

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

Independent Market Monitor for PJM)	Docket No. EL24-12-000
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
)	

**ANSWER AND MOTION FOR LEAVE TO ANSWER
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits this answer to the answer submitted by PJM on November 15, 2023, to the Market Monitor’s complaint that initiated this proceeding, November 7, 2023 (“Complaint”).

The Complaint requests that the Commission find that the current penalty rate in the PJM Market Rules is unjust and unreasonable. The Market Monitor provided a replacement rate twice approved by stakeholders. The Complaint is necessary because PJM has refused two opportunities to take corrective action. PJM did not include a corrected penalty in Docket No. ER23-1996-000, when it filed revisions to the trigger for Performance Assessment Intervals (“PAI”), despite the fact that stakeholders approved both changes as a package.³

¹ 18 CFR §§ 385.212 & 385.213 (2023).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”), the PJM Operating Agreement (“OA”) or the PJM Reliability Assurance Agreement (“RAA”).

³ See Complaint, Attachments A-1, A-2 & B.

PJM did not propose to revise the penalty rate in its unilateral Critical Issue Fast Path (“CIFP”) filings, Docket Nos. ER24-98-000 and ER24-99-000, filed October 13, 2023, despite the fact that a joint package included exactly the same proposal included in the Complaint. The Market Monitor and others protested the CIFP filings, and the Commission has issued deficiency notices for both filings.

The Complaint and the delayed CIFP filings present two clear options: Proceed with the current auction schedule with confidence based on the discrete but material revisions included in the Complaint or attempt to continue forward based on the unduly complicated, flawed and underdeveloped proposals submitted by PJM, which are already significantly delayed. Moving forward based on the Complaint would provide for a stable and efficient process and provide additional time for PJM and stakeholders to continue to finalize proposals to improve the capacity market design.

PJM’s answer seeks to distract from the pragmatic options at hand, and instead serves up a school of red herrings. In this pleading, the Market Monitor seeks to eliminate confusion, to ensure a complete record and to facilitate the best decision on a path for eliminating the failed capacity performance experiment and restoring clarity, consistency and purpose to the PJM Capacity Markets. This answer should be accepted, the penalty rates in the current rules should be found unjust and unreasonable, and the Complaint should be granted.

I. ANSWER

A. PAI Level

The current level of the PAI penalty rate was set by the Commission in its initial order on the Capacity Performance (“CP”) capacity market design.⁴ The penalty level on an hourly

⁴ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015), *order on reh’g*, 152 FERC ¶ 61,064 (2015), *order on reh’g*, 155 FERC ¶ 61,157 (2016), *aff’d sub nom., Advanced Energy Management Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. 2017).

basis is $[(B * \text{Net CONE}) / 30]$, where 30 is the asserted number of expected PAH.⁵ Since the CP Order the Commission has revised its opinion on the role of Net CONE in the market seller offer cap (“MSOC”).⁶

Net CONE was an integral part of the CP design, demonstrated in significant part by the fact that the default MSOC was based on Net CONE. Although accepted by the Commission in the order adopting the CP model, that view was later rejected by the Commission based on a complaint filed by the Market Monitor and the rejection was upheld by the Courts.⁷ The original CP model no longer exists, and PJM’s proposals in Docket Nos. ER24-98 and ER24-99 indicate PJM’s intent to further undo that model.⁸ The changes to the CP model are a material changed circumstance. The fact that the Commission approved CP approximately eight years ago does not mean, especially in a hybrid, post CP capacity market design, that a penalty rate based on Net CONE remains just and reasonable. It is not just and reasonable.

PJM’s statements do not make the assertion or even support the assertion that the penalty rate is based on economic or market logic or is otherwise just and reasonable. PJM has not supported the penalty rate in any specific way or with any data. PJM relies on generalities which are not adequate to support the level of such a key variable in the PJM markets.

⁵ The original filing used performance assessment hours (PAH) which were subsequently converted to performance assessment intervals (PAI) where each interval is five minutes and there are 12 intervals per hour.

⁶ See *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,137 (2021); *order on reh’g*, 177 FERC ¶ 62,066 (2021); *order on reh’g*, 178 FERC ¶ 61,121 (2022); *appeal denied*, *Vistra Corp., et al. v. FERC*, Case No. 21-1214, et al. (D.C. Cir. August 15, 2023); *appeal denied en banc*, *Vistra Corp., et al. v. FERC*, Case No. 21-1214, et al. (D.C. Cir. October 10, 2023).

