

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Lincoln Generating Facility, LLC,	)	
Complainant,	)	
	)	
v.	)	Docket No. EL23-59-000
	)	
PJM Interconnection, L.L.C.,	)	
Respondent.	)	
	)	

**ANSWER OF PJM INTERCONNECTION, L.L.C.**

PJM Interconnection, L.L.C. (“PJM”), pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,<sup>1</sup> answers, the complaint filed by Lincoln Generating Facility, LLC (“Lincoln” or “Complainant”) on April 6, 2023.<sup>2</sup> The Commission should deny the Complaint.

**I. INTRODUCTION**

Lincoln should be assessed Non-Performance Charges because during Winter Storm Elliott, Lincoln:

- Never purchased gas in the key periods;
- Put itself in forced outage because it was unavailable due to not having fuel;

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<sup>1</sup> 18 C.F.R. § 385.213.

<sup>2</sup> *Lincoln Generating Facility, LLC v. PJM Interconnection, L.L.C.*, Complaint Requesting Fast Track Processing and Shortened Answer Period of Lincoln Generating Facility, LLC, Docket No. EL23-59-000 (Apr. 6, 2023) (“Complaint”).

- Verbally provided PJM a dramatically longer notification parameter during the emergency that was as much as 80 times its usual notification parameter;
- Failed to reflect its longer notification parameter in PJM’s dispatch and market systems as required; and
- Never notified PJM that it was ready to generate, despite several requests from PJM to do so.

Lincoln has been a committed Capacity Resource<sup>3</sup> since [BEGIN CUI//PRIV-HC] ■ ■ ■ ■ ■ ■ ■ ■ ■ [END CUI//PRIV-HC] and has been well paid by PJM Region loads for all those years to support PJM Region resource adequacy at the times of greatest need. But, when the PJM Region encountered its most acute resource adequacy challenge since the inception of the Capacity Performance construct, Lincoln was not dispatchable by PJM at the height of Winter Storm Elliott.<sup>4</sup> And Lincoln was not dispatchable because it made the economic choice not to procure fuel. The Tariff is explicit that a Capacity Resource’s non-performance is not excused if the Capacity Resource was unavailable for dispatch for reasons other than a PJM-approved planned or maintenance outage.<sup>5</sup> Lincoln was therefore properly assessed Non-Performance Charges.

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<sup>3</sup> Capitalized terms used, but not otherwise defined, in this pleading have the meaning provided in, as applicable, the PJM Open Access Transmission Tariff (“Tariff”), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), or the Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region.

<sup>4</sup> “Winter Storm Elliott” refers to a large winter storm that passed through the PJM Region on December 23 through 25, 2022. See *Winter Storm Elliott Info*, PJM Interconnection, L.L.C., <https://pjm.com/markets-and-operations/winter-storm-elliott> (last visited May 25, 2023) (collecting PJM’s public statements addressing Winter Storm Elliott’s impact on PJM’s operations and markets).

<sup>5</sup> See Tariff, Attachment DD, section 10A(d).

The Complaint attempts to shift Lincoln’s burden of fulfilling its capacity obligations to PJM, arguing that “instead of scheduling the Lincoln Facility” PJM operators directed Lincoln’s energy manager to put the facility in forced outage thereby (according to Lincoln) “taking the Lincoln Facility out of the market.”<sup>6</sup> This is entirely inaccurate and misapprehends Lincoln’s Capacity Performance obligations. The Commission has made clear, time and again, that Capacity Market Sellers bear the burden—and the risk—of managing their fuel supplies.<sup>7</sup> The Commission should firmly reject Lincoln’s unreasonable suggestion here as well. The PJM Region has hundreds of gas-fired generators, taking service from a mix of more than 24 interstate pipelines, each with its own particular operating tariff, scheduling, and curtailment rules and practices. While PJM has a gas team that monitors the gas markets and transportation in the region to advise the PJM operators and enhance PJM’s operational awareness,<sup>8</sup> whether, when,

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<sup>6</sup> Complaint at 4.

<sup>7</sup> See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 14 (2015) (“CP Order”), *order on reh’g & compliance*, 155 FERC ¶ 61,157, at PP 18 (“[H]old[ing] capacity resources accountable for delivering on their capacity commitments . . . .”), 110 (“[W]e do not find it unreasonable for capacity sellers to bear the burden of delivering on their capacity obligation, as now defined in PJM’s capacity market, to load. A natural gas generator is held responsible for arranging sufficient natural gas deliveries despite pipeline outages and this same principle should apply to all such outages.”) (2016) (“CP Rehearing Order”), *aff’d sub nom. Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656 (D.C. Cir. 2017); see also *Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,141, at P 251 (2022) (“Resource owners should already make investments in their units to ensure future availability . . . .”), *order on reh’g & compliance*, 182 FERC ¶ 61,096 (2023), *petitions for review pending sub nom. Entergy Arkansas, LLC v. FERC*, Nos. 22-1335 & 23-1111 (D.C. Cir. Dec. 28, 2022); *New England Power Generators Ass’n v. ISO New England Inc.*, 144 FERC ¶ 61,157, at P 47 (2013) (imposing a “strict performance obligation on capacity resources and that capacity resources may not take economic outages, including outages based on economic decisions not to procure fuel or transportation”).

<sup>8</sup> That more can and should be done (as PJM has encouraged in several dockets, (see, e.g., *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Initial Comments of PJM Interconnection, L.L.C., Docket No. RM21-17-000, at 20 (Aug. 17, 2022); *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, Comments and Responses of PJM Interconnection, L.L.C., Docket No. AD18-7-000, at 6 (Mar. 9, 2018))) to ensure better gas/electric coordination that would reconcile the forward nomination and scheduling processes of the pipelines and system operator dispatch directives does not change the governing question here. Under Capacity Performance, responsibility for the present limitations on gas/electric coordination practices plainly rests with Capacity Market Sellers during Performance Assessment Intervals, and that

and how to procure and schedule gas to meet Capacity Performance obligations is solely and entirely the responsibility of Capacity Market Sellers. In particular, if a Capacity Resource manager approaches circumstances that could develop into Performance Assessment Intervals, the Tariff and the Commission's governing precedents provide an unmistakable signal that the resource operator (not PJM or some other party) needs to ensure the plant is not caught short on its fuel supplies. During emergencies, PJM operators need to focus on operating the grid and maintaining reliability. Indeed, PJM management instructs the operators that they are not to tell generators whether or not to buy gas.<sup>9</sup> Deciding for Capacity Market Sellers whether and when they should be buying gas is not the PJM operators' job—and the Commission has an excellent opportunity here to make that abundantly clear to any who have not yet received that message.

Nor should the Commission be led down the path of parsing individual PJM operator statements to try and divine on-the-fly waivers of Capacity Market Sellers' plain Tariff obligations. When PJM is in or approaching a Maximum Generation Emergency, and it is individually telephoning Capacity Resource operators, *it needs the resource*.<sup>10</sup> If the resource manager's response is that the resource cannot perform because it does not have fuel or it needs an extended time to come online, then the question of non-performance under the Tariff is already settled.

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responsibility (or ensuing costs) cannot be shifted to PJM operators or PJM Region loads. Moreover, PJM notes that the Commission has assigned the gas/electric coordination issue to the North American Energy Standards Board for preparation of a report as part of the recommendations arising from the Commission's joint report with the North American Electric Reliability Corporation ("NERC") on Winter Storm Uri. *See FERC, NERC Encourage NAESB to Convene Gas-Electric Forum to Address Reliability Challenge*, Federal Energy Regulatory Commission (July 29, 2022), <https://www.ferc.gov/news-events/news/ferc-nerc-encourage-naesb-convene-gas-electric-forum-address-reliability>. PJM has been active in that process.

<sup>9</sup> Attachment D, Affidavit of Donald Bielak on Behalf of PJM Interconnection, L.L.C. ¶ 10 ("Bielak Aff.").

<sup>10</sup> Bielak Aff. ¶ 14.

Micro-managing those interactions after the fact, as Lincoln and other Winter Storm Elliott complainants suggest, amounts to the very sort of “second-guess[ing]” that the Commission has made clear it will avoid when it comes to regional transmission organizations (“RTOs”) exercising their “operational and reliability-related discretion.”<sup>11</sup> Monday morning quarterbacking as to the fine details of PJM’s implementation of its assigned responsibility, and discretion, to manage emergencies<sup>12</sup> is not only inappropriate, but would create a dangerous precedent that the Commission should be very reluctant to set. As related in detail below, PJM and its operators managed the many difficult challenges posed by Winter Storm Elliott,<sup>13</sup> including unusually high overnight and holiday weekend demand, massive amounts of generator forced outages, managing hydro pumped storage resources to best extract their desperately needed benefits, and providing assistance to neighbors, and did not direct a single mandatory load curtailment—*the lights stayed on*. The Commission should keep those facts in mind as it evaluates Complainant’s requests to tease out of individual operator statements alleged excuses for Capacity Resource non-performance.

Lincoln also argues that PJM scheduling the Crete Facility, but not Lincoln, amounts to PJM not scheduling Lincoln “because of PJM’s security-constrained economic dispatch.”<sup>14</sup> Lincoln is mistaken as to the difference between the Crete Facility being scheduled and the Lincoln Facility not being scheduled and, in any event, cannot

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<sup>11</sup> *Big Sandy Peaker Plant, LLC v. PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,216, at P 50 (2016).

<sup>12</sup> Operating Agreement at section 10.4(XX).

<sup>13</sup> The severity of the event and the threat to maintaining grid reliability was recognized by the Secretary of Energy who issued an emergency order on December 24. *See* Department of Energy, Order No. 202-22-4 (Dec. 24, 2022), <https://www.pjm.com/-/media/documents/ferc/orders/2022/20221224-pjm-202c-doe-order.ashx>.

<sup>14</sup> Complaint at 7.

overcome the fact that Lincoln did not have gas throughout the critical period. In fact, PJM called Lincoln's energy manager multiple times on December 23 and 24, 2022,<sup>15</sup> and at no time were the Lincoln units ready to generate, with gas flowing. Lincoln's choice not to buy fuel is the type of economic behavior that Capacity Performance was designed to *disincent* through Non-Performance Charges, and therefore PJM properly assessed Lincoln Non-Performance Charges.

Under the Capacity Performance rules in the Tariff, Capacity Market Sellers "bear the burden of delivering on their capacity obligation[;]"<sup>16</sup> consequently, "[a] natural gas generator is held responsible for arranging sufficient natural gas deliveries despite pipeline outages."<sup>17</sup> As Lincoln did not meet its Capacity Performance obligations during the period from 17:30 to 23:00 on December 23, 2022, and from 04:25 to 22:00 on December 24, 2022, PJM properly assessed Non-Performance Charges on Lincoln. Lincoln's efforts to nullify those charges through its Complaint are unavailing.

## II. BACKGROUND

### A. *The Capacity Performance Construct Shifted Performance Risk to Generators from Load by Requiring Generators to Perform When Needed, with Very Limited Excuses, or Pay Stringent Non-Performance Charges*

#### 1. *Overview*

The principle underlying PJM's Capacity Performance rules is simple: Capacity Market Sellers are responsible for the performance of their Capacity Resources. Specifically, as further elaborated on below, Capacity Market Sellers are responsible for

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<sup>15</sup> Unless otherwise specified, all dates in this answer are in 2022 and all times in this answer are in 24-hour time and are Eastern Prevailing Time.

<sup>16</sup> CP Rehearing Order at P 110.

<sup>17</sup> CP Rehearing Order at P 110.

ensuring their resources are ready and available to perform. Additionally, Capacity Market Sellers are responsible for ensuring that their resources do indeed perform when needed at times of declared emergencies. Capacity Market Sellers, not PJM, are responsible for deciding when and how to buy fuel needed to ensure that their resources are capable of performing—and for any Non-Performance Charges resulting from their economic choices.

