the parties present the same or similar claims, I will refer to the "Complainants."

² Complaint of ComEd Zone Generators (ComEd Zone Complaint) at 3.

³ *Id.* at 3-4.

⁴ *Id.* at 4.

⁵ *Id.* at 5; *accord id.* ("Clearly, the generation should not have been dispatched as it would have made the situation worse, and clearly emergency demand response was not only unnecessary, but it, too, was making things worse in the ComEd zone.")

⁶ *See, e.g., id.* at 40; *id.*, Test. of Dr. Paul Sotkiewicz, Ph.D., Ex. CZG-0004, at P 97.

⁷ *See* Complaint of the Coalition of PJM Capacity Resources (Coalition Complaint), at 25-26.

Actions.⁸ They further contend that PJM’s continuing exports to adjacent Balancing Areas is evidence that they were not “needed” to address the emergency, and thus cannot be liable for Non-Performance Charges.⁹

6. All of these claims are wrong. Complainants’ assertions misstate the terms of the controlling documents, misrepresent or misunderstand the relevant facts, and ignore mutual assistance policies established by this Commission and the North American Electric Reliability Corporation (NERC). Specifically, Complainants misread the Tariff, Operating Agreement, and Manual 13¹⁰ to impose irrational and counter-productive constraints on emergency operations that are entirely alien to my understanding of those documents and contrary to the manner in which our operators are trained to respond in emergency conditions. On the contrary, PJM acted properly and fully in compliance with its obligations to support neighboring Balancing Authorities in crisis by allowing the non-firm exports to those Balancing Authorities after PJM initiated Pre-Emergency Load Management Reduction Actions and Emergency Actions. Also, because PJM did not initiate Load Management procedures for the purpose of assisting other regions, PJM was not constrained from providing exports to regions experiencing or attempting to avoid capacity deficient conditions. Further, the CZG Complainants’ claim that there was no emergency in the ComEd Zone or elsewhere in PJM to justify Emergency Actions is absurd on its face, as is their claim that bringing the Complainants’ 6,552 MW of non-performing capacity resources on line would have exacerbated the emergency.¹¹

⁸ Complaint of the Nautilus Entities (Nautilus Complaint) at 19.

⁹ *Id.* at 32.

¹⁰ PJM Manual 13: Emergency Operations (Nov. 3, 2022), <https://www.pjm.com/-/media/documents/manuals/archive/m13/m13v86-emergency-operations-11-03-2022.ashx>. References to all PJM Manuals herein are to the versions in effect during Winter Storm Elliott.

¹¹ As Mr. McGlynn explains in his affidavit:

- For the snapshot of the system as of 4:45 on December 24th, PJM could have reliably accommodated a net 5,845 MW from the ComEd generators;
- For the snapshot of the system as of 10:54 on December 24th, PJM could have reliably accommodated a net 5,055 MW from the ComEd generators; and
- For the snapshot of the system as of 16:03 on December 24th, PJM could have reliably accommodated a net 5,001 MW from the ComEd generators. Notably for the analysis run at 16:03, this energy is in addition to the net 540 MW of energy being produced at this time from five units, at Aurora and Elwood, included in the two prior analyses, that had not been operating earlier in the day.

McGlynn Aff. at P 24.

B. PJM Is Obligated To Provide Assistance to Other Regions And Is Entitled To Receive Assistance From Other Regions During Emergency Conditions

7. The Eastern Interconnection is one of the largest fully integrated transmission systems in the world. One of the advantages of its large scope is to provide enhanced reliability to all of the Balancing Areas that comprise it. In addition to the reliability benefits associated with having multiple redundant paths for power flows from generators to loads, there are also significant reliability benefits associated with diversity of load, generation, and geography. The benefit of geographic diversity is that over a large region such as the Eastern Interconnection, one region may not be as severely impacted by an event as an adjoining region. For example, one part of the Eastern Interconnection may be experiencing an extreme weather event when another portion of the Eastern Interconnection may be relatively less affected by the event. The Commission illustrated this point when commenting on the impacts of Winter Storm Uri in February 2021:

ERCOT faced the greatest challenge [in Winter Storm Uri] due to the magnitude of unplanned generating unit outages in its area, coupled with its limited ability to import power to help offset generation shortfalls. . . . In contrast to ERCOT, some regions, such as MISO and SPP, had the ability to import power from the east, where weather conditions were less severe, to make up for a large portion of their generation shortfalls during the event. For example, PJM was exporting an unprecedented amount of electricity into MISO and SPP, reaching over 15,700 MW of interregional transfers on February 15, 2021.¹²

It would waste the Eastern Interconnection’s capabilities to accept Complainants’ artificial, needlessly formalistic, and counter-productive constraints on providing mutual assistance. Further, accepting Complainants’ arguments would be inconsistent with the Commission’s policies as embodied in the quoted passage.

8. NERC also has rules governing mutual assistance. PJM has NERC obligations as a Reliability Coordinator and as a Balancing Area that require PJM to provide assistance to other regions, particularly when PJM can do so without shedding load within its own footprint. Attachment 1 to NERC Standard EOP-011-1,¹³ Section 2.3 provides: “During EEA 2, Reliability Coordinators and energy deficient Balancing Authorities have the following responsibilities: Other Reliability Coordinators of Balancing Authorities with available resources shall coordinate, as appropriate, with the Reliability Coordinator that has an energy deficient Balancing Authority.” NERC Standard IRO-014-3 R7 likewise provides: “Each Reliability Coordinator shall assist Reliability Coordinators, if requested and able, provided that the requesting Reliability Coordinator has implemented its

¹² *Transmission Sys. Plan. Performance Requirements for Extreme Weather*, 179 FERC ¶ 61,195 at P 32 (2022) (footnotes omitted).

¹³ NERC Standard EOP-011-1 was in effect during Winter Storm Elliott. NERC Standard EOP-011-2 superseded that standard on April 1, 2023.

emergency procedures, unless such actions cannot be physically implemented or would violate safety, equipment, regulatory, or statutory requirements.”¹⁴ Other Reliability Coordinators and Balancing Areas have reciprocal obligations to PJM under these same rules and, for that reason, PJM not only provided emergency energy to other Balancing Authorities during capacity shortages, but also received assistance from the Northeast Power Coordinating Council (NPCC) during the Winter Storm Elliott emergency.¹⁵

9. The Tariff and Operating Agreement also incorporate mutual assistance principles. They state that PJM “shall . . . [a]dminister . . . agreements for the transfer of energy in conditions constituting an Emergency in the PJM Region or in an interconnected Control Area, and the mutual provision of other support in such Emergency conditions with other interconnected Control Areas”¹⁶ Further, PJM “shall . . . [c]oordinate the curtailment or shedding of load, or other measures appropriate to alleviate an Emergency, in order to preserve reliability in accordance with NERC, or Applicable Regional Entity principles, guidelines and standards, and to ensure the operation of the PJM Region in accordance with Good Utility Practice and this Agreement.”¹⁷
10. PJM also has agreements with other regions that flesh out procedures to provide assistance during emergencies and potential emergencies. PJM has such agreements with Duke Energy Progress, LLC (Duke),¹⁸ Midcontinent Independent System Operator (MISO),

¹⁴ NERC Standard IRO-014-3, Coordination Among Reliability Coordinators, R7.

¹⁵ Net Scheduled Imports to PJM were in excess of 2,000 MW/hr for most of the cold weather period and reached as high as 4,000 MW/hr.

¹⁶ PJM Open Access Transmission Tariff (Tariff), Attach. K-App’x, § 1.6.2(vi); *see also id.* § 1.7.11 (“The Office of the Interconnection, with the assistance of the Members’ dispatchers as it may request, shall be responsible for monitoring the operation of the PJM Region, for declaring the existence of an Emergency, and for directing the operations of Market Participants as necessary to manage, alleviate or end an Emergency. . . . Actions by the Office of the Interconnection and the Market Participants shall be carried out in accordance with this Agreement, the NERC Operating Policies, Applicable Regional Entity reliability principles and standards, Good Utility Practice, and the PJM Manuals.”).

¹⁷ *Id.* § 1.6.2(vi).

¹⁸ Amended and Restated Joint Operating Agreement Among and Between PJM Interconnection, L.L.C., and Duke Energy Progress, LLC (July 22, 2019) (PJM-Duke JOA), <https://www.pjm.com/directory/merged-tariffs/progress-joa.pdf>.

Inc.,¹⁹ Tennessee Valley Authority (TVA),²⁰ New York Independent System Operator, Inc. (NYISO),²¹ and VACAR South Reliability Coordinator.²² For example, the PJM-MISO JOA provides:

In the event an emergency condition is declared in accordance with a Party's published operating protocols, the Parties agree to provide emergency assistance to each other and to facilitate obtaining emergency assistance from a third party. The Parties will coordinate respective actions to provide immediate relief until the declaring Party eliminates the declaration of emergency. The Parties will notify each other of emergency maintenance and forced outages that would have a significant impact on the other Party as soon as possible after the conditions are known. The Parties will evaluate the impact of emergency and forced outages on the Parties' systems and coordinate to develop remedial steps as necessary or appropriate. If the emergency response allows for coordinating with the other Party before action must be taken, the normal RTO to RTO request for action will be followed. The Parties will conduct joint annual emergency drills and will ensure that all operating staff are trained and certified, if required, and will practice the joint emergency drills that include criteria for declaring an emergency, prioritized action plans, staffing and responsibilities, and communications.²³

As is typical in agreements of this type, the general goal is to coordinate operations during emergencies to alleviate the emergency condition. As Manual 37 states, "PJM directs actions to provide emergency assistance to all Reliability Coordination neighbors, during

¹⁹ Joint Operating Agreement Between the Midcontinent System Operator, Inc. and PJM Interconnection, L.L.C. (Dec. 11, 2008) (PJM-MISO JOA), <https://www.pjm.com/directory/merged-tariffs/miso-joa.pdf>.

²⁰ Joint Reliability Coordination Agreement Among and Between PJM Interconnection, L.L.C., and Tennessee Valley Authority (Oct. 15, 2014) (PJM-TVA JOA), <https://www.pjm.com/-/media/documents/agreements/joint-reliabilityagreement-jrca-pjm-tva.ashx>.

²¹ Joint Operating Agreement Among and Between New York Independent System Operator Inc. and PJM Interconnection, L.L.C. (Sept. 16, 2019) (PJM-NYISO JOA), <https://pjm.com/~/-/media/documents/agreements/nyiso-joa.ashx>.

²² PJM-VACAR South Amended Adjacent Reliability Coordinator Coordination Agreement (Mar. 7, 2018) (PJM-VACAR JOA), <https://www.pjm.com/-/media/documents/agreements/executed-pjm-vacar-rc-agreement.ashx>. The VACAR South RC Area includes the territories of the following companies: Cube Hydro Carolinas, LLC, Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, Dominion Energy South Carolina, Inc. and the South Carolina Public Service Authority.

²³ PJM-MISO JOA, § 8.1.1.

declared emergencies, which is required to mitigate the operational concern to the extent that the same entities are taking in kind steps and the assistance would be effective.”²⁴

11. Mutual assistance concepts are also recognized in PJM Manual 13. One important provision concerns exports from PJM to other Balancing Authorities when PJM has declared a Maximum Generation Emergency. Section 2.3.2 includes among the steps taken by PJM in a Maximum Generation Emergency Action:

- PJM Dispatch determines the feasibility [of] recalling off-system capacity sales that are recallable (network resources).
 - PJM Dispatch will determine any limiting transmission constraints internal to PJM that would impact the ability to cut transactions to a specific interface.
 - PJM Dispatch will identify off-system capacity sales associated with the identified interfaces.
 - PJM Dispatch will contact the sink Balancing Authority to determine the impact of transaction curtailment.
- If the net result of cutting off-system capacity sales would put the sink Balancing Authority into load shed then PJM will not curtail the transactions unless it would prevent load shedding within PJM.²⁵

This provision supplements the Operating Agreement and Tariff concerning PJM’s obligations to provide mutual assistance by explaining the level of priority that off-system capacity sales will receive during a capacity emergency even while PJM itself is in near deficit conditions.

12. In addition, Manual 13 provides that:

When adjacent Balancing Areas are deficient in generation and are requesting assistance from the PJM RTO, actions are taken, provided the adjacent Balancing Area has taken the same actions requested of PJM [including] as required, increased generation, including Maximum Emergency generation (with the exception of fuel limited and environmentally restricted capacity).²⁶

²⁴ Manual 37: Reliability Coordination (Mar. 22, 2023), Attach. A (PJM Reliability Plan, § 1.1, <https://www.pjm.com/-/media/documents/manuals/m37.ashx>).

²⁵ PJM Manual 13, § 2.3.2 (Step 4A – Maximum Generation Emergency Action) at 32; *accord id.* § 5.2 (Transmission Security Emergency Procedures) (Step 4A) at 93 (same).