⁷ *Id.*

⁸ See PJM CIFP Filings, Docket Nos. ER24-98-000 & ER24-99-000 (not consolidated) (October 13, 2023).

PJM does not explain why it is appropriate to abandon the basic market principle that the clearing price defines the value of the product. PJM appears to believe, without substantive or evidentiary support, that PJM knows the value of capacity better than the market. PJM's first filing in the CP matter stated that the rationale for the penalty rate was that the correct price for the capacity market is Net CONE.⁹ That unsupported assertion represented neither PJM market results nor economic theory.

PJM states (at 9): "The capacity market is about more than achieving efficient market outcomes; it is primarily about maintaining reliability through competitive markets." The statement reveals a misunderstanding about competitive markets and suggests a nonexistent difference between an efficient and a competitive market. Imposing an arbitrary penalty does not help maintain reliability and it has nothing to do with a competitive market. The market rules must create a framework within which there are incentives for competitive behavior and the market results reflect that competitive behavior and the market results provide reliability.

PJM's rules result in market prices. Those market prices define the value of capacity in PJM.

PJM states (at 6): "... PJM's Tariff includes a strong nonperformance charge based on Net CONE[footnote omitted] and a stop loss capped at 1.5 times Net CONE[footnote omitted]." PJM also states (at 9): "Exposure to significant economic loss through the current Non-Performance Charge rate provides a strong incentive for committed resources to perform, allowing PJM to maintain reliability."

PJM's statements are general and unsupported assertions that do not support in any way PJM's preferred specific penalty rate.

⁹ PJM Filing re Capacity Performance, Docket No. ER15-623-000, et al. (December 12, 2014) at 43 ("Net CONE is the proper measure of the value of capacity.").

PJM ignores the fact that PJM's Net CONE incentives demonstrably failed to have the incentive effect that PJM claims. PJM's response is the previously unstated assertion that the absence of blackouts demonstrated that the incentives worked.¹⁰ That is simply incorrect. The outage rates for PJM capacity resources during Winter Storm Elliott demonstrate conclusively that the incentives did not work. If the incentives had worked, there would have been no Winter Storm Elliott event, but just cold weather.

B. PJM Market Clearing Price is Just and Reasonable Basis for Penalty Rates

PJM (at 15) asserts that there is no economic analysis to support a penalty rate equal to the PJM market clearing price. PJM does recognize that the penalty rate should be based on the value of capacity. But PJM wants to unilaterally and administratively define the value of capacity as Net CONE. It is not clear exactly what economic analysis PJM would require before recognizing that the PJM market clearing price defines the value of capacity. There is no other mystical component to the value of capacity. PJM cannot simply define the value of capacity as something other than the market value.

C. Stop Loss Is Unjust and Unreasonable

PJM asserts that the Market Monitor did not address the stop loss. The Market Monitor's proposed stop loss is that the stop loss equal 1.5 times a resource's capacity market revenues for the year. This follows from the substitution of the market clearing price for Net CONE in PJM's penalty rate, maintains a consistent tariff structure based on 1.5 times the relevant rate, is consistent with capping risk at a reasonable level, and is the same stop loss proposed by PJM.

The Complaint stated (1-2):

¹⁰ PJM states (at 10 n.37): "The Market Monitor asserts that the current Non-Performance Charge rate 'do[es] not have the intended incentive effect and do have a destructive effect, in the energy market and in the capacity market.' Complaint at 11. However, such claims overlook that PJM in fact had sufficient resources available to maintain reliability keep the lights on—supporting an inference that the current Non-Performance Charge rate provided sufficient incentive to perform."

The penalty rate would be based on the value of capacity as determined in the PJM Capacity Market, the capacity market clearing price. The stop loss would be 1.5 times the capacity market revenue. The proposed penalty rate and stop loss provisions are just and reasonable because they are defined by the value of capacity as determined in the PJM Capacity Market, because they are simple and clear, because they can be easily understood by market participants, because they can be easily implemented by PJM, because the defined penalties are proportional to the payments received for capacity, because they reduce the risk to the PJM markets, because they minimize the risk of protracted litigation for each PAI event, and because they would create certainty for market participants for the next two auctions at a time when PJM capacity markets need a period of stability and certainty. The proposed replacement rules are designed to be simple and clear so that they can be implemented in the next two RPM Base Residual Auctions (“BRA”), for the 2025/2026 and the 2026/2027 Delivery Years.

