

176 FERC ¶ 61,080  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
Neil Chatterjee, James P. Danly,  
Allison Clements, and Mark C. Christie.

PJM Interconnection, L.L.C.

Docket Nos. ER21-1635-001  
EL21-91-000

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO CONDITION AND  
ESTABLISHING A SHOW CAUSE PROCEEDING

(Issued August 10, 2021)

1. On April 7, 2021, as amended June 11, 2021, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> PJM Interconnection, L.L.C. (PJM) filed revisions to Schedule 6A of its Open Access Transmission Tariff (Tariff).<sup>2</sup> PJM seeks to revise certain rate and non-rate terms and conditions for the provision of Black Start Service, by developing a formula-based rate option applicable to generators that PJM selects for Black Start Service in competitive solicitations held after the effective date of this filing. PJM requests that the proposed revisions be accepted, effective June 6, 2021. In this order, we accept the proposed Tariff revisions to become effective June 6, 2021, subject to minor conditions as discussed below.

2. In addition, pursuant to section 206 of the FPA, we institute a proceeding to determine whether the existing rates for generating units providing Black Start Service (Black Start Units), which are based on a federal corporate income tax rate that pre-dates the Tax Cuts and Jobs Act of 2017 (TCJA), remain just and reasonable. We direct PJM to either: (1) propose revisions to its Black Start Service rates to reflect changes in the federal corporate income tax rate and describe the methodology used for making those revisions; or (2) show cause why it should not be required to do so.

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> PJM, Intra-PJM Tariffs, Open Access Transmission Tariff, Sched. 6A (12.1.0).

## I. Black Start Service in PJM

3. PJM's Tariff, Schedule 6A requires all transmission customers to take Black Start Service, which is a service necessary to re-energize the transmission system following a system-wide blackout.<sup>3</sup> Schedule 6A also governs the rates, terms, and conditions for Black Start Units.<sup>4</sup> There are currently 154 Black Start Units in PJM.<sup>5</sup>

### A. Rates

4. PJM conducts competitive solicitations to select units to provide Black Start Service. Owners of Black Start Units selected in these competitive solicitations are paid a cost-of-service-rate and can choose between a Commission-approved, unit-specific rate (which would require a separate FPA section 205 filing with the Commission with a rate schedule) or a generic rate prescribed in Schedule 6A.<sup>6</sup> Under the generic rate, a Black Start Unit's annual revenue requirement is a function of its specific fixed costs (Fixed Black Start Service Costs, or Fixed BSSC), variable costs, training costs, and fuel storage costs.<sup>7</sup> The method for calculating the Fixed BSSC component of the generic rate depends on whether the owner of a Black Start Unit has elected to recover any new or incremental capital costs incurred to make that unit Black Start capable. If a Black Start Unit owner chooses to recover such capital costs, the Fixed BSSC is determined using the Capital Cost Recovery Rate.<sup>8</sup> As discussed below, PJM's filing seeks to change

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<sup>3</sup> Black Start Service means "the capability of generating units to start without an outside electrical supply or the demonstrated ability of a generating unit with a high operating factor...to automatically remain operating at reduced levels when disconnected from the grid." Tariff, I. Common Service Provisions, 1. Definitions, Definitions – A-B (15.0.0).

<sup>4</sup> Tariff, Schedule 6A (11.0.0).

<sup>5</sup> PJM April 7 Filing, attach. B (Hauske Aff.) at 8.

<sup>6</sup> Tariff, Schedule 6A (11.0.0), § 17.

<sup>7</sup> Under the generic rate, a Black Start Unit's annual revenue requirement equals:  $\{(Fixed\ Black\ Start\ Service\ Costs) + (Variable\ Black\ Start\ Service\ Costs) + (Training\ Costs) + (Fuel\ Storage\ Costs)\} * (1+Z)$ , where Z is equal to an incentive factor of up to 10%. Tariff, Schedule 6A (11.0.0), § 18.

<sup>8</sup> If a Black Start Unit owner chooses not to recover such capital costs, the Fixed BSSC is determined using the Base Formula Rate, which equals:  $Net\ Cost\ of\ New\ Entry * Black\ Start\ Unit\ Capacity * X$ , where X is the Black Start Service allocation factor

two components of this generic rate—the Capital Cost Recovery Rate and fuel storage costs—for Black Start Units selected in future competitive solicitations.

5. Under the Capital Cost Recovery Rate, Fixed BSSC equals the product of each unit's new or incremental capital costs incurred to provide Black Start Service and a Capital Recovery Factor (CRF).<sup>9</sup> Since 2009, Schedule 6A has contained a table of stated CRF values,<sup>10</sup> a percentage that allows the unit owner to recover those capital costs, plus a return on investment and provision for taxes, over a prescribed period. As a stated rate, the table of CRF values was developed using fixed assumptions regarding depreciation rates, federal and state corporate income tax rates, capital structure, and cost of capital. For a given Black Start Unit, PJM chooses the applicable CRF based on the age of the Black Start Unit when the capital costs were incurred.