²⁶ *Id.* § 2.5 at 51.

This provision allows PJM to initiate actions, including Emergency Actions, for the purpose of providing assistance to another Balancing Area provided that, when it does so, it must specifically indicate that the action is being done to support that region.²⁷

C. Nothing in Manual 13 or NERC Standard EOP-011-2 Prevents PJM From Taking Actions that Trigger a Performance Assessment Interval While Making Non-Firm Exports

13. One of Complainants' central contentions is that PJM must curtail all non-firm exports as a "prerequisite" of calling a Maximum Generation Emergency Action or a Pre-Emergency or Emergency Load Management Reduction Action.²⁸ In support, they reference Manual 13 and NERC Standard EOP-011-1.²⁹ In fact, neither Manual 13 nor NERC Standard EOP-011-1 imposes such an obligation.
14. Manual 13, like all manuals, is supplementary to the Tariff and Operating Agreement. As discussed by Mr. McGlynn in his Affidavit,³⁰ PJM has broad authority under the Tariff and Operating Agreement to declare emergencies and decide what steps to take to avoid, mitigate, or shorten emergencies. Nothing in the PJM Manuals could limit the ability of the PJM Operators to address emergency conditions under the discretionary authority conferred in the Tariff and Operating Agreement.³¹ In this case, however, there is no inconsistency to address because Manual 13 does not specify a requirement to curtail non-

²⁷ *Id.* ("PJM Dispatch prefaces these procedures [when initiated to provide assistance to other regions] by the words 'due to PJM providing emergency assistance to an adjacent Control Area(s), PJM is issuing an (appropriate alert or action message.)'").

²⁸ CZG Complaint at 21-22 ("The evidence introduced by Dr. Harvey and Dr. Sotkiewicz demonstrates that th[e] prerequisite [of curtailing all non-firm exports] was not met, as PJM failed to curtail non-firm exports prior to taking Emergency Actions. In fact, during many of the PAIs, PJM was a net exporter of electricity including energy supported by Non-Firm transmission as shown by Dr. Sotkiewicz."); Coalition Complaint at 27-28 ("PJM's Tariff mandates the curtailment of these reservation exports *prior to* entering into the Maximum Generation Emergency Action, which PJM failed to do." (emphasis in original)); Nautilus Complaint at 19-20 (referring to PJM's "obligation to curtail all non-Firm exports prior to declaring a Maximum Generation Emergency Action").

²⁹ *See* CZG Complaint at 21; *id.*, Sotkiewicz Aff., CZG-0004, at P 4; Coalition Complaint at 26-27; Nautilus Complaint at 19.

³⁰ McGlynn Aff. at P 20.

³¹ The ComEd Zone and Coalition Complainants argue that their respective misinterpretations of Manual 13 were incorporated into the PJM Tariff and Operating Agreement. However, I will note that if Complainants' arguments were to be accepted, *i.e.*, that Manual 13 removes all operator discretion regarding actions during emergencies, then Manual 13 procedures it would simply overwrite and nullify other PJM documents, NERC rules, Reliability First principles, and long-standing practices regarding mutual assistance.

firm exports—or any other preliminary step—as a “prerequisite” to instituting either a Maximum Generation Emergency Action or a Pre-Emergency/Emergency Load Management Reduction Action. Manual 13 specifies that “[d]ue to system conditions and the time required to obtain results, PJM dispatchers may find it necessary to vary the order of application [of actions] to achieve the best overall system reliability.”³² Manual 13 further states, repeatedly, that “[a] NERC EEA2³³ is issued when the following has occurred: Public appeals to reduce demand, voltage reduction, interruption of non-firm load in accordance with applicable contracts, demand side management/active load management, *or* utility load conservation measures.”³⁴ Thus, PJM Manual 13 does not mandate that Maximum Generation Emergency Action or a Pre-Emergency/Emergency Load Management Reduction Action may be taken only when all non-firm exports are curtailed.

15. Complainants’ argument is also inconsistent with other provisions of Manual 13. As noted above, Section 2.3.2 of Manual 13 has a specific procedure for determining whether to cut transactions to other Balancing Areas if PJM has declared a Maximum Emergency Action. This provision gives such transactions, when made known to PJM, a priority almost as high as native load stating that “[i]f the net result of cutting off-system capacity sales would put the sink Balancing Authority into load shed then PJM will not curtail the transactions unless it would prevent load shedding within PJM.”³⁵ Clearly, given this directive, there cannot be a mandatory requirement that PJM must cut all non-firm exports before taking an Emergency Action.
16. Complainants’ reliance on NERC Standard EOP-011-1 is also misplaced. While NERC Standard EOP-011-1 states that curtailing “[n]on-firm wholesale energy sales (other than those that are recallable to meet reserve requirements)” may be a typical step before

³² Manual 13, § 2.3.2 at 28.

³³ EEA2 is a NERC procedure in which, *inter alia*, “[l]oad management procedures [are] in effect” and “[a]n energy deficient Balancing Authority has implemented its Operating Plan(s) to mitigate Emergencies.” NERC Standard EOP-011-1, Attach. 1: Emergency Operations, § B(2). Nothing in NERC Standard EOP-110-1, Attach. 1, § B(2) references an expectation that the Balancing Authority will have curtailed non-firm exports before issuing the alert.

³⁴ Manual 13, § 2.3.2 (Step 2 - Emergency Load Management Reduction Action) at 30; *id.* (Step 7 - Deploy All Resources) at 37; *id.* (Step 9 - Voltage Reduction Action) at 40; *id.* § 2.5 (Transmission Security Emergency Procedures) (Step 2 - Emergency Load Management Reduction Action) at 90; *id.* (Step 7 - Deploy All Resources) at 98; *id.* (Step 9 - Voltage Reduction Action) at 100 (emphasis added); *see also id.* § 2.3.2 (Step 2 - Emergency Load Management Reduction Action) (Note 4, EEA Levels) at 30 (stating that a NEARC EEA2 “may be issued,” rather than “is issued”); *id.* § 2.5 (Transmission Security Emergency Procedures) (Note 4, EEA Levels) at 91 (same).

³⁵ *Id.*

declaring an EEA1 alert,³⁶ the standard also specifies that “[t]he Reliability Coordinator may declare whatever alert level is necessary, and need not proceed through the alerts sequentially.”³⁷ Therefore, declaring an EEA1 alert is not a prerequisite for declaring an EEA2 event such as the Maximum Generation Emergency Actions or the Pre-Emergency Load Management Reduction Actions that triggered PAIs during Winter Storm Elliott.

17. In addition to Complainants’ failure to acknowledge that NERC Standard EOP-011-1 and Manual 13 give operators the discretion to skip or reorder steps to avoid or address emergency conditions, Complainants also wrongly treat a provision intended to be guidance as a mandate. I interpret the reference to curtailing non-firm load prior to declaring an EEA1 alert in Attachment 1, NERC Standard EOP-011-1, to mean that non-firm load should be curtailed when the operators have a reasonable expectation that doing so will address the emergency or potential emergency. Complainants’ insistence that it is a strict rule regardless of its impact is unreasonable. In the situation faced by the PJM operators during Winter Storm Elliott, curtailing all non-firm exports for the entirety of the PAIs would not have alleviated the need for the Maximum Generation Emergency Actions or the Pre-Emergency/Emergency Load Management Reduction Actions taken by the PJM operators. Further, PJM operators also had to consider PJM’s obligations to provide assistance to other regions and, in the circumstances present during Winter Storm Elliott, the non-firm deliveries were helping to alleviate reliability challenges being experienced in other regions. I will discuss both of these points in greater detail below.

D. Acceptance of Complainants’ Assertion That Initiating Pre-Emergency Load Management Reduction Action Requires Curtailment of Non-Firm Exports Would Nullify the Flexibility Granted to PJM to Utilize This Tool

18. Acceptance of Complainants’ contention that Manual 13 requires the prior curtailment of all non-firm exports before calling for a Pre-Emergency Load Management Reduction Action³⁸ would nullify the flexibility expressly granted to PJM under its Tariff to utilize this tool. The Tariff states that, “PJM will initiate a pre-emergency event *prior to* the declaration of a Maximum Generation Emergency or an emergency event *when*

³⁶ NERC Standard EOP-011-1, Attach. 1, § B(1).

³⁷ *Id.* § B.

³⁸ See CZG Complaint at 4 (“Manual 13 requires PJM to curtail all non-firm exports before taking . . . Emergency Actions, including both Pre-Emergency and Emergency Load Management Reduction Actions” (alteration in original)); *id.* at 29 (“For the avoidance of doubt, these Emergency Actions include Pre-Emergency Load Management Reduction Actions—i.e., Manual 13 requires PJM to curtail all non-Firm exports before taking Pre-Emergency Load Management Reduction Actions.” (alteration in original)); CZG Complaint, Sotkiewicz Aff. at P 90 (“Prior to initiating an Emergency Action such as call for Pre-Emergency . . . Load Management . . . PJM is required by Manual 13; . . . to curtail all Non-Firm exports of energy.”), Coalition Complaint at 25 (“PJM must curtail non-firm exports before taking capacity-related Emergency Actions.”); Nautilus Complaint at 19.

practicable. A pre-emergency event is implemented when economic resources are not adequate to serve load and maintain reserves or maintain system reliability, and prior to proceeding into *emergency procedures*.³⁹ Further, as the Commission stated in its order approving the Pre-Emergency Load Management Reduction Program, “it is reasonable for PJM to seek some added flexibility to dispatch these resources in response to system conditions, *without* the added step of declaring a system emergency.”⁴⁰ Complainants’ contention that there is a rigid prerequisite surrounding the use of this program is completely at odds with both the Tariff and the Commission’s findings. Further, Manual 13 refers to the potential step of curtailing non-firm exports only in connection with “emergency procedures”⁴¹ which, in the Tariff passage quoted above, comes *after* PJM has initiated “a pre-emergency event.”

E. PJM Acted Properly During Winter Storm Elliott By Allowing Non-Firm Exports Following PJM’s Declaration of Maximum Generation Emergency Actions and the Pre-Emergency and Emergency Load Management Reduction Actions

19. During Winter Storm Elliott, PJM acted consistently with its obligations by allowing non-firm transactions during periods in which Maximum Generation Emergency Actions and the Pre-Emergency and Emergency Load Management Reduction Actions were in effect. As I discussed above, PJM is obligated to provide assistance to other Balancing Areas when it can do so and when those regions are facing emergencies or potential emergency conditions.⁴² During Winter Storm Elliott, PJM operators sought to help adjacent Balancing Areas to the extent feasible without shedding load in PJM. As I will detail below, PJM operators were successful in their efforts as PJM avoided load shedding and the assistance that PJM provided to other regions enabled them either to avoid or mitigate shedding their customers’ load. Finally, while I disagree with the CZG Zone Complainants’ claim that the reliability issues facing the ComEd Zone can be evaluated separately from the rest of PJM under the facts here, I will show that, accepting this premise, there was no impediment to the initiation of Pre-Emergency and Emergency Actions in the ComEd Zone even under Complainants’ erroneous Tariff interpretation.

1. Curtailing All Non-Firm Exports Would Not Have Enabled PJM To Avoid Taking Pre-Emergency and Emergency Actions

Curtailing all non-firm transactions would not have alleviated the conditions that compelled the decision of the PJM operators to take Emergency Actions. As explained in greater detail in Mr. McGlynn’s Affidavit, one of the reasons why the PJM operators took these steps related to the uncertainty of the load forecast—both in terms of the weather

³⁹ Tariff, Attach. K App., § 8.5 (emphasis added).

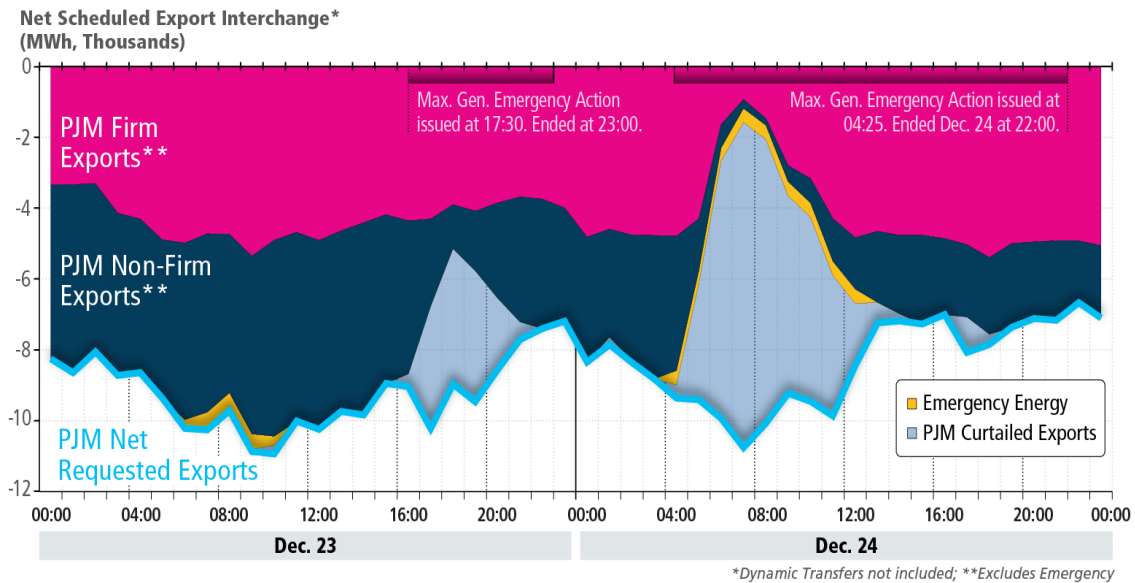
⁴⁰ *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103 at P 38 (2014) (emphasis added).