PJM’s recognizes that PJM’s own stop loss is the same as the stop loss proposed in the Complaint (PJM at 11): “While PJM proposed a similar reduction to the stop-loss in its section 205 filing in Docket No. ER24-99-000 to reduce tail-end risk of the most extreme Non-Performance Charges that could harm the investability of the PJM markets, that proposal was part of a thoughtfully curated and integrated set of amendments.”

PJM admits that the current penalties could “harm the investability of the PJM markets.” That is the point. Limiting the total exposure to penalties to 1.5 times the total market value of a capacity resource for a year directly caps the total penalty exposure and defines a limit on the risk that is imposed on capacity resources. The Market Monitor’s stop loss undoes the negative impact of the current penalty rate and stop loss levels, eliminates the resultant artificially created risk, and therefore significantly improves investability.

PJM follows with another unsupported assertion (at 12): “Otherwise, the existing stop-loss remains just and reasonable as there is simply too great of a risk to system reliability by reducing the stop-loss in isolation without the additional and necessary enhancements proposed in PJM’s ER24-99 October 13 Filing.”

PJM has not established that a stop loss based on the market clearing price rather than Net CONE would create reliability risks. PJM has not even attempted to establish that point with supporting logic or evidence.

Nothing in the Complaint has any effect on the steps that PJM could take immediately to enhance reliability. PJM does not require either of its CIFP filings in order to take concrete steps to improve its reliability analysis or to modify testing protocols.

D. PJM Changes Following Elliott Did Not Address the Issues Identified in the Complaint.

The financial impact of Winter Storm Elliott on PJM market participants and on PJM was severe. While the weather was real, the financial impacts were a direct result of the unjust and unreasonable PJM penalty rates and their application by PJM. This included both the level of the penalty rate and the fact that the asserted incentive effects of the penalty rate did not work.

PJM cites to the new definition of PAI, initially proposed by the Market Monitor in the stakeholder process, as if it made moot the question about the level of the penalty rate. If the CP paradigm remains and a penalty rate remains, narrowing the definition of PAI events is a good thing. But the Complaint is about the penalty rate.

PJM's view appears to be (at 12–14) that a specific targeted tariff change to change the definition of a PAI event can be a good thing while a specific targeted tariff change to reduce the penalty rate is not acceptable. PJM does not explain why its targeted tariff change is a good thing while the Market Monitor's targeted tariff change is a bad thing.

The narrowing of the definition of PAI events does not mean that there will be fewer PAI events in the future or that the impact of the current penalty rate will be rendered acceptable. PAI events will be a result of the weather and other uncontrollable and unpredictable events. Appropriately narrowing the definition of PAI events will mean that for any given weather conditions, the number of actual performance assessment intervals

should be reduced.¹¹ The impact of any PAI events will be a result of both the number of intervals and the penalty rate.

An unintended consequence of PJM's proposal to combine a high penalty rate based on an arbitrary value with a stop loss based on market revenues means that the stop loss will be reached sooner. Under PJM's approach, once the stop loss is reached there will be no performance incentives for the remainder of the delivery year. That is not a rational incentive structure and it is not just and reasonable.

PJM cites (at 19 n.61) to the fact that PJM filed for an expedited waiver to extend payment terms to avoid "bankruptcies, defaults, deactivations, and other financial stress" as if this supported the position that high penalties are a good thing.¹² PJM's waiver filing proves only that PJM did not understand the implications of the penalty rates and that the actual burdens created by the penalty payments were so extreme that payment terms had to be extended in order to avoid putting PJM reliability at risk.

¹¹ PJM asserts, apparently based on a misunderstanding of PAI triggers, that Elliott would have resulted in only 73 PAI rather than 277 PAI under the narrowed definition of a PAI. The Market Monitor agrees that the narrowed definition of PAI would have reduced the number of PAI under Elliott, but only to 141 PAI. This is equal to the number of intervals during Elliott in which total primary reserve MW assigned were less than the Primary Reserve Requirement in the dispatch run and the Maximum Generation Action was in place.

