

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

PJM Interconnection, L.L.C.

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Docket No. ER26-3380-000

PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits this protest to the filing submitted by PJM Interconnection, L.L.C. (“PJM”) on July 31, 2026, proposing (at 1) “to establish the Reliability Backstop Procurement (“RBP”)—a one-time procurement of new capacity to address resource adequacy challenges in the PJM Region arising from insufficient commitments of capacity in the 2027/2028 and 2028/2029 Reliability Pricing Model (“RPM”) Auctions, primarily driven by the unprecedented addition of large loads, most notably data centers” (“RBP Filing”).³

The RBP Filing has not been supported as just and reasonable, and it should be rejected. The RBP Filing is unjust and unreasonable, and attempting to implement it will

¹ 18 CFR § 385.211 (2026).

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 The RBP Filing is supported by an (i) Affidavit of Ms. Danielle Croop on Behalf of PJM (Attachment C) (“Croop Affidavit”) and an (ii) Affidavit of Gwen Kelly on Behalf of PJM (Attachment D) (“Kelly Affidavit”).

severely damage PJM markets, create unintended consequences, and compound that damage for a period of 15 years.

The problem that the RBP Filing is designed to address is real and needs immediate action. The current rules are not designed to address the extraordinary circumstances that confront the PJM markets today. PJM has done nothing to prevent the interconnection of data centers that it does not have the capacity to serve. Timely action is needed to protect resource adequacy in the PJM Region while ensuring that data centers pay for the capacity they need and bear the risks they impose. There is broad agreement among policy makers, regulators, and developers, captured in the Ratepayer Protection Pledge and Principles, on the need to ensure that data centers bring their own new generation and pay their own way and to prioritize the protection of reliability and affordability for all the other customers.^{4 5}

⁴ See The White House, “Ratepayer Protection Pledge” (March 4, 2026), <https://www.whitehouse.gov/releases/2026/03/ratepayer-protection-pledge/?utm_source=wh_social_share_button>, Proclamation No. 11014, 91 Fed. Reg. 11439 (Mar. 4, 2026) (“Today, pursuant to the Ratepayer Protection Pledge, leading United States hyperscalers and AI companies guarantee that data centers’ energy needs will not increase household electricity costs for American citizens. Instead, these companies will build, bring, or buy the new generation resources and electricity needed to satisfy their energy demands, and pay for all new power delivery infrastructure upgrades to service their data centers. They will voluntarily negotiate new, separate rate structures with their utilities and relevant State governments, and pay those rates, and for their infrastructure, whether they use the electricity or not. They will also invest in local communities and coordinate with grid operators to contribute to a more reliable grid.”) (“Pledge”). On July 23, 2026, over 200 additional entities joined the pledge. See The White House, “President Trump’s Ratepayer Protection Pledge Secures American AI Dominance, Protects Consumers” (July 23, 2026), <https://www.whitehouse.gov/releases/2026/07/president-trumps-ratepayer-protection-pledge-secures-american-ai-dominance-protects-consumers/?utm_source=wh_social_share_button>.

⁵ National Energy Dominance Council, Statement of Principles Regarding PJM (January 16, 2026) <<https://www.energy.gov/documents/statement-principles-regarding-pjm>> (“Principles”). Two principles apply to the contemplated procurement of new generation. First, the procurement should “[p]rovide 15-year price certainty for *new* capacity resources” [emphasis]. The statement notes that this can be done in through a “Reliability Backstop Auction,” but does not require that this auction be a centralized procurement by PJM or that PJM customers assume risks. Second, “PJM should allocate the cost of any new capacity through the aforementioned Reliability Backstop Auction to load serving entities (LSEs) with new data centers that have not self-procured new capacity or agreed to be curtailable.” The principles, agreed to by the Governors of PJM States Indiana, Ohio,

The Pledge affirms: “The Ratepayer Protection Pledge and the commitments embodied therein effectuate the national policy of the United States.” The Commission has recognized the Pledge and Principles.⁶ The Pledge and Principles should guide the development of rules to support resource adequacy by procuring new capacity to serve data centers and ensuring that data centers pay for that capacity and that those costs are not assigned, allocated or otherwise pushed onto other customers.

Accordingly, in addition to rejecting the RBP Filing as not shown to be just and reasonable, an order should issue, finding that the existing rules relating to resource adequacy for serving data centers in the PJM Region are unjust and unreasonable under Section 206 of the Federal Power Act.⁷ Upon issuing a finding that the current rules are

Maryland, Pennsylvania, Virginia, West Virginia, Delaware, Illinois, Michigan, New Jersey, Tennessee, North Carolina and Kentucky, call for PJM to do the allocation and to match data centers to the costs not excluding risks of new resources or commitments to curtail. Additional principles that going beyond the RBF Proposal, the Market Proposal, or potential alternatives, include: (i) extending the price collar for two additional RPM Base Residual Auctions, (ii) PJM improving load forecasting, (iii) accelerating generator interconnections, i.e., the Reliability Resource Initiative (RRI), and (iv) continued efforts to reform the capacity market.

⁶ See *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,211 at PP 2, 5, 8, 32 & 69 (2026) (“Large Load Show Cause Order”). The Large Loads Show Cause Order states (at P 66) (“We next preliminarily find that PJM’s Tariff appears to be unjust and unreasonable because it lacks adequate mechanisms to mitigate the risk of cost shifting among transmission customers, which may result in unjust and unreasonable rates for transmission service. In particular, we are concerned about the apparent lack of: (1) transparency regarding the assignment of Network Upgrades, and their associated costs, that are needed to provide transmission service to Eligible Customers on behalf of large loads; and (2) a pro forma cost recovery agreement between PJM, the relevant transmission owner, and the Eligible Customer taking transmission service on behalf of large loads that help ensure that Eligible Customers bear the risk and are ultimately responsible for costs incurred to provide transmission service, including the cost of Network Upgrades.”).

⁷ See 16 U.S.C. § 824e(a); see also Large Loads Show Cause Order at P 49 (“[W]e today exercise our authority to ensure that the process by which jurisdictional transmission providers and/or transmission owners will study the provision of jurisdictional transmission service to Eligible Customers on behalf of large loads interconnecting to the transmission system, including where, as allowed by state law or a public utility’s voluntary offer of such service, an end-use large load seeks unbundled retail transmission service, is just and reasonable and not unduly discriminatory or preferential. Pursuant to that authority, we find that PJM’s Tariff appears to be unjust and

unjust and unreasonable, the Commission can, on the basis of the existing record, act without delay to direct PJM to immediately implement a remedy.