6. Another component of the generic rate for Black Start Service provides for fuel storage costs for Black Start Units that store liquefied natural gas, propane, or oil on-site to provide Black Start Service.<sup>11</sup> The fuel storage costs calculation also allows Black Start Units that store oil in tanks to recover the cost of storing fuel that is unusable but necessary for fuel pumps to function properly, referred to as the minimum tank suction level (MTSL).<sup>12</sup>

#### **B. Non-Rate Terms and Conditions**

7. Schedule 6A also requires Black Start Units to comply with several non-rate terms and conditions intended to ensure the performance and availability of Black Start Service. For example, Schedule 6A prescribes the period for which a Black Start Unit must provide Black Start Service once selected (commitment period). Currently, the commitment period is prescribed in the same table as the CRF values (in Schedule 6A) and relates to the age of the Black Start Unit. Schedule 6A also governs the

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(currently, 1-2% depending on the unit type). The Base Formula Rate is not at issue in this proceeding. Tariff, Schedule 6A (11.0.0), § 18.

<sup>9</sup> The formula for the Capital Cost Recovery Rate is: (FERC-approved rate, if any) + (Incremental Black Start Capital Costs \* CRF), where CRF is the Capital Recovery Factor. Tariff, Schedule 6A (11.0.0), § 18.

<sup>10</sup> *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,197, at P 39 (2009).

<sup>11</sup> See *supra* n.7 (specifying the formula for the generic Black Start Service rate).

<sup>12</sup> Fuel Storage Costs in the generic rate is calculated as: {MTSL + [(# Run Hours) \* (Fuel Burn Rate)] \* (12 Month Forward Strip + Basis) \* (Bond Rate), where MTSL is the minimum tank suction level. Tariff, Schedule 6A (11.0.0), § 18.

circumstances in which Black Start Units can take outages, and whether the owner of a Black Start Unit on an outage may offer a substitute Black Start Unit during that outage. In addition, Schedule 6A prescribes the annual testing requirements for Black Start Units, the rate for energy produced during testing, and possible sanctions for failure to pass the required test (or a re-test).

## II. Overview of PJM's Initial Filing

### A. Rates

8. PJM proposes revising the Capital Cost Recovery Rate and the commitment period for Black Start Units that make capital investments on or after June 6, 2021 (New Black Start Investments).<sup>13</sup> For New Black Start Investments, PJM proposes to use a formula rate such that the CRF's components would be re-calculated annually to reflect the current information, including revisions to federal and state income taxes and debt interest rates. PJM states that its proposal will result in an initial net rate reduction because of reductions in the federal corporate income tax rate under the TCJA. PJM proposes to conceptually describe the CRF calculation in Schedule 6A, with assumptions regarding capital structure and return on equity stated in the Tariff, while other assumptions—federal corporate income tax rates and depreciation rules, state corporate income tax rates, and debt interest rates—and details on the annual update process are to be specified in PJM's Manual 15. For New Black Start Investments, PJM also proposes requiring a lifetime commitment period based on the age of the Black Start Unit plus the remaining life of the Black Start equipment.<sup>14</sup>

9. Meanwhile, for Black Start Units currently on the Capital Cost Recovery Rate and recovering investments made prior to June 6, 2021 (Existing Black Start Investments) PJM does not propose any changes to the CRF and commitment period values stated in the CRF table in Schedule 6A.<sup>15</sup> In support of this decision, PJM contends that the stated CRF values in the table in Schedule 6A are “black box” numbers and therefore it is not possible to adjust them to reflect federal tax law changes.<sup>16</sup> PJM also argues that it is respecting the settled expectations of owners of Black Start Units that have made necessary capital investments to qualify for Black Start Service, have committed to

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<sup>13</sup> PJM April 7 Filing, Transmittal at 8-9, 12-15, 18-20.

<sup>14</sup> *Id.* at 8-9, 14-15.

<sup>15</sup> While not defined terms in the Tariff, for clarity and consistency in this order we use New Black Start Investments and Existing Black Start Investments in discussing PJM's proposed revisions to Schedule 6A.

<sup>16</sup> PJM April 7 Filing, Transmittal at 12.

provide Black Start Service over multi-year periods, and have done so in reliance on the stated CRF values.<sup>17</sup> PJM expresses concern that changing the stated CRF values for existing Black Start Units could incent owners of such units to terminate their current commitments, while also impacting investor confidence among prospective suppliers of Black Start Service, who may be concerned about future changes in Black Start Service compensation.<sup>18</sup> PJM also argues that the Commission has approved different rates and non-rate terms and conditions for existing and new customers as just, reasonable, and not unduly discriminatory when there are distinctions in timing, notice, and expectations between the two groups—and asserts the Commission should do the same here.<sup>19</sup>

10. Finally, for all Black Start Units, PJM proposes changing the calculation used to recover the cost of unusable fuel needed to satisfy a Black Start Unit's MTSL in order to recover only the portion related to Black Start Service.<sup>20</sup>

### **B. Non-Rate Terms and Conditions**

11. PJM also proposes changes to non-rate terms and conditions for all generators, which aim to enhance performance requirements.<sup>21</sup> All Black Start Units will be required to pass an annual test, with Black Start Units that fail this test ceasing to receive Black Start Service revenues and potentially facing involuntary termination and forfeiture of past revenues. PJM also proposes more prescriptive eligibility criteria for the owner of a Black Start Unit to substitute another unit when taking an outage.

### **III. Notice of Filing and Responsive Pleadings**

12. Notice of PJM's filing was published in the *Federal Register*, 86 Fed. Reg. 19,614 (April 14, 2021), with interventions and comments due on or before April 28, 2021. Timely motions to intervene were filed by: American Municipal Power, Inc.; Buckeye Power, Inc.; Calpine Corporation; Delaware Division of the Public

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<sup>17</sup> *Id.* at 18; *see also* Deficiency Resp. at 2-3.