¹² See Joint Motion for Waiver of Tariff Provisions, Expedited Consideration, and Shortened Comment Period, Docket No. EL23-53-000, et al. (September 8, 2023) at 7, 11–12 ("Unless the Commission grants a waiver of PJM's governing billing provisions and deferral of the associated payments, PJM will be required by its Tariff and Operating Agreement to continue to issue billing statements, despite the Settlement seeking Commission approval of a lower total amount of Non-Performance Charges for PJM to assess to, and collect from, Market Participants. The continued assessment of these Non-Performance Charges could cause further financial strain on Market Participants that have outstanding charges stemming from Winter Storm Elliott... [S]uspending further billing of Non-Performance Charges could help to avoid bankruptcies, defaults, deactivations, and other financial stress for generators on which the region relies. ... The Commission's approval of PJM and Lee County's joint waiver request was based in part on a stipulation between Lee County and PJM that was intended to allow Lee County to remain solvent so that it could continue to support system reliability ..., and so that Lee County would be able to make the remaining six monthly Non-Performance Charge payments.[footnote omitted] Similarly, granting the waiver requested herein would allow PJM to forestall creating unnecessary financial stress for additional generators").

PJM states (at 14): “Simply put, certain post-Winter Storm Elliott changes to the Tariff have sufficiently ameliorated the bankruptcy and liquidity risks raised in the Market Monitor’s complaint (even if such risks had risen to the level to make the Tariff unjust and unreasonable before such changes, which the Complaint has not demonstrated).”

PJM does recognize that Elliott created bankruptcy and liquidity risks but asserts that they are “sufficiently ameliorated” without any evidence or even logical argument. Stretching out the payment period does nothing to change the underlying risk as measured by the total payments. “Sufficiently ameliorated” is damning with faint praise. Ameliorate means to make better something that is bad. Sufficiently ameliorated appears to mean that PJM believes that its actions have made a bad situation better enough. PJM misstates the goal and mischaracterizes the progress to date.

The best way to actually eliminate the arbitrary and artificial risks created by the levels of the penalty rate and the stop loss, consistent with competitive markets, would be to reduce the penalty rate to the market value of capacity and correspondingly reduce the stop loss.

E. Procedural Conundrum

PJM asserts (at 2, 4) that the Commission would, by accepting the Complaint, prejudge the 15 outstanding complaints against PJM for its handling of Winter Storm Elliott (“Elliott”) and PJM’s imposition of penalties.¹³

¹³ See Essential Power OPP, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-53-000; Aurora Generation, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-54-000; Coalition of PJM Capacity Resources v. PJM Interconnection, L.L.C., Docket No. EL23-55-000; Talen Energy Marketing, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-56-000; Lee County Generating Station, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-57-000; SunEnergy1, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-58-000; Lincoln Generating Facility, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-59-000; Parkway Generating Keys Energy Center LLC v. PJM Interconnection, L.L.C., Docket No. EL23-60-000; Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C., Docket No. EL23-61-000; Energy Harbor LLC v. PJM Interconnection, L.L.C., Docket No. EL23-63-000; Calpine Corporation v. PJM Interconnection, L.L.C., Docket No. EL23-66-000; Invenergy Nelson LLC v. PJM Interconnection, L.L.C., Docket No. EL23-67-000; East Kentucky Power Cooperative, Inc. v. PJM Interconnection, L.L.C., Docket No. EL23-74-000; CPV Maryland, LLC, and Competitive Power Venture Holdings, LP v. PJM Interconnection, L.L.C., Docket No. EL23-75-000; Parkway Generation Operating LLC et al. v. PJM Interconnection, L.L.C., Docket No. EL23-77-000 (Not Consolidated).

This is clearly incorrect. The Market Monitor's Complaint is forward looking and requests that the penalty rate and associated stop loss be fixed for the upcoming two Base Residual Auctions while PJM and the stakeholders review the options for the capacity market in a careful and systematic way.

The Market Monitor's Complaint is no more prejudging the 15 complaints against PJM than was PJM's filing to change the definition of PAI events.

F. The Complaints Are Properly Filed.

PJM accuses the Market Monitor of disrupting (PJM at 3) the process of reforming the capacity market and of attempting to pull apart (PJM at 4) the packages filed by PJM. PJM argues that the Commission "should not condone" the Market Monitor's request to consider a reasonable approach to addressing the issues in a measured way that was supported by the stakeholders.