A remedial order should direct that PJM file, within two weeks, a solution with the following elements:

- PJM should, working with LSEs and EDCs, immediately identify data center load not interconnected by June 1, 2026, and remove it from RPM capacity market auctions.
- PJM should establish criteria to be included in the RAA defining the obligations of LSEs to require that new data center loads have 15 year bilateral contracts with new generation that do not permit any cost or risk shifting to other customers. The contracts would be based on general terms and conditions in accordance with tariff defined criteria with the cost and risk specifics defined by the data centers and generators.
- For LSEs with data centers unable to make independent arrangements meeting the criteria, PJM should run a full single clearing price auction using the BRA capacity market clearing model for new data center load. LSEs would require data centers to participate in the reliability backstop auction if they do not have a bilateral contract for new generation that meets the requirements of such contracts. When the clearing process is complete, the LSEs would require that generators and data center loads enter into 15 year bilateral contracts that do not permit any cost or risk shifting to other customers. The contracts would be based

unreasonable or unduly discriminatory or preferential because it lacks sufficiently clear and consistent provisions regarding the study process related to the provision of transmission service to Eligible Customers on behalf of large loads. We need not comprehensively address the Commission's jurisdiction over other aspects of the addition of large loads to the transmission system at this time.").

on general terms and conditions in accordance with tariff defined criteria with the cost and risk specifics defined by the data centers and generators.

- PJM should establish curtailment obligations for wholesale service to data centers during a defined transition period that would allow all data centers the time to contract for new generation.

These requirements meet the goals of the Pledge and Principles and can be implemented immediately.

I. PROTEST

A. The RBP Filing Has Not Been Shown Just and Reasonable.

PJM faces the issue of how to address the massive and unexpected influx of data center load. While data center growth has occurred over five or more years, PJM has failed to address the impact of data centers on the PJM Capacity Market over the last four capacity auctions. PJM has made its RBP Filing only under direct pressure from the Commission and the White House and the PJM governors, among others. It is clear that the current situation and the current tariff in PJM are untenable and therefore unjust and unreasonable. The addition of data center load has resulted in adding \$29.4 billion to the cost of capacity, higher energy costs, higher transmission costs, and a significant degradation of system reliability. Rather than directly addressing the issue of data center load, PJM's RBP Filing proposes an extremely complex approach to this issue that unnecessarily undermines basic elements of the PJM market design.

PJM's RBP Filing fails to explain why PJM does not directly address the data center issue. PJM's RBP Filing fails to explain why PJM imposes the costs of data centers on other customers and does not require data centers to pay the costs and bear the risks that they impose on the system. PJM's RBP Filing fails to explain why each of the significant changes to the fundamentals of the current capacity market design are required in order to address

the data center issue. PJM fails to explain why the simple, focused Market Monitor proposal that was presented in stakeholder discussions should not be adopted.⁸

PJM's current approach to addressing data center load is not just and reasonable, as demonstrated by the results of the last four Base Residual Auctions. It is not the fundamentals of the capacity market design that are at issue. It is not the fundamentals of the energy market design that are at issue. It is the fact that PJM is currently allowing the rapid interconnection of large data center loads without having the capacity to serve those loads that makes the current PJM application of the rules unjust and unreasonable. The Market Monitor has demonstrated that PJM's approach has created a massive financial burden on all PJM customers.⁹ ¹⁰ That demonstration does not include the additional impact on energy market prices or on the costs of transmission. The RBP Filing in this matter further demonstrates PJM's own belated recognition that the application of the current tariff rules is not just and reasonable.

The RBP Filing is inconsistent with the purpose of the Ratepayer Protection Pledge and Principles. That purpose is to ensure that data centers pay for their own costs and risks. PJM's proposed RBP auction defines a shortfall that is based entirely on data center load yet assigns the costs and risks associated with meeting that shortfall to other PJM customers.

PJM's mistake, in this filing, is to propose unsupported changes to the fundamental market design while ignoring the actual data center issue which is that the data center loads are imposing significant costs and risks on other customers. There is a straightforward

⁸ See IMM, CIPF: Reliability Backstop, "Proposed reliability backstop auction design" (v6) (June 30, 2026), included as Attachment A.

⁹ See Monitoring Analytics, LLC "Analysis of the 2027/2028 RPM Base Residual Auction – Part A," (January 5, 2026).

¹⁰ See Monitoring Analytics, LLC, *2026 Quarterly State of the Market Report for PJM: January through June* (August 13, 2026) Section 1: Introduction.

approach that directly addresses the data center issue while maintaining the current market design.

PJM's RBP Filing is inconsistent with PJM's fundamental market design. The elements of PJM's market design that PJM seeks to change protect the public interest and have worked to provide competitive results over a significant period. Additional rules are needed to address the extraordinary issues presented by the speed and size of data center additions.

Federal and State government at the highest levels, with the explicit support of the data centers themselves, have identified the issues and have identified acceptable solutions. By their published standards, the RBP Filing is unacceptable. PJM's RBP Filing violates the Ratepayer Protection Pledge and Principles because the RBP Filing assigns the costs and risks of data center load to other customers.

These facts, separately or together, should result in Commission rejection of the PJM RBP Filing. PJM should be directed to file tariff modifications within two weeks that would create a reliability backstop auction that facilitates the acquisition of capacity for those data centers that commit to buying capacity and that have not otherwise bought capacity.

The goal should be a practical, implementable method for helping data centers to acquire and pay for capacity in order to help PJM and LSEs' meet their obligations to ensure system reliability in the face of a massive onslaught of data center load, while ensuring that data centers have access to power.

B. The RBP Filing Is Deficient, Unjust and Unreasonable.

1. The PJM RBP Filing would violate fundamental elements of the PJM capacity market design.

The PJM RBP proposal would violate these fundamental elements of the PJM capacity market design:

- Must buy/must sell requirements in the capacity market
- LSEs' role in the capacity market
- Locational capacity market design

- Single clearing price auction design
- Market power mitigation rules
- Responsibility for performance and for failure to perform

2. PJM's RBP Filing would reverse the core must buy/must sell obligations in the capacity market and convert to must buy/option to sell at highest price.

The PJM capacity market design is a must buy/must sell design in which all LSEs and all capacity owners must participate.^{11 12} The existing symmetrical design was intended to counter the market power of generation owners while allowing all LSEs to meet their obligation to have capacity to cover their load obligations. The PJM RBP Filing would replace the must buy/must sell design with a must buy/option to sell at the highest price design. The proposed must buy/option to sell at the highest price design undoes the symmetry and creates market power for generation sellers. The proposed must buy/option to sell at the highest price design provides no choice for buyers, but forces LSEs to pay the prices that result from PJM's RBP process that fails to include any market power mitigation rules.

PJM has failed to provide any explanation for why they propose to undermine this core element of the capacity market and impose high prices on LSEs who have no ability to affect the price while allowing generators the option but not the obligation to sell at the highest price.

¹¹ "Reliability Assurance Agreement Among Load Serving Entities in the PJM Region," Article 7 § 7.2 & Schedule 8.

¹² PJM OATT Attachment DD § 6.6.

3. PJM's RBP Filing would inappropriately require LSEs to bear costs and risks.

PJM's RBP Filing is inconsistent with PJM's fundamental market design because it would substitute a bilateral design for a competitive market design by making individual LSEs and their customers responsible for the costs of data center load. PJM's repeated assertion that the PJM Capacity Market is primarily a bilateral market is not correct. That assertion is not supported by history. That assertion is not supported by the actual capacity market design and the actual functioning of the PJM Capacity Market.