The Tariff makes no exception for fuel purchasing or operating parameter issues because, as between load and Capacity Market Sellers, performance responsibility appropriately lies with the Sellers as the parties in the best position to assess and address the relevant risks (including the well-known strictures of nomination deadlines and risks of pipeline interruptions, operational flow orders, and ratable take requirements) that its resource might not be able to perform (and who are being compensated for their committed Capacity Resources). As Mr. Bielak testifies, the fuel delivery risk associated with not having on-site fuel is up to generators to address.<sup>18</sup>

The Tariff does make two exceptions, each of which, by design, is explicit, narrow, and limited. No one alleges the first exception—for Generator Planned Outages and Generator Maintenance Outages—applies here. The second applies only to a “scheduling action” by PJM, but only in certain circumstances. And if PJM is unable to schedule the units due to the Seller’s economic choices, i.e., its operating parameter limitations, even this exception does not apply.<sup>19</sup>

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<sup>18</sup> Bielak Aff. ¶ 10.

<sup>19</sup> See Tariff, Attachment DD, section 10A(d).

2. *Relevant requirements of PJM's Capacity Performance Tariff provisions*

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 incent committed Capacity Resources to deliver the promised energy and reserves when PJM calls upon them in emergencies.<sup>20</sup> Central to these reforms was a new capacity product, the Capacity Performance Resource, 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.”<sup>21</sup>

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<sup>22</sup> Non-Performance Charges.<sup>23</sup> Specifically, for the periods (known as Performance Assessment Intervals) when certain PJM-declared Emergency Actions are in effect, the Tariff requires PJM to compare a Capacity Resource's Actual Performance<sup>24</sup> against its Expected Performance,<sup>25</sup> and

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<sup>20</sup> See generally CP Order.

<sup>21</sup> CP Order at P 28.

<sup>22</sup> The Non-Performance Charge is based on the Net Cost of New Entry (Tariff, Attachment DD, section 10A(e)) even if the Capacity Resource Clearing Price for the relevant Delivery Year is set at a level well below the Net Cost of New Entry.

<sup>23</sup> The details for applying and determining Non-Performance Charges and bonus payments are set forth in Tariff, Attachment DD, section 10A. A resource does not need to be a Capacity Resource to receive bonus payments.

<sup>24</sup> Expected Performance roughly is the amount of capacity the Capacity Resource was expected to provide during a given Performance Assessment Interval. See Tariff, Attachment DD, section 10A(c).

<sup>25</sup> Actual Performance for a generation resource like Lee County is “the metered output of energy delivered to PJM by such resource plus the resource's real-time reserve or regulation assignment, if any, during the Performance Assessment Interval.” Tariff, Attachment DD, section 10A(c).

assess Non-Performance Charges when the resource falls short.<sup>26</sup> The Commission found that Non-Performance Charges will “act as a strong incentive for performance,”<sup>27</sup> 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.”<sup>28</sup>

There are only two excuses from Non-Performance Charges, and they are “strictly circumscribed.”<sup>29</sup> Specifically, a resource’s performance shortfall may be excused only if:

- the resource “was unavailable during such Performance Assessment Interval solely because the resource on which such Capacity Resource . . . is based was on a Generator Planned Outage or Generator Maintenance Outage approved by [PJM];” or
- the resource “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.”<sup>30</sup>

Moreover, there is a crucial caveat to that second exception: 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

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<sup>26</sup> See Tariff, Attachment DD, section 10A(c) (prescribing comparison of Actual Performance against Expected Performance); Tariff, Definitions – E-F (defining Emergency Action); *id.*, Definitions – O-P-Q (defining Performance Assessment Interval).

<sup>27</sup> CP Rehearing Order at P 72.

<sup>28</sup> CP Rehearing Order at P 29.

<sup>29</sup> CP Order at P 167.

<sup>30</sup> Tariff, Attachment DD, section 10A(d).

offer, or (ii) the seller’s submission of a market-based offer higher than its cost-based [offer].”<sup>31</sup>

These limitations on the narrow PJM “scheduling action” exception reflect that when a Capacity Market Seller places limitations on the availability of a resource, they reduce PJM’s ability to deploy the resource to help alleviate an emergency. Thus, any shortfall in Actual Performance below Expected Performance that would have been provided *but for* the seller’s economic choice(s) is assessed Non-Performance Charges, regardless of whether that choice is reflected in a seller-specified parameter limitation<sup>32</sup> or in a market-based offer. As the United States Court of Appeals for the District of Columbia 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 ‘parameter limits should not be viewed as a permanent entitlement to under-perform. Instead, those limits should be exposed to financial and market consequences.’”<sup>33</sup>

In other words, the Capacity Performance Tariff holds “resources with restrictive operating limits to the same standards as resources with fewer limitations.”<sup>34</sup> This equivalent treatment appropriately reflects that “a resource that is unable to produce energy or provide operating reserves during Performance Assessment [Intervals] because

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<sup>31</sup> Tariff, Attachment DD, section 10A(d).

<sup>32</sup> See, e.g., *PJM Interconnection, L.L.C.*, Answer of PJM Interconnection, L.L.C., Docket No. ER15-623-000, 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.”).

<sup>33</sup> *Advanced Energy Mgmt. All.*, 860 F.3d at 674 (quoting CP Rehearing Order at P 103); see CP Order 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.”).

<sup>34</sup> *Advanced Energy Mgmt. All.*, 860 F.3d at 674.

of parameter limitations provides less capacity value to customers than a resource that is able to perform during these [intervals].”<sup>35</sup> As a result, “a resource that fails to perform because of parameter limitations [may] receive less net capacity revenue than a performing resource.”<sup>36</sup>

The very limited excuses from Non-Performance Charges puts the responsibility for ensuring resource performance on Capacity Market Sellers, and requires them to “bear the burden of delivering on their capacity obligation.”<sup>37</sup> 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 outages and this same principle should apply to all such outages.”<sup>38</sup> In this way, the Non-Performance Charge “holds capacity resources accountable for delivering on their capacity commitments”<sup>39</sup> 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.”<sup>40</sup>

Capacity Resources are not paid to simply stand by; they are paid to be available to perform and serve PJM’s loads. Thus, Capacity Market Sellers should assume that

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<sup>35</sup> CP Order at P 441; *see* CP Rehearing Order 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.”).

<sup>36</sup> CP Order at P 441.

<sup>37</sup> CP Rehearing Order at P 110.

<sup>38</sup> CP Rehearing Order at P 110.

<sup>39</sup> CP Rehearing Order at P 18.

<sup>40</sup> CP Order at P 158; *see also* CP Rehearing Order 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.”).

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 are available when needed, then sellers of gas-fueled Capacity Resources should engage in such forward-looking behavior.<sup>41</sup>

The Non-Performance Charges are “a tariff-defined mechanism that establishes a transparent, operative framework to provide an incentive for resource reliability.”<sup>42</sup> They advance the overarching goal of Capacity Performance: ensuring all Capacity Resources are available to provide energy or reserves when needed, while reallocating non-performance risk from consumers to capacity suppliers.<sup>43</sup> Stated another way, PJM’s Tariff rules penalizing under-performance are designed so that customers get the reliability for which they are paying and generators’ capacity revenues are tied “more closely with real-time delivery of energy and reserves during emergency system conditions.”<sup>44</sup> Further, as the Commission stated, each excuse of non-performance, “represent[s] a reallocation of non-performance risk from capacity suppliers to consumers.”<sup>45</sup> Lincoln seeks to be excused from its instances of non-performance, representing a massive shift of non-performance risk to consumers and a corresponding

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<sup>41</sup> Generators have recognized that the Capacity Performance rules require that “the generator must manage its fuel supply risks and ensure that it is able to perform when called to do so by PJM.” See *PJM Interconnection, L.L.C.*, Answer of Direct Energy to PJM Interconnection, L.L.C.’s Motion for Leave to Answer and Answer, Docket No. ER19-664-000, at 3 (Feb. 14, 2019).

<sup>42</sup> CP Order at P 15.

<sup>43</sup> See, e.g., CP Order at 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.”); CP Rehearing Order 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.”).

<sup>44</sup> CP Order at P 158.

degradation of the incentives for Capacity Performance that the Commission should not permit.

***B. Commission Policy and the Governing Provisions of the Tariff and Operating Agreement Afford PJM Substantial Discretion and the Needed Tools and Flexibility to Declare, Manage, and Resolve Emergencies***

As noted in the preceding section, Non-Performance Charges are assessed during Performance Assessment Intervals, which are triggered by PJM's declaration of certain types of procedures that qualify as Emergency Actions as defined in the PJM Tariff. The Commission has repeatedly recognized the importance of affording RTOs, such as PJM, the discretion to respond to operational circumstances related to reliability concerns, and the Tariff and Operating Agreement assign PJM the central role in declaring and managing emergencies, with few if any express Tariff conditions on how PJM implements that vital responsibility.

For context, the Commission has long recognized that “[t]he reality of pool operations is a continuous matching of load and supply that requires every system operator to have the flexibility to respond to operational crises as they develop.”<sup>46</sup> Applying this policy, the Commission recently declined to specify requested criteria that “could restrict operators’ ability to apply their expert judgment to actual conditions on the system in making decisions to maintain reliable operations.”<sup>47</sup> In the same vein, the Commission has found that “it may be appropriate to provide operational and reliability-

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<sup>45</sup> CP Rehearing Order at P 109 (citing *ISO New Eng. Inc.*, 147 FERC ¶ 61,172, at P 71 (2014)).

<sup>46</sup> *Me. Pub. Utils. Comm'n*, 97 FERC ¶ 61,322, at P 26 (2001).

<sup>47</sup> *PJM Interconnection, L.L.C.*, 180 FERC ¶ 61,051, at P 82 (2022).

related discretion to independent system operators, and to not second-guess their decisions in that regard.”<sup>48</sup>

Understandably, the need for such discretion is most acute during emergencies, and PJM’s governing documents are designed to not unduly constrain PJM’s efforts to address emergencies. Most importantly, the Operating Agreement (executed by all Capacity Market Sellers, among others), without elaboration, assigns to PJM the ability to declare emergencies and manage grid operations to ensure reliability. The Operating Agreement broadly defines “Emergency” to include “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;” and “a condition that requires implementation of emergency procedures as defined in the PJM Manuals.”<sup>49</sup>

Implementing this responsibility, PJM has an entire manual solely devoted to Emergency Operations.<sup>50</sup> That manual opens with policy statements that provide the essential context for the details that follow, explaining that “Power system disturbances” which can occur “as the result of loss of generating equipment . . . or as the result of unexpected load changes. . . . may be of, or develop into, a magnitude sufficient to affect the reliable operation of the PJM RTO and/or the Eastern Interconnection,” and stressing that “[t]hese events demand timely, decisive action to prevent further propagation of the

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<sup>48</sup> *Big Sandy Peaker Plant, LLC v. PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,216, at P 50; *see also 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.”).

<sup>49</sup> Operating Agreement, Definitions – E-F.