<sup>18</sup> PJM April 7 Filing, Transmittal at 18, 20.

<sup>19</sup> *Id.* at 21; *see also* Deficiency Resp. at 3-4 (citing, e.g., *Sw. Power Pool, Inc.*, 158 FERC ¶ 61,063, at P 12 (2017) (demonstrating that new and existing customers are not similarly situated in certain cases); *Mo. River Energy Servs. v. FERC*, 918 F.3d 954, 958 (D.C. Cir. 2019) (“undue discrimination occurs only if the entities are ‘similarly situated,’ such that ‘there is no reason for the difference.’” (internal cites omitted))).

<sup>20</sup> PJM April 7 Filing, Transmittal at 14, 17.

<sup>21</sup> *Id.* at 9-11, 16-17.

Advocate; Dominion Energy Services, Inc. (Dominion); Exelon Corporation, Exelon Generation Company, LLC and its Affiliates; Hazleton Generation LLC; Illinois Citizens Utility Board; Indiana Office of Utility Consumer Counselor; J-POWER USA Development Co., Ltd.; LS Power Development, LLC; Maryland Office of People's Counsel; Monitoring Analytics, LLC, as Independent Market Monitor for PJM (PJM Market Monitor); North Carolina Electric Membership Corporation; NRG Power Marketing LLC and Midwest Generation, LLC; Office of the Ohio Consumers' Counsel; Office of the People's Counsel for the District of Columbia; Old Dominion Electric Cooperative; PJM Industrial Customer Coalition; PJM Power Providers Group (PJM Power Providers); Rockland Electric Company; St. Joseph Energy Center, LLC; and Vistra Corp. and Dynegy Marketing and Trade, LLC. A late-filed motion to intervene was filed by American Electric Power Service Corporation (AEP).

13. Comments in support of PJM's filing were submitted by: Dominion; Exelon Corporation, Exelon Generation Company, LLC and its Affiliates, and PJM Industrial Customer Coalition (collectively, Exelon-PJMICC); Hazleton Generation LLC, J-POWER USA Development Co., Ltd., LS Power Development, LLC, and St. Joseph Energy Center, LLC (collectively, Indicated Suppliers); and PJM Power Providers.

14. Protests were submitted by: American Municipal Power, Inc. and Old Dominion Electric Cooperative (collectively, AMP-ODEC); Delaware Division of the Public Advocate, Illinois Citizens Utility Board, Indiana Office of Utility Consumer Counselor, Maryland Office of People's Counsel, Office of the People's Counsel for the District of Columbia, and Office of the Ohio Consumers' Counsel (collectively, Joint Consumer Advocates); and PJM Market Monitor.

15. On May 12, 2021, Indicated Suppliers filed an answer. On May 13, 2021, Buckeye Power, Inc. filed a limited answer and PJM filed an answer. On May 17, 2021, Joint Consumer Advocates filed an answer. On May 21, 2021, PJM Market Monitor filed an answer and PJM filed an answer and clarification.

**A. Initial Protests**

16. Joint Consumer Advocates argues that the definition of the formulaic CRF describes what PJM is seeking to calculate, but fails to describe how PJM will perform the annual calculation of the CRF values to be posted to the PJM website.<sup>22</sup> PJM Market Monitor offers a mathematical expression of the formulaic CRF, which it contends is a reduction of the standard financial model that PJM proposes to otherwise use, and

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<sup>22</sup> Joint Consumer Advocates April 28 Protest at 3.

PJM Market Monitor asks the Commission to direct PJM to include this formula and associated definitions in the Tariff.<sup>23</sup>

17. AMP-ODEC and PJM Market Monitor argue that PJM's failure to revise the stated CRFs for Existing Black Start Investments preserves unjust and unreasonable rates since the stated CRFs do not reflect the reduction in federal corporate income tax rates under the TCJA.<sup>24</sup> Joint Consumer Advocates similarly argues that PJM has admitted that the proposed formulaic CRF would result in lower values today than the stated CRFs, and thus there is no evidentiary basis for PJM to continue applying a 2009 rate that is too high to be used in 2021, whether due to changes in cost of equity, cost of debt, or income tax rates.<sup>25</sup> AMP-ODEC, Joint Consumer Advocates, and PJM Market Monitor also contend that PJM's failure to revise stated CRFs effectively establishes an unduly discriminatory rate structure that will treat similarly situated Black Start Units differently, based on the date they were selected to provide Black Start Service.<sup>26</sup>

18. AMP-ODEC further argues that the generic rate in Schedule 6A is a formula rate whereby revenue requirements are calculated annually, and thus inherently is subject to revision prospectively such that owners of Black Start Units with Existing Black Start Investments have no reasonable expectation for rates to remain fixed.<sup>27</sup> Relatedly, Joint Consumer Advocates argues that the risk of existing Black Start Units prematurely terminating their commitments is not new, as they might have sought to do so if costs increased (such as a tax increase or increase in debt rates) and the CRF values were not updated.<sup>28</sup> As to concerns that prospective bidders may not participate in Black Start Service procurements if they are concerned expectations may be upset (if stated CRFs for Existing Black Start Investments were replaced with formulaic CRFs), Joint Consumer Advocates states that such concerns are not credible given that the proposed formulaic CRF will update annually.