⁴¹ The term “emergency procedures” is sometimes capitalized in Manual 13 and sometimes in lower case. *See e.g.*, Manual 13, § 2.3 at 28.

⁴² *See supra* at P 8.

forecast and uncertainty regarding how loads would respond to the weather conditions.⁴³ The most important reason, however, was the spectacular failure of generators to be available consistent with PJM’s expectations of them as Capacity Resources subject to Capacity Performance obligations. As discussed by Mr. Pulong in his affidavit, “because of the poor generator performance, PJM was facing approximately 57,000 MW of generator unavailability for the morning peak on December 24.”⁴⁴ Not only did many generators fail to produce power as expected but they also failed in many cases even to update their parameters so that operators had the information they needed to make the most effective dispatch decisions. In fact, about 24% of the PJM generation fleet was not available which actually was worse than PJM experienced during the 2014 Polar Vortex that was the precipitating event for adopting the Capacity Performance construct. Based upon these general considerations alone—the uncertainty of the load forecast and the shockingly poor performance of generators—the operators were justified in taking Emergency Actions instead of risking that PJM could avoid load-shedding by curtailing non-firm exports.

20. The operators’ decisions to initiate Emergency Actions, moreover, are validated by the supply/demand conditions that were present. The graph below depicts the levels of exports from PJM during Winter Storm Elliott:



21. Comparing the values in this graph to the supply/demand conditions that PJM actually experienced confirms that PJM could not have met system demand only by cutting non-firm exports. On December 23, 2022, at 17:30, PJM issued a Pre-Emergency Load Management Reduction Action for the 30 minute and 60 minute Demand Resources that resulted in load reductions of about 1,100 MW. At the same time, PJM operators also

⁴³ McGlynn Aff. at P 56.

⁴⁴ Pulong Aff. at P 26.

issued a Maximum Generation Emergency Action that resulted in an average of 2,372 MW of additional generation.⁴⁵ In total, these actions had about 3,472 MW of impact. In comparison, for hour 18:00 non-firm exports were 1,241MW and for hour 19:00 non-firm exports were 1,683 MWs. Accordingly, even if the operators had cut all non-firm exports there would have been a deficit of at least 1,789 MW needed to satisfy PJM load and firm exports. Pre-Emergency and Emergency Actions thus would have been necessary to satisfy capacity needs even if all non-firm exports had been cut.

22. The situation for December 24, 2022 is similar. At 04:20 on December 24, 2022, PJM issued a Pre-Emergency Load Management Reduction Action and an Emergency Load Management Reduction Action that covered all Demand Resources and resulted in about 2,400 MW of load reduction. And at 04:28, PJM issued a Maximum Generation Emergency Action that it resulted in an average of about 2,879 MW in additional generation.⁴⁶ In total, these actions had 5,279 MW of impact. In comparison, for hour 05:00, non-firm exports were 1,820 MW falling to a low of 591 MW in hour 8:00 and increasing to a maximum level of 2,359 MW in hour 19:00 before the PAIs ended at 22:00. Accordingly, even if the operators had cut all non-firm exports there would have been a deficit between about 4,688 MW and 2,920 MW during this period needed to satisfy PJM load and firm exports. Pre-Emergency and Emergency Actions thus would have been necessary even if all non-firm exports had been cut.
23. These graphs also show that PJM prioritized meeting its own load by cutting exports—both firm and non-firm—when necessary. The graph shows a significant number of hours in which the assistance requested by other regions was not supplied. This correlates to the periods when PJM needed most of its generation for internal loads notwithstanding that during some these times other regions were seeking emergency supplies.
24. The Complainants also fail to acknowledge that PJM’s operators were simultaneously considering PJM’s potential needs over multiple time frames.⁴⁷ The ComEd Zone Complainants focus on the period after 06:00 on December 24, 2022, claiming that “there was no emergency in ComEd Zone beginning at least as of 06:00 on December 24 and thereafter”⁴⁸ and asserting that there was “excess generation” in the ComEd Zone.⁴⁹ Likewise, the Coalition faults PJM for issuing Maximum Generation Emergency Actions across the entire RTO and failing to distinguish generators in less-affected areas.⁵⁰ The

⁴⁵ This is hourly total MW operating above Ecomax for the Maximum Generation Emergency period.

⁴⁶ This is hourly total MW operating above Ecomax for the Maximum Generation period.

⁴⁷ *See, e.g.*, Pulong Aff. at 21-22, 29.

⁴⁸ CZG Complaint at 34 (quoting Test. of Dr. Scott Harvey, Ex. CZG-0001, at P 70).

⁴⁹ *Id.* at 35.

⁵⁰ Coalition Complaint at 37.

Nautilus Entities argue that the OPP and Rock Springs units were not needed between 12:00 and 24:00 on December 24, citing PJM's exports as evidence for that claim.⁵¹ But looking at the totality of the circumstances, PJM's operators acted consistently with Good Utility Practice in retaining the Pre-Emergency Load Management Reductions and Maximum Emergency generation based on the information they had at the time. PJM operators had to continue to assume that more generation in the ComEd Zone and the entire PJM footprint would continue to experience outages for the rest of the weekend.

25. An overriding concern of the operators during December 24, 2022, given what had happened over the previous day and in the morning, was whether PJM could meet the evening peak in the RTO. PJM's ability to allow some non-firm exports to flow during the time leading up to the evening peak was not indicative as to whether PJM could meet the evening peak without Emergency Actions even if all non-firm exports were curtailed. PJM was reasonably concerned that loads might be as high or higher as the earlier peaks experienced on December 23 and 24.⁵² Keeping both the Maximum Generation Emergency Actions and Pre-Emergency/Emergency Load Management Reduction Actions in effect throughout the day on December 24, 2022 were reasonable measures to address this possibility.
26. In particular, operators were concerned that if the Maximum Generation Emergency Action and the Pre-Emergency/Emergency Load Management Reduction Action were rescinded and PJM attempted to reinstate them in the face of a high evening peak on December 24, there could be a significantly lower response rate. If allowed to go offline, some generators might not restart due to the cold weather conditions or units running on gas might resell their gas supply. In addition, if Demand Resources were released and allowed to resume normal power consumption, PJM operators were concerned that they would not be willing and able to redeploy if called again prior to the evening peak. The fact that the evening peak came in at a relatively lower level does not undermine the validity of the operators' decisions under the Good Utility Practice standard based on the information they had when those decisions were made.
27. The validity of the PJM operators' decision to continue with Pre-Emergency/Emergency Load Management Reduction Actions and the Maximum Generation Emergency Action until PJM experienced the evening peak becomes even more plain when taking into account the operators' understanding regarding Demand Resources during the event. When the PJM operators called for Pre-Emergency Load Management Reduction Actions for the 30 minute and 60 minute participants on December 23, 2022, load reductions of about 4,300 MW were expected based on the estimates provided by the Curtailment Service Providers (CSPs). And, when PJM called for Pre-Emergency Load Management Reduction Actions and Emergency Load Management Reduction Actions for all participants, PJM expected load reduction of about 7,400 MWs based on the estimates provided by the CSPs. Until PJM received the data to determine actual load management response weeks later,

⁵¹ Nautilus Complaint at 51-52.

⁵² McGlynn Aff. at PP 56-57.

operators reasonably assumed that the actual reductions would be in line with the CSP estimates. Accordingly, when the operators decided to retain pre-emergency and Emergency Actions until the evening peak on December 24, the data they possessed indicated that the unrestricted peaks on the evening of December 23 and the morning of December 24 would have been approximately 139,300⁵³ MW and 137,400 MW,⁵⁴ respectively. The *perceived* impact of load management therefore was considerably greater than the actual impact of load management based on performance data, so the *perceived* risk of meeting the evening peak on December 24, 2022 was elevated even beyond what an *ex post* analysis of the actual supply/demand balance shows.

2. PJM’s Decision To Permit Non-Firm Power to Flow When There Was Sufficient Generation to Meet That Demand Was Not Only Reasonable, But Was Also Necessary For PJM to Fulfill Its Obligations To Assist Adjoining Balancing Areas

28. Complainants provide no justification or rationale for their claim that Manual 13 and NERC rules prohibit PJM from employing Emergency Actions unless non-firm exports have been cut to zero. In fact, accepting the Complainants’ interpretation would lead to inefficient outcomes and could adversely affect reliability. Essentially, Complainants’ argue that if two adjoining Balancing Areas are experiencing a capacity shortage and, after taking Emergency Actions under their respective tariffs, one of the Balancing Areas has sufficient capacity to provide non-firm service requested by the other Balancing Area to assist in meeting load, then the Balancing Area with the available capacity must turn down the request for help or, alternatively, must end its own emergency declaration. As I indicated earlier, the only sensible reading of Manual 13 and NERC Standard EOP-011-1 is that a Balancing Authority experiencing or approaching a capacity shortage emergency should curtail non-firm exports to the extent that doing so will help alleviate the emergency. However, after the Balancing Authority takes Emergency Action and has the capacity to provide non-firm service requested by another Balancing Authority to avoid shedding load, it would be inefficient and undermine reliability in the Eastern Interconnection to impose an arbitrary restriction preventing it from doing so. But that is exactly what Complainants claim is the rule.
29. In the situation posited here, the Balancing Authority with the extra capacity took the Emergency Action to meet the needs of its own system and thereby *incidentally* created capacity capable of serving load in another Balancing Authority. This was the situation faced by PJM during Winter Storm Elliott, in particular on December 24, 2022, after the morning peak. PJM took Pre-Emergency and Emergency Actions to meet its own needs, which created more capacity than it needed on a minute-by-minute basis, and it supplied

⁵³ Actual peak of about 135,000 MW plus expected :Load Management response of 4,300 MW.

⁵⁴ Actual peak of about 130,000 MW plus expected Load Management response of 7,400 MW.

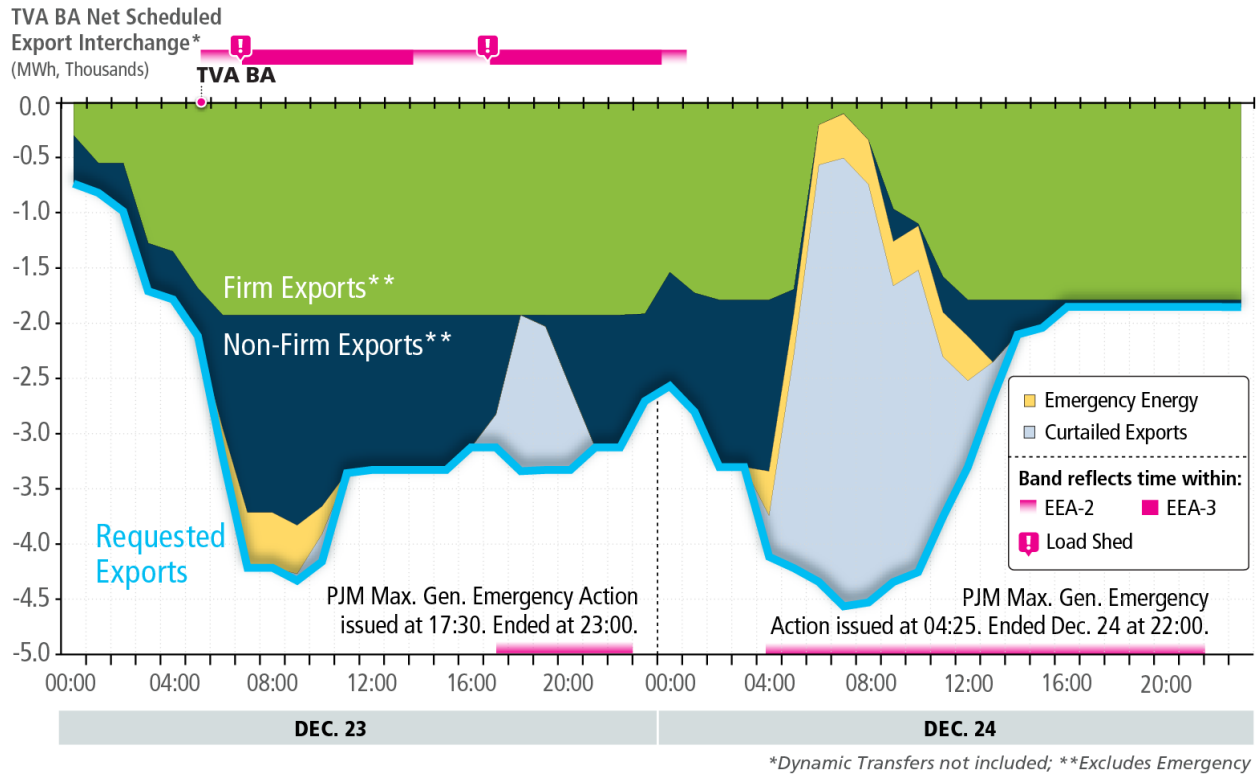
some of that capacity to other areas that needed it through non-firm exports (as well as firm exports and emergency sales).