<sup>50</sup> *See* System Operations Division, *PJM Manual 13: Emergency Operations*, PJM Interconnection, L.L.C. (May 18, 2023), <https://www.pjm.com/-/media/documents/manuals/m13.ashx>.

disturbance.”<sup>51</sup> PJM’s overarching responsibility during Emergencies is “[t]aking actions *[PJM] determines* are consistent with Good Utility Practice and are necessary to maintain the operational integrity of the PJM RTO and the Eastern Interconnection.”<sup>52</sup>

In fact, PJM’s market rules explicitly provide that “[c]onsistent with Good Utility Practice, the Office of the Interconnection 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.”<sup>53</sup>

As particularly relevant here, the Tariff defines “Emergency Actions” that trigger Performance Assessment Intervals as “any emergency action for locational or system-wide capacity shortages that either utilizes pre-emergency mandatory load management reductions or other emergency capacity, or initiates a more severe action.”<sup>54</sup> One such action, declared here, is a “Maximum Generation Emergency” which means “an Emergency *declared by [PJM]* to address either a generation or transmission emergency in which *[PJM] anticipates* requesting one or more Generation Capacity Resources . . . to operate at its maximum net or gross electrical power output, subject to the equipment stress limits for such Generation Capacity Resource . . . in order to manage, alleviate, or end the Emergency.”<sup>55</sup>

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<sup>51</sup> PJM Manual 13, section 1.1.

<sup>52</sup> *Id.* (emphasis added); *see also* Tariff, Definitions – G-H (defining Good Utility Practice).

<sup>53</sup> Operating Agreement, Schedule 1, section 1.7.15; Tariff, Attachment K-Appendix, section 1.7.15.

<sup>54</sup> Tariff, Definitions – E-F.

<sup>55</sup> Tariff, Definitions – L-M-N (emphasis added).

**C. *PJM Exercised Its Discretion to Declare Emergency Actions During Winter Storm Elliott in Response to Very Challenging, Rapidly Changing Conditions, Including Unexpectedly High Demand and Unexpectedly High Forced Outages***

**1. *The PJM Region faced unprecedented rapidly changing conditions during Winter Storm Elliott.***

Winter Storm Elliott, lasting from December 21, 2022, through December 25, 2022, caused record cold temperatures across the PJM Region.<sup>56</sup> The severe cold weather on December 23<sup>57</sup> was unprecedented for early winter.<sup>58</sup> The record-breaking temperature drop of 29 degrees Fahrenheit over 12 hours on that day surpassed the previous PJM record of a 22-degree drop during the 2014 Polar Vortex.<sup>59</sup> Adding to the grid management challenges, the overnight minimum load in the early morning hours of December 24 was by far the highest on record for that date—exceeding by 40,000 megawatts (“MW”) the second highest minimum overnight load on that date in the prior decade.<sup>60</sup>

The challenges were exacerbated by very high levels of generation outages. While, as further detailed below, PJM started the operating day on December 23 with 155,750 MW of reported available generation, well above the forecast peak for that day of about 127,000 MW, generator forced outages increased rapidly. During the early evening of December 23, as power demand rose to a peak of about 135,000 MW,

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<sup>56</sup> See *Winter Storm Elliott Frequently Asked Questions*, PJM Interconnection, L.L.C., 3 (Apr. 12, 2023), <https://www.pjm.com/-/media/markets-ops/winter-storm-elliott/faq-winter-storm-elliott.ashx> (“Winter Storm Elliott FAQ”).

<sup>57</sup> All dates noted in this chronology are in 2022.

<sup>58</sup> See Winter Storm Elliott FAQ at 3.

<sup>59</sup> See Winter Storm Elliott FAQ at 3.

<sup>60</sup> See Mike Bryson, Sr. et al., *Winter Storm Elliott*, PJM Interconnection, L.L.C., 8 (Jan. 13, 2023), <https://pjm.com/-/media/committees-groups/committees/mic/2023/20230111/item-0x---winter-storm-elliott-overview.ashx> (“Winter Storm Elliott Overview”).

generator forced outages reached as high as 34,500 MW.<sup>61</sup> By the early morning of Saturday, December 24, generation outages had grown to a level initially estimated at nearly 46,000 MW,<sup>62</sup> and later updated to approximately 47,000 MW.<sup>63</sup>

2. *PJM deployed its available tools to give generators advance notice of the need to prepare for challenging conditions.*

PJM prepared for cold weather operations beginning in the summer of 2022 and continuing throughout the fall, conducting emergency drills, verifying reactive capability, and issuing data requests to Members to ascertain seasonal fuel inventories, emissions data, and generator minimum operating limits.<sup>64</sup> Beginning on December 20, PJM issued multiple Cold Weather Advisories and Cold Weather Alerts on both a regional basis and an entire RTO basis. These various types of advisories and alerts, defined and explained in Attachment A and deployed as shown on the timeline in Attachment B, were intended to elevate awareness of impending conditions and provide notice to Members—including those responsible for Capacity Resources—so they could prepare personnel and facilities for extreme cold weather conditions.

3. *PJM declared Emergency Actions during December 23 and December 24 as part of PJM’s successful effort to preserve reliability.*

On the morning of December 23, after issuing Cold Weather Advisories and Cold Weather Alerts each of the three prior days, PJM developed its operating plan for the day cautiously. PJM started the operating day with approximately 133 gigawatts (“GW”) of

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<sup>61</sup> See Winter Storm Elliott FAQ at 3.

<sup>62</sup> See Winter Storm Elliott FAQ at 3.

<sup>63</sup> Operating Committee, *Winter Storm Elliott Generator Performance*, PJM Interconnection, L.L.C. (Feb. 9, 2023), <https://www.pjm.com/-/media/committees-groups/committees/oc/2023/20230209/20230209-item-04---winter-storm-elliott-generator-performance.ashx>.

<sup>64</sup> Bielak Aff. ¶ 5.

energy committed in the Day-Ahead Market and an additional 9 GW of available 30-minute reserves, notwithstanding the approximately 12 GW of unplanned outages that were reported for the PJM generation fleet.<sup>65</sup> In addition, based on the operating parameters submitted and visible to PJM, approximately 13 GW of short-lead, aka “fast start,” units were then reported as available.<sup>66</sup> As noted above, the resulting total of 155,750 MW of generation reported as available on the morning of December 23 exceeded the then-forecast PJM Region peak of about 127,000 MW, leaving (at that time) almost 29 GW of reserve capacity, far more than the reserve requirement of 3,000 MW, expected to be available to absorb load increases and generation contingencies and support PJM’s neighboring systems.<sup>67</sup>

However, as the day went on, temperatures plunged rapidly and demand spiked. At the same time, PJM began seeing increasingly high levels of forced generation outages.<sup>68</sup> PJM responded by exercising its discretion to invoke its Emergency-related authorities, including calling upon generators with capacity commitments, deploying Synchronized Reserves, initiating RTO-wide Maximum Generation Emergency Actions, and calling on demand response resources. At 17:30 on December 23, PJM declared a Pre-Emergency Load Management Reduction Action and a Maximum Generation Emergency Action through 23:59 on December 23.<sup>69</sup> The declaration of the Maximum Generation Emergency Action triggered Performance Assessment Intervals and put all on

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<sup>65</sup> See Winter Storm Elliott FAQ at 3, 7.

<sup>66</sup> See Winter Storm Elliott FAQ at 3.

<sup>67</sup> See Winter Storm Elliott Overview at 5.

<sup>68</sup> See Winter Storm Elliott Overview at 12; Bielak Aff. ¶¶ 8-9.

<sup>69</sup> See Attachment B at 1. Although it was issued to be in effect through 23:59, PJM cancelled the Maximum Generation Emergency Action at 23:00.

notice of the severity of the emergency conditions facing the PJM Region.<sup>70</sup> During the evening of December 23, with (as previously noted) power demand rising to a peak of about 135,000 MW and generator forced outages increasing to 34,500 MW,<sup>71</sup> at 23:00, PJM declared a Maximum Generation Alert and Load Management Alert starting December 24 at 00:00.<sup>72</sup>

Given the persistent high load demand and high forced outage rates (rising up to 47,000 MW by the morning peak, as previously noted) on the morning of December 24, PJM invoked its various alerts and authorities to manage the Emergency and maintain reliability. Thus, PJM issued a rare Region-wide public call for conservation from 04:00 on December 24 to 10:00 on December 25.<sup>73</sup> At 04:20, PJM issued a Pre-Emergency Load Management Reduction Action, and an Emergency Load Management Reduction Action.<sup>74</sup> At 04:27, PJM issued a Maximum Generation Emergency Action for the period from 04:27 to 22:00, triggering Performance Assessment Intervals. At 04:52, PJM issued a Voltage Reduction Alert.<sup>75</sup> PJM then, at 06:17, encouraged Market Participants to submit bids to sell Emergency energy into PJM.<sup>76</sup> At 07:15, PJM issued a Voltage Reduction Warning and Reduction of Non-Critical Plant Load. Each of these actions,

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<sup>70</sup> Performance assessment hours are triggered when PJM declares an Emergency Action. Tariff, Attachment DD, section 10.A(a). An Emergency Action is defined as “locational or system-wide capacity shortages” that cause “pre-emergency mandatory load management reductions or . . . a more severe action.” Tariff, Definitions – E-F.

<sup>71</sup> See Winter Storm Elliott FAQ at 3.

<sup>72</sup> See Attachment B at 1.

<sup>73</sup> See Attachment B at 1.

<sup>74</sup> See Attachment B at 1; *supra* note 70.

<sup>75</sup> See Attachment B at 2.

<sup>76</sup> See Attachment B at 2.

alerts, and warnings signaled Emergency conditions and put all market participants on notice of the urgent need for capacity.

Additionally, around 06:30 on December 24, in response to generators starting to inform PJM operators that their resources were reaching their emission runtime limits, PJM began working on the process of requesting the U.S. Department of Energy (“DOE”) to obtain an emergency order pursuant to section 202(c) of the Federal Power Act (“FPA”). PJM submitted its petition for a declaration of energy emergency to the DOE on the afternoon of December 24.<sup>77</sup> At 17:30 the DOE issued the requested section 202(c) emergency order,<sup>78</sup> authorizing all electric generating units serving the PJM Region to operate up to their maximum generation output levels under limited, prescribed circumstances, even if doing so exceeded their air quality or other permit limitations. The DOE emergency order was in effect from 17:30 to 22:00 on December 24.<sup>79</sup>

PJM’s actions helped preserve reliability during this very challenging period. PJM did not shed any load during Winter Storm Elliott.

***D. By Its Own Account, Lincoln Did Not Meet Its Capacity Performance Obligations and Is Not Entitled to an Excuse***

PJM’s fruitless attempts to obtain needed energy and reserves from Lincoln during the capacity emergency on December 23 and 24 are recounted below, including conversations between PJM operators and Lincoln’s energy manager. The transcripts, attached hereto as Attachment C and excerpted below, show that, in addition to Lincoln’s

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<sup>77</sup> Request for Emergency Order Under Section 202(c) of the Federal Power Act of PJM Interconnection, L.L.C., Dept. of Energy (Dec. 24, 2022), <https://www.energy.gov/sites/default/files/2022-12/PJM%20202%28c%29%20Request.pdf>.

<sup>78</sup> See Department of Energy, Order No. 202-22-4 (Dec. 24, 2022), <https://www.pjm.com/-/media/documents/ferc/orders/2022/20221224-pjm-202c-doe-order.ashx>.

<sup>79</sup> *Id.*

failure to update its operating parameters appropriately and to communicate proactively its lack of fuel to PJM,<sup>80</sup> Lincoln chose not to purchase the fuel necessary for it to operate during this critical period. That economic choice prevented Lincoln from being “reliably available to provide energy and reserves in an emergency condition”<sup>81</sup> as required by its capacity commitment. To meet its obligations as a Capacity Resource, Lincoln should have purchased fuel and made itself available to PJM operators, even if that meant self-scheduling the resource as may have been required to meet pipeline ratable take requirements. In short, it was Lincoln’s economic choice to shirk its Capacity Performance obligations and Lincoln does not qualify for an excuse from the Non-Performance Charges PJM rightfully imposed.