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<sup>23</sup> PJM Market Monitor April 28 Comments at 15-16.

<sup>24</sup> AMP-ODEC April 28 Protest at 2, 4-5; PJM Market Monitor April 28 Comments at 13-14.

<sup>25</sup> Joint Consumer Advocates April 28 Protest at 9-10.

<sup>26</sup> AMP-ODEC April 28 Protest at 2, 5, 9-10; Joint Consumer Advocates April 28 Protest at 9, 11, 14; PJM Market Monitor April 28 Comments at 2.

<sup>27</sup> AMP-ODEC April 28 Protest at 7-9.

<sup>28</sup> Joint Consumer Advocates April 28 Protest at 12-13.

19. PJM Market Monitor also argues that the Commission should require PJM to expand the proposed formulaic CRF to apply to all Black Start Units and should apply corrected CRF values retroactively to January 1, 2018 when the TCJA took effect.<sup>29</sup>

**B. Responsive Pleadings**

20. Indicated Suppliers argue that PJM has entered binding contracts with certain owners of existing Black Start Units, setting forth rates for providing Black Start Service. Indicated Suppliers contend that the RFP proposals and PJM's subsequent letters to bidders accepting such proposals together establish a binding contract, with a specified CRF rate, between PJM and the owner of the selected Black Start Unit.<sup>30</sup> Indicated Suppliers assert that the *Mobile-Sierra* doctrine constrains the Commission such that it may declare a mutually agreed-upon contract rate to be unjust and unreasonable only when it seriously harms the public interest. Indicated Suppliers contend that the Commission need not address existing Black Start Service contracts, as no party has filed a complaint pursuant to FPA section 206 challenging the terms of any existing Black Start Service arrangement nor provided evidence demonstrating any such arrangement to be contrary to the public interest.

21. Indicated Suppliers also argue that PJM's decision not to disturb the stated CRFs is not unduly discriminatory and preferential because existing Black Start Units are not similarly situated to new Black Start Units in that the former have already made investments in reliance on the rates set forth in Schedule 6A and PJM's notification letters sent to selected Black Start Units. By contrast, prospective bidders can review the formulaic CRF prior to deciding to submit a proposal or assume a Black Start Service commitment.<sup>31</sup>

22. Indicated Suppliers further assert that Black Start Unit owners are the public utilities providing Black Start Service, and thus have the associated section 205 filing rights. Accordingly, even when a Black Start Unit owner has elected the generic rate in Schedule 6A, that election does not grant PJM the right to unilaterally modify, under section 205, the terms under which the Black Start Unit owner has agreed to provide Black Start Service.<sup>32</sup>

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<sup>29</sup> PJM Market Monitor April 28 Comments at 2, 23

<sup>30</sup> Indicated Suppliers May 12 Answer at 4-6.

<sup>31</sup> *Id.* at 12.

<sup>32</sup> *Id.* at 7.

23. Joint Consumer Advocates and PJM Market Monitor contend that Indicated Suppliers are incorrect to assert a “binding contract” with PJM to provide Black Start Service, as no such contracts exist; the *Mobile-Sierra* doctrine does not apply to PJM’s notification letters to selected bidders, nor do Indicated Suppliers cite a Tariff provision that permits PJM to enter into a binding contract with compensation terms different from those in Schedule 6A.<sup>33</sup> PJM Market Monitor also argues that *Morgan Stanley*, which Indicated Suppliers invokes, is inapposite because Black Start Service is not provided pursuant to market-based rate authority or valid contracts.<sup>34</sup> PJM Market Monitor also challenges Indicated Suppliers’ assertion regarding FPA section 205 filing rights, noting that such an argument presumes that affected Black Start Unit owners have exercised or attempted to exercise their FPA section 205 filing rights, which PJM Market Monitor states has not occurred thus rendering such arguments irrelevant.

24. PJM Market Monitor asserts that the different rate designs available under Schedule 6A (unit-specific rate schedules or the generic rate) are designed to address the circumstances of differently situated Black Start Units, while new and existing Black Start Units paid under the Capital Cost Recovery Rate are similarly situated.<sup>35</sup>

25. Finally, PJM Market Monitor disputes claims that applying correct CRF values will discourage new investment and cause existing Black Start Units to terminate service.<sup>36</sup> PJM Market Monitor clarifies that “corrected” stated CRF values for Existing Black Start Investments should be the same except for revisions to reflect a federal corporate income tax rate of 21% and bonus depreciation and notes that the CRF is designed to provide a fixed rate of return, which would not change from correcting the assumed federal corporate income tax rate and associated tax depreciation. PJM Market Monitor also notes that the formulaic CRF is intended to promote investment (rather than discourage it) by reducing risk, which is achieved by automatic adjustments to the CRF, and thus payments, if corporate income tax rates rise.

#### **IV. Deficiency Letter, Response, and Protests**

26. On May 21, 2021, Commission staff issued a letter notifying PJM that its filing was deficient and requesting additional information needed to process the filing (Deficiency Letter). Commission staff inquired about PJM’s decision to retain the

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<sup>33</sup> Joint Consumer Advocates May 17 Answer at 5; PJM Market Monitor May 21 Answer at 6.

<sup>34</sup> PJM Market Monitor May 21 Answer at 6-8.