The capacity market was originally implemented in 1999 at the request of the Pennsylvania Public Utility Commission in order to prevent existing generation owners from exercising market power against new entrant competitive LSEs that needed to buy capacity to meet their reliability obligation as defined in the RAA. That market power could be exercised because the only source of capacity for a new entrant LSE to meet its reliability obligation was a bilateral contract with existing generation owners. Then, as now, the ownership of capacity was highly concentrated and the generation owners had the ability to exercise market power in those bilateral negotiations.

The solution was a competitive capacity market that required all generation owners to sell their capacity at a competitive price and all LSEs to buy the capacity needed to meet their reliability requirements at a competitive price. The result was access to competitively provided capacity that permitted competitive new entrant LSEs to compete with the incumbent utilities to meet load. As the capacity market evolved into the RPM design, the PJM capacity market design remains a must buy/must sell design in which all LSEs and all capacity owners must participate.¹³ This design prevents both buyer side and seller side market power.

¹³ LSEs may elect the Fixed Resource Requirement ("FRR") alternative. See "Reliability Assurance Agreement Among Load Serving Entities in the PJM Region," Schedule 8.1.

PJM's RBP Filing assigns the costs and risks of data center load to LSEs and their other customers based on this bilateral view of the capacity market. PJM supports its use of a pay as bid auction design by asserting that it "more closely aligns with the economics and settlement structures of bilateral contracts."¹⁴ PJM's proposal would reverse the advantages of the competitive capacity market and restore market power by assigning the costs of the RBP procurement to LSEs based on their share of the shortfall in the 2028/2029 Delivery Year based on forecasted growth in the large loads.¹⁵ Data center loads are not the responsibility of the LSEs where the data centers choose to locate or of the other customers of the LSEs. Data center loads should pay their own costs and cover their own risks. PJM's RBP Filing directly imposes the costs and risks of meeting data center load on LSEs and their customers.

The assignment of costs to LSEs with data center load is also inconsistent with the Reliability Backstop Auction provisions of the tariff. The Reliability Backstop Auction tariff rules assign the costs of procuring backstop capacity to all LSEs in PJM on a pro rata basis based on their daily unforced capacity obligations. PJM's RBP Filing did not change this language in Attachment DD, Section 16.4, as it applies to the Reliability Backstop Auction.

4. The RBP Filing is inconsistent with the basic locational design of the PJM Capacity Market.

The RBP Filing is inconsistent with the basic locational design of the PJM Capacity Market. The current locational Reliability Pricing Model (RPM) design was implemented in 2007 because the capacity supply and demand conditions were very different by location within PJM. In 2007, the zones in Maryland and New Jersey were short capacity and western zones were long capacity and the transmission system did not permit the excess

¹⁴ *Id.* at 23–24.

¹⁵ Attachment A - Revisions to the PJM Open Access Transmission Tariff and PJM Reliability Assurance Agreement at 18.3 Cost Allocation of RBP Charges, Credits, and Shortfall Charges ("Attachment A – Marked Tariff Records").

capacity in the west to solve the issues in the east. Maryland and New Jersey faced reliability issues and western zones did not. PJM created the locational RPM design in response to these basic structural facts.

PJM's explicit and conscious and unsupported failure to include locational requirements in the RBP Filing creates the risk of repeating the experience of 2007. PJM's failure to address locational issues risks customers having to pay higher capacity prices in price separated LDAs, customers having to pay for additional transmission and customers having to pay more for energy as more expensive local resources are required to actually meet the data center load rather than the resources acquired in the RBP. PJM's assertion that it cannot predict CETO and CETL values for 15 years is irrelevant. That should not serve as a facile excuse for simply ignoring the critical locational dimension of the capacity market. Simply ignoring locational issues could result in very significant locational mismatches between resources and loads that are not resolvable even through transmission expansion. There are clear solutions available for addressing the locational facts of PJM including requiring that the generation to serve a data center must be in the same LDA as the data center. Ignoring locational realities is not an option. Ignoring locational realities will create unintended consequences including the need to build transmission in the future and price separation in the capacity market that could mean even higher capacity prices in areas with data center load.

5. The RBP Filing abandons single clearing price auction in favor of pay as bid.

The RBP Filing abandons the single clearing price auction design in favor of pay as bid, despite the complete failure to explain why economists' consensus view of this issue is ignored.¹⁶ Pay as bid is inefficient and does not facilitate competition. After deciding to abandon basic competitive market design PJM then uses its chosen pay as bid structure as a

¹⁶ RBP Filing, Attachment C (Croop Affidavit) at 21.

reason for failing to have market power mitigation rules. PJM fails to justify using pay as bid in place of the competitive and efficient single clearing price approach that has been a fundamental part of the PJM market design since its inception.

Under PJM's proposed pay as bid structure an RBP seller, if selected in the procurement process, will be paid its RBP sell offer. PJM also proposes to not use "market power screening or mitigation measures."¹⁷ It should be unacceptable that PJM, at a time of severe supply shortage, would propose to not use the standard market power screening that is used in all PJM capacity auctions.

Pay as bid auctions do not provide an incentive for sellers to reveal their costs while a uniform price auction does. For example, if Plant A has a lower cost than Plant B and both generators are expected to clear, under pay as bid Plant A has an incentive to offer above its actual cost and to guess at the clearing price. In a uniform price auction, Plant A can offer its cost and still receive the higher clearing price in the case that Plant B is marginal. That is the efficient and competitive outcome. By proposing a pay as bid auction design with no market power screening, RBP market sellers have a strong incentive to offer above their cost. PJM defends using pay as bid pricing rather than uniform pricing that is used in PJM's RPM auctions by asserting that pricing outcomes are less likely to serve as market signals and that the pay as bid approach "more closely aligns with the economics and settlement structures of bilateral contracts."¹⁸ PJM misses one of the important aspects of having a competitive capacity auction that reveals prices. Competitive auctions provide a price signal to both parties engaged in bilateral contract negotiations. Finally, PJM argues that uniform pricing would require offers to be normalized using potentially complex and subjective assumptions because the RBP capacity product is not uniform due to differences in contract duration, commercial operation dates, ELCC accreditation and changes in the

¹⁷ *Id.* at 32.

¹⁸ *Id.* at 23–24.

ELCC accreditation over the 15 year period.¹⁹ The whole point of capacity accreditation and calculating a levelized cost offer is to provide a homogenous product at a comparable price that conveys all necessary information to the buyer and the buyer is indifferent between purchasing the product from Plant A versus Plant B. PJM's own evaluation of which offers are better than others depends on calculating the price for a product. PJM is in fact using complex and subjective assumptions to evaluate competing offers.