*1. December 23*

On December 23 at 11:59, PJM operators called Lincoln’s energy manager regarding the time to start the Crete Facility. During that call, Lincoln’s energy manager informed PJM that Lincoln would not be available until 18:00 on December 23 “because of the [gas pipeline] intraday nomination schedules.”<sup>82</sup> This information was inconsistent with the operating parameters for notification available to PJM, which indicated that Lincoln is a [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] unit that could be online within [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] of being

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<sup>80</sup> Lincoln failed to update its parameter limitations, fuel status, and availability in real time. Bielak Aff. ¶ 12. This lapse forced PJM to call Lincoln’s energy manager multiple times to find out if a resource showing in PJM’s systems as being a [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] unit that would be ready in [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] from notification to start up and [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] to start up) was truly available. As discussed herein, Lincoln was not available any of the times PJM called on it during the Winter Storm Elliott capacity emergency.

<sup>81</sup> CP Order at P 28.

<sup>82</sup> Attachment C at 1 (Transcript of 12/23/22, 11:59).

notified. PJM clarified with the energy manager that if PJM wanted to call on Lincoln, it could do so at 18:00. Lincoln's energy manager agreed, noting that PJM needed to call on Lincoln within the next hour and twenty minutes or it "[would not] be able to burn gas until 23:00" "because of the nomination windows, [intraday] nomination windows."<sup>83</sup> PJM then called Lincoln's energy manager at 13:30 to determine how much time it had to call on Lincoln for 18:00. Lincoln's energy manager indicated PJM "missed the gas window for the [intraday] cycle 18:00" by 5 minutes, and that "it would be 23:00 before we can have gas flowing at the Lincoln facility."<sup>84</sup>

What Lincoln's energy manager did not mention, however, was that the cutoff for gas nomination in the intraday cycle for gas flowing at 19:00 was actually 15:30.<sup>85</sup> In other words, the 13:20 deadline that Lincoln's energy manager imposed was an arbitrary deadline that was not grounded in any required nomination timeline. The record shows that even though PJM called Lincoln's energy manager approximately two hours before the actual nomination deadline and only 10 minutes after the Lincoln's energy manager-imposed deadline, Lincoln's energy manager did not even attempt to nominate gas simply because it was beyond their own arbitrary deadline.

In any event, at 16:31, PJM operators again called Lincoln's energy manager, who confirmed that Lincoln was not available until 23:00 "because of the gas pipeline constraint."<sup>86</sup> Accordingly, PJM asked Lincoln's energy manager to submit a forced

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<sup>83</sup> Attachment C at 1 (Transcript of 12/23/22, 11:59).

<sup>84</sup> Attachment C at 3 (Transcript of 12/23/22, 13:30).

<sup>85</sup> See *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order No. 809, 151 FERC ¶ 61,049, at PP 104-07, *order on clarification*, 152 FERC ¶ 61,095, *order on reh'g*, 152 FERC ¶ 61,212 (2015).

<sup>86</sup> Attachment C at 4 (Transcript of 12/23/22, 16:31).

outage ticket for Lincoln “until then” (i.e., 23:00) to signal to PJM operators that Lincoln was not available.<sup>87</sup> At 17:46, PJM again confirmed with Lincoln’s energy manager that Lincoln was unavailable because of fuel limitations.<sup>88</sup>

2. *December 24*

On December 24 at 05:32, PJM operators called Lincoln’s energy manager regarding the Crete Facility. During that call, Lincoln’s energy manager stated that the last intraday gas nomination window was at 08:00.<sup>89</sup> At 05:54, PJM called Lincoln’s energy manager to “find out if we can get any of your ComEd CTs,” including Lincoln, and “what time they’d be able to run.”<sup>90</sup> At 06:32, Lincoln’s energy manager informed PJM that it was “fuel limited through 10am at this point on Lincoln.”<sup>91</sup> PJM then attempted again to confirm Lincoln’s availability.

PJM: “So you’re saying at 10am you can get Lincolns?”

LINCOLN’S ENERGY MANAGER: “Uh, yes sir.”

\* \* \*

PJM: “And Lincolns you can start, how many Lincolns can we get after 10am?”

LINCOLN’S ENERGY MANAGER: “Uh, I’ll have to get back with you on that.”

PJM: “Well find out how many Lincolns we can get after 10am”

LINCOLN’S ENERGY MANAGER: “Okay.”

**PJM: “Whatever you can get we need, we need to be constantly updated on it so we know where we stand.”**

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<sup>87</sup> Attachment C at 4 (Transcript of 12/23/22, 16:31).

<sup>88</sup> Attachment C at 5 (Transcript of 12/23/22, 17:46).

<sup>89</sup> Attachment C at 6 (Transcript of 12/24/22, 05:32).

<sup>90</sup> Attachment C at 8 (Transcript of 12/24/22, 05:54).

<sup>91</sup> Attachment C at 9 (Transcript of 12/24/22, 06:32).

LINCOLN'S ENERGY MANAGER: "Understood."<sup>92</sup>

Thus, while PJM did not schedule Lincoln during this exchange (it could not, because Lincoln was unavailable due to having no fuel), the PJM operator clearly communicated to Lincoln's energy manager that PJM wanted power from Lincoln as soon as it was available and wanted to be kept up to date on Lincoln's availability. PJM was not looking for more information on when Lincoln *could* buy gas, it wanted to know when Lincoln *had bought* gas and was available to run.

PJM operators again called Lincoln's energy manager at 06:49 about the availability of Lincoln. PJM requested that Lincoln's energy manager confirm that Lincoln would be available at 10:00. Lincoln's energy manager stated that he would "give . . . an update as soon as I know."<sup>93</sup> At 07:31, Lincoln's energy manager responded and indicated that Lincoln's operating parameters required an [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] notification period for start-up.<sup>94</sup> PJM responded that Lincoln's time-to-start in Markets Gateway was [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] with a notification time of [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC].<sup>95</sup> [REDACTED] [END CUI//PRIV-HC] At 07:41, Lincoln's energy manager confirmed that "right now if you're calling [Lincoln], they're [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] away."<sup>96</sup>

At 10:07, PJM operators called to check on Lincoln's availability.

PJM: "Just curious, what's the availability status of the Lincolns?"

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<sup>92</sup> Attachment C at 9-10 (Transcript of 12/24/22, 06:32) (emphasis added).

<sup>93</sup> Attachment C at 11 (Transcript of 12/24/22, 06:49).

<sup>94</sup> Attachment C at 12 (Transcript of 12/24/22, 07:31).

<sup>95</sup> Attachment C at 12 (Transcript of 12/24/22, 07:31).

<sup>96</sup> Attachment C at 14 (Transcript of 12/24/22, 07:41).

LINCOLN'S ENERGY MANAGER: "Lincoln units, fuel limited unavailable."

PJM: "All right, I'm showing them available in my system that's why so if you could make them unavailable in the market."

\* \* \*

LINCOLN'S ENERGY MANAGER: "Just got off the phone—the Lincoln's a no go for sure. Fuel cannot be delivered—enough fuel cannot be delivered to Lincoln to flow."

**PJM: "Okay, I'll tell you what, why don't you guys handle your gas stuff and then let me know what I have and how long it can run for and then once you guys figure that out I'll schedule it, all right?"<sup>97</sup>**

As the PJM operator's last statement indicates, PJM had been waiting for almost a full day for Lincoln to actually purchase gas and be available to be scheduled, rather than just talking about it.

### III. ANSWER TO COMPLAINT

#### A. *Lincoln Cannot Claim an Excuse from Non-Performance When It Was Unavailable by Its Own Choice*

##### 1. *The two narrow excuses for non-performance do not apply to Lincoln.*

The Capacity Performance provisions of the Tariff place Capacity Resource performance risk on Capacity Market Sellers, subject to only two "narrow and strictly circumscribed" excuses. Neither of those excuses applies to Lincoln's operations on December 23 and 24.

The first excuse, for Generator Planned Outage and Generator Maintenance Outage, does not apply because Lincoln was not on a Planned or Maintenance Outage. No other type of outage is within the scope of this excuse.

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<sup>97</sup> Attachment C at 16 (Transcript of 12/24/22, 10:07).

The second excuse, i.e., PJM did not schedule the resource, or the resource was online but 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,” also does not apply here.<sup>98</sup>

The simple fact is that PJM *could not* schedule Lincoln during the capacity emergency because Lincoln was not ready to generate at any time during the relevant period. Lincoln did not purchase fuel on either December 23 or 24, notwithstanding PJM operators inquiring as to Lincoln’s availability multiple times during that period. Further, even though Lincoln’s time to start parameter was still showing in the PJM system the PJM operators rely upon as [BEGIN CUI//PRIV-HC] ■■■■■ [END CUI//PRIV-HC] Lincoln informed the PJM operator calling to ask about Lincoln’s availability at 07:31 on December 24 that Lincoln’s notification parameter was [BEGIN CUI//PRIV-HC] ■■■■■ [END CUI//PRIV-HC] Accordingly, as a result of its own economic choices not to buy fuel and to lengthen its notification parameter, Lincoln was not able to meet its Capacity Performance obligations when PJM faced emergency conditions on the evening of December 23 that required PJM to implement the Maximum Generation Action.<sup>99</sup> PJM could not schedule Lincoln to address the emergency, nor could PJM schedule down Lincoln (if it had wanted to), as it was unavailable. Lincoln’s choice not to purchase fuel and to lengthen its notification parameter and therefore be unavailable is exactly the type of economic behavior that Capacity Performance was

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<sup>98</sup> As discussed below, *see infra* Section III.C., Lincoln’s attempt to show that PJM’s real-time economic dispatch of its Crete Facility affiliate proves that Lincoln was “not scheduled” based on PJM’s security-constrained economic dispatch fails because Crete was dispatched for economics before PJM was experiencing a capacity emergency.

<sup>99</sup> *See* Attachment B (timeline noting this action triggered Performance Assessment Intervals for the period).

designed to *disincent* through Non-Performance Charges. Therefore, PJM properly assessed Lincoln Non-Performance Charges.

Given that “resources with restrictive operating limits [are held] to the same standards as resources with fewer limitations”<sup>100</sup> and Capacity Market Sellers “bear the burden of delivering on their capacity obligation,”<sup>101</sup> generators that wish to avoid Non-Performance Charges should do what needs to be done to be available.<sup>102</sup> If Lincoln had chosen to maintain availability so that it could operate when called, by self-scheduling at minimum output, then it would have performed consistent with its capacity obligation, regardless of whether PJM scheduled it to provide energy or reserves. Yet, in Lincoln’s energy manager’s words, it was “fuel limited unavailable.”<sup>103</sup>

2. *The lack of a day-ahead commitment for Lincoln is irrelevant to Lincoln’s unavailability during the Performance Assessment Intervals.*

Lincoln notes that its offer did not clear in the Day-Ahead Markets for December 23 and 24 and its facility was not committed following the Reliability Assessment and Commitment Run process and concludes that “market signals and lack of PJM operator action indicate Lincoln was not needed for economics [or] reliability.”<sup>104</sup> Day-ahead indications from the market obviously cannot be determinative of emergency operations; indeed, day-ahead results do not limit real-time operations. Lack of a day-ahead

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<sup>100</sup> *Advanced Energy Mgmt. All.*, 860 F.3d at 674.

<sup>101</sup> CP Rehearing Order at P 110.

<sup>102</sup> Other natural gas generators “procure[d] gas despite not having prior notice that PJM would need the facility to operate,” including “purchasing same-day natural gas at an extremely high price without any guarantee that [the Capacity Market Seller] would be able to recover the gas costs through market prices.” Protest of Constellation Energy Generation, LLC, to PJM Interconnection L.L.C.’s Motion for Establishment of Settlement Judge Procedures, Docket Nos. EL23-53, et al., at 8 (Apr. 24, 2023).

