

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

Dairyland Power Cooperative MRP Elgin LLC and MRP Rocky Road LLC	) ) ) ) ) )	Docket No. ER25-3124-000
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**PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 211 of the Commission’s Rules and Regulations,<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),<sup>2</sup> submits this protest to the request filed August 7, 2025, by Dairyland Power Cooperative (“Dairyland”), MRP Elgin LLC (“MRP Elgin”), and MRP Rocky Road LLC (“MRP Rocky Road”) (MRP Elgin and MRP Rocky Road, collectively the “Sellers”) for waiver of certain requirements included in reason (ii) of Section 6.6(g) of Attachment DD to the OATT to obtain an exception to the RPM must offer rule for the Base Residual Auction (“BRA”) for 2027/2028 Delivery Year. On August 27, 2025, Dairyland and Sellers filed a Supplement to the August 7, 2025, filing that significantly expands the scope of their request. The parties now request a blanket exception to the entire RPM must offer rule rather than asserting that the transaction qualifies under a specific element of the rule. Neither the initial request nor the expanded request satisfy the criteria for a waiver and both should be denied.<sup>3</sup>

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<sup>1</sup> 18 CFR § 385.211 (2025).

<sup>2</sup> 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”).

<sup>3</sup> *See, e.g., Empire Dist. Elec. Co.*, 166 FERC ¶ 61,164 (2019) (“The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the

## I. BACKGROUND

Dairyland is in the process of acquiring from Sellers the MRP Elgin Project, a generating facility with an approximate capacity of 483 MW located in Elgin, Illinois and the MRP Rocky Road Project, a generating facility with an approximate capacity of 334 MW located in East Dundee, Illinois (collectively, the “Facilities”). The Facilities are PJM capacity resources. Dairyland seeks to export capacity from the Facilities to MISO, but has not obtained firm transmission and will not have firm transmission prior to the 2027/2028 BRA now scheduled for December 4, 2025, and has not entered the queue to obtain long term firm transmission matching the duration of the transaction. Dairyland and the Sellers initially requested that the Commission grant a waiver of the requirement in Section 6.6(g), of Attachment DD of the OATT to obtain firm transmission, by the exception request deadline for the 2027/2028 BRA, and then expanded the request to seek a blanket waiver of the entire RPM must offer requirement for the 2027/2028 BRA.

Dairyland and the Sellers have not demonstrated that they will be able to obtain firm transmission service for the 2027/2028 Delivery Year or for future delivery years. Dairyland and the Sellers admit that they will not be able to obtain firm transmission service prior to the 2027/2028 BRA. Final clearing prices for the 2027/2028 BRA will be determined when the auction concludes. Exempting the Sellers from the auction would distort the capacity market results by excluding supply. Other sellers needing long term firm transmission have obtained long term firm transmission by entering the new services queue and paying for required upgrades as needed.

The must offer rules in the capacity market exist to help ensure that all capacity resources offer as a match for the fact that all load must buy capacity. The must offer rule is essential to a competitive capacity market. The must offer rule should not simply be waived because a request is made, particularly a request that cannot actually be consummated, as a

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waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.”).

result of the inability to acquire long term firm transmission to match the expected duration of the transaction. Simply waiving the must offer rule would set an unfortunate precedent that generators that cannot meet the rules are simply allowed to ignore them.

## II. COMMENTS

Dairyland and the Sellers have not met the requirement to support a waiver, either of 6.6(g) part (ii), or of the entirety of 6.6(g).

Dairyland and the Sellers have not shown that they have acted in good faith. Market participants should act with diligence to conform their planning to the market rules rather than attempt to alter the rules to conform to their plans.<sup>4</sup> Dairyland and the Sellers have not shown that they acted diligently to avoid the problem. The underlying problem is that Dairyland and the Sellers do not have long term firm transmission and have not entered the queue to obtain the long term firm transmission needed to make the long term transaction for the sale of the Facilities work. In Dairyland's initial waiver request (at Page 8), Dairyland explains that part of their inability to acquire transmission rests on the fact that they are not yet members of PJM. Dairyland states that "... until PJM approves its membership, Dairyland is unable to submit a long-term transmission service request ("TSR")." The fact that Dairyland did not request PJM membership in time for PJM to review and approve their request, and were therefore unable to submit a request for long term transmission request demonstrates that Dairyland did not act diligently to avoid the problem. The RPM must offer

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<sup>4</sup> See *Oxbow Solar, LLC*, 191 FERC ¶ 61,057 at P 27 (2025) ("Specifically, we find that Oxbow Solar has not demonstrated that it has acted in good faith. Oxbow Solar does not dispute that it failed to meet the Amended Oxbow Solar GIA's September 1, 2022 milestone to issue an authorization to proceed to SWEPCO to begin construction, nor does it dispute that it issued the authorization to proceed almost two and half years late, and only shortly after SPP issued a notice of default. Although Oxbow Solar describes the circumstances that led to the original load-serving entity counterparty withdrawing from negotiations in 2022, Oxbow Solar provides only a vague explanation about 'market conditions' outside of its control that prevented it from securing financing and issuing an authorization to proceed to SWEPCO since that time. Based on the record, we find that Oxbow Solar has not shown that it acted in good faith to diligently advance the Facility, and it appears that Oxbow Solar's need for the instant waiver may have been caused, in part, by its own inaction.").

rule is a longstanding provision of the PJM OATT and the Sellers do not assert that they were not aware of the rule. The must offer rule is core to maintaining a competitive capacity market.