6. The PJM RBP Filing fails to address market power.

The PJM RBP Filing explicitly and entirely fails to address market power despite the fact that the entire PJM Capacity Market is characterized by endemic market power and despite the fact that the RBP auction design creates market power by establishing an inelastic demand for capacity and a maximum price that is not really a maximum price. Effective market power mitigation is needed now more than ever. PJM's only justification for failing to address market power is that it is difficult to design market power mitigation rules when there is a pay as bid design. The pay as bid design is PJM's choice. PJM's rationale for pay as bid is that it looks more like a bilateral market. PJM fails to note a key feature of bilateral markets. Bilateral markets have two sides. PJM's RBP simply assigns costs to LSEs and gives LSEs no voice in the price. The result is not a bilateral market but a one sided market with extreme market power conferred on generators.

PJM has chosen an inefficient and noncompetitive pay as bid design despite the nearly unanimous recommendation of economists that in turn makes market power mitigation more difficult. The answer is straightforward. Use a single clearing price auction with clear market power mitigation rules.

¹⁹ *Id.* at 25.

7. The RBP Filing shifts ELCC risk from generators to customers. The RBP filing shifts the risks of generators failing to perform to customers.

PJM's RBP rules would permit generators to sell more capacity than they actually have and to do so without penalty for overstating capacity. PJM's RBP rules allow RBP sell offer UCAP MW values up to 120 percent of the maximum preliminary ELCC class rating for 2028/2029 through the last posted Delivery Year.²⁰ This will overstate the RBP cleared MW and require customers to pay for nonexistent capacity. More generally, PJM proposes to inappropriately shift ELCC related risk from generators to customers.²¹ Generator performance risk is an investor risk and not a customer risk. One of the benefits of markets is that performance risk is assigned to generators because they are responsible for unit performance.

There is no analytical or market basis for permitting generators to oversell capacity in the RBP process. In fact, as PJM pointed out recently, increased data center load results in reduced ELCC values for most technology types.²² Regardless of expected ELCC changes, generators should sell only the amount of their current accredited capacity and generators should bear the risk of changes in accredited value.

Under PJM's RBP Filing, generators are not required to cover shortfalls due to changes in the ELCC ratings. The generators will not be paid for the shortfall in capacity but there are no shortfall charges for failing to provide what was sold.²³ This shifts the

²⁰ Attachment A – Market Tariff Records, Attachment DD, 18.5(e)(i).

²¹ Shortfalls due to decreases in the ELCC ratings are not subject to RBP Shortfall Charges. See RBP Filing, Attachment A – Market Tariff Records, Attachment DD, 18.6(d).

²² Installed Reserve Margin (IRM), Forecast Pool Requirement (FPR), and Effective Load Carrying Capability (ELCC) for 2029/2030 BRA at 6 and 16, MRC Meeting Materials Item 3, Markets and Reliability Committee (August 19, 2026). <<https://www.pjm.com/-/media/DotCom/committees-groups/committees/mrc/2026/20260819/20260819-item-03---2029-2030-bra-irm-fpr---presentation.pdf>>

²³ RBP Filing, Attachment A – Market Tariff Records, Attachment DD, 18.6(c) through (d).

ELCC accreditation risk to load which has to pay for the additional supply to cover the shortfall. This transfers the risk of non-delivery to the load and unfairly requires the load to pay for the shortfall in needed capacity rather than requiring the RBP seller to provide the capacity.

8. The RBP Filing is inconsistent with the capacity market approach to penalties for performance.

The RBP Filing is inconsistent with the capacity market approach to penalties for performance.

RBP Shortfall Charges are defined in the PJM proposed Tariff, Attachment DD, Sections 18.6(c) through 18.6(e). PJM proposed Tariff, Attachment DD, section 18.6(d) states:

RBP Resources with RBP UCAP MW committed through the Reliability Backstop Procurement that are unable to meet its full RBP UCAP MW commitment due to not achieving commercial operation by the first Delivery Year of the RBP commitment shall be subject to RBP shortfall charges for the committed RBP UCAP MW until the resources achieves commercial operation, for up to three years.

This proposed Tariff language unnecessarily restricts the applicability of charges to a narrow, specific reason, is vague about the timing of the charges, limits the charges to three years, and shifts the risk from resource owners to customers. The PJM proposed criteria for defining RBP Shortfall Charges have not been shown to be just and reasonable and should be rejected. PJM's proposed criteria for defining RBP Shortfall Charges are also vague and unenforceable. PJM has not explained why the RBP penalties vary so significantly from the current RPM rules.

Deficiency charges in the current RPM rules are assessed due to a failure to satisfy a commitment "for any reason," such as derates and retirements whereas the proposed RBP Shortfall Charge would only apply for a specific reason, "due to not achieving commercial

operation.”²⁴ For example, if a generation project configuration and MW change significantly but it still achieves commercial operation by the delivery year, it is not clear whether RBP Shortfall Charges would apply. If a generation resource achieves commercial operation but then has a catastrophic failure and retires halfway through the 15 year term, it appears that no RBP Shortfall Charges would apply.

Use of the term commercial operation instead of the more precise tariff defined commencement of Interconnection Service limits the applicability even more so. Also, the term commercial operation is generally not a term applied to demand resources and DER aggregation resources. As RBP Resources under the PJM proposal include demand resources and DER aggregation resources, it is not clear how the RBP Shortall Charges would apply to these resource types. In fact, in defining the eligibility criteria for RBP Resources in proposed Tariff, Attachment DD, Sections 18.5(a)(i), PJM distinguishes demand resources and DER aggregate resources as being registered and under a contract to perform versus having a commercial operation date prior to June 1, 2032. PJM does not explain why this same distinction is not included in the RBP Shortfall Charge provision.

PJM states that RBP Shortfall Charges would apply if commercial operation is not achieved by the first Delivery Year of the RBP commitment. PJM OATT, Attachment DD, Section 8 Capacity Resource Deficiency Charges, which is a parallel charge to the RBP Shortfall Charge, clearly states that the charge is applicable when committed MW are unable or unavailable to deliver unforced capacity “for all or any part of such Delivery Year” and likewise uses the term “start of the Delivery Year” when describing the timing of the failure to meet RPM commitments.²⁵ The PJM proposed Tariff language lacks specificity in defining the timing of the penalty assessments. PJM does not explain or support the different treatment for RBP resources.

²⁴ OATT Attachment DD § 8.1.

²⁵ OATT Attachment DD § 8.

Under the PJM proposal, the RBP Shortfall Charges are limited to three years. In the transmittal letter, page 61, PJM states that the reason for the limitation on the RBP Shortfall Charges is to reduce barriers to entry. Limiting the penalties to three years of the 15 year term results in shifting the risk from resource owners to LSEs. PJM's reasoning is not logical or meaningful. The fact that a generator in a market has risks is always a barrier to entry. Barriers to entry are not bad by definition. PJM's entire tariff could be reasonably considered to be a barrier to entry. It is not PJM's role to help generators by shifting their risks to customers. Yet that is exactly what PJM proposes to do.