<sup>103</sup> Attachment C at 16 (Transcript of 12/24/22, 10:07).

<sup>104</sup> *See* Complaint at 14, 18.

commitment does not mean a generating facility will not be needed in real-time or in emergency conditions, as conditions change from the day-ahead to real-time and tend to change even more in emergencies. During emergency conditions, PJM can and will call units without regard to economic merit order to maintain reliability.<sup>105</sup> Lincoln's assertions regarding unit commitment the day before (on December 22 for December 23 and on December 23 for December 24) therefore have no bearing on Lincoln's unavailability during the capacity emergency.

***B. PJM Was Not Required to Schedule Lincoln on Lincoln's Terms***

At bottom, the Complaint argues that it was PJM's responsibility to schedule the Lincoln facility as directed by Lincoln (based on Lincoln's cited gas pipeline nomination timelines) or to direct Lincoln to buy gas at the appropriate time so that PJM could schedule the Lincoln facility. Lincoln's interpretation of its fuel management responsibility is not valid, and the scenario it constructs does not fit with either normal operating conditions or emergency conditions.

Like every other gas-fired generator in PJM, Lincoln (or its energy manager) should be handling its own gas supply arrangements and taking on the supply risks that it is uniquely situated to handle in return for the Capacity Performance payments it has been receiving. PJM has no authority to direct resources to procure fuel or weatherize their facilities. Instead of being able to command those types of behaviors or actions, PJM's markets are designed to send economic signals to incent resources to follow PJM's dispatch signals. PJM's capacity market uses both incentive bonus payments and disincentive Non-Performance Charges to influence Capacity Resource behavior, but

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<sup>105</sup> Bielak Aff. ¶ 16.

PJM cannot go beyond structured incentives in its Tariff to direct generators when to buy fuel. When Capacity Market Sellers choose to ignore those incentives and disincentives, and allow their resources to be unable to perform precisely at the critical time they are being paid throughout the year to perform, it is not PJM operators' responsibility—in the height of an emergency—to figure out how to ameliorate the Seller's untenable situation.

The communications between PJM and Lincoln's energy manager on December 23 and 24 show PJM operators trying to locate energy and reserves wherever they could. To that end, PJM repeatedly and consistently asked Lincoln's energy manager to report the Lincoln facility's availability and operating parameters proactively and accurately, to let PJM know when Lincoln would be available, and for Lincoln's energy manager to handle the gas supply issues<sup>106</sup> and then let PJM dispatch know when Lincoln was available so Lincoln could be scheduled.<sup>107</sup> As summed up by the PJM operator talking to Lincoln's energy manager on the morning of December 24, "Okay, I'll tell you what, why don't you guys handle your gas stuff and then let me know what I have and how long it can run for and then once you guys figure that out I'll schedule it, all right?"<sup>108</sup>

In the end, the pipeline nomination deadlines and ratable take requirements are immaterial to the question of Lincoln's non-performance. Lincoln's choices were to buy gas and get it flowing so that the plant could be available to meet its Capacity

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<sup>106</sup> Lincoln's characterization of the PJM operators as not understanding how gas scheduling works and lacking operational awareness is ludicrous. PJM has a gas electric coordination team that monitors the natural gas pipelines in and across the PJM Region and advises PJM operations and dispatch about potential gas market and transportation issues and how they may affect PJM's operations.

<sup>107</sup> Attachment C at 3 (Transcript of 12/23/22, 13:30), 4 (Transcript of 12/23/22, 16:31), 8 (Transcript of 12/24/22, 05:54), 10 (Transcript of 12/24/22, 06:32), 16 (Transcript of 12/24/22, 10:07).

<sup>108</sup> Attachment C at 16 (Transcript of 12/24/22, 10:07).

Performance obligations or to change its operating parameters to reflect the hours required for Lincoln to buy gas to run the units. Lincoln, by its own admission, chose the latter course, which is really all that matters on the question of Lincoln's satisfaction of its Capacity Performance obligations. To make matters worse, Lincoln failed to update its parameter limitations, fuel status, and availability in real time, forcing PJM operators to call Lincoln's energy manager multiple times to find out if a resource showing in the systems on which the PJM operators rely as a [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] unit that would be ready in [BEGIN CUI//PRIV-HC] ██████████ ██████████ [END CUI//PRIV-HC] from notification to start up and [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] to start up) was truly available.<sup>109</sup> It was Lincoln's operating parameters, i.e., the hours of advance notice Lincoln claimed it needed to purchase gas, which prevented PJM from scheduling the units when they were needed.

None of the communications between Lincoln's energy manager and PJM on December 23 and 24 demonstrate that Lincoln qualifies for the narrow Tariff excuses for non-performance. Moreover, the Non-Performance Charge excuse for PJM not scheduling a unit explicitly is not available when it is the unit's parameter limitations that prevent PJM scheduling.

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<sup>109</sup> Bielak Aff. ¶ 12.

*C. PJM’s Scheduling of the Crete Units Does Not Mean that Lincoln Was “Not Scheduled” Because of PJM’s Security-Constrained Economic Dispatch*

Lincoln asserts that the Crete facility had the same parameters as Lincoln but PJM dispatched Crete and did not dispatch Lincoln.<sup>110</sup> From this mere fact, Lincoln alleges: (1) PJM’s communications with Lincoln were part of a plan to minimize uplift costs associated with the capacity emergency; and (2) that PJM’s dispatch of Crete but not Lincoln evidences PJM taking a scheduling action that PJM determined was appropriate to the security-constrained economic dispatch of the PJM Region.<sup>111</sup> Neither argument withstands scrutiny.

Contrary to the Complaint’s allegations, the particular differences between the PJM operator’s interactions as to Crete, and those with respect to Lincoln, reflect the differing times and circumstances in which PJM sought to get the units online. PJM tried to call the Crete units on for economics (i.e., in merit order) in the morning of December 23. At that time, PJM was not experiencing a capacity emergency. When the energy manager for both Crete and Lincoln said that [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] the PJM operator “release[d]” the Crete units and stated he would “log” them as coming on at 18:00.<sup>112</sup> This was a real-time economics dispatch, which PJM delayed because Crete [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] Later in the day, when a Maximum Generation Emergency Action was in effect and therefore PJM operators were calling generators looking for every possible MW, regardless of

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<sup>110</sup> Complaint at 36.

<sup>111</sup> Complaint at 37.

<sup>112</sup> Attachment C at 2 (Transcript of 12/23/22, 11:59).

economics, PJM asked about Lincoln's availability multiple times and was consistently told that Lincoln did not have fuel. While Lincoln cites the Illinois Climate and Equitable Jobs Act costs of the Crete and Lincoln units,<sup>113</sup> that factor was not a consideration during the Maximum Generation Emergency Action because PJM was not calling to ascertain Lincoln's availability for economic dispatch, but rather for emergency, out-of-merit-order dispatch.

The dispatch of Crete and not Lincoln had nothing to do with minimizing uplift costs. At the time, PJM's priority was preserving reliability and it was dispatching available units without regard to costs.<sup>114</sup> Certainly, nothing in the PJM operators' statements express PJM concern with exposing loads to uplift costs, and Lincoln's efforts to infuse those statements with that intent are entirely lacking in substance. Moreover, Mr. Bielak, who was in the control room at the relevant times, testifies that PJM operators "were forced to engage in what at times seemed like an unending recovery," because as soon as they got one generation facility online, others would trip off.<sup>115</sup> During the severe capacity emergency, PJM operators were focused solely on physical MWs, not pricing.<sup>116</sup>

Similarly, Lincoln does not show that PJM declining to manage Lincoln's fuel supply obstacles was a PJM scheduling action appropriate to the security-constrained economic dispatch of the PJM Region. Crete was dispatched in real time for economics before the emergency conditions arose. PJM repeatedly attempted to call on Lincoln

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<sup>113</sup> Complaint at 37.

<sup>114</sup> Bielak Aff. ¶ 17.

<sup>115</sup> Bielak Aff. ¶ 8.

<sup>116</sup> Bielak Aff. ¶ 17.

later, during the Performance Assessment Intervals, only to meet with repeated rebuffs, deferrals, and obstacles from Lincoln. Lincoln's economic dispatch theory of the case fails.

***D. The Forced Outage Ticket Does Not Constitute an Operator-Directed Outage that Excuses Lincoln***

Lincoln argues that the forced outage ticket it put in constitutes a PJM-directed outage that excuses Lincoln's non-performance.<sup>117</sup> To the contrary, the PJM operator's suggestion that Lincoln submit a forced outage ticket from 16:31 on December 23 until 23:00 on December 23 was to correct the status of Lincoln from the [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] notification parameter shown in the PJM systems, which Lincoln announced it could not meet. The PJM operators were trying to enhance their operational awareness as to unit availability by every means possible, as every phone call to generators to inquire as to their availability took time and the PJM operators did not have much time to spare during the stressed emergency conditions.<sup>118</sup>

Lincoln's energy manager clearly understood that updating Lincoln's status by submitting a forced outage ticket was necessary for PJM's operational awareness. When a PJM operator told Lincoln's energy manager the next day, on December 24 at 16:31, that the Lincoln units were still showing in the system as [BEGIN CUI//PRIV-HC] ██████████ ██████████ [END CUI//PRIV-HC] units, Lincoln's energy manager immediately volunteered to put in an outage ticket.<sup>119</sup>

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<sup>117</sup> Complaint at 39.

<sup>118</sup> Bielak Aff. ¶¶ 12-13.

<sup>119</sup> Attachment C at 4 (Transcript of 12/23/22, 16:31).

***E. Elements of the Complaint Are Barred by Operating Agreement, Schedule 1, Section 1.8.2 and Commission Precedent***

PJM's answer and supporting affidavit demonstrate that Lincoln has not asserted any valid basis to challenge PJM's unit dispatch or scheduling decisions made during Winter Storm Elliott. Lincoln argues that it was unavailable during Winter Storm Elliott as a result of PJM's scheduling decisions.<sup>120</sup> As demonstrated above, PJM never had the opportunity to schedule Lincoln because Lincoln never had fuel and verbally imposed an [BEGIN CUI//PRIV-HC] ■ [END CUI//PRIV-HC] notification parameter. Regardless, however, the Commission need not reach or decide any of Lincoln's arguments because these claims are barred by the Operating Agreement, Schedule 1, section 1.8.2 and *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*<sup>121</sup>

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.<sup>122</sup> This provision states that “[c]omplaints arising from or relating to [the selection, scheduling or dispatch of resources] shall be brought to the attention of [PJM].”<sup>123</sup> Section 1.8.2 requires that any such complaints must “be brought to the attention of [PJM] not later than the end of the fifth Business Day after the end of the Operating Day to which the selection or scheduling relates, or in which the scheduling or dispatch took place.”<sup>124</sup> It further 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

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<sup>120</sup> See Complaint at 2.

<sup>121</sup> 117 FERC ¶ 61,338, at P 33 (2006).

<sup>122</sup> See Tariff, Attachment K-Appendix, section 1.8.2.

<sup>123</sup> Operating Agreement, Schedule 1, section 1.8.2(a); Tariff, Attachment K-Appendix, section 1.8.2(a).

<sup>124</sup> Operating Agreement, Schedule 1, section 1.8.2(a); Tariff, Attachment K-Appendix, section 1.8.2(a).

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.”<sup>125</sup> Lincoln’s request for relief falls squarely within the scope of this provision, and is foreclosed by it, because Lincoln claims that PJM “failed to schedule the Lincoln Facility” during the period in question.<sup>126</sup> To address this claim, the Commission would have to decide whether PJM made any scheduling decision with respect to Lincoln.