Dairyland and the Sellers have not shown that the waiver is of limited scope. The sale of the Facilities is by definition long term but neither Dairyland or the Sellers have even started the process of obtaining the long term firm transmission service that will be needed. The initial filing requested waiver of the substantive requirements for an exception request. That request was subsequently expanded to request waiver of the entire must offer rule. Despite the assertion that the waiver is limited only to the 2027/2028 auction, the waiver request is effectively for an undefined period.<sup>5</sup> Although the asserted issue pertains to the auction for the 2027/2028 Delivery Year, it is not possible for Dairyland to obtain firm transmission by the December 2025 auction date, or long term firm transmission by the deadline in February 2026 for the June 2026 auction. Dairyland has not provided any evidence that firm transmission will be available within a defined time period. Dairyland and the Sellers are not proposing a limited, targeted solution. Waiving the tariff obligation to have firm transmission to qualify for an RPM must offer exception request is not consistent with the purpose of the provision which is to demonstrate a physically firm commitment to an external sale. It is not possible to demonstrate a physically firm commitment without that transmission.

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<sup>5</sup> Cf. *Midcontinent Independent System Operator, Inc., et al.*, 192 FERC ¶ 61,004 at P 20 (2025) (“First, we find that the requested waiver is not limited in scope because, although Filing Parties claim that waiver would apply only to the 2024-2025 CSP study and would modify specific technical requirements within the existing CSP framework, waiver of those provisions would broadly alter the parameters of the CSP study. Specifically, Filing Parties’ request for waiver of language in section 9.6.3.1.1 of the JOA so that they may evaluate benefits without using a multi-year analysis would appear to relieve them of a discrete tariff obligation, i.e., the requirement to use a multi-year analysis to evaluate benefits. However, waiving the tariff obligation for Filing Parties to evaluate the benefits of reliability and public policy interregional transmission projects as the avoided cost of regional transmission projects that address the same reliability or public policy issue is a significant change to the CSP study scope.”).

In the August 27 Filing, Dairyland claims that the waiver request is limited to the 2027/2028 BRA and that similar waivers requests will not be needed for future delivery years.<sup>6</sup> However, Dairyland will encounter the same issue for at least the 2028/2029 Delivery Year. The 2028/2029 BRA is scheduled for June 2026, and the deadline for an RPM must offer exception request will be in February 2026. Current submissions for long term firm transmission will be evaluated in PJM's new services queue interconnection Cycle 1. The current application deadline for Cycle 1 does not close until April 27, 2026, so it is not possible for Dairyland to acquire long term firm transmission by the February 2026 exception deadline.

The response of Dairyland and the Sellers to the fact that they cannot meet the requirement for the exception request is to request waiver of the entire must offer requirement. A key condition of the exception request cannot be met. The response is to request a waiver of the entire rule.<sup>7</sup>

Dairyland and the Sellers have not shown that granting the relief requested in the waiver request will address a concrete problem.<sup>8</sup> Dairyland and the Sellers have not demonstrated that additional time granted by the requested waiver would allow them to obtain firm transmission for the 2027/2028 Delivery Year or that firm transmission will even

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<sup>6</sup> August 27 Filing, page 7.

<sup>7</sup> As stated at pages 3-4 of the August 27 Filing: "To address potential concerns that a grant of waiver in these circumstances could arguably diminish the substance of PJM's firm transmission requirement in connection with an exception request based on a financially and physically firm commitment to an external sale of its capacity, Dairyland and Sellers hereby supplement and amend the Waiver Request to instead seek an order by the Commission granting Sellers a one-time waiver of PJM's must-offer requirement."

<sup>8</sup> See *Midcontinent Independent System Operator, Inc., et al.*, 192 FERC ¶ 61,004 at P 21 (2025) ("[W]e find that the waiver request does not address a concrete problem because Filing Parties have not shown that expanding the study scope would address the problem the Filing Parties have identified."); *Oxbow Solar, LLC*, 191 FERC ¶ 61,057 at P 28 (2025) ("Given the absence of a detailed explanation in the record of how the 24-month extension will allow Oxbow Solar to secure financing and achieve commercial operation, we find that Oxbow Solar has failed to sufficiently demonstrate that its waiver request will remedy a concrete problem.").