PJM proposed Tariff, Attachment DD, Sections 18.6(d)(i) states:

An RBP Resource that is a generation or Energy Storage Resource and is unable to meet expected commercial operation date solely due to Network Upgrades shall be excepted from RBP shortfall charges if the RBP Resource successfully demonstrates readiness through test energy and seeks interim deliverability.

This exception for unavailability due to Network Upgrades erodes the penalty assessment and again results in shifting the risk from resource owners to LSEs and their customers.

The RBP Filing is also inconsistent with a logical approach to addressing the data center issues:

- Fails to distinguish data center load from other loads
- Fails to match energy supply and data center demand
- Fails to provide revenue certainty for full generation revenue requirement
- Fails to include a consistent definition of capacity that can meet data center load
- Fails to include effective, targeted penalties for failure to perform
- Fails to include a logical market clearing mechanism
- Fails to update the maximum price used in the RBP
- Fails to reasonably assign risk and the associated credit and collateral

1. PJM proposes to include all large loads rather than just data center load.

The ostensible goal of the RBP Filing is to address the data center issue. Addressing the data center issue requires separately identifying and providing special rules applicable to LSEs serving data center loads. Special rules are justified because there are extraordinary circumstances specifically applicable to data centers.²⁶ Data centers are requesting unusually expedited service and at unusually elevated volumes, and significant efforts are being made to accommodate their extraordinary demands. Large loads in the nature of customers who have a long history of taking service from the system are not responsible for the data center issue. These customers are not seeking the sudden addition of large loads on an expedited basis outside of longstanding historical norms. It is necessary and appropriate to craft rules that specifically apply to LSEs serving data centers for the same reason that hyperscalers representing data centers are the ones affirming the Pledge. The inclusion of all large loads within the scope of the RBP Filing is unjust and unreasonable, and is unduly discriminatory, because large loads that are not data centers do not present the extraordinary circumstances that the RBP Filing should address.

2. The RBP Filing fails to match supply and demand for energy

The RBP Filing is inconsistent with matching the supply and demand for energy. PJM makes no effort to match the duration of supply with the duration of demand. PJM fails to recognize or address these issues. Data center demand is 8,760 hours per year. Since a four hour battery is an acceptable form of resource under the RBP, there is a significant

²⁶ See 16 U.S.C. § 824d; *TranSource, LLC v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,119, 61636 (2019) (“The courts have consistently upheld this longstanding approach to undue discrimination.”) citing, e.g., *Complex v. FERC*, 165 F.3d 992, 1012 (1999); *Advanced Energy v. FERC*, 860 F.3d 656, 670–71 (2017); *Transmission Agency v. FERC*, 628 F.3d 538, 549 (2010) (“A rate is not ‘unduly’ preferential or ‘unreasonably’ discriminatory if the utility can justify the disparate effect. The court will not find a Commission determination to be unduly discriminatory if the entity claiming discrimination is not similarly situated to others (internal quotations and citations omitted).”).

mismatch between the supply of energy from the battery and the demand for energy from the data center, plus the charging demand of the battery. The same issue exists for standalone solar resources. The result of this mismatch will be higher energy prices for all PJM customers because higher cost resources will need to be dispatched to meet the demand for energy.

3. The RBP Filing is inconsistent with the requirement to provide revenue certainty to new generation for 15 years.

The RBP Filing is inconsistent with the requirement to provide revenue certainty to new generation for 15 years. The RBP Filing addresses only the capacity cost component of the total revenue requirement for building new capacity. The contract for differences addresses only the price of capacity. The RBP pricing entirely ignores net revenue from the energy and ancillary services markets and therefore ignores more than half the revenue for a new CC resource.

4. The RBP Filing includes inconsistent definitions of the capacity that can satisfy the requirements to meet the data center load.

The RBP Filing does not have a consistent definition of capacity. While the stated intent of the Principles and of the RBP Filing is to have 15 year capacity to meet the shortfall in supply resulting from data center demand, the RBP Filing allows inferior capacity to displace such 15 year capacity. The RBP Filing includes very different definitions of the capacity that can satisfy the requirements to meet the data center load. The RBP auction requires 15 year contracts. The RBP Filing also allows five year bilateral contracts to meet the same obligation under the RPB offset option. The RBP auction has a stronger definition of what constitutes new capacity than the RBP offset definition. The RBP Filing creates strong incentives to provide inferior and shorter term capacity to meet the 15 year demand. The RBP Filing creates strong incentives to claim capacity that is not actually new capacity to meet data center demand. PJM provides no reason for these weaker standards for RBP offset MW.

The criteria for qualifying to be an RBP resource are defined in the PJM proposed Tariff, Attachment DD, Section 18.5(a) through (d). PJM's proposed criteria include uprates, demand resources, and DER aggregation resources. The goal should be to support new generation and to prevent gaming of the rules by reclassifying existing capacity resources as new. The definition should ensure that all cleared capacity represents investment in new physical supply rather than redefining existing resources. PJM's proposed criteria fail to do this.

PJM's criteria in proposed Tariff, Attachment DD, Section 18.5(b) uses the capitalized term Installed Capacity, but there is no proposed definition or definition in the existing tariff.

The criteria for qualifying for RBP Offset UCAP MW are defined in PJM proposed Tariff, Attachment DD, Section 18.2. These criteria differ from the criteria to qualify for an RBP resource in several ways, including allowing incremental capacity created by the utilization of Surplus Interconnection Service; incremental CIRs or UCAP due to fuel switching; Planned Demand Resources and Planned DER Capacity Aggregation Resources.

PJM fails to explain why capacity qualifying for RBP Offset UCAP MW are held to a weaker standard than RBP resources given that both are being used to satisfy the reliability shortfall. RBP offset rules also only require 5 year contracts for bilateral contracts and self supply versus the 15 year term for the RBP.

The problem is that PJM proposes to treat RBP offset capacity as equivalent to RBP supply for purposes of reducing the regional reliability requirement, even though the two have materially different contractual protections and performance obligations. Under PJM's RBP Filing, an offset does not need to demonstrate that it provides a substitute contribution to resource adequacy while reducing the RBP procurement target by that amount. The concern is particularly acute for DR and DER as offset MW because their UCAP contribution is dependent upon operating conditions, dispatch availability, customer participation and other factors that differ from the characteristics of conventional generation.

There is an asymmetry. PJM is willing to reduce a 15 year regional procurement obligation based on offset arrangements that require only five years of contractual commitment. The Commission must require PJM to justify why five years of capacity is sufficient to offset a procurement obligation that otherwise would be satisfied through a 15 year commitment. For DR and DER, the concern is even more pronounced because the commitment is to provide a specified demand reduction or DER capability, rather than to maintain a physical generating asset for the duration of the RBP term.

An offset should be required to demonstrate durable capacity availability for the same period over which it displaces RBP procurement, or PJM needs to justify why a shorter commitment provides equivalent reliability value. All capacity that addresses the shortfall should be required to meet the same conditions.

Table 1 summarizes the different requirements for RBP capacity and the three types of offset capacity.