30. PJM's purpose in initiating and maintaining Pre-Emergency Emergency Actions on December 24, 2022, through the evening peak was not directed towards providing non-firm exports. But once PJM had sufficient capacity to provide assistance to other Balancing Areas, it was obligated to do so. As I noted above, NERC Standard IRO-014-3 R7 provides that "[e]ach Reliability Coordinator shall assist Reliability Coordinators, if requested and able"⁵⁵ PJM met this obligation, in part, when it was "requested and able" to make non-firm exports to other Reliability Coordinators such as VACAR and TVA. Further, as also noted above, Manual 13 specifically contemplates that "[i]f the net result of cutting off-system capacity sales would put the sink Balancing Authority into load shed then PJM will not curtail the transactions unless it would prevent load shedding within PJM."⁵⁶ As shown below, this was exactly the situation presented to the PJM operators. With this in mind, Dr. Sotkiewicz's, as well as the CZG Zone Complainants and the Coalition, assertion that "[i]f PJM felt comfortable enough to allow Non-Firm exports of energy, the logical implication is that there really was no Emergency Condition"⁵⁷ is a complete misunderstanding of PJM's obligations under Manual 13 and distorts the logic undergirding Section 2.3.2.
31. The non-firm exports supplied to TVA provided assistance during periods when TVA was in a capacity deficient condition. The graph below shows the non-firm exports made to TVA:

⁵⁵ NERC Standard IRO-014-3 R7.

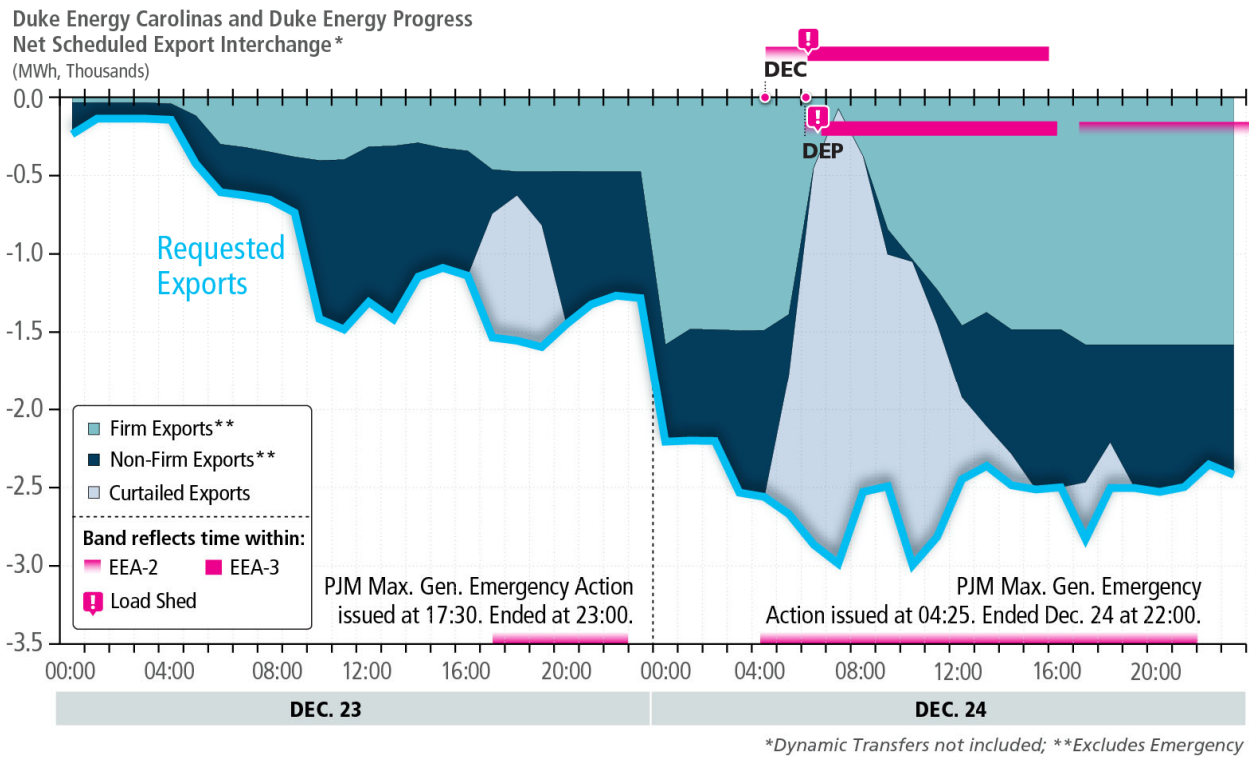
⁵⁶ Manual 13, § 2.3.2.

⁵⁷ CZG Complaint, Sotkiewicz Aff., Ex. CZG-0004, at P 96; Coalition Complaint, Sotkiewicz Aff., Attach. 4, at P 130.



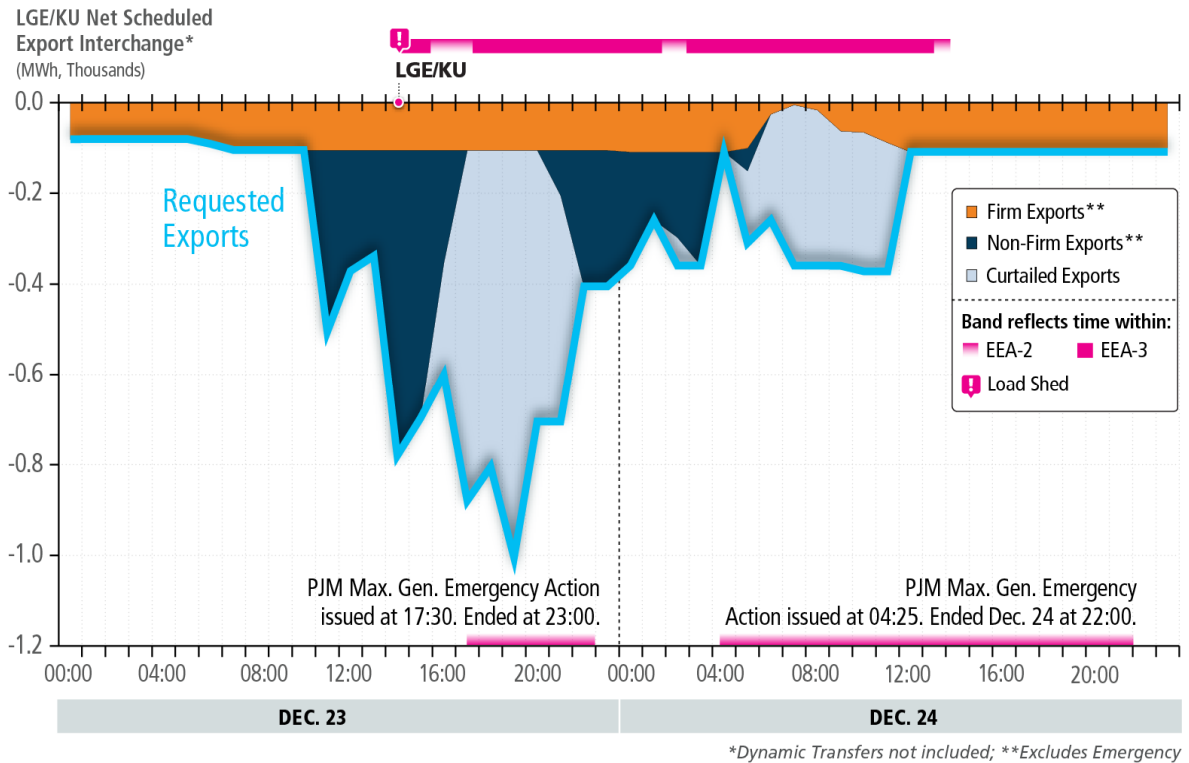
As can be seen by the chart, PJM was able to assist TVA by providing non-firm exports during times that the TVA system was shedding load. Had PJM not done so, it is likely that TVA would have been required to engage in additional load shedding than actually occurred.

32. Similarly, the non-firm exports supplied to Duke Carolinas and Duke Energy Progress provided assistance to those systems when they were experiencing capacity deficient conditions as shown in the chart below:



As depicted above, PJM was also able to provide assistance by making non-firm exports to Duke Carolinas and Duke-Energy Progress when they were shedding load. Again, if PJM had not provided this assistance, in all likelihood Duke Carolinas and Duke Energy Progress would also have had to engage in more load shedding.

33. Finally, Louisville Gas and Electric Company and Kentucky Utilities Company (LGE/KU) also received non-firm exports when they were experiencing capacity deficit conditions as shown in the chart below:



Once again, PJM made non-firm deliveries to LGE/KU when the region was shedding load. Had PJM not made these exports, additional load shedding would likely have been needed.

F. PJM Acted Properly By Providing Assistance to Adjoining Balancing Areas After It Initiated Load Management Actions

34. The CZG Complainants and the Coalition assert that PJM violated a provision in Section 2.5 of Manual 13 that prevents PJM from calling Load Management Actions for the purpose of providing assistance to another region. According to these Complainants, this violation occurred because PJM made non-firm exports after it implemented Load Managements Actions. The factual support for their claims consists of pointing to timelines for December 23, 2022 and December 24, 2022 showing that non-firm exports occurred after the Load Management events began. The CZG Complainants’ and the Coalition’s argument is a gross misreading of Manual 13 that is inconsistent with the text of the manual and which, if accepted, would prevent PJM from providing *any* assistance to other Balancing Areas during virtually any capacity shortage event that PJM might ever experience.
35. The obvious purpose of Section 2.5 of Manual 13 is to prohibit PJM from initiating Load Management *for the purpose* of providing assistance to another region. Section 2.5 provides: “When adjacent Balancing Areas are deficient in generation and are requesting assistance from the PJM RTO, actions are taken, provided the adjacent Balancing Area has

taken the same actions requested of PJM.”⁵⁸ Subject to certain restrictions, actions may include “Maximum Emergency generation [and] a 5% Voltage Reduction to provide the required assistance” To be clear, this provision assumes that PJM is not itself experiencing an emergency condition when it is invoked. As stated in Manual 13, “PJM Dispatch prefaces these procedures [steps taken to assist other Balancing Areas under this provision] by the words ‘due to PJM providing emergency assistance to an adjacent Control Area(s), PJM is issuing an (appropriate alert or action message).’”⁵⁹ The events that occurred during Winter Storm Elliott therefore do not fall within the scope of this section of Manual 13.

36. PJM *itself* needed Load Management Actions to meet its own needs. During Winter Storm Elliott, PJM never initiated a Load Management Action for the purpose of providing assistance to another region. Even assuming that Load Management might have had the incidental effect of facilitating some non-firm exports when PJM was experiencing emergency conditions, the Manual 13 guidance not to initiate Load Management Actions *for the purpose* of assisting other regions simply does not apply.
37. In fact, accepting the CZG Complainants’ and the Coalition’s interpretation, PJM could never provide emergency assistance of any sort to another Balancing Area if it previously called for Load Management Actions. There is nothing in Section 2.5 of Manual 13 that would limit the (claimed) prohibition of providing assistance to other regions after initiating Load Management Actions to non-firm exports. The sentence cited by these Complainants states: “PJM load management programs are not to be used to provide assistance to adjacent Balancing Areas.”⁶⁰ If the CZG Complainants’ and the Coalition’s reading is correct, this limitation would mean that PJM could not provide firm exports or even emergency sales to another Balancing Area experiencing a capacity shortfall after PJM initiated a Load Management Action. The only time PJM could assist another region in any respect would be if no Load Management Actions were taken. Given that PJM would be expected to call for Load Management Action during any capacity shortage (including during pre-emergency conditions) PJM would be side-lined in virtually any wide-area capacity event that included its territory. Such an interpretation of this manual provision would be irrational.