The Commission’s decision in *PPL EnergyPlus* confirms this reading of the Operating Agreement and supports the rejection of Lincoln’s argument. There, the Commission barred the claim of a generator that its unit should have been called sooner by the operators during a reliability emergency related to the overload of a single transmission line.<sup>127</sup> The generator argued that its unit should have been dispatched before PJM called a Maximum Emergency Generation Action and started to purchase emergency power and not afterwards, in violation of the Operating Agreement.<sup>128</sup> 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.”<sup>129</sup> This finding applies equally to Lincoln’s claims here.

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<sup>125</sup> Operating Agreement, Schedule 1, section 1.8.2(d); Tariff, Attachment K-Appendix, section 1.8.2(d).

<sup>126</sup> Complaint at 7.

<sup>127</sup> *PPL EnergyPlus*, 117 FERC ¶ 61,338, at PP 2, 33.

<sup>128</sup> *Id.* at PP 3-4.

<sup>129</sup> *Id.* at P 33.

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.<sup>130</sup>

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.

#### **IV. ADMISSIONS AND DENIALS PURSUANT TO 18 C.F.R. § 385.213(c)(2)(i)**

Pursuant to Rule 213(c)(2)(i) of the Commission's rules of Practice and Procedure,<sup>131</sup> PJM affirms that any allegation in the Complaint that is not specifically and expressly admitted above is denied.

#### **V. AFFIRMATIVE DEFENSES PURSUANT TO 18 C.F.R. § 385.213(c)(2)(ii)**

PJM's affirmative defenses are set forth above in this answer, and include the following, subject to amendment and supplementation.

1. Complainant has failed to satisfy its burden of proof under FPA section 206 (16 U.S.C. § 824e), and has not demonstrated that PJM violated any Commission order, the Tariff, the Operating Agreement, Reliability Assurance Agreement, the Consolidated Transmission Owners Agreement, or any other Commission-jurisdictional governing document.

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<sup>130</sup> *Id.*

<sup>131</sup> 18 C.F.R. § 385.213(c)(2)(i).

**VI. REQUEST FOR CONFIDENTIAL TREATMENT**

PJM respectfully requests, pursuant to 18 C.F.R. § 388.112, privileged 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 (“FOIA”),<sup>132</sup> 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.”<sup>133</sup>

In accordance with 18 C.F.R. § 388.112(b)(2)(i), PJM includes with this filing, as Attachment E, 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 respects (other than being labeled a Protective Agreement rather than a Protective Order) to the Protective Order PJM moved the Commission on May 24, 2023, to issue in this proceeding and eleven other related proceedings.<sup>134</sup> The proposed Protective Order, by its terms, will superseded 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

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<sup>132</sup> 5 U.S.C. § 552.

<sup>133</sup> See 5 U.S.C. § 552(b)(4).

<sup>134</sup> *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Motion for Adoption of Protective Order, Docket Nos. EL23-54-000, et al. (May 24, 2023).

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(b)(1) of the Commission's regulations.

## VII. COMMUNICATIONS AND SERVICE

PJM requests that the Commission place the following individuals on the official service list for this proceeding:<sup>135</sup>

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<sup>135</sup> 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 on the official service list for this proceeding.

## VIII. CONCLUSION

For the reasons set forth in this answer, the Commission should deny the Complaint.

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May 26, 2023

Respectfully submitted,

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**ATTACHMENTS**

- A. ADVISORIES, ALERTS, CONDITIONS
- B. TIMELINE
- C. TRANSCRIPTS OF CALLS BETWEEN PJM AND LINCOLN'S ENERGY  
MANAGER
- D. AFFIDAVIT OF DONALD BIELAK ON BEHALF OF PJM  
INTERCONNECTION, L.L.C
- E. PROPOSED PROTECTIVE AGREEMENT

**ATTACHMENT A**  
**ADVISORIES, ALERTS, CONDITIONS**

## ADVISORIES, ALERTS, CONDITIONS

- A **Cold Weather Advisory** provides an early notice that forecasted temperatures may prompt PJM to issue a Cold Weather Alert.<sup>1</sup> Such an advisory is designed to elevate awareness and give PJM members ample time to gather information required by NERC standards.<sup>2</sup> A Cold Weather Advisory can be issued one or more days in advance of the operating day.<sup>3</sup>
- A **Cold Weather Alert** is issued one or more days in advance of the operating day for elevated awareness and to give PJM members time to prepare personnel and facilities for expected extreme cold weather conditions.<sup>4</sup> PJM can initiate a Cold Weather Alert when forecasts predict temperatures of 10 degrees Fahrenheit or below.<sup>5</sup> However, PJM may issue an alert at higher temperatures if PJM anticipates increased winds or if PJM projects a portion of gas fired capacity is unable to obtain spot market gas during load pick-up periods.<sup>6</sup> PJM will initiate the Cold Weather Alert for the appropriate region(s) in advance of the operating day based on several factors, including historical experience, information supplied by the pipelines, and/or information supplied from the generator owners.<sup>7</sup> PJM Manual 13 specifies that “PJM Dispatch will notify the

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<sup>1</sup> System Operations Division, *PJM Manual 13: Emergency Operations*, PJM Interconnection, L.L.C., section 3.3.1 (May 18, 2023), <https://www.pjm.com/-/media/documents/manuals/m13.ashx>.

<sup>2</sup> PJM Manual 13, section 3.3.1.

<sup>3</sup> PJM Manual 13, section 3.3.1.

<sup>4</sup> PJM Manual 13, section 3.3.2.

<sup>5</sup> PJM Manual 13, section 3.3.2.

<sup>6</sup> PJM Manual 13, section 3.3.2.

<sup>7</sup> PJM Manual 13, section 3.3.2.

generator owner that the unit is required to be online and ready to follow PJM Dispatch signals at XX:XXhrs on XX day for reliability. The unit parameters and the offer will then be confirmed and the unit will be offer capped.”<sup>8</sup>

- **Energy Emergency Alerts:** PJM follows the North American Electric Reliability Corporation (“NERC”) Reliability Standards for making emergency alert declarations relating to reliability.<sup>9</sup> Consistent with NERC’s reliability standards, emergency conditions exist in PJM when PJM declares an Energy Emergency Alert (“EEA”) Level 2.<sup>10</sup> NERC has established three levels of EEAs.<sup>11</sup>
  - PJM may declare an EEA1 when all available generation resources are in use or are committed to meet firm Load, firm transactions, and reserve commitments, and PJM is concerned about sustaining its required Contingency Reserves.<sup>12</sup>
  - PJM may declare an EEA2 when PJM is no longer able to provide its expected energy requirements and is energy deficient, has implemented its operating plan to mitigate emergencies, but is still able to maintain minimum Contingency Reserve requirements.<sup>13</sup> PJM will perform public appeals to reduce demand, reduce voltage, and interrupt non-firm load in accordance with applicable contracts.<sup>14</sup>

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<sup>8</sup> PJM Manual 13, section 3.3.2.

<sup>9</sup> See Operating Agreement, Schedule 1, section 8.5; Tariff, Attachment K-Appendix, section 8.5.

<sup>10</sup> See Operating Agreement, Schedule 1, section 8.5; Tariff, Attachment K-Appendix, section 8.5.

<sup>11</sup> *NERC Standard EOP-011-1*, North American Electric Reliability Corporation, Attachment 1, Energy Emergency Alerts, section B (Dec. 1, 2015), <http://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-011-1.pdf> (NERC Standard EOP-011-1 was in effect during Winter Storm Elliott and has since been replaced by NERC Standard EOP-011-2, effective April 1, 2023); PJM Manual 13, section 2.3.1.

<sup>12</sup> NERC Standard EOP-011-1, Attachment 1, Energy Emergency Alerts, section B(1).

<sup>13</sup> NERC Standard EOP-011-1, Attachment 1, Energy Emergency Alerts, section B(2).

<sup>14</sup> PJM Manual 13, section 2.3.2.

- Before declaring an EEA3, PJM must make use of all available resources, including, but not limited to, all available generation units that are online, all generation capable of being online in the time frame of the emergency, and available demand-side resources.<sup>15</sup> An EEA3 occurs when firm load interruption is imminent or in progress, and PJM is unable to meet minimum Contingency Reserve requirements.
- **Actions** are issued in real time and require PJM and/or member response. Actions include:
  - **Maximum Generation Emergency:** issued 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.
  - **Emergency Load Management Reductions:** PJM Dispatch posts detailed instructions to the Curtailment Service Providers (CSP) to dispatch 30, 60 and/or 120 minute Pre-Emergency Load Management Reductions.
  - **Voltage Reduction:** the purpose of this action is to warn members that the available synchronized reserve is less than the Synchronized Reserve Requirement and that present operations have deteriorated such that a voltage reduction may be required.
- PJM also may deploy **Synchronized Reserves**, 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 PJM dispatcher's request, and is provided by equipment that is electrically synchronized to the Transmission System. Synchronized Reserves are supplied from 10-minute synchronized generating

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<sup>15</sup> NERC Standard EOP-011-1, Attachment 1, Energy Emergency Alerts, section B(3).

resources (i.e., Spinning Reserves) and 10-minute demand-side response resources. Interruptible load resources cannot be part of the 10 minute synchronized generating reserves component of Synchronized Reserves.

**ATTACHMENT B**  
**TIMELINE**

## TIMELINE

\* All dates noted in this chronology are in 2022 and all times are in 24-hour time.

<u>Date</u>	<u>Time</u>	<u>Event</u>	<u>Performance Assessment Interval Trigger?</u>
December 20	09:00	PJM issued a Cold Weather Advisory for the Western Region zones from 07:00 on December 23 through 23:00 on December 25.	
December 21	09:00	PJM issued a Cold Weather Alert for the Western Region zones from 07:00 on December 23 through 23:00 on December 25.	
	10:00	PJM extended the Cold Weather Advisory for the Western Region zones to last through 23:00 on December 26.	
December 22	17:30	PJM expanded the Cold Weather Advisory from 07:00 on December 23 through 23:00 on December 26 to the entire regional transmission organization (“RTO”).	
December 23	10:14	PJM called a 100% RTO Synchronized Reserve Event.	
	11:00	PJM issued a Cold Weather Alert for the entire RTO from 00:00 on December 24 through 23:59 on December 25.	
	16:17	PJM called a 100% RTO Synchronized Reserve Event.	
	17:30	Issued the EEA2 with Pre-Emergency Load Management Reduction Action and Maximum Generation Action through 23:59 on December 23.	Yes
	23:00	Declared a Maximum Generation Alert/Load Management Alert, and an EEA1, starting Saturday, December 24, at 00:00.  Cancelled the Maximum Generation Action issued at 17:30.	No
December 24	00:05	PJM called a 100% RTO Synchronized Reserve Event.	
	02:23	PJM called a 100% RTO Synchronized Reserve Event.	