Apparently it is PJM's view that any disagreements with PJM are disruptive while PJM's own filing to radically change the capacity market design without support of the stakeholders is not. To the contrary, the proposed penalty rate and stop loss provisions are just and reasonable because they are defined by the value of capacity as determined in the PJM Capacity Market, because they are simple and clear, because they can be easily understood by market participants, because they can be easily implemented by PJM, because the defined penalties are proportional to the payments received for capacity, because they reduce the risk to the PJM markets, because they minimize the risk of protracted litigation for each PAI event, and because they would create certainty for market participants for the next two auctions at a time when PJM Capacity Markets need a period of stability and certainty. The proposed replacement rules are designed to be simple and clear so that they can be implemented in the next two RPM Base Residual Auctions ("BRA"), for the 2025/2026 and the 2026/2027 Delivery Years.

The Market Monitor's Complaint does not try to pull apart any package, but proposes a rational approach to running the capacity markets in a timely manner and permitting full stakeholder review of competing proposals. The Complaint does not undermine the

stakeholder process but is fully consistent with it. PJM chose to make two complicated and unfinished filings despite PJM's failure to get stakeholder support for either. Granting the complaint and the simple and straightforward solutions it proposes, while deferring consideration of PJM's and others' proposals until just and reasonable proposals are developed and supported would be the most efficient and effective path forward in the process of considering changes to the capacity market. Reviewing PJM's unnecessarily complicated CIFP filings that include unrelated components that PJM wants to be taken either as a package or not at all would be inefficient.

G. Corrected Replacement Rule

There was an error in the detailed tariff language for the proposed replacement rule included in the Complaint (at 12). The Market Monitor intended to include exactly the same language that was stated in the CIFP RA - Stage 4 matrix and was supported by a majority of stakeholders, in the proposed replacement rules.¹⁴ The text of the Complaint includes the correct language. It is the text of the proposed detailed tariff language that contains errors.

The following revisions to the revisions proposed in the Complaint to Section 10A(e) of Attachment DD to the OATT would implement the Market Monitor's proposed replacement rules:

$$\text{Non-Performance Charge} = \text{Performance Shortfall} * \text{Non-Performance Charge Rate}$$

Where

For Capacity Performance Resources and Seasonal Capacity Performance Resources, the Non-Performance Charge Rate = ~~(Weighted Average Resource Capacity Market~~ Clearing Price applicable to the resource * (the number of days in the Delivery Year / 30) / (the number of Real-Time Settlement Intervals in an hour).

¹⁴ See CIFP -RA Matrix (August 23, 2023), which can accessed at: <<https://www.pjm.com/-/media/committees-groups/committees/mc/2023/20230823-special/item-01---20230823-cifp-ra-matrix-all-kwa-cifp-stage-4.ashx>>.

The following revisions to the revisions proposed in the Complaint to the stop loss provision in Section 10A(f) would implement the Market Monitor's proposed replacement rules:

The Non-Performance Charges for each Capacity Performance Resource (including Locational UCAP from such a resource) and each PRD Provider for a Delivery Year shall not exceed a Non-Performance Charge Limit equal to 1.5 times the ~~Weighted Average Resource Capacity Market~~ Weighted Average Resource Capacity Market Clearing Price applicable to the resource times the megawatts of Unforced Capacity committed by such resource or such PRD Provider times the number of days in the Delivery Year. All references to Net Cost of New Entry in this section 10A shall be to the Net Cost of New Entry for the LDA and Delivery Year for which the calculation is performed. The total Non-Performance Charges for each Base Capacity Resource (including Locational UCAP from such a resource) for a Delivery Year shall not exceed a NonPerformance Charge Limit equal to the total payments due such Capacity Resource or Locational UCAP under Tariff, Attachment DD, section 5.14 for such Delivery Year. The NonPerformance Charges for each Seasonal Capacity Performance Resource for a Delivery Year shall not exceed a Non-Performance Charge Limit equal to 1.5 times the Net Cost of New Entry times the megawatts of Unforced Capacity committed by such resource times the number of days in the season applicable to such resource. The Market Monitor proposes that the language above be used in the replacement rule.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to requests for rehearing unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.¹⁵ In this answer, the Market Monitor provides

¹⁵ See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-

the Commission with information useful to the Commission's decision making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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making process); *N.Y. Independent System Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

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 Eagleville, Pennsylvania,
this 21st day of November, 2023.



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