G. Complainants’ Arguments That PJM Failed to Properly Maintain Reserves in Certain Control Areas Do Not Support their Claims

38. The CZG Complainants and Coalition contend that PJM failed to properly maintain reserve levels and claim that PJM should have curtailed both non-firm and firm exports to do so. According to Dr. Sotkiewicz, PJM violated the Tariff and Operating Agreement because “PJM allowed reserve levels to fall below their requirements RTO-wide and within the

⁵⁸ Manual 13, § 2.5.

⁵⁹ *Id.* (emphasis omitted).

⁶⁰ *Id.*

Mid-Atlantic-Dominion (‘MAD’) reserve sub-zone frequently while supporting exports.”⁶¹ Specifically, Complainants cite the language of Tariff, Attachment K–Appendix Section 1.10.6 (c) and Operating Agreement Schedule 1, Section 1.10.6(c), which both state that “[t]he Office of the Interconnection shall curtail deliveries to an External Market Buyer if necessary to maintain appropriate reserve levels for a Control Zone as defined in the PJM Manuals, or to avoid shedding load in such Control Zone.”⁶² The CZG Complainants claim that “because the OA trumps the manuals,”⁶³ the admonition to “curtail deliveries to an External Market Buyer if necessary to maintain appropriate reserve levels” prevents PJM from relying upon Manual 13, Sections 2.3.2 and 2.5, which both prevent PJM from cutting external sales “[i]f the net result of cutting off-system capacity sales would put the sink Balancing Authority into load shed . . . unless it would prevent load shedding within PJM.”⁶⁴ But even if Dr. Sotkiewicz’s analysis were correct (and I do not concede that it is), it fails to help Complainants’ basic thesis that PJM’s pre-emergency and Emergency Actions were not justified. Further, the Complainants’ asserted dichotomy between the Operating Agreement, Tariff, and Manual 13 is invalid. Complainants badly misread each of those provisions, which do not conflict.

39. As an initial matter, I disagree with Dr. Sotkiewicz’s statement that PJM “allow[ed] reserves to go short increasing the likelihood of a loss of load event in PJM.”⁶⁵ PJM had options to address a large contingency occurring at times when level of reserves fell below the desired levels. PJM had the option to take a Voltage Reduction Action which would have made 1,701.7 MW of reserves available to PJM.⁶⁶ At least 1,239.1 MW are available in 10 minutes or less, some of which are available in as little as 2 minutes.⁶⁷ Also, a Voltage Reduction Action for the Mid-Atlantic-Dominion subzone would have made 1239.1 MW available in 10 minutes or less. These quantities are similar in terms of their operational characteristics to Synchronized Reserves since their sources are currently operating resources synchronized to the system. Further, because this was a capacity shortage emergency and PJM had called a Maximum Generation Action, it had the ability to recall all PJM Capacity Resources being used to serve loads outside of PJM regardless of the type

⁶¹ CZG Complaint, Sotkiewicz Aff., Ex. CZG-0004, at P 100; Coalition Complaint, Sotkiewicz Aff., Attach. 4, at P 131 & n.93.

⁶² CZG Zone Complaint at 19 & n.57 (quoting and citing the Tariff and OA); Coalition Complaint at 25, 32.

⁶³ CZG Complaint at 30.

⁶⁴ *Id.* at 30 (quoting Manual 13, § 2.3.2 at 32); Manual 13, § 2.5 at 92.

⁶⁵ CGZ Complaint, Sotkiewicz Aff., Ex. CZG-Ex-004, at P 117.

⁶⁶ *See* Manual 13 § 2.3.2 (Step 9 (Real-time)) Voltage Reduction Action at 39, *id.* at 26-27 (tables describing available amounts).

⁶⁷ *Id.* at 26-27 (tables describing available amounts).

of transmission service, *i.e.*, non-firm or firm, being used.⁶⁸ Most of the exports are related to PJM Capacity Resources and thus could have been recalled by PJM if needed to serve its own customers' requirements.

40. Dr. Sotkiewicz claims that all or most exports should have been curtailed at various times on December 23 and December 24, 2022, but he nowhere explains how much curtailment was necessary, so the impact of taking this extraordinary step contrary to Manual 13 cannot be determined. Even more importantly, Dr. Sotkiewicz does not even claim that if PJM had curtailed non-firm and firm exports, PJM would not have needed either Pre-Emergency Load Reduction Actions or Emergency Actions. As I have explained already, the PJM's operators' reasons for taking Pre-Emergency and Emergency Actions related mainly to uncertainty in the load forecast and the surprisingly poor overall performance of generation. Further, as I have also explained, an important reason for extending pre-emergency and emergency procedures after the morning peak ended on December 24, was the PJM operators' concern about meeting the evening peak. Even if PJM should have curtailed external exports to maintain RTO Primary Reserves during certain times between 02:00 and 06:00 on December 24, 2022 (which I do not concede is correct), that would not have addressed the valid concerns the operators had about meeting the evening peak. In fact, about half the identified period on December 24, 2022, falls outside of the times that PJM took pre-emergency and Emergency Actions. The main focus of this portion of Dr. Sotkiewicz's affidavit is the claim that "PJM's failure to curtail exports to maintain reserves in accordance with the Tariff led to reserve shortages and higher reserve prices than needed to be the case."⁶⁹ But the ComEd Zone Complainants and Coalition are seeking to avoid Non-Performance Charges; they do not seek redress for cost impacts associated with PJM's alleged violation of the requirement to maintain reserves.
41. The CZG Complainants' assertion that Dr. Sotkiewicz's affidavit sets up a conflict between a controlling tariff provision and an inferior manual provision is also misleading. PJM's Tariff and Operating Agreement both provide for "the mutual provision of . . . support in . . . Emergency conditions with other interconnected Control Areas" and require PJM to "[c]oordinate the curtailment or shedding of load, or other measures appropriate to alleviate an Emergency."⁷⁰ The Manual 13 guideline is an implementation detail for the

⁶⁸ See *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at 62,081 (1998) ("PJM explains that the curtailment provisions [*i.e.*, those proposed for Operating Agreement Section 1.11.3A Maximum Generation Emergency] relate to generation curtailments, not transmission curtailments. [PJM's] right to call upon the output of Capacity Resources is already a requirement applicable to the owners of Capacity Resources (*i.e.*, they are permitted to make only nonfirm, recallable sales from Capacity Resources) . . . , and that this provision merely clarifies that fact. We find that PJM's explanation adequately addresses Cargill-Alliant's concerns and agree that the curtailment terms at issue here relate to generation sales, not transmission service, and simply clarify the existing arrangement.").

⁶⁹ CZG Complaint, Sotkiewicz Aff., Ex. CZG-0004, at P 109.

⁷⁰ Tariff § 1.6.2.

performance of PJM's obligations under the Tariff and Operating Agreement. Assuming a conflict between PJM's Tariff/Operating Agreement duties to sustain internal reserves and its Tariff/Operating Agreement commitment to provide assistance to prevent load shed in another area, the task faced by the PJM operators would be to balance, the achievement of these two goals when feasible and consistent with the Good Utility Practice Standard. Specifically, under the facts here, the PJM operators would need to balance the the reserves violations the CZG Zone Complainants and Coalition allege occurred against the load shedding damage that cutting firm transactions to other regions would have caused or failed to mitigate. This is very different than the analysis framed by these Complainants. Even accepting the CZG Complainants' and Coalition's claim that the reserves shortages occurred, opting instead to prevent or mitigate load shedding in neighboring regions during an extreme cold weather event would been the most reasonable choice.

42. This concludes my affidavit.

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

Essential Power OPP, LLC, <i>et al.</i>)	
Complainants)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Aurora Generation, LLC, <i>et al.</i>)	
Complainants)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
Coalition of PJM Capacity Resources)	
Complainant)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

VERIFICATION

I, **Michael E. Bryson**, state, under penalty of perjury, that I am the Michael E. Bryson referred to in the foregoing document entitled “Affidavit of Michael E. Bryson on Behalf of PJM Interconnection, L.L.C.,” that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

/s/ Michael E. Bryson
Michael E. Bryson

Exhibit 7

Affidavit of Steven A. Naumann

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

Essential Power OPP, LLC, <i>et al.</i>,)	
Complainants)	
v.)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Respondent)	
)	
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PJM Interconnection, L.L.C.)	
Respondent)	
)	
Coalition of PJM Capacity Resources)	
Complainant)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Respondent)	

**AFFIDAVIT OF STEVEN T. NAUMANN, P.E.
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

1. My name is Steven T. Naumann. My business address is 8210 Tripp Avenue, Skokie, Illinois 60076. I am a self-employed consultant. In 2019, I retired from Exelon Corporation (Exelon) where I served as Vice President, Transmission and NERC Policy for Exelon Business Services Company. In that role, I provided the electric delivery utilities owned by Exelon advice and guidance on regulatory questions relating to system planning, design, operation, and reliability, and rates, terms, and conditions of service that are subject to federal regulation or that concern boundaries and classifications of assets, services, and authority between federal and state jurisdiction. I also provided advice and guidance on reliability and security policy to Exelon Generation, then the generation subsidiary of Exelon.

2. I have over 40 years of experience in planning, operations, reliability and regulatory aspects of electric power systems. I was part of the Exelon executive team leading the integration of Commonwealth Edison Company (ComEd) into PJM. My knowledge of transmission and generation issues in PJM, particularly in the ComEd Zone, is directly relevant to the arguments advanced by the ComEd Zone Generators in this proceeding.

3. I am licensed in Illinois, both as a Professional Engineer and as an attorney, although I do not practice law. I hold a Bachelor of Science degree in Electric Power Engineering and a Master of Engineering degree in Electric Power Engineering, both from Rensselaer Polytechnic Institute in New York, as well as a Juris Doctor from Chicago-Kent College

of Law. My biographical summary, attached as Exhibit PJM-007.1, provides more detail on my qualifications, my publications, and my previous testimony.

4. I am submitting this Affidavit in support of PJM Interconnection, L.L.C. (PJM) in response to the complaints filed in the above captioned proceedings.

Conclusions

5. PJM's primary responsibility is to manage the assets that it operates in a reliable and safe manner. This responsibility is above all others. PJM's mission statement declares that its "primary task" is "to ensure the safety, reliability, and security of the bulk electric power system."¹ As PJM's President and CEO has stated, "[k]eeping the power flowing and the grid reliable is the core mission for PJM and our member companies."²
6. Based on over 40 years of experience, the primary responsibility of all entities that plan and operate the electric power grid is to keep the lights on. This task may be challenging when system operators face severe conditions, especially where decisions need to be made within a short period of time and circumstances are rapidly changing. It should be no surprise that operators may take actions in real-time to address difficult problems that others may question after the fact as being overly conservative or uneconomic. At such times, delaying actions can result in unnecessary loss of load. Furthermore, it is important for operators to be proactive—i.e., stay ahead of potential problems, not reactive after problems occur—to ensure reliability, especially during periods of severe stress.
7. Winter Storm Elliott was an unusually severe winter storm that struck the PJM Region between December 23 and December 24, 2022. The storm presented extraordinary reliability challenges by causing an extremely rapid drop in temperatures coincident with unexpectedly record-breaking high loads for the Christmas holiday.³ It had a major impact not just on PJM but on much of the rest of the Eastern Interconnection. There have been a number of large-scale disturbances that have resulted in wide-area loss of load dating back to the Northeast Blackout of 1965.⁴ One of the more remarkable features of PJM's

¹ PJM, *About PJM: Who We Are*, <https://pjm.com/about-pjm>.

² *PJM 2021 Annual Report, Operations* (June 2022), <https://services.pjm.com/annual-report2021/operations/>. PJM's emphasis on reliability has remained unchanged for the past two decades. For example, in April 2004, the Exelon executive team met with the PJM executive team to finalize the steps of PJM integrating ComEd into PJM on May 1, 2004. At that meeting, I recall that Exelon's then-CEO, John Rowe, asked PJM's then-CEO, Phil Harris, to promise not to go forward with the integration if there was anything not yet completed that would threaten reliability. Mr. Harris, of course, reassured the Exelon team that PJM would ensure reliable operations before completing the switchover.

³ See PJM, *Winter Storm Elliott Info*, <https://www.pjm.com/markets-and-operations/winter-storm-elliott> (collecting PJM's public statements addressing Winter Storm Elliott's impact on PJM's operations and markets).