<u>Date</u>	<u>Time</u>	<u>Event</u>	<u>Performance Assessment Interval Trigger?</u>
	04:00	PJM called for conservation through 10:00 on December 25, and curtailed exports.	
	04:20	Issued an EEA2-Pre-Emergency Load Management Reduction Action and Emergency Load Management Reduction Action.	Yes (to start at 06:20)
	04:23	PJM called a 100% RTO Synchronized Reserve Event.	
	04:27	Issued an EEA2-Maximum Generation Emergency Action.	Yes
	04:52	PJM issued a Voltage Reduction Alert.	
	06:00	Load management came into effect.	
	06:17	PJM encouraged Market Participants to submit bids to sell emergency energy into PJM.	
	06:30	PJM received first notification of emissions issues from generation and began working with the Department of Energy (“DOE”) to obtain an emergency order pursuant to section 202(c) of the Federal Power Act (“FPA”).	
	07:15	PJM issued a Voltage Reduction Warning and Reduction of Non-Critical Plant Load.	
	17:30	The DOE issues emergency order pursuant to section 202(c) of the FPA, which PJM received and implemented.	
	22:00	Ended the EEA2-Maximum Gen Emergency Action, ending the PAIs and returned to EEA0.	
	23:38	PJM issued a Maximum Generation Emergency/Load Management Alert for December 25.	No
December 25	11:10	PJM issued a Cold Weather Alert for only the Western Region zones from 07:00–23:00 on December 26.	
	22:00	Returned to EEA0.	
December 26	23:00	The Cold Weather Alert ended.	

**ATTACHMENT C**

**TRANSCRIPTS OF CALLS  
BETWEEN PJM AND  
LINCOLN'S ENERGY MANAGER**





Transcriptions of Phone Calls between PJM Dispatchers and Lincoln’s energy manager

Green highlighted lines = PJM’s side of the conversation

<p>8741933 12/23/2022 13:30 (PJM Dispatcher – Alex L.)</p>	<p>Hey, how long to I have to call the Lincolns to get them on by 18:00?</p> <p>[Employee 1 asking another employee] Hey, [Employee 2]? [Employee 2] Yes? [Employee 1 asking Employee 2] PJM inquiring about when can they call Lincolns on to get them on by 18:00? [Switches to Employee 2] [inaudible] ... You missed the gas window for the ID cycle 18:00, that passed...only 5 minutes ago actually. But now it would be 23:00 before we can have gas flowing at the Lincoln facility.</p> <p>Ugh. There’s no way, I guess, that you can get an exception for 5 minutes possibly?</p> <p>That’s a pipeline thing, no. The pipelines are not being as user friendly as we would like.</p> <p>Alrighty. All right.</p> <p>The next window ... to have gas flowing for the gas that we nom now would be 23:00.</p> <p>Alrighty, I’ll have to give you a call back.</p>
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Transcriptions of Phone Calls between PJM Dispatchers and Lincoln’s energy manager

Green highlighted lines = PJM’s side of the conversation

8742884 12/23/2022 16:31 (PJM Dispatcher – Steve Barczyk)	So Lincoln CTs, are those available? Because we are calling them on if they are.
	They’re available, not until 23:00.
	Lincoln CTs aren’t available until 23:00 and that’s for gas?
	[Switches to another employee] That’s because of the gas pipeline constraint, yes.
	Okay, thank you. Hey, can you put in an outage ticket for them then, until then?
	Well, we have a notification time that looks pretty funky that shows that, right...oh, no, we don’t have that.
	No?
	We’ll put an outage ticket in.

Transcriptions of Phone Calls between PJM Dispatchers and Lincoln’s energy manager

Green highlighted lines = PJM’s side of the conversation

8743449 12/23/2022 17:46 (PJM Dispatcher – Steve Forrest)	Question for you, for the Lincoln CTs...I just wanted to confirm that I see them unavailable. That is not CEJA-related emissions, right? That is fuel?
	Yes, that is fuel limitations. Yeah, they are fuel-limited not emissions-limited. That’s correct.
	Not emissions—okay, all right. Just wanted to confirm since we’re in Max.



Transcriptions of Phone Calls between PJM Dispatchers and Lincoln's energy manager

Green highlighted lines = PJM's side of the conversation

	All right. Thank you very much for your time.
	Thanks.

Transcriptions of Phone Calls between PJM Dispatchers and Lincoln’s energy manager

Green highlighted lines = PJM’s side of the conversation

8746620 12/24/2022 05:54 (PJM – Alex)	Hey, can you do me a favor and maybe find out if we can get any of your ComEd CTs and what time they’d be able to run or anything like that if possible?
	ComEd CTs?
	Yeah, your [other resource] uh like that stuff...I know things are crazy right now but just...any information you can get on any type of availability on those.
	Yeah, okay. So [other resource], Lincolns...any of those.
	Anything that is not online that you can give us any information on running, let us know.
	Okay, and what was your name sir?
	Alex.
	Alex, okay will do.
Thank you, bye	





## Transcriptions of Phone Calls between PJM Dispatchers and Lincoln's energy manager

Green highlighted lines = PJM's side of the conversation

8746875 12/24/2022 06:49:39 AM (PJM – Bo)	I'm calling about the [other resource] and Lincoln units. I'm just wondering if you think that they are going to be available at any point today?
	One second. I'm showing them out until 10am today... (speaker asks another employee - hey is [employee] here yet?)...um, I had a note...
	I'm assuming that's for what, gas?
	Yes, it's a gas issue, the gas day starts at 10am I think they're available at that point.
	Okay, so you think [other resource] and Lincolns will be available at 10?
	I believe so.
	Okay, and will you let us know when you know for sure?
	Yeah and who am I talking to?
	This is Bo Grove.
	Okay, Bo Grove at PJM, I'll give you an update as soon as I know.
	All right, thanks.
	Hold on a second... Oh just as a caveat, Lincoln has [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] minimum run time if they get called on.
	Okay, okay, I understand. Lincoln [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] min run time?
	Yes sir.
	All right, then just let us know.
We'll let you know.	
Thank you, I appreciate it.	

Transcriptions of Phone Calls between PJM Dispatchers and Lincoln’s energy manager

Green highlighted lines = PJM’s side of the conversation

8747115 12/24/2022 07:31 AM (PJM – Steve)	They called earlier asking about Lincoln and [other resource] ... if we were going to be available today to get any gas.
	Yes.
	As long as the notification times that are submitted are respected -- so like right now on the [other resource] and Lincolns we have like an [BEGIN CUI//PRIV-HC] ██████ [END CUI//PRIV-HC] notification.
	We don’t see that...on Lincolns it still has like [BEGIN CUI//PRIV-HC] ██████. Linc.. [other resource] we see the ██████ [END CUI//PRIV-HC]
	I see. Lincolns you see [BEGIN CUI//PRIV-HC] ██████? [END CUI//PRIV-HC]
	Correct?
	Let me double check that then.
	Yeah, we see [BEGIN CUI//PRIV-HC] ██████. We see ██████ [END CUI//PRIV-HC] for time to start for Lincoln and that includes notification time and...
	Yeah, oh okay I see.
	Yeah, right now we have a notification time of [BEGIN CUI//PRIV-HC] ██████ and... ██████ [END CUI//PRIV-HC] and then start-up for [BEGIN CUI//PRIV-HC] ██████. [END CUI//PRIV-HC]
	I don’t understand that because I’m looking at what was submitted.
	Well, I mean, unless you just did it maybe I need to refresh.
	No, sir I didn’t just do it.
	Okay.
These were done yesterday so I’ve got to figure out what’s happening...	
What’s the difference?	
Yeah, what’s happening on Lincoln.	

Transcriptions of Phone Calls between PJM Dispatchers and Lincoln's energy manager

Green highlighted lines = PJM's side of the conversation

	Okay.
	I will double check and get right back with you, but [other resource] would be an [BEGIN CUI//PRIV-HC] ■ ■■ [END CUI//PRIV-HC] notification at this point.
	And Lincoln as well?
	Ah, I will double check on Lincoln and call you right back.
	All right, very good.
	Yes, sir.
	Thank you. Bye.

Transcriptions of Phone Calls between PJM Dispatchers and Lincoln’s energy manager

Green highlighted lines = PJM’s side of the conversation

<p>8747191 12/24/2022 07:41 AM (PJM – Willis)</p>	<p>I just got confirmation on... I talked to Mr. Barczyk on the Lincolns and told him we can get gas after 10:00 with the notification times that are submitted and it’s a [BEGIN CUI//PRIV-HC] ██████ [END CUI//PRIV-HC] run once they’re called on.</p>
	<p>All right.</p>
	<p>[Brief discussion of other resource]</p>
	<p>Yeah, but you said all the Lincolns are [BEGIN CUI//PRIV-HC] ██████ starts...I mean ██████ runs? [END CUI//PRIV-HC]</p>
	<p>They are [BEGIN CUI//PRIV-HC] ██████ [END CUI//PRIV-HC] runs, yes sir.</p>
	<p>And what’s the start on?</p>
	<p>The start time or the notification?</p>
	<p>The notification, I’m sorry...okay, what’s the notification then?</p>
	<p>Yeah, so right now if you’re calling them they’re [BEGIN CUI//PRIV-HC] ██████ [END CUI//PRIV-HC] away.</p>
	<p>Damn.</p>
	<p>Yeah, I know.</p>
	<p>And [BEGIN CUI//PRIV-HC] ██████ [END CUI//PRIV-HC] runs?</p>
	<p>Yes, sir.</p>
	<p>All of them? And [other resource] are [BEGIN CUI//PRIV-HC] ██████ [END CUI//PRIV-HC] away...and how long is the run?</p>
	<p>Hang on a second... Yes, [BEGIN CUI//PRIV-HC] ██████ [END CUI//PRIV-HC] sir.</p>
	<p>All right, let me pass this on and I’ll get back to you.</p>
	<p>Yes, sir. I appreciate it, Mr. Willis.</p>

Transcriptions of Phone Calls between PJM Dispatchers and Lincoln's energy manager

Green highlighted lines = PJM's side of the conversation

	Yup, bye.
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Transcriptions of Phone Calls between PJM Dispatchers and Lincoln’s energy manager

Green highlighted lines = PJM’s side of the conversation

8747980 12/24/2022 10:07 AM (PJM - Alex)	Just curious, what’s the availability status of the Lincolns? [inaudible]
	Lincoln units, fuel limited unavailable.
	All right, I’m showing them available in my system that’s why, so if you could make them unavailable in the market.
	Hold on a second...[inaudible] Crete is going to be available [BEGIN CUI//PRIV-HC] ██████████, [END CUI//PRIV-HC] Lincoln no fuel.
	All right, um Cretes are definitely gonna be available?
	[Switches to another employee in background] Uh, [BEGIN CUI//PRIV-HC] ██████████ ██████████. [END CUI//PRIV-HC]
	All right, are you guys checking on all of your assets right now? I mean I imagine, yeah.
	Wait a sec. Just got off the phone—the Lincoln’s a no go for sure. Fuel cannot be delivered—enough fuel cannot be delivered to Lincoln to flow.
	Okay, I’ll tell you what, why don’t you guys handle your gas stuff and then let me know what I have and how long it can run for and then once you guys figure that out I’ll schedule it, all right?
	Perfect.
	All right, thank you.
	Bye.

**ATTACHMENT D**

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

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Lincoln Generating Facility, LLC,	)	
Complainant,	)	
	)	
v.	)	Docket No. EL23-59-000
	)	
PJM Interconnection, L.L.C.,	)	
Respondent.	)	
	)	

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

I. QUALIFICATIONS

1. My name is Donald Bielak, and my business address is 2750 Monroe Blvd., Audubon, Pennsylvania, 19403. I am employed by PJM Interconnection, L.L.C. (“PJM”) and my current title is Senior Manager – Dispatch. I joined PJM in September 2004 and have been continuously employed there on a full-time basis since January 2007. Prior to holding my current position, I served as an Engineer in the Engineering Support department, as a Senior Engineer in the Markets Coordination department, as a Reliability Engineer, and most recently as Manager – Reliability Engineering. I am submitting this affidavit on behalf of PJM in support of PJM’s answer to the captioned complaint by Lincoln Generating Facility, LLC (“Lincoln” or “Complainant”).