be available for the 2027/2028 Delivery Year, let alone for the 2028/2029 Delivery Year. The requested waiver will exacerbate rather than solve the problem by permitting the must offer rule to be avoided without a financially and physically firm commitment. The auction for the 2028/2029 Delivery Year is scheduled for June 2026 with corresponding deadlines for exceptions in February 2026. In Dairyland's initial waiver request, Dairyland claims (at Page 9) that once they are members of PJM, they will "... timely acquire Monthly firm point-to-point transmission for the 2027/2028 MISO Planning Year." There is no guarantee that monthly firm transmission will be available to Dairyland. The amount of monthly firm Available Transmission Capability ("ATC") made available in any given month can vary significantly from month to month. This varying ATC is the result of previously granted long term transmission requests and other operational constraints such as planned transmission outages. A current analysis of monthly firm ATC is not an accurate predictor of future availability. Longer term requests may be approved or future planned transmission outages that have not yet been reported may impact future ATC making it unavailable for any given month. In addition, PJM's monthly ATC is granted on a first come, first serve basis. Even if monthly ATC were posted for a particular path, there is no guarantee that Dairyland will be able to obtain firm transmission.

Dairyland and the Sellers have asserted that the concrete problem is that "the 2027/2028 BRA will close before Dairyland can obtain available monthly firm transmission service as evidenced by ATC postings."<sup>9</sup> Dairyland and the Seller seek to avoid compliance with the substantive rules for obtaining a must offer exception for an export. As the Commission has repeatedly explained, "Simply having to follow [the] Tariff requirements . . . is not a concrete problem that warrants waiver of the Tariff's requirements."<sup>10</sup> Dairyland and the Sellers' problem is that they cannot comply with the rules and effectuate their plans.

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<sup>9</sup> August 27 Filing, page 7.

<sup>10</sup> *Erie Power, LLC*, 148 FERC ¶ 61,038 at P 20 (2014), quoted in *Midcontinent Independent System Operator, Inc., et al.*, 192 FERC ¶ 61,004 at P 21 (2025).

This is not the showing of a concrete problem required to support the extraordinary relief of waiving the applicable market rules.

Dairyland and the Sellers have not shown that the waiver does not have undesirable consequences, such as harming third parties. If the requested waiver is granted, the Facilities would not be offered in the 2027/2028 BRA. If firm transmission cannot be obtained for the 2027/2028 Delivery Year, the withholding of the Facilities is likely to increase capacity clearing prices as a result and cause harm to customers in PJM. The same issues will arise in future capacity auctions. In the absence of the firm transmission to export this capacity, the Dairyland request is a request to violate the RPM must offer requirement of the PJM Capacity Market and to withhold that capacity. The Market Monitor does not allege that Dairyland and the Sellers have an incentive or intent to exercise market power. The fact is that the proposal to not comply with the capacity market must offer rule is likely to contribute to the capacity shortfall in PJM and to create upward pressure on capacity market prices.

The requested waiver is not consistent with the waivers granted for Lee County Generating Station, LLC and Invenergy Nelson LLC, Dairyland and the Sellers have not committed to providing the documentation showing firm transmission by the start of the auction.<sup>11</sup> Those proceedings involved waiving the deadlines to allow the applicants to provide evidence of firm transmission after the RPM must offer exception request deadline but before the auction closing. In the case of Lee County Generating Station, LLC, they had obtained firm transmission by the time they requested the waiver. In the case of Invenergy Nelson LLC, they had committed to providing evidence of firm transmission prior to the auction closing. In addition, the Commission has recognized the critical distinction between

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<sup>11</sup> *Lee County Generation Station, LLC*, 186 FERC ¶ 61,089 (2024); *Invenergy Nelson LLC*, 185 FERC ¶ 61,054 (2023).

granting waivers to deadlines while preserving the substance of the rules and waiving a substantive rule.<sup>12</sup>

Finally, the supplement to the waiver request relies on the OATT provision in 6.6(g) that is conditioned on: “If a Capacity Market Seller doesn’t timely seek...” In fact, the waiver request filed on August 6, 2025, did meet the deadline but failed to meet the test defined in the OATT.

Because Dairyland and the Sellers have not shown that they meet any of the criteria to support a waiver, the request for waiver should be denied.

### III. CONCLUSION

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

Respectfully submitted,



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<sup>12</sup> See *Midcontinent Independent System Operator, Inc., et al.*, 192 FERC ¶ 61,004 at P 22 (2025) (“[W]e are not persuaded by Filing Parties’ claim that their waiver request is consistent with Commission precedent...’ Those proceedings involved requests for waiver of tariff deadlines to allow the waiver applicant additional time to comply with a tariff requirement, not to change the requirement outright.”). (“Finally, we are not persuaded by Filing Parties’ claim that their waiver request is consistent with Commission precedent granting “waivers modifying transmission planning study requirements and timelines and addressing inefficient market outcomes.” Those proceedings involved requests for waiver of tariff deadlines to allow the waiver applicant additional time to comply with a tariff requirement, not to change the requirement outright.”)



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Dated: September 8, 2025

## **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 8<sup>th</sup> day of September, 2025.



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