⁴ See FERC and NERC, *Regional Entity Staff Report, The February 2021 Cold Weather Outages in Texas and the South Central United States 47-50* (Nov. 2021) (February 2021 Cold

performance during Winter Storm Elliott is that PJM, unlike its neighboring Balancing Authorities, was able to navigate Winter Storm Elliott without forcing customers to shed load.⁵

8. While each operating situation is different and the information that operators have to make decisions varies, it is important to put the performance of PJM during Winter Storm Elliott in context of severe cold weather events over the past decade.⁶ Following the February 2011 cold weather event in ERCOT and the Southwest, the FERC-NERC Staff Report made 26 recommendations for the electric system including the need for generator winterization.⁷ Next was the 2014 Polar Vortex, after which NERC made a number of recommendations, generator winterization again among them.⁸ In January 2018, similar high outage rates occurred during the extreme cold in the South Central United States, including MISO and TVA, which connect to PJM.⁹ A more recent incident is the situation in Texas during Winter Storm Uri, in February 2021, when ERCOT was forced to shed over 10,000 MW of load in less than an hour to avoid a blackout of the entire ERCOT

Weather Report) (describing previous cold weather events), <https://www.nerc.com/news/Pages/Final-Report-on-February-2021-Freeze-Underscores-Winterization-Recommendations.aspx>; FERC and NERC Staff Report, Arizona-Southern California Outages on September 8, 2011 (Apr. 2012), <https://www.nerc.com/pa/rrm/ea/Pages/September-2011-Southwest-Blackout-Event.aspx>; U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations § 7 at 103-07 (Apr. 2004) (describing seven large-scale disturbances), <https://www.energy.gov/oe/articles/blackout-2003-final-report-august-14-2003-blackout-united-states-and-canada-causes-and>.

⁵ See *infra* P 23 & notes 47-51 (detailing emergency actions and substantial forced load shedding in PJM's neighboring Balancing Authorities on December 23 and December 24 as documented by NERC, the Department of Energy, and the Reliability Coordinator Information System).

⁶ Other types of historical weather events also highlight the risk of operators waiting too long to take emergency actions and how dramatic such actions may need to be in a crisis. A particularly noteworthy example occurred in July 1977, when the New York electric grid suffered transmission line outages due to lightning from thunderstorms north of New York City, which was importing power. After a number of outages, the Consolidated Edison operators delayed shedding load, and, after separating from the rest of the Eastern Interconnection, nearly the entire city suffered a blackout. See, e.g., Victor K. McElheny, *Improbable Strikes by Lightning Tripped Its System*, *Con Ed Says*, N.Y. TIMES (July 15, 1977).

⁷ See FERC and NERC, Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011, 197-212 (Aug. 2011), <https://www.nerc.com/pa/rrm/ea/Pages/February-2011-Southwest-Cold-Weather-Event.aspx>.

⁸ See NERC, Polar Vortex Review 19-20 (Sept. 2014), https://www.nerc.com/pa/rrm/january%202014%20polar%20vortex%20review/polar_vortex_review_29_sept_2014_final.pdf.

⁹ See FERC and NERC, Staff Report, The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018 (July 2019), https://www.nerc.com/pa/rrm/ea/Documents/South_Central_Cold_Weather_Event_FERC-NERC-Report_20190718.pdf.

system.¹⁰ ERCOT came within minutes of a full blackout due to a combination of generator outages and high load.¹¹

9. These events prompted regulators and public utilities, including PJM, to develop guidelines to avoid or mitigate cold weather emergencies. Starting in 2012, NERC issued three versions of winter preparedness guidelines culminating in a comprehensive guideline in 2020¹² and Level 2 Alerts providing recommendations to industry prior to the 2021-2022 and 2022-2023 winter seasons.¹³ After a decade of alerts, guidelines, training, and lessons learned, PJM’s generator owners and operators were well aware of the need to winterize their assets and that extreme cold was going to be more common than previously thought. In fact, the Commission recently pointed this out stating “we also emphasize that industry has been aware of and alerted to the need to prepare their generating units for cold weather since at least 2011.”¹⁴ And PJM’s generators certainly were aware that FERC had approved modifications to three NERC reliability standards, even though those standards would not be effective until April 1, 2023.¹⁵
10. Nevertheless, many generators failed to perform once again when Winter Storm Elliott struck PJM on December 23-24. They failed despite mandatory reliability standards that were just over the horizon, numerous examples of cold weather events where large amounts of natural gas-fired generation were unavailable, and a wide array of alerts, reports, lessons learned, guidelines and training in which generators were told repeatedly what they needed to do to operate during extreme cold.
11. For example, NERC’s Generating Unit Winter Weather Readiness Guideline lists 16 “typical problem areas,” that may result in operational issues due to cold and/or freezing

¹⁰ See February 2021 Cold Weather Report, Fig. 73, at 137.

¹¹ See *id.* at 47-50.

¹² See NERC, Reliability Guideline, Generating Unit Winter Weather Readiness – Current Industry Practices – Version 3 (Dec. 15, 2020) (Generating Unit Winter Weather Readiness), https://www.nerc.com/comm/RSTCReliabilityGuidelines/Reliability_Guideline_Generating_Unit_Winter_Weather_Readiness_v3_Final.pdf.

¹³ See Recommendation to Industry, Cold Weather Preparations for Extreme Weather Events – II (Sept. 12, 2022), <https://www.nerc.com/pa/rrm/bpsa/Alerts%20DL/NERC%20Alert%20R-2022-09-12-01%20Cold%20Weather%20Events%20II.pdf>; Recommendation to Industry, Cold Weather Preparations for Extreme Weather Events (Aug. 18, 2021), <https://www.nerc.com/pa/rrm/bpsa/Alerts%20DL/NERC%20Alert%20R-2021-08-18-01%20Extreme%20Cold%20Weather%20Events.pdf>.

¹⁴ See *N. Am. Elec. Reliability Corp.*, 182 FERC ¶ 61,094 at P 88 (2023) (approving Extreme Cold Weather Reliability Standards).

¹⁵ See *N. Am. Elec. Reliability Corp.*, 176 FERC ¶ 61,119 (2021) (approving Cold Weather Reliability Standards); Recommendation to Industry, Cold Weather Preparations for Extreme Weather Events – II at 1 (“The Cold Weather Reliability Standard becomes enforceable on April 1, 2023”) (in red and bold in original).

weather.¹⁶ In turn, PJM has documented a Cold Weather Preparation Guideline and Checklist that includes a detailed list of typical problem areas for generators to include in their winterization plans.¹⁷

- Personnel Preparation
- Staffing
- Equipment Preparation
- Maintain Substation Equipment
- Fuel and Environmental Preparation

Under equipment protection, PJM has listed 33 detailed, albeit not exclusive actions, including:

- Review cold weather scenarios affecting equipment taking into account the effects of precipitation and wind
- Consider pre-warming, operating at full speed no load, early start-up, and/or putting on turning gear scheduled units prior to a forecasted severe winter weather event
- Prepare units that have been off line for lengthy periods of time for start-up and operation during severe winter weather events

To refer to the events of Winter Storm Elliott as *déjà vu* all over again would be an understatement.¹⁸

12. With this history in mind, Winter Storm Elliott presented PJM operators with extremely high rates of generator outages and derates related to extreme cold weather and fuel supply problems—problems that the training, guidelines, and most importantly, the Capacity Performance market-based framework¹⁹ were supposed to solve. PJM operators had to deal with these facts and could not assume that, if the next generator(s) tripped, sufficient generation would be able to come on line at the times needed to stabilize the system with enough energy plus reserves. The risk was too high.
13. The seriousness of generation failures during a decade of cold weather events and lack of preparedness, has led NERC to issue an unprecedented level 3 alert “to target a critical risk,

¹⁶ See Generating Unit Winter Weather Readiness, at 3-5.

¹⁷ See PJM Manual 14D: Generator Operational Guidelines, Attach. N: Cold Weather Preparation Guideline and Checklist, at 148-54 (Rev. 62, Dec. 21, 2022).

¹⁸ Yogi Berra purportedly made this statement following back-to-back home runs by Mickey Mantle and Roger Maris in 1961.

¹⁹ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (Capacity Performance Order), *order on reh’g & compliance*, 155 FERC ¶ 61,157 (Capacity Performance Rehearing and Compliance Order), *pet’n for rev. denied sub nom. Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656 (D.C. Cir. 2017).

cold weather preparations for extreme weather events to reliability.”²⁰ Of the eight Essential Actions, six require responses by Generator Owners. These actions include (1) calculating the Extreme Cold Weather Temperature (ECWT), as defined in the Alert and in new standard EOP-12-1, for each plant; (2) identifying the cold weather preparedness plan the critical components and freeze protection measures to be implemented for the next winter season; (3) identifying which units are capable of operating at the ECWT, which units require additional freeze protection and which can be implemented prior to next winter; (4) identifying units that experienced a Generator Cold Weather Event during the 2022-2023 winter and (a) identify the cause; (b) determine applicability to similar units; (c) determine corrective actions that can be implemented prior to next winter; and (d) identify temporary operating limitations; and (5) providing information to the relevant Reliability Coordinators, Balancing Authorities and Transmission Operators.²¹ While I am not implying that the PJM generators should have been in compliance with Reliability Standard EOP-012-1, which the Commission did not approve until after the events of Winter Storm Elliott,²² generators certainly were aware of the requirements prior to the start of the 2022-2023 winter season.

14. The ComEd Zone Generators contend that PJM was required to curtail all non-firm exports prior to initiating capacity-related emergency procedures.²³ The Coalition of PJM Capacity Resources (Coalition) makes this same argument.²⁴ This is a faulty interpretation of the PJM OATT and PJM Manual 13. The ComEd Zone Generators and the Coalition are arguing that PJM has no flexibility in the steps it takes before a Performance Assessment Interval (PAI) is triggered. In the first instance, both Complainants come to this conclusion by misreading the PJM OATT and PJM Manual 13. While the ComEd Zone Generators correctly cite the definition of Emergency Action, which encompasses “*any* emergency action for locational or system-wide capacity shortages,”²⁵ the ComEd Zone Generators go on to argue that, because “PJM did not take *all* steps before taking Emergency Actions that triggered the PAIs,” the penalties should not have been triggered.²⁶ For example, the

²⁰ NERC Board of Trustees Agenda, Agenda Item 6b (Mar. 11, 2023).

²¹ NERC, Essential Actions to Industry, Cold Weather Preparations for Extreme Weather Events III (May 15, 2023), <https://www.nerc.com/pa/rrm/bpsa/Alerts%20DL/Level%203%20Alert%20Essential%20Actions%20to%20Industry%20Cold%20Weather%20Preparations%20for%20Extreme%20Weather%20Events%20III.pdf>.

²² See *N. Am. Elec. Reliability Corp.*, 182 FERC ¶ 61,094. A number of the Complainants voted against approval of EOP-12-1. See Ballot Name: 2021-07 Extreme Cold Weather Grid Operations, Preparedness, and Coordination EOP-012-1, <https://sbs.nerc.net/BallotResults/Index/649>.

²³ Complaint of ComEd Zone Generators at 21-22, Docket No. EL23-54 (Apr. 4, 2023).

²⁴ Complaint of the Coalition of PJM Capacity Resources (Coalition Complaint) at 27-33, Docket No. EL23-55 (filed Apr. 4, 2023).

²⁵ Complaint of ComEd Zone Generators at 18, Docket No. EL23-54 (Apr. 4, 2023) (citing PJM OATT, § 1, Definitions, Definitions E – F) (emphasis added).

²⁶ Complaint of ComEd Zone Generators at 19 (emphasis added).

ComEd Zone Generators, the Coalition and the Nautilus Entities argue that Section 2.3.2 of PJM Manual 13 *requires* that “prior to entering into capacity related Emergency Procedures, PJM must ‘curtail all non-Firm exports.’”²⁷ The Coalition repeats this argument and also claims, erroneously, that Section 2.3.2 requires PJM to issue an Energy Emergency Alert Level 1 (EEA 1).²⁸ But Section 2.3.2 says no such thing.

15. Inventing a requirement to take *all* steps prior to taking Emergency Actions is contrary to the express language of Section 2.3.2 of PJM Manual 13. First, Section 2.3.2 explicitly states, “[d]ue to system conditions and the time required to obtain results, PJM dispatchers may find it necessary to vary the order of application to achieve the best overall system reliability.”²⁹ Section 2.3.2 goes on to state that the actions taken prior to entering into capacity related emergency procedures are “the most probable sequence” and, depending on the severity of the capacity deficiency, “it is unlikely that some Steps would be implemented.”³⁰ Moreover, as I explain below, such a reading is inconsistent with the flexibility that PJM operators must have to deal with emergencies, especially those faced by PJM during Winter Storm Elliott.
16. The operators have to make decisions based on current conditions, expected conditions, and the uncertainty of various elements of the system with an eye to preventing loss of load. They must have flexibility. For example, given the quickly changing weather and the large amount of gas-fired generation then unavailable, inaccurate and untimely information provided by generators, the fact that neighboring regions did not have excess capacity to supply to PJM if additional PJM generation tripped, and the uncertainty of the level of load, maintaining non-firm exports when PJM had additional resources to do so must be considered Good Utility Practice.³¹ If some generators that were delivering energy had tripped or were forced to derate, or load unexpectedly increased, PJM could then

²⁷ Complaint of ComEd Zone Generators at 21 (underlining in original, italics added); *see also* Complaint of Coalition Complaint at 25, 27, Docket No. EL23-55 (filed Apr. 4, 2023); Complaint of Nautilus Entities at 42, 56 and Affidavit of Christopher H. Jordan at P 42, Docket No. EL23-53 (filed Mar. 31, 2023).