<sup>35</sup> *Id.* at 8.

<sup>36</sup> *Id.* at 4-5, 9-10.

current stated CRF values for calculating prospective annual revenue requirements for existing Black Start Units, and specifically asked PJM to address Commission precedent regarding reductions to stated transmission rates following passage of the TCJA.

Commission staff also asked PJM to clarify which compensation rules would apply to incremental capital investments undertaken by existing Black Start Units on or after June 6, 2021 and to, as needed, further support its proposal. Finally, Commission staff asked PJM to elaborate on its proposed formulaic CRF methodology by explaining: (1) how PJM would calculate each input to the formula; (2) why PJM proposed to include certain details in the business practice manuals; and (3) how stakeholders would be able to understand, verify, and contest PJM's annual CRF calculations.

27. PJM responded to the Deficiency Letter on June 11, 2021 (Deficiency Response). PJM clarifies that Black Start Units with Existing Black Start Investments, and that elect to make a New Black Start Investment to continue offering Black Start Service, would be subject to the proposed rules providing for a formulaic CRF and requiring a lifetime commitment.<sup>37</sup> PJM explains that for such Black Start Units, their Existing Black Start Investments would continue to be recovered for the equipment's remaining service life using the pre-existing stated CRF values. PJM also explains that while it is able to parse cost recovery for old and new investments, it is unable to do so for commitment periods, and so the owner of a Black Start Unit with an Existing Black Start Investment that undertakes a New Black Start Investment would face a lifetime commitment that supersedes any shorter commitment periods associated with Existing Black Start Investments.

28. Regarding PJM's decision to not modify the existing, stated CRF values when calculating annual revenue requirements prospectively for Existing Black Start Investments, PJM advances several arguments pertaining to: settled expectations of owners of existing Black Start Units; Commission precedent approving different rates, terms, and conditions for new and existing customers when there are justifiable differences between two groups; and Commission precedent implementing the TCJA in transmission formula and stated rates. PJM contends that Commission precedent clearly demonstrates that new and existing customers are not similarly situated in certain cases where existing customers relied on certain material terms when they elected to take or provide a service.<sup>38</sup> Addressing Commission precedent regarding reductions to stated transmission rates following passage of the TCJA, PJM states that not all utilities with stated transmission rates that were subject to the show cause order in *Alcoa* filed rate

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<sup>37</sup> Deficiency Response at 7.

<sup>38</sup> *Id.* at 4-5.

reductions to reflect the lower federal corporate income tax rate.<sup>39</sup> PJM also argues that in Order No. 864, the Commission declined to require changes to stated transmission rates to reflect the impact of the TCJA on accumulated deferred income taxes (ADIT), instead directing utilities with stated transmission rates to address those impacts in their next rate case—and that here, PJM is not filing a new stated rate case, but rather is maintaining the existing stated CRF values for existing Black Start Service providers.<sup>40</sup>

29. Finally, PJM notes that the question of whether the existing, stated CRF values for existing Black Start Units should be revised to reflect the change in the federal corporate income tax rate does not render PJM's proposal as to the formulaic CRF unjust and unreasonable.<sup>41</sup> PJM contends that if the Commission sees merit in such arguments, the Commission should, as it did in the show cause orders in *Alcoa*, use FPA section 206 to address this issue.

30. Regarding PJM's proposed formulaic CRF methodology, PJM states that it is amenable, if directed by the Commission, to including the CRF formula (as specified by PJM Market Monitor in its comments) and an accompanying table describing inputs, in Schedule 6A, section 18.<sup>42</sup> PJM also states that if the Commission determines it is not just and reasonable to describe in Manual 15 the fixed and variable inputs to the CRF formula, PJM would agree to including detailed descriptions of these inputs in Schedule 6A, section 18.<sup>43</sup> Finally, PJM explains that it would be amenable, if directed by the Commission, to revising the initially proposed dates by which the CRF calculations would be performed and posted to the PJM website to be a month earlier, and to add a date by which stakeholders can contest the calculations before the CRFs are applied to calculate Black Start Service revenue requirements.

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<sup>39</sup> *Id.* at 6 (citing *Alcoa Power Generating Inc.—Long Sault Div.*, 162 FERC ¶ 61,224 (2018) (*Alcoa*)).

<sup>40</sup> *Id.*.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 9-11; *see also* PJM May 13 Answer at 3-4.

<sup>43</sup> PJM clarifies that the formulaic CRF would capture annually changes in the state and federal income tax rates and debt interest rates, as well as changes in tax depreciation rules. The depreciation that is applicable under the tax code at the date a Black Start Service undertakes a New Black Start Investment will be used to calculate the CRF for that investment throughout the commitment period. Deficiency Response at n.28.

31. Notice of the Deficiency Response was published in the *Federal Register*, 86 Fed. Reg. 32,259 (June 17, 2021), with interventions and comments due on or before July 2, 2021. A timely motion to intervene was filed by National Hydropower Association. PJM Market Monitor submitted comments and AMP-ODEC and Joint Consumer Advocates submitted protests. On July 15, 2021, PJM filed an answer. On July 26, 2021, AMP-ODEC submitted an answer.