2. As Senior Manager – Dispatch I am responsible for ensuring the efficient economic dispatch of the PJM system under the existing PJM market rules and Joint Operating Agreements with neighboring systems. As the Manager for the Reliability Engineering group, I managed the group responsible for coordinating day-ahead and real-

time operating plans among PJM, its Member<sup>1</sup> Transmission Owners and Generation Owners, and our neighboring entities. As a Reliability Engineer prior to that, I performed these functions directly. In my previous engineering positions I supported the Energy Management System and the Security Constrained Economic Dispatch application.

3. 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.

## **II. PURPOSE AND OVERVIEW OF AFFIDAVIT**

4. The purpose of my affidavit is to support PJM’s answer to the complaint filed by Lincoln on April 6, 2023, regarding the Non-Performance Charges assessed to Lincoln’s generating facility (“Lincoln Facility”). Contrary to the complaint, PJM properly assessed Non-Performance Charges on Lincoln because the Lincoln Facility was never able to be scheduled during the relevant hours of December 23 and 24, 2022, as Lincoln never purchased gas for the Lincoln Facility. Responsibility for procuring fuel and updating its status and operating parameters in the PJM systems rests with Capacity Market Sellers such as Lincoln. 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.

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<sup>1</sup> Capitalized terms used, but not otherwise defined, in this pleading have the meaning provided in, as applicable, the PJM Open Access Transmission Tariff (“Tariff”), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), or the Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region.

### **III. PJM PREPARATIONS FOR WINTER OPERATIONS AND FOR WINTER STORM ELLIOTT**

5. Consistent with PJM's obligations to maintain reliability in the operation of the PJM Transmission System, PJM initiated extensive preparations for operating in severe winter cold and winter storm events in the summer and fall of 2022, conducting emergency drills, verifying reactive capability, and issuing data requests to Members to ascertain seasonal fuel inventories, emissions data, and generator minimum operating temperature limits. My affidavit supporting PJM's answer in Docket No. EL23-54-000 provides greater detail on PJM's general preparation efforts.

6. PJM also prepared specifically for Winter Storm Elliott,<sup>2</sup> as also presented in detail in my affidavit supporting PJM's answer in Docket No. EL23-54-000. In particular, as relevant to Lincoln's complaint, PJM put generators on notice through Cold Weather Advisories and Cold Weather Alerts of the need for heightened readiness as Winter Storm Elliott approached. Despite PJM's efforts, many Capacity Resources failed to perform when they were most needed to support reliable system operations on December 23 and 24, 2022.

### **IV. WINTER STORM ELLIOTT PRESENTED VERY CHALLENGING CONDITIONS FOR PJM OPERATORS**

7. I was working remotely during the daytime hours of December 23 and then in the PJM Control Room for the period from 18:00<sup>3</sup> on December 23, through 08:00 on December 24, and 14:00 through 23:00 on December 24, managing PJM operators'

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<sup>2</sup> "Winter Storm Elliott" refers to a large winter storm that passed through the PJM Region on December 23-25, 2022. See *Winter Storm Elliott Info*, PJM Interconnection, L.L.C., <https://www.pjm.com/markets-and-operations/winter-storm-elliott> (last visited May 25, 2023) (collecting PJM's public statements addressing Winter Storm Elliott's impact on PJM's operations and markets).

<sup>3</sup> All times mentioned in this affidavit are in 24-hour time and Eastern Prevailing Time.

successful efforts to keep the lights on. 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 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.

8. Notwithstanding PJM's preparations for Winter Storm Elliott, the storm's extreme temperature drop coupled with the unusually high holiday weekend load would have stressed system operations by themselves. When the widespread failure of Capacity Resources to meet their Capacity Performance obligations, with over a quarter of the generation in the PJM Region—47,000—MW in unplanned or forced outages, is added to the mix, PJM operators were forced to engage in what at times seemed like an unending recovery. Just as a generating unit was found to replace a unit that had unexpectedly tripped offline or was unable to start at all, another unit would trip off and the hunt for more MW would begin again.

9. On the morning of December 23, PJM started the operating day with approximately 133 gigawatts ("GW") of energy committed in the Day-Ahead Market and an additional 9 GW of available 30-minute reserves, notwithstanding the approximately 12 GW of unplanned (forced) outages that were reported for the PJM generation fleet. PJM did not forecast any potential capacity issues leading into the operating day of December 23, 2022. However, as the day went on, temperatures plunged incredibly quickly, and the number of generating units on forced outage grew dramatically. By the evening of December 23, power demand had risen to a peak of about 135,000 MW and generator forced outages had increased over the day to a total of 34,500 MW. By the

morning of December 24, 2022, the forced outage rate had risen further, with about 47,000 MW unavailable in total.

**V. LINCOLN'S CLAIMS REGARDING PJM OPERATORS' ACTIONS AND COMMUNICATIONS ARE INACCURATE AND PROVIDE NO EXCUSE FOR NON-PERFORMANCE CHARGES**

10. My understanding is that 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.<sup>4</sup>

11. PJM operators do not direct generators to declare forced outages. PJM operators do direct resources to reflect their actual capabilities in eDART and/or Markets Gateway. 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

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<sup>4</sup> See *Duke Energy Corp. v. PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,206 (2015), *reh'g denied*, 154 FERC ¶ 61,156 (2016), *aff'd sub nom. Duke Energy Corp. v. FERC*, 892 F.3d 416 (D.C. Cir. 2018); *Old Dominion Elec. Coop.*, 151 FERC ¶ 61,207 (2015), *reh'g denied*, 154 FERC ¶ 61,155 (2016), *aff'd sub nom. Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018).

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 eDART<sup>5</sup> 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.

12. 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, we had many Capacity Market Sellers inform PJM of their operating status, fuel status, or operating parameter changes only when PJM operators called them. Lincoln fit this pattern of behavior: it did not update its time-to-start parameter from [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] from notification by PJM to starting the units and [BEGIN CUI//PRIV-HC] [REDACTED] [END CUI//PRIV-HC] for the unit to come online and generate) to [BEGIN CUI//PRIV-HC] [REDACTED] [REDACTED] [END CUI//PRIV-HC] in Markets Gateway at any time on December 23 and 24, and did not report its units as "outage type: unplanned with cause type: fuel problem," in eDART, as required, until PJM asked it to so in order to properly reflect its status. When PJM operators called Lincoln because so many other generating facilities had failed and generation that

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<sup>5</sup> 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 25, 2023).

could be online in [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] was sorely needed, Lincoln then informed PJM that it did not have fuel and it would therefore take [BEGIN CUI//PRIV-HC] ██████████, not ██████████, [END CUI//PRIV-HC] to come online.

13. After Lincoln informed the PJM operator who called Lincoln because it appeared in the PJM systems to be a [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] unit that Lincoln did not have fuel and so would not be available until it procured fuel, PJM requested that Lincoln submit a forced (i.e., unplanned) outage ticket in eDART to reflect the Lincoln Facility's actual operating status. It would have been expected for Lincoln to properly end that ticket if or when its units' status changed, i.e., if it had procured fuel and was ready to generate. Also, PJM operators continued to call Lincoln's energy manager on December 23 and 24 to ask when the units might be available and ready to come online. Rather than procuring gas and being ready to generate, by 07:31 on December 24, the [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] for the Lincoln Facility to come online had increased to [BEGIN CUI//PRIV-HC] ██████████, [END CUI//PRIV-HC] yet the Lincoln Facility was still showing in PJM's systems, on which the PJM operators rely, as [BEGIN CUI//PRIV-HC] ██████████, with a ██████████ [END CUI//PRIV-HC] time to start.

14. Contrary to Lincoln's claims, the PJM operators were not calling Lincoln to find out what the pipeline nomination deadlines were at the time and they were not calling to discuss gas procurement. Instead, we needed every MW we could bring online and the operators were calling to find out when the Lincoln Facility would be ready to generate. In the several calls PJM operators had with Lincoln's energy manager, Lincoln never had gas.

15. Even though PJM issued multiple Cold Weather Advisories and Alerts, Lincoln made no effort to procure fuel so that it could perform if needed. Lincoln 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 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.

16. Lincoln's arguments that the Lincoln Facility did not clear in the Day-Ahead Market and was not committed in the Reliability Assessment Commitment ("RAC") the prior day are irrelevant to whether its non-performance on December 23 and 24 should be excused. The reason PJM needed [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] units the afternoon of December 23 was that many of the units that were committed in the Day-Ahead Market and in the RAC were unable to start or tripped offline starting around 10:00 on December 23. The morning of December 23, PJM calculated it had sufficient generation committed in the Day-Ahead Market and the RAC to meet load (even after accounting for a margin of error which was appropriate as load ultimately materialized to be 8% higher than forecast) and have more than enough in reserve, until the generators committed in the Day-Ahead Market and the RAC failed. And when PJM tried to call on the [BEGIN CUI//PRIV-HC] ██████████ [END CUI//PRIV-HC] units like

Lincoln, it found they were not able to be dispatched because they had no gas. That is the reason Lincoln could not be scheduled and therefore is not excused from Non-Performance Charges.

17. Finally, Lincoln's argument that PJM scheduling the Crete Facility and not the Lincoln Facility means PJM was dispatching units for reasons other than their operating parameters, and it must have been a desire to limit the amount of uplift costs, is incorrect. Crete was scheduled earlier in the day for economics, and was a less expensive resource than Lincoln. At the time PJM tried to call Lincoln online, a Maximum Generation Emergency Action was in effect and the PJM operators were dispatching without regard to economic merit order, uplift costs or emissions adders, in order to maintain system reliability.

18. This concludes my affidavit.

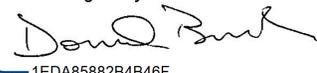
UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Lincoln Generating Facility, LLC, )  
Complainant, )  
 )  
v. )  
 )  
PJM Interconnection, L.L.C., )  
Respondent. )  
 )

Docket No. EL23-59-000

VERIFICATION

I, **Donald Bielak**, pursuant to 28 U.S.C. § 1746, 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.

DocuSigned by:  
  
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Donald Bielak

**ATTACHMENT E**

**PROPOSED PROTECTIVE AGREEMENT**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Lincoln Generating Facility, LLC,	)	
Complainant,	)	
	)	
v.	)	Docket No. EL23-59-000
	)	
PJM Interconnection, L.L.C.,	)	
Respondent.	)	
	)	

**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:<sup>1</sup>

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;<sup>2</sup>

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<sup>1</sup> 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).

<sup>2</sup> See *infra* P 11 for the procedures governing the labeling of this designation.

- 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;<sup>3</sup>
- 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 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);<sup>4</sup> 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

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<sup>3</sup> 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 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).

<sup>4</sup> Notes of Protected Material are subject to the same restrictions for Protected Material except as specifically provided in this Protective Agreement.

- 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 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);<sup>5</sup> 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).

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<sup>5</sup> 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.

- 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;
  - 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.<sup>6</sup> However, if an attorney qualified as a Reviewing

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<sup>6</sup> 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

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 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.<sup>7</sup>

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*.<sup>8</sup> 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

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individual shall not receive access to the Protected Material, Highly Confidential Protected Material, and/or CEII, as applicable, until resolution of the dispute.

<sup>7</sup> See *infra* P 19.

<sup>8</sup> *Notice of Document Labelling Guidance for Documents Submitted to or Filed With the Commission or Commission Staff*, 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

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.
- 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

Lincoln Generating Facility, LLC, )  
Complainant, )  
 )  
v. )  
 )  
PJM Interconnection, L.L.C., )  
Respondent. )  
 )

Docket No. EL23-59-000

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: \_\_\_\_\_



**CERTIFICATE OF SERVICE**

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

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

/s/ Wendy B. Warren  
Wendy B. Warren  
Wright & Talisman, P.C.  
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*Attorney for*  
*PJM Interconnection, L.L.C.*