²⁸ Coalition Complaint at 25, 27.

²⁹ PJM Manual 13, § 2.3.2, at 28.

³⁰ *Id.*

³¹ The “Good Utility Practice” standard has been in place for decades and applies to all FERC-jurisdictional transmission providers. The PJM OATT includes the standard definition of “Good Utility Practice” as “any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, *in the exercise of reasonable judgment in light of the facts known at the time the decision was made*, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region; including those practices required by Federal Power Act section 215(a)(4).” PJM OATT, § 1, Definitions, Definitions G – H (emphasis added).

interrupt non-firm exports and utilize the energy from the remaining generators that are on-line to maintain service to PJM load.³² Similarly, PJM operators had to consider the probability that generators would not start when called upon or that start-up would be delayed. This concern was not theoretical. When PJM called for resources to support the peak the morning of December 24, approximately 6,000 MW of steam generation did not come on-line at the expected time to support the load.³³ Furthermore, PJM found numerous instances of generators either not providing accurate data on availability or not updating data. PJM only found out about generators inability to run, to start when needed, or derates when PJM called on those generators to operate. This lack of accurate information increased the difficulty for PJM to serve the load.³⁴ PJM was in a position of having to make critical operating decisions but could not trust the information provided by many generators. Having generation running and synchronized, as well as additional generation available for such contingencies is, by definition, Good Utility Practice.

17. The conditions in ERCOT during Winter Storm Uri are an example of what can happen under similar extreme cold conditions. During a three-hour period, the load in ERCOT increased and over 6,000 MW of generation was lost.³⁵ As stated in the February 2021 Cold Weather Report, “[d]ue to the unrelenting generating unit losses during this period, the actions ERCOT BA operators took to restore Physical Responsive Capability and maintain normal frequency (initially, calling on demand response, then ordering small blocks of firm load shed) could not keep up, and frequency continued to drop. ERCOT BA operators were forced to shed larger blocks of firm load, and within minutes of one another, to restore frequency.”³⁶ PJM operators could not allow a similar situation to occur. They had to be proactive, not reactive.
18. Dr. Sotkiewicz’s analogy to the airline safety instruction concerning putting on your mask before helping others is incorrect.³⁷ PJM operators did, in fact, keep the PJM system reliable and helped keep their neighbors reliable. Furthermore, to the extent reserve levels

³² As it turns out, the concerns of PJM operators were well founded. Between the evening of Friday, December 23, when 34,500 MW of generation were forced out, and the morning of Saturday, December 24, another 12,500 MW of generation were forced off line. Other generation issues raised the total amount of “missing” generation to 57,000 MW on the morning of December 24. See PJM, Winter Storm Elliott, Frequently Asked Question 3 (updated Apr. 12, 2023), <https://www.pjm.com/-/media/markets-ops/winter-storm-elliott/faq-winter-storm-elliott.ashx>.

³³ PJM Presentation to Market Implementation Committee “Winter Storm Elliott” at 12 (Jan. 11, 2023), <https://www.pjm.com/-/media/committees-groups/committees/mic/2023/20230111/item-0x---winter-storm-elliott-overview.ashx>; Christopher Pulong Aff., Ex. PJM-004 at PP 26.

³⁴ Pulong Aff. at PP 47-65.

³⁵ See February 2021 Cold Weather Report, Figs. 69-70, at 130-31.

³⁶ *Id.* at 133.

³⁷ Sotkiewicz Aff., Ex. CZG-0004, at PP 123-24; Coalition Complaint, Attach. 4, Aff. of Paul M. Sotkiewicz, Ph.D, at P 152.

in PJM were below what Dr. Sotkiewicz believes were required, PJM temporarily shared the oxygen in their masks with their neighbors when it was safe to do so, rather than allowing them to pass out.

19. Dr. Sotkiewicz’s argument that PJM violated its tariff and NERC Standards by continuing with non-firm exports during Emergency Actions is incorrect for several reasons.
20. First, Dr. Sotkiewicz repeats the mistaken interpretation that section 2.3.2 of Manual 13 *requires* PJM to curtail *all* non-firm energy exports prior to initiating Emergency Action.³⁸ As I stated above,³⁹ this interpretation is incorrect.
21. Second, Dr. Sotkiewicz, in support of the ComEd Zone Generators, takes a similar inflexible reading of the PJM Operating Agreement and Tariff sections that state PJM “shall curtail deliveries to an External Market Buyer if necessary to maintain appropriate reserve levels.”⁴⁰ The Coalition makes this same argument.⁴¹ Again, Dr. Sotkiewicz and the Coalition assume that the term “appropriate reserve levels” leaves no room for PJM to assist its neighbors when it can while retaining the ability to recall non-firm transactions when necessary. In fact, PJM Manual 13 contemplates this situation stating that “[i]f the net result of cutting off-system capacity sales would put the sink Balancing Authority into load shed then PJM will not curtail the transactions unless it would prevent load shedding within PJM.”⁴²
22. Third, Dr. Sotkiewicz’s claim that while PJM can “come to the aid of neighboring control areas [sic]” PJM put its system “in a jeopardized reliability situation . . . by extending PAIs through December 24”⁴³ ignores PJM’s obligations to support other Reliability Coordinators. The Coalition goes further and contends that “PJM was *obligated, then, not to assist other zones* after it entered into its own emergency.”⁴⁴ Complainants’ arguments disregard Requirement R7 of NERC Reliability Standard IRO-014-3, which states that “[e]ach Reliability Coordinator *shall* assist Reliability Coordinators, if requested and able,

³⁸ *Id.* at P 122. Dr. Sotkiewicz, in support of the Coalition goes further and claims that Section 2.3.2 of PJM Manual 13 “mandated” that PJM curtail all non-firm exports and “reasonably allowed” PJM to recall daily firm exports. *See* Coalition Complaint, Attach. 4: Sotkiewicz Aff., at P 72.

³⁹ *See supra* PP 15.

⁴⁰ Sotkiewicz Aff., Ex. CZG-0004, at P 100 (citing parallel provisions in PJM OATT, Attach. K – App’x § 1.10.6(c) and PJM Operating Agreement, Schedule 1, § 1.10.6(c)).

⁴¹ Coalition Complaint at 32-33.

⁴² Manual 13, § 2.3.2 at p. 32.

⁴³ Sotkiewicz Aff., Ex. CZG-0004, at P 99. Although Manual 13 uses the term “control areas,” I assume Dr. Sotkiewicz is referring to neighboring Reliability Coordinators or possibly Reliability Balancing Authorities as NERC has assigned functions formerly performed by control area functions to specific registered entities to whom the standards are applicable.

⁴⁴ Coalition Complaint at 32 (*italics added*).

provided that the requesting Reliability Coordinator has implemented its emergency procedures, unless such actions cannot be physically implemented or would violate safety, equipment, regulatory, or statutory requirements.”⁴⁵ This is exactly what PJM did – assisted TVA (the Reliability Coordinator for TVA and LGE/KU) and VACAR-South (the Reliability Coordinator for Duke Progress and Duke Carolinas).

23. There is no question that these neighboring systems were implementing emergency steps, up to and including firm load interruptions under Energy Emergency Alert Level 3 (EEA 3),⁴⁶ and that PJM was able to assist. These EEA 3 actions and load-shedding are well-documented by NERC,⁴⁷ the Department of Energy,⁴⁸ and the Reliability Coordinator Information System (RCIS).⁴⁹

Emergency Energy Alerts Level 3⁵⁰

⁴⁵ NERC Standard IRO-014-3 – Coordination Among Reliability Coordinators (2015).

⁴⁶ NERC defines EEA 3 to mean that “Firm Load Interruption is imminent or in progress.” NERC, Attachment 1-EOP-011-1 (Energy Emergency Alerts) at 12, <https://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-011-1.pdf>.

⁴⁷ See NERC, Winter Storm Elliott: Bulk Power System Awareness Observations, at 5-8 (Mar. 22, 2023) (listing preparatory actions, EEA 3 actions, and load shed quantities in neighboring Balancing Authorities), https://www.nerc.com/comm/RSTC/AgendaHighlightsandMinutes/RSTC_Meeting_Materials_Package_March_22_2023.pdf.

⁴⁸ U.S. Dep’t of Energy, OE-417 Electric Emergency and Disturbance Report – Calendar Year 2022, at 37 (showing SERC (Tennessee) shedding 100 MW or more of firm load on Dec. 23 and SERC (South Carolina and North Carolina) shedding 1,960 MW of firm load on Dec. 24), <https://www.oe.netl.doe.gov/download.aspx?type=OE417PDF&ID=83>.

⁴⁹ See PJM, RCIS-EEA 12/20/2022 00:00 – 12/26/2022 00:00. Specifically, PJM’s neighboring Reliability Coordinators—including TVA and VACAR South—declared EEA3 and lower levels of system emergencies during Winter Storm Elliott. Specifically, TVA declared EEA-3 for the TVA BA at 06:15 on 12/23; and for the LGE/KU BA at 1456 on 12/23. The TVA BA went down and then back to EEA3 at 17:21 on 12/23. Similarly, VACAR South declared EEA-3 for Dominion South Carolina at 05:59 on 12/24, for Duke Energy Carolinas at 06:17 on 12/24, for Duke Energy Progress at 06:40 on 12/24, and for South Carolina Public Service Authority at 07:20 on 12/24.

⁵⁰ NERC, Winter Storm Elliott, *supra* note 47, at 7.

Reliability Coordinator	Balancing Authority	Fri	Sat	Sun
Tennessee Valley Authority	TVA BA	●	●	
Tennessee Valley Authority	LG&E/KU	●	●	
VACAR South	Duke Energy Carolinas		●	
VACAR South	Duke Energy Progress		●	
VACAR South	Dominion South Carolina		●	
VACAR South	Santee Cooper		●	●

24. NERC summarized the load loss as follows:⁵¹

Friday, December 23		
06:12	TVA BA	1,270
09:31	Memphis Light Gas and Water*	200
16:18	TVA BA	3,200
14:36	LG&E/KU	350
Saturday, December 24		
06:10	Duke Energy Carolina	1,000
06:15	Dominion South Carolina	86.3
06:35	Duke Energy Progress	961
Total (all reports) load shed		7,067.3 MW

* TVA BA is the Balancing Authority for MLGW.

25. Had PJM not provided assistance, PJM’s neighboring Reliability Coordinators would have been required to shed additional firm load with possible devastating consequences. For example, between around 16:11 on December 23, TVA told PJM dispatchers several times that if PJM were to curtail roughly 2,500 MW of exports, “that would put [TVA] back into an EEA3, essentially shedding loads”⁵² and that doing so would “put the bulk electric grid at risk.”⁵³ Later, around 17:11, TVA, when discussing curtailing those transactions, told PJM “we’re trying to keep people alive over here.”⁵⁴ For PJM not to provide assistance when it was able would have been a violation of Requirement R7 which documents one of the most important obligations of operating entities in an interconnection – to assist others

⁵¹ *Id.* at 8 (showing over 5,000 MW of load shed in the TVA BA and LG&E/KU BA on December 23 and over 2,000 MW of load shed in the Duke Carolina, Duke Progress and Dominion Carolina BAs on December 24).

⁵² Transcript, Tennessee Valley Authority Call to PJM (Dec. 23, 2022) (on file with author) P 0206 at 13-14.

⁵³ *Id.* P 0208 at 11-12.

⁵⁴ *Id.* p. 74 at 1-2.

when they are able to without endangering their own reliability. The Violation Severity Level of not complying with Requirement R7 is “Severe.” Unlike most other NERC Standards, there are no lesser degrees of non-compliance. The standard is clear – help your neighbors if you can without endangering your system.

26. As FERC reiterated when it approved the first version of IRO-014, one of the purposes of this standard is to “preserve the reliability benefits of interconnected operation.”⁵⁵ In spite of Dr. Sotkiewicz’s assertions, it is clear to me that PJM operated in accordance with Good Utility Practice while maintaining the reliability of the PJM system under very stressful conditions.
27. The Coalition claims that NERC Reliability Standard EOP-011-2 [sic] and PJM Manual 13 require PJM to issue an EEA1 “before Emergency Actions are taken.”⁵⁶ But this ignores the express language of Attachment 1 – EOP-011-1 which explicitly states “The Reliability Coordinator may declare whatever alert level is necessary, and need not proceed through the alerts sequentially.”⁵⁷
28. The Coalition also makes an amorphous claim that PJM violated Requirement R1 of NERC Reliability Standard IRO-001-4 which states that “[e]ach Reliability Coordinator shall act to address the reliability of its Reliability Coordinator Area.” It argues that “PJM had an obligation to use its position to operate a reliable grid. It did not.”⁵⁸ In spite of the fact that unlike many of its neighbors, PJM did not shed load,⁵⁹ the Coalition bases its conclusion on *post hoc* conclusions as to actions that PJM should have taken, such as scheduling long-lead generation further in advance.⁶⁰ Similarly, the Coalition’s claims that “PJM “inserted uncertainty into a situation when certainty was needed” and “gave incomplete or inaccurate guidance to the available resources” including exactly whether, when and for how long generators would be needed.⁶¹ But, as stated in more detail in P 29 below, Complainants’ arguments in each case are made after the fact, knowing all the events that have transpired, rather than looking at the decision PJM made in real-time faced with many uncertainties. PJM was facing uncertainties about available generation as generators were failing before the operators eyes in spite of over 10 years of notice concerning winter weather readiness and uncertainty as to load levels in the face of “a

⁵⁵ *Mandatory Reliability Standards for the Bulk-Power System*, 118 FERC ¶ 61,218 at P 993 (2007).