32. Joint Consumer Advocates states that even if there were settled expectations, PJM has not justified that expectation since the tariff under which Black Start Service is provided expressly states it is subject to change under sections 205 and 206.<sup>44</sup> Joint Consumer Advocates also argues that the Commission precedent cited by PJM in the Deficiency Response is inapposite given different fact patterns present in those cases relative to in this proceeding. Joint Consumer Advocates similarly argues that PJM has failed to distinguish relevant facts in the instant proceeding from those present in Commission precedent requiring transmission rate revisions to implement the TCJA.

33. PJM Market Monitor contends that calculating the CRF to reflect current tax provisions is the only way to provide returns consistent with the legitimate investor expectations, and that providing owners of Black Start Units a windfall from overcharging for taxes would exceed the reasonable expectations of both investors and customers.<sup>45</sup> PJM Market Monitor also clarifies that different, corrected CRF values should be calculated for existing Black Start Units based on the date on which the capital investments being recovered through the Capital Cost Recovery Rate were placed in service, since the TCJA's bonus depreciation rules do not apply to investments made on or before September 27, 2017, while bonus depreciation does apply to investments placed in service after September 27, 2017. PJM Market Monitor reiterates requests for any corrections to the stated CRF values to be applied retroactively to January 1, 2018.

34. AMP-ODEC argues that because PJM Market Monitor has demonstrated that the generic rate is a formula rate, consistent with Order No. 864 the Commission should require PJM to adjust the stated CRF values to reflect currently effective federal corporate income tax rates.<sup>46</sup> AMP-ODEC disputes PJM's reliance on the multi-year nature of a Black Start Unit commitment as the basis for retaining the stated CRF values for past investments, noting that the formulaic CRF reduces risk for these owners by, for instance, providing for a revenue increase if tax rates increase in the future. AMP-ODEC also contends that all inputs to the formulaic CRF that are not sourced from clear

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<sup>44</sup> Joint Consumer Advocates July 2 Protest at 2-10.

<sup>45</sup> PJM Market Monitor July 2 Comments at 3-5.

<sup>46</sup> AMP-ODEC July 2 Protest at 4-5, 7-10.

external, authoritative public sources should be stated in the Tariff, including the debt interest rate, debt term, capital structure, and internal rate of return on equity.

35. PJM argues that protestors repeat arguments concerning what PJM “*does not propose to change*” and that effectively protestors improperly seek to revise PJM’s filing.<sup>47</sup> PJM renews its request for the Commission, to the extent it finds merit in protestors’ concerns regarding application of the CRF to Existing Black Start Investments, to address those claims in a separate section 206 proceeding. In response, AMP-ODEC argues that PJM has only agreed to including the CRF formula, and an accompanying “table of inputs,” in the Tariff. AMP-ODEC contends that the “rule of reason” requires that all practices that significantly affect rates, terms, and conditions of Commission-jurisdictional services be included in a Tariff on file with the Commission; and because PJM does not intend to include fixed values in the Tariff where there is no clear or simple source of those values for purposes of annual updates, PJM’s agreement to move the basic CRF formula into the Tariff results in unreasonably vague rates.<sup>48</sup>

## V. Discussion

### A. Procedural Matters

36. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,<sup>49</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

37. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure,<sup>50</sup> we grant the late-filed motion to intervene of AEP given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers of AMP-ODEC, Buckeye Power, Inc., Indicated Suppliers, Joint Consumer Advocates, PJM, and PJM Market Monitor because they have provided information that assisted us in our decision-making process.

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<sup>47</sup> PJM July 15 Answer at 2-4 (original emphasis).

<sup>48</sup> AMP-ODEC July 26 Answer at 3.

<sup>49</sup> 18 C.F.R. § 385.214 (2020).

<sup>50</sup> *Id.* § 385.214(d).

**B. Substantive Matters**

39. We accept the proposed Tariff revisions, to become effective June 6, 2021, subject to condition, as discussed below.

**1. Uncontested Revisions**

40. PJM's proposed revisions to the: (1) MTSL; (2) testing requirements and involuntary termination provisions; and (3) outage and substitution requirements—all of which would apply to all Black Start Units—are uncontested. Similarly, PJM's proposed revisions to the commitment period and voluntary termination provisions, which would apply to New Black Start Investments only, are also uncontested.

41. We find that these uncontested revisions appear to be just and reasonable and not unduly discriminatory or preferential, and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. As to the MTSL, we find that PJM's proposal ensures just and reasonable rates by better aligning cost causation with cost recovery and accept these revisions subject to correcting typographical errors. Within 30 days of the date of this order, we direct PJM to submit a compliance filing correcting typographical errors in the MTSL calculation to ensure clarity regarding this element of the generic Black Start Service rate.<sup>51</sup> As for the remaining uncontested provisions discussed above, we find that they appropriately recognize the essential nature of Black Start Service by seeking to ensure the availability of these resources while ensuring just and reasonable terms and conditions for Black Start Units and accept them as filed.