Table 1 The requirements for RBP capacity and offset capacity

Requirement	RBP Supply			RBP Offset UCAP MW	
	Gen	DR and DER	Bilateral	Self Supply	CSP or DER Aggregator
COD or under contract date	No later than June 1, 2032	No later than June 1, 2032	No later than June 1, 2032	No later than June 1, 2032	No later than June 1, 2032
New build	New ICAP, new MFO, supported by new or transferred CIRs from a deactivated resource or a resource that announced deactivation as of April 10, 2026	NA	Not clearly defined. Includes transferred CIRs from a deactivated resource or a resource that has announced deactivation as of April 10, 2026	Not clearly defined. Includes transferred CIRs from a deactivated resource or a resource that has announced deactivation as of April 10, 2026	NA
Uprate	New ICAP, <i>new MFO</i> , supported by new or transferred CIRs	NA	New ICAP, supported by an increase in CIRs (<i>does not specify new or transferred</i>)	New ICAP, supported by an increase in CIRs (<i>does not specify new or transferred</i>)	NA
Incremental capacity other than uprates	Not allowable	NA	Allowable for Surplus Interconnection Service; UCAP or CIR increase due to fuel switching	Allowable for Surplus Interconnection Service; UCAP or CIR increase due to fuel switching	NA
Repowering	Deactivated, or <i>announced deactivation, on or before</i> April 10, 2026.	NA	Deactivated <i>prior to</i> April 10, 2026	Deactivated <i>prior to</i> April 10, 2026	NA
Term	15 year	15 year	At least 5 delivery years	At least 5 delivery years	2028/2029 Second IA through 2032/2033
Load matching			Matched with load that has an executed electric service agreement or transmission service agreement, indicating that the load will be coming online in the 2027/2028 or 2028/2029 Delivery Year	Matched with load that has an executed electric service agreement or transmission service agreement, indicating that the load will be coming online in the 2027/2028 or 2028/2029 Delivery Year	2028/2029

5. DR as capacity to meet demand of data centers

Permitting DR and DER to serve as RBP supply creates capacity that is materially inferior to generation capacity resources. Committed generation is required to participate in PJM's Day-Ahead Energy Market and make itself available for economic dispatch. In contrast, committed DR is only required to enroll in PJM's Annual Demand Response program which means that its reliability benefits are only available when PJM invokes emergency procedures. This is analogous to permitting RBP Offset generation to classify its committed ICAP as maximum emergency requiring PJM to invoke emergency procedures in order to access its reliability benefit.

Allowing new load to serve as its own offset through enrollment as Annual Demand Response further allows the new load to circumvent curtailment under IRAS. IRAS

curtailments occur prior to pre-emergency Demand Response. The new load enrolled as its own DR offset provides a means to subordinate its curtailment relative to curtailment priority under IRAS.

PJM's proposal to permit a new data center to satisfy its own RBP obligation by enrolling the load as an Annual Demand Resource is flawed because it allows the load to receive credit against the RBP requirement without providing a reliability commitment equivalent to the capacity that the RBP otherwise would procure. Under the RBP Filing, a new load can use Annual Demand resource participation as an RBP offset through the 2032/2033 Delivery Year whereas a committed RBP resource would be subject to a 15 year term. PJM therefore would permit a relatively short term demand response commitment to displace a capacity procurement that otherwise would provide 15 years of committed capacity. The reliability value of that DR also differs fundamentally from that of committed generation. DR is an emergency resource whose reliability contribution is realized through PJM's direction to curtail load under emergency procedures, whereas a committed generation resource can be economically dispatched when needed, providing a continuing source of energy without requiring PJM to invoke emergency measures. Allowing the new data center to designate its own load as Annual DR further creates an opportunity to avoid the curtailment obligation that would otherwise apply to the load under PJM's Interim Resource Adequacy Service ("IRAS"). In effect, the data center can transform a reliability obligation imposed on an inadequately supplied large load into a self-designated RBP offset, while providing PJM with a demand side resource whose availability is dependent on emergency curtailment rather than an economically dispatchable supply resource. This raises a fundamental question. PJM has not demonstrated that such DR provides reliability value comparable to the 15 year committed capacity that it displaces, particularly when the load itself is the entity receiving the benefit from the offset. PJM's own description of the RBP confirms that the procurement is intended to secure a new capacity for up to 15 years while qualifying offsets are used to reduce the procurement target.

Consider an LSE with a 1 GW data center that becomes subject to the RBP because its incremental load contributes to PJM's identified resource adequacy need. Under PJM's proposal, the data center could enroll its entire load as an Annual Demand Resource and use the resulting UCAP value as an RBP offset. If the 1 GW load received 1 GW of qualifying DR offset credit, the data center would effectively eliminate its RBP obligation without PJM procuring a new generation resource to serve that capacity. Yet, the DR arrangement would provide a materially different commitment from the RBP capacity it displaces. The DR commitment would extend only through the 2032/2033 Delivery Year effectively, a five delivery year commitment, while an RBP resource would be committed for 15 years. Moreover, PJM cannot access the DR capability in the ordinary course through economic dispatch. The reliability benefit is available only when PJM invokes its emergency procedures and requires the data center to curtail. A generation resource procured through the RBP, by contrast, can be economically dispatched when needed and can provide energy without requiring PJM to declare an emergency and order the data center offline. The proposal therefore permits the 1 GW data center to substitute a relatively short duration, emergency only curtailment obligation, for the 15 year capacity commitment that otherwise would be procured through the RBP. It also allows the data center to avoid the curtailment to which it would otherwise be subject under IRAS by designating its own load as an RBP offset. In substance, the proposal allows the large load to satisfy the reliability obligation created by its own demand by making itself a demand response resource, even though that resource provides a fundamentally different and less durable reliability product than the capacity procurement it displaces.

6. The proposed RBP process is not consistent with the cost minimizing principles used for clearing energy and capacity markets in PJM today.

The proposed RBP auction clearing process is not consistent with the cost minimizing principles used for clearing energy and capacity markets in PJM today. The selection process lacks a clearly defined objective and favors resources that will offer to provide capacity with a commercial operation date in 2028/2029 over resources that need

additional time to achieve commercial operation even when the later resources are less costly and have better reliability characteristics.²⁷ The RBP's use of a pay as bid approach coupled with the failure to include market power mitigation will result in the exercise of market power. The RBP Filing includes a levelized cost calculation that PJM has not supported or explained. PJM's defines the Levelized Cost (\$ per MW-day) as the Present Value of future revenues (Offer Price*UCAP Offered) divided by the sum of discounted offered UCAP MW values.²⁸ PJM proposed to use a discount rate equal to 9.5 percent after tax average weighted average cost of capital for discounting the revenues and UCAP MW. Discounted cash payments are well understood and frequently used for comparing revenues or investment opportunities spread over future years, but it is not clear what discounted UCAP MW mean. For example, \$100 in five years is worth \$63.52 today. Applying PJM's logic and discount rate, 100 MW of UCAP in five years has a discounted value of 63.52 MW. PJM does not explain the meaning of a discounted MW.