⁵⁶ Coalition Complaint at 38-39. EOP-011-1 was in effect during Winter Storm Elliott. The current version, EOP-011-2, did not become effective until April 1, 2023. If EOP-011-2 had been in effect at the time of Winter Storm Elliott, the registered entities comprising the Coalition would have been subject to Requirements R7 and R8 concerning cold weather preparedness.

⁵⁷ See Attachment 1 – EOP-011-1, Emergency Energy Alerts, § B.

⁵⁸ Coalition Complaint at 39.

⁵⁹ See *supra* P 7.

⁶⁰ Coalition Complaint at 39-40.

⁶¹ *Id.* at 41-42.

historic extratropical cyclone [that] created winter storm conditions including blizzards, high winds, snowfall, and record cold temperatures.⁶² The Coalition’s claim that PJM operators should have had perfect foresight simply cannot be squared with the standard of Good Utility Practice which makes clear that actions are judged “*in light of the facts known at the time the decision was made.*”⁶³

29. The ComEd Zone Generators argue that PJM did not operate in a reasonable manner based on their own *post hoc* economic analysis months after Winter Storm Elliott has passed.⁶⁴ The essence of their argument is that, because not enough bad things actually happened, the actions of PJM’s operators to be prepared for foreseeable contingencies were not only wrong, but also a violation of PJM’s tariffs and manuals.⁶⁵ Complainants’ approach in each case is fundamentally misguided. This type of *post hoc* economic analyses and other varieties of “Monday morning quarterbacking” are irrelevant to the question of whether operators acted reasonably and in accordance with Good Utility practice with the knowledge they had at the time they had to make decisions. While post event analyses are useful to better understand the event, and can be used to improve rules and processes *going forward*, they cannot upset real-time decisions.⁶⁶
30. The ComEd Zone Generators contend that PJM should not have taken Emergency Actions in the ComEd Zone because there was no capacity deficiency within the ComEd Zone.⁶⁷ The Coalition makes a similar argument that (1) because PJM Manual 13 *allows* PJM to target Emergency Actions to specific zones; and (2) because “PJM had never issued an RTO-wide PAI in the history of its emergency procedures,” PJM’s decision to implement Emergency Actions for the entire RTO were “unprecedented and unreasonable.”⁶⁸ The

⁶² See NERC, Winter Storm Elliott: Bulk Power System Awareness Observations, at 3.

⁶³ See *supra* note 31.

⁶⁴ Complaint of ComEd Zone Generators at 19; Harvey Aff., Ex. CZG-0001, at P 78.

⁶⁵ For an extreme example based on after-the-fact simulations, the NTSB determined that US Air 1549 could have returned to LaGuardia following the loss of both engines if the aircraft had “been turned toward the airport immediately after the bird strike.” However, the National Transportation Safety Board also found that “[t]he immediate turn did not reflect real-world considerations.” See NTSB, Accident Report NTSB/AAR-10/03, Loss of Thrust in Both Engines After Encountering a Flock of Birds and Subsequent Ditching on the Hudson River, US Airway Flight 1549, § 2.3.2, at 89 (May 4, 2010).

⁶⁶ Good Utility Practice is analogous to the Commission’s prudence standard, which rejects the type of *post hoc* analysis pushed by the ComEd Zone Generators here. See, e.g., *Big Sandy Peaker Plant, LLC v. PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,216 at P 50 (2016); *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,338 at P 33 (2006); see also *Midcontinent Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,129 at P 37 (2018).

⁶⁷ Complaint of ComEd Zone Generators at 31 (citing Harvey Aff., Ex. CZG-0001, at P 65). The Coalition makes a similar, albeit more generic argument, focusing on Virginia versus Ohio and Kentucky. Coalition Complaint at 35-37.

⁶⁸ Coalition Complaint at 35.

Coalition further argues that PJM (1) did not distinguish temperature differences between zones covering Ohio and Kentucky from Virginia,⁶⁹ and (2) did not provide adequate justification for its “economically inefficient decision to apply the Emergency Action orders to the entire RTO.”⁷⁰ Nautilus Entities focus on conditions at specific times in Maryland and New Jersey, where its generators are located.⁷¹

31. These arguments are deeply flawed. During Winter Storm Elliott, PJM faced unprecedented operating conditions in the form of rapidly failing generators, inaccurate and untimely information from generators, fuel supply problems, increasing load, and continuing uncertainty. It is absurd to suggest that because PJM had not issued an RTO-wide PAI in the past, it was unreasonable to do so under the conditions presented in Winter Storm Elliott. Moreover, Dr. Harvey’s own testimony concedes that prior to PJM Capacity Performance rules, PJM did, in fact, declare RTO-wide capacity emergencies.⁷² PJM operators are not handcuffed by the past, but must address the system conditions they actually face. Nor must PJM operate in a Balkanized manner where PJM must not consider generation available in some specific areas (Illinois, Virginia, Maryland and New Jersey). The opposite is true. PJM operates as a centrally dispatched Balancing Area that dispatches its aggregate generation resources to serve the aggregate load in the RTO. PJM has an obligation to ensure the reliability of each of its control zones and its entire system.⁷³ Because PJM *may* limit Emergency Actions to specific zones does not mean that under every and all conditions PJM *must* tie its hands and take risks to the reliability of the rest of PJM.
32. As I noted above, PJM Manual 13 section 2.3.2 states, “[d]ue to system conditions and the time required to obtain results, PJM dispatchers may find it necessary to vary the order of application *to achieve the best overall system reliability.*”⁷⁴ This is consistent with Good Utility Practice and the need for system operators to maintain flexibility to address emergencies in real-time. PJM operators needed to make decisions in real-time to ensure that the load was served in the entire RTO. Because of the large increase in failures of (mostly) gas-fired generation, PJM operators needed to ensure that all generation, other than those on approved planned and maintenance outages, were available on-line or at least available to run when needed. The fact that specific zones were not at some point short of generation did not relieve PJM operators from acting in the best interest of the entire RTO, as is their obligation. Recall that between the evening of December 23 and the morning of

⁶⁹ *Id.* at 35-36.

⁷⁰ *Id.* at 37.

⁷¹ Complaint of Nautilus Entities at 43-44.

⁷² PJM declared an Emergency Generation Action during the 2014 Polar Vortex. *See* Ex. CZG-0003, Tbl. C-10, at 6-7; Harvey Aff., Ex. CZG-0001, at PP 92-93 (“[B]efore the establishment of PJM’s capacity performance rules [emergency declarations] were also *generally* limited to a subset of PJM zones.”) (emphasis added).

⁷³ *See* McGlynn Aff., Ex. PJM-005.

⁷⁴ PJM Manual 13, § 2.3.2, at 28 (emphasis added).

December 24, PJM had seen a significant increase in unavailable generation. One just has to look at how quickly the situation deteriorated in ERCOT during Winter Storm Uri to understand PJM's need to continue emergency conditions RTO-wide until PJM had assurance that the emergency had passed.

33. In effect, the ComEd Zone Generators are saying that PJM should have rolled the dice, wagering that generation from their units would not be needed for the duration of the emergency because the Complainants' *post hoc* analysis suggests those units were not arguably needed to supply load to the ComEd Zone. The key flaw in this approach is that it treats the successful performance by *other* generators as a given; however, the PJM operators had no such luxury when they were managing the emergency in real time. Had events transpired differently, and one or more units had tripped, the consequences would have fallen on PJM's customers.⁷⁵ Once again, Good Utility Practice, especially during extremely stressed conditions, requires maximum flexibility on the part of system operators.
34. The ComEd Zone Generators assert that because transmission was constrained east of the ComEd Zone, bringing the ComEd Zone Generators' resources on line could not have helped to increase the supply of energy available to other PJM zones in the east. As discussed below, they are incorrect. Moreover, the *post hoc* argument by Dr. Harvey⁷⁶ presents an incomplete and misleading view of the operating situation. First, even if transmission was constrained east of ComEd at particular times, PJM operators had to be prepared to have sufficient generation available in other time periods and also in the event of foreseeable contingencies that would have required increases in generation in the ComEd Zone.⁷⁷ For example, Dr. Harvey is literally correct when he states that "from the standpoint of transmission flows from ComEd to eastern PJM, a load reduction in [the] ComEd [zone] has the same effect on net exports from the zone as an increase in ComEd [zone] generation output."⁷⁸ But PJM operators had to be concerned about the converse situation—an unexpected increase in load in the ComEd Zone, which, to use Dr. Harvey's language, would have the same effect on net exports from the ComEd Zone as a decrease in generation in the ComEd Zone, which would relieve the constraints. Second, PJM system operators had to be concerned that more generation, possibly even large nuclear units, would trip, causing the same impact.⁷⁹ The fact that those contingencies were

⁷⁵ See Bryson Aff., Ex. PJM-006 at P 24.

⁷⁶ See Harvey Aff., Ex. CZG-0001, at P 65.

⁷⁷ See Bryson Aff., at P 38 (PJM operators need to consider future time frames).

⁷⁸ Harvey Aff., at P 64.

⁷⁹ All nuclear units in the ComEd Zone operated at full output during Winter Storm Elliott. See, U.S. Nuclear Regulatory Commission, Power Reactor Status Report for 2022 (specifically for the Braidwood, Byron, Dresden, LaSalle and Quad Cities units on December 23, 24 and 25), <https://www.nrc.gov/reading-rm/doc-collections/event-status/reactor-status/2022/index.html>. However, PJM operators had seen that at 2:22 am on December 24 a large nuclear unit had tripped in Eastern PJM. See U.S. Nuclear Regulatory Commission, Event Notification Report for Dec. 27, 2022 (Event No. 56286 showing Salem Unit 2 tripped at 02:22 EST on Dec. 24, 2022),

avoided does not mean that PJM operators should not have had more generation available to deal with severe and changing conditions.

35. Third, ComEd Zone Generators ignore the fact that, had their units been available, PJM could have increased the generators on-line within the ComEd Zone. Doing so would have given PJM more assurance of avoiding start-up risk that it had already encountered.⁸⁰ Finally, had as much as 5,000 MW of generation in the ComEd Zone been available, PJM could, at various times, have utilized that generation to address the needs within PJM and could have redispatched generation within the ComEd Zone to relieve transmission constraints.⁸¹
36. I would make a final point in response to an argument made in a related Winter Storm Elliott complaint proceeding that I think is relevant here. Mr. Berardesco, on behalf of Lee County Generating Station, LLC, in Docket No. EL23-57-000, contends that PJM's Operating Instruction for Lee County to enter into a forced outage was inconsistent with NERC's definition. While Mr. Berardesco correctly states NERC's definition of Forced Outage in NERC's Glossary of Terms Used in NERC Reliability Standards,⁸² he never explains why this definition applies to anything other than reliability standards. As the title of the Glossary explicitly states, these terms are for use in NERC Reliability Standards, not anything else.⁸³ However, PJM has not incorporated the NERC definition of Forced Outage as part of its Capacity Performance mechanism.
37. This concludes my affidavit.
38. I hereby certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief:

Executed on: May 26, 2023

/s/ Steven T. Naumann

Steven T. Naumann

<https://www.nrc.gov/reading-rm/doc-collections/event-status/event/2022/20221227en.html>. As I stated in P 33, while the *post hoc* analysis by the ComEd Zone Generators had the luxury of knowing that these units performed, PJM operators could not make that assumption in real-time.

⁸⁰ See *supra*, note 32; Bryson Aff. at P 27.

⁸¹ See McGlynn Aff. at PP 69-72. While the analysis detailed by Mr. McGlynn was performed after Winter Storm Elliott, it simply confirms the obvious – that having the additional generation within the ComEd Zone would have provided PJM operators with additional flexibility to mitigate transmission constraints and provide energy to PJM zones to the east.

⁸² See Declaration of Charles A. Berardesco on Behalf of Lee County Generating Station, LLC at P 4, Docket No. EL23-57 (filed Apr. 5, 2023).

⁸³ Following immediately after the document title, NERC states “[t]his Glossary lists each term that was defined in one or more of NERC’s continental-wide or Regional Reliability Standard.”