**2. Revisions to the Capital Recovery Factor**

42. We also accept the proposed Tariff revisions governing the CRF, subject to condition, as discussed below. As an initial matter, no party protested PJM's proposal to calculate new CRFs annually for New Black Start Investments (except for concerns regarding specification of the CRF methodology in Schedule 6A, which we address below). Additionally, we find that using a tracker to calculate the CRFs for New Black Start Investments is just and reasonable because it ensures that Black Start Unit compensation aligns with changes in market conditions and certain underlying costs, and strikes an appropriate balance between ratepayer protection and investor certainty by fixing certain inputs (such as return on equity and capital structure) while requiring other inputs to be updated annually (such as debt interest rates and income taxes). We also find that PJM's proposed Tariff revisions do not propose any changes to the CRF values

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<sup>51</sup> Specifically, PJM's proposed tariff revisions in Schedule 6A, section 18 use the terms "Black Start/Energy Tank Ratio," "Black Start Energy Tank Ratio," and "Black Start Energy Take Ratio" to refer to the same input to the MTSL calculation.

stated in the CRF table in Schedule 6A for Black Start Units currently on the Capital Cost Recovery Rate and recovering Existing Black Start Investments. For this reason, we need not address protests or arguments as to the stated CRF values for Existing Black Start Investments, as they are outside the scope of our evaluation of PJM's proposal under FPA section 205. However as discussed below, we establish proceedings pursuant to FPA section 206, requiring PJM to either revise the stated CRF values for Existing Black Start Investments or show cause why such CRF values should not be revised.

43. Under the Commission's rule of reason policy, provisions that "significantly affect rates, terms, and conditions of service, are readily susceptible of specification, and are not generally understood...must be in the Tariff." In contrast, "items better classified as implementation details may be included only in the business practice manual[s]."<sup>52</sup> We find that essential details regarding the proposed annual CRF calculation should be included in Schedule 6A of the Tariff rather than Manual 15, as the CRF significantly affects Black Start Service rates. Moreover, further specifying the formulaic CRF methodology in Schedule 6A will allow interested parties to better understand PJM's annual update process.<sup>53</sup> As PJM has already consented to provide greater specificity regarding the formulaic CRF methodology in the Tariff, we therefore direct PJM to submit a compliance filing within 30 days of the date of this order proposing Schedule 6A revisions that include the formula used to calculate the CRF values, specifying the inputs used in the calculation of the CRF, and further specifying the process PJM will use to perform and post the results of this annual CRF calculation.<sup>54</sup>

44. Specifically, PJM should revise Schedule 6A, section 18 to include each of the following elements regarding the formulaic CRF methodology: (1) a mathematical

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<sup>52</sup> *Energy Storage Assoc. v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,296, at P 108 (2018).

<sup>53</sup> *See Me. Yankee Atomic Power Co.*, 42 FERC ¶ 61,307, at 61,923 (1988) ("formula rates that are not specific are unacceptable," requiring "that the specific formula calculations be reduced to writing and incorporated into the rate schedule"); *Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 290 (2013) ("Interested parties must have the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and calculations, or the reasonableness and prudence of the costs to be recovered in the formula rate.").

<sup>54</sup> The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has "authority to propose modifications to a utility's [FPA section 205] proposal *if the utility consents to the modifications.*" *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

equation representing the formulaic CRF;<sup>55</sup> (2) an accompanying table describing each variable within the mathematical equation;<sup>56</sup> (3) detailed descriptions of how PJM will calculate each input to the formulaic CRF, including a table specifying the applicable relationship between capital investment lifespan and the recovery period;<sup>57</sup> and (4) a table presenting the annual milestones for PJM to calculate and post the CRF values and for interested parties to contest PJM's calculation prior to the values taking effect.<sup>58</sup> PJM may propose in its compliance filing where to place these elements within section 18 as well as any accompanying revisions that are required.

45. Finally, with respect to AMP-ODEC's characterization that "PJM does not intend to include fixed values in the Tariff where there is not clear or simple source of those values for purposes of annual updates," we find that the revisions that PJM has agreed to make in the compliance filing would clearly state the basis for each input, whether fixed or updated annually.<sup>59</sup>

#### **VI. Show Cause Proceeding to Address the Capital Recovery Factor for Existing Black Start Investments**

46. The CRF applied to a Black Start Unit's capital costs has been based on a table (within Schedule 6A, section 18) containing stated CRF values.<sup>60</sup> As noted above, PJM does not propose any changes to those values for Black Start Units with Existing Black Start Investments that are currently on the Capital Cost Recovery Rate. The evidence in this record, as highlighted by PJM Market Monitor, demonstrates that these stated CRF values are premised, in relevant part, on an assumed federal corporate income tax rate that pre-dates the TCJA.<sup>61</sup>

47. The TCJA, among other things, lowered the federal corporate income tax rate from a maximum 35% to a flat 21% rate effective January 1, 2018. This means that

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<sup>55</sup> PJM May 13 Answer at 4.

<sup>56</sup> *Id.*

<sup>57</sup> Deficiency Response at 10-11.

<sup>58</sup> *Id.* at 11.

<sup>59</sup> AMP-ODEC July 26 Answer at 3.

<sup>60</sup> *See supra* P 5 (explaining the table of stated CRF values).