A better approach for comparing offers with varying UCAP MW would be to divide the levelized annual revenue from the RBP payments by the average UCAP MW. The levelized annual revenue is equal to the present value of the RBP payments multiplied by a capital recovery factor (CRF).²⁹ The average UCAP MW represents the expected UCAP MW over a time period unlike the discounted UCAP MW which understates the expected UCAP

²⁷ Attachment A - Revisions to the PJM Open Access Transmission Tariff and PJM Reliability Assurance Agreement at 18.5 The Reliability Backstop Procurement Process ("Attachment A – Marked Tariff Records").)

²⁸ Under the PJM 's proposed approach, sellers of RBP capacity provide PJM offer price in \$/MW-day and offer MW for every delivery year between the expected commercial operation date and the maximum term of 15 years that does not extend beyond the 2042/2043 Delivery Year.

²⁹ A CRF is used to convert a present day dollar amount into an equivalent level payment over a period of years. PJM currently uses CRF factors to determine capital recovery payments for black start generators and incremental investments in the definition of avoidable cost for capacity resources.

MW. This approach also does not give preference to resources that need less time to achieve commercial operation.

The proposed RBP procurement selection process lacks a clearly defined objective. In the PJM annual capacity market, the objective is to minimize the total procurement cost to meet the reliability requirement. The objective is met after evaluating all feasible tradeoffs. This is accomplished through a linear optimization algorithm. The RBP procurement approach first ranks the offers based only on expected commercial operation date. A sell offer with an earlier commercial operation date is preferred over a project with lower cost and better reliability characteristics, but a later commercial operation date. For example, the proposed RBP clearing logic would choose a demand response alternative with an earlier commercial operation date and a higher price over a combined cycle with a later commercial operation date and a lower price. The RBP iterative selection approach does not include the fundamental cost minimization principles that are essential to a competitive market and are the basis for capacity procurement in the annual PJM Capacity Market. After ordering all received offers based on the expected commercial operation date, PJM iteratively selects and unselects the sell offers to select a first combination of sell offers that exceeds the shortfall such that the combined levelized cost falls below the maximum willingness to pay. PJM does not exhaustively examine any more offers in the ordered list to explore the potential for finding a cheaper combination. Even under PJM's purported levelized cost metric, the combination chosen by PJM will not necessarily be the least cost solution.

PJM fails to provide any meaningful support for this ineffective and inefficient approach.

PJM's levelized cost calculation does not correctly reflect the cost to provide capacity and will distort the selection process. Through discounting the future MW in the levelized cost calculation and through ordering the resource for selection based on the earlier commercial operation date, PJM would give preference to expensive offers with lower

UCAP MW in the earlier years over cheaper offers with higher UCAP MW in the later years.

7. PJM failed to update the maximum price calculation

PJM failed to update the calculation of energy market net revenues that is used to offset Gross CONE to calculate the Net CONE value used as the maximum price in the RBP of \$555/MW-day. Based on the forward looking method used to calculate the \$555/MW-day number, net revenues are significantly higher than the net revenues used by PJM. As a result, PJM has significantly overstated the maximum price for the RBP.

PJM failed to explicitly address energy market net revenues in the RBP Filing. However, the price cap of \$555/MW-Day UCAP used by PJM in the RBP Filing was based on a very specific value of energy market net revenues.

Net CONE is equal to Gross CONE less energy and ancillary net revenues (EAS). If EAS increases, Net CONE decreases. At the August 22, 2025, Market Implementation Committee, PJM presented Net CONE values for each CONE area as well as the RTO, and specified that the dates of the forwards were the 30 trade dates that conclude in August 2025.³⁰ The CONE Area and RTO Net CONE values are the same as the Net CONE values shown by zone in the Marzewski Affidavit in Table 3.³¹

The \$555/MW-Day price cap of the RBP is the RTO Net CONE based on those August 2025 forward prices. The August 2025 forwards are now a year out of date. Forward prices have substantially increased since August 2025. Comparing forward prices for the

³⁰ Skyler Marzewski, CONE Operating Parameters for Net EAS, and Net CONE Updates. Market Implementation Committee. (August 22, 2025). The date of these forwards is: 30 trade dates that concluded in August 2025.

³¹ 2025 Periodic Review of Variable Resource Requirement Curve Shape and Key Parameters, Affidavit of Skyler Marzewski in Docket No. ER26-455-000, (*"Quad Review Filing"*). (November 7, 2025) (*"Marzewski Affidavit"*).

2028/2029 Delivery Year as of August 1, 2025, to August 1, 2026, average hourly Western Hub LMPs have increased by \$14/MWh, or 24 percent.

If forwards are 24 percent higher, EAS is higher, and point A of the VRR Curve = $\max[(1.15 \times \text{Gross CONE} - 0.75 \times \text{Net E\&AS}) \text{ or } (0.2 \times \text{Gross CONE})]$ is \$473/MW-Day UCAP, not \$555/MW-Day UCAP.³²

PJM should be required to use an accurate maximum price, based on PJM's approved method.

C. Rejecting the RBP Filing Would Allow the Commission to Direct and Appropriate Remedy.

1. The Current Rules Are Inadequate to Address Prevailing Market Conditions.

The Market Monitor has extensively documented the fact that the application of the current tariff is unjust and unreasonable and produces results that are not competitive.^{33 34}

2. The Record Provides Sufficient Information for the Commission to Immediately Issue a Remedial Directive that Protects Reliability and Affordability.

Upon issuing a finding that the current rules are unjust and unreasonable, the Commission can, on the basis of the existing record, direct PJM to implement a remedy ("Remedial Directive"). The Remedial Directive is based on the Market Monitor Proposal (Attachment A), but streamlined to allow for immediate issuance of a directive that includes the core concepts while deferring full consideration and approval of the details.

³² See Technical Appendix, included as Attachment B to this filing, for more details on the calculation.

³³ See Monitoring Analytics, LLC "Analysis of the 2027/2028 RPM Base Residual Auction – Part A," (January 5, 2026).

³⁴ See Monitoring Analytics, LLC, *2026 Quarterly State of the Market Report for PJM: January through June* (August 13, 2026) Section 1: Introduction.

The Remedial Directive should direct that PJM file, within two weeks, rules and procedures with the following elements:

- PJM should, working with LSEs and EDCs, immediately identify data center load not interconnected by June 1, 2026, and remove it from RPM capacity market auctions.
- PJM should establish criteria to be included in the RAA defining the obligations of LSEs to require that new data center loads have 15 year bilateral contracts with new generation that do not permit any cost or risk shifting to other customers. The contracts would be based on general terms and conditions in accordance with tariff defined criteria with the cost and risk specifics defined by the data centers and generators.
- For LSEs with data centers unable to make independent arrangements meeting the criteria, PJM should run a full single clearing price auction using the BRA capacity market clearing model for new data center load. LSEs would require data centers to participate in the reliability backstop auction if they do not have a bilateral contract for new generation that meets the requirements of such contracts. When the clearing process is complete, the LSEs would require that generators and data center loads enter into 15 year bilateral contracts that do not permit any cost or risk shifting to other customers. The contracts would be based on general terms and conditions in accordance with tariff defined criteria with the cost and risk specifics defined by the data centers and generators.
- PJM should establish curtailment obligations for wholesale service to data centers during a defined transition period that would allow all data centers the time to contract for new generation.