<sup>61</sup> PJM Market Monitor April 28 Comments n.15; PJM Market Monitor July 2 Comments at 4-5.

companies, including those subject to the Commission's jurisdiction, will compute income taxes owed to the Internal Revenue Service based on a 21% tax rate. This tax rate reduction will result in lower income tax expense going forward and a reduction in accumulated deferred income taxes on the books of rate-regulated companies. The recovery of federal corporate income taxes is reflected in Black Start Service rates. When tax expense decreases, so does the cost of service. Absent a change to the stated CRF values, the rates paid prospectively to owners of Black Start Units with Existing Black Start Investments may not accurately reflect the costs of providing service given the reduction in the federal corporate income tax rate. Accordingly, the stated CRF values currently on file with the Commission appear to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.<sup>62</sup>

48. Pursuant to FPA section 206, we direct PJM within 60 days of the date of this order either: (1) to show cause as to why its Tariff remains just and reasonable and not unduly discriminatory or preferential; or (2) to explain what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the Tariff has in fact become unjust and unreasonable or unduly discriminatory or preferential and, therefore, proceeds to establish a replacement Tariff.<sup>63</sup>

49. If PJM prefers to propose revisions to its Tariff on the subject of this order, then it may do so pursuant to its applicable FPA section 205 filing rights. In such a filing, PJM should state explicitly that it is submitting its proposal under FPA section 205. If PJM wishes to have the Commission hold this proceeding in abeyance pending the Commission's consideration of any such FPA section 205 filing, PJM should submit an appropriate motion in this docket explaining the basis for the abeyance.

50. We decline to include within the scope of this proceeding, as PJM Market Monitor requests, the issue of whether PJM should make retroactive changes to the rates

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<sup>62</sup> See e.g., *Alcoa*, 162 FERC ¶ 61,224; *AEP Appalachian Transmission Co., Inc.*, 162 FERC ¶ 61,225 (2018) (requiring transmission owners to revise stated and formula transmission rates to reflect changes in the federal corporate income tax rate or show cause why they should not be required to do so).

<sup>63</sup> PJM should make this show cause filing as a compliance filing in eTariff (eTariff Code 80) establishing a new docket number (which means filing without an associated filing identifier at the filing level). PJM either should include any proposed tariff changes in its transmittal letter or as *pro forma* tariff records. This compliance filing will establish a new proceeding in which to process the section 206 proceeding. Filings in response to PJM's compliance response to the section 206 proceeding should be filed only in this new docket.

previously paid to generators, as any such changes violate the filed rate doctrine and the related rule against retroactive ratemaking.

51. Indicated Suppliers assert that the Commission should not revise the CRF for existing resources due to their settled expectations. At this juncture, we are unpersuaded that tracking changes in the federal corporate income tax rate upsets settled expectations, as owners of Black Start Units would be earning, all else equal, the same after-tax return under the 21% tax rate as they did under the 35% tax rate.

52. Indicated Suppliers further assert the *Mobile-Sierra* doctrine constrains the Commission in this proceeding to review of the Black Start Unit service agreements under a public interest standard. They, however, provide no agreement indicating that the public interest standard applies or that these rates should be considered anything other than tariff-based rates established under Schedule 6A and subject to PJM's *Memphis*<sup>64</sup> clause. If owners of Black Start Units have additional evidence that they believe establishes a public interest standard of review, they may present that evidence in this show cause proceeding.

53. Interested entities may respond within 30 days of PJM's filing, addressing either or both: (1) whether PJM's existing Tariff remains just and reasonable and not unduly discriminatory or preferential; and (2) if not, what changes to PJM's Tariff should be implemented as a replacement rate.

54. In cases where, as here, the Commission institutes a proceeding on its own motion under FPA section 206, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date. Consistent with our general policy of providing maximum protection to customers, we will set the refund effective date at the earliest date possible, i.e., the date of publication by the Commission of its notice of initiation of the above-captioned proceeding in the *Federal Register*.

55. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reasons why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. Assuming that PJM files revisions to the stated CRF values, we estimate that we would be able to issue our decision within approximately four months of the filing of the tariff revisions.

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<sup>64</sup> *United Gas Pipeline Co. v. Memphis Light, Gas and Water Div.*, 358 U.S. 103 (1958) (*Memphis*).

56. Any entity desiring to participate in this proceeding must file a notice of intervention or a motion to intervene, as appropriate, in the docket number identified in the caption of this order in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, within 21 days of publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding.

The Commission orders:

(A) PJM's proposed Tariff revisions in Docket No. ER21-1635-001 are hereby accepted, subject to condition, to become effective June 6, 2021, as discussed in section V.B of this order.

(B) PJM is hereby directed to submit a compliance filing in Docket No. ER21-1635 within 30 days of the date of this order, as discussed in section V.B of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL21-91-000, concerning the justness and reasonableness of the rate for existing Black Start Resources subject to the stated CRF values in section 18 of Schedule 6A, as discussed in section VI of this order.

(D) For Black Start Units subject to the stated CRF values in section 18 of Schedule 6A, pursuant to FPA section 206, we direct PJM within 60 days of the date of this order to submit a compliance filing as discussed in this order either: (1) to show cause as to why its Tariff remains just and reasonable and not unduly discriminatory or preferential; or (2) to explain what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the Tariff has in fact become unjust and unreasonable or unduly discriminatory or preferential and, therefore, proceeds to establish a replacement Tariff.

(E) Any entity desiring to participate in this proceeding must file a notice of intervention or a motion to intervene, as appropriate, in the docket number identified in the caption of this order in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, within 21 days of publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding.

(F) Interested entities may respond within 30 days of PJM's filing, addressing either or both: (1) whether PJM's existing Tariff remains just and reasonable and not unduly discriminatory or preferential; and (2) if not, what changes to PJM's Tariff should be implemented as a replacement rate.

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(G) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the FPA section 206 proceeding in Docket No. EL21-91-000.

(H) The refund effective date established pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (E) above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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