These requirements can be implemented immediately and can be relied upon to meet the goals of the Pledge and Principles.

The Commission has exclusive jurisdiction over the terms and conditions of wholesale power sales and the bulk power grid.³⁵ The capacity obligation of LSEs to support resource adequacy is a term and condition of wholesale power sales subject to the Commission's exclusive jurisdiction.³⁶ ³⁷ The Remedial Directive applies to LSEs and the terms and conditions necessary to meet capacity obligations to PJM, and these terms cannot be changed by States.³⁸ The Supreme Court has determined that Federal regulation in this field preempts state regulation.³⁹ The Remedial Directive does not regulate retail power sales. The Commission's jurisdiction to determine whether LSEs have met capacity obligations related to resource adequacy does not intrude on the jurisdiction over generation reserved to the States.⁴⁰ The Commission initiated a proceeding to address

³⁵ See 16 U.S.C. § 824.

³⁶ See *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 163 (2016) ("We agree with the Fourth Circuit's judgment that Maryland's program sets an interstate wholesale rate, contravening the FPA's division of authority between state and federal regulators. As earlier recounted, ... the FPA allocates to FERC exclusive jurisdiction over "rates and charges . . . received . . . for or in connection with" interstate wholesale sales. §824d(a). Exercising this authority, FERC has approved the PJM capacity auction as the sole rate setting mechanism for sales of capacity to PJM, and has deemed the clearing price per se just and reasonable").

³⁷ RAA Article 7.

³⁸ See *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 972 (1986) ("[I]n formulating rates over which it has exclusive jurisdiction, FERC ruled that the NFA and AA should be treated as allocating 22.5% of the entitlement power of the Tapoco-Nantahala system to Nantahala's customers and 77.5% of that power to Tapoco's customer. That allocation, reflected as it is in a filed rate, must be respected by NCUC. If, as a result, Nantahala needs to purchase additional power from some nonentitlement source, that need is a reasonable one.').

³⁹ See *id.* (state action targeting rates for capacity preempted by federal occupation of the field), citing *EPSA*, 577 U.S. 260, 288 (2016) ("The FPA leaves no room either for direct state regulation of the prices of interstate wholesales or for regulation that would indirectly achieve the same result." (internal quotation marks omitted)).

⁴⁰ See *id.* at 164 ("That Maryland was attempting to encourage construction of new in-state generation does not save its program. States, of course, may regulate within the domain Congress assigned to them even when their laws incidentally affect areas within FERC's domain. See *Oneok, Inc. v. Learjet, Inc.*, 575 U. S. 373, 385, 135 S. Ct. 1591, 191 L. Ed. 2d 511, 528 (2015) (whether the Natural

matching costs of new transmission network upgrades to data centers.⁴¹ A similar and complementary proceeding is needed to match of the costs of new resources to support resource adequacy to data centers.

The Remedial Directive provides terms and conditions for wholesale energy service to support resource adequacy, similar, in so far as the Commission's jurisdiction is concerned, to the Fixed Resource Requirement ("FRR") alternative that allows for eligible LSEs to satisfy PJM's capacity requirements through a plan consisting of a list of owned or controlled resources meeting PJM's criteria.⁴² Under the RAA's provisions for FRR alternative plans, an LSE takes the responsibility and risk to procure, by contract or ownership, resources needed to support resource adequacy in the PJM region. PJM's role is limited to ensuring that resources meet the applicable criteria. Under the Remedial Directive, LSEs serving data centers are required to identify data center load, so that PJM can remove it from RPM Auctions, and reviews LSEs' resources included in its plan to meet capacity obligations related to data centers. The Remedial Directive builds upon the voluntary matching process element of the RBF Proposal (at 30–31), which allows LSEs to satisfy their capacity obligations through resources, procured by contract or ownership, that meet PJM criteria. There is no material difference, in so far as the Commission's exclusive jurisdiction over resource adequacy is concerned,⁴³ between the Remedial Directive and the existing FRR alternative rules, and the voluntary matching element of the RBP Filing. PJM's administration of the RAA and FRR plans approved by FERC since 2006 has never been

Gas Act (NGA) preempts a particular state law turns on "the target at which the state law aims").[citation omitted] But States may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC's authority over interstate wholesale rates, as Maryland has done here."); *see also* Conn. Dep't of Pub. Util. Control v. FERC, 569 F.3d 477, 481 (2009).

⁴¹ See Large Loads Show Cause Order.

⁴² See RAA Schedule 8.1.

⁴³ See *Hughes*, 578 U.S. 150.

found outside of FERC's jurisdiction nor has the issue of jurisdictional basis for the RAA and FRR plans been raised on appeal.⁴⁴

The reason why the RBP Filing should be rejected, and the Remedial Directive should issue instead, is the broadly recognized need to protect reliability and affordability in the PJM Region. The RBF Filing fails to address reliability and may lock in unaffordability in the PJM Region for 15 years. Meanwhile, contrary to the fundamental goals of the Pledge and Principles, PJM has shifted the costs and risks of the data center developers who are driving the extraordinary and immediate need for new resources to existing customers even though the data centers are ready and willing to assume the costs and risks they create. The Remedial Directive can fully and timely implement the goals of the Pledge and Principles.

II. CONCLUSION

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

Respectfully submitted,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

⁴⁴ See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006), *order on reh'g*, 119 FERC ¶ 61,318 (2007).

Catherine A. Tyler
Deputy Market Monitor
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
catherine.tyler@monitoringanalytics.com

Paul G. Scheidecker
Senior Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
paul.scheidecker@monitoringanalytics.com

Alexandra Salaneck
Senior Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
alexandra.salaneck@monitoringanalytics.com

John Hyatt
Senior Economist
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
john.hyatt@monitoringanalytics.com

Devendra R. Canchi
Senior Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
devendra.canchi@monitoringanalytics.com

Dated: August 21, 2026

ATTACHMENT A
Market Monitor Proposal



DATE: June 30, 2026, Meeting Date
TO: CIFP: Reliability Backstop
FROM: IMM
SUBJECT: Proposed reliability backstop auction design V6

The most important criterion for evaluating proposals to address how to reliably serve new data center load is the assignment of the costs and risks associated with LSEs serving data center load.¹ For example, the failure to exclude new data center load from the BRAs, as PJM proposes, would by definition impose significant costs on other customers and therefore violate the basic principle that data center costs should not be imposed on other customers. The rules must protect just and reasonable pricing for capacity that serves existing customers. To date, the capacity costs imposed on existing customers by data centers have been \$23 billion.² As another example, PJM's proposal assigns the ultimate backstop risk associated with serving data center load to other PJM customers, whether it derives from an expected data center not showing up or the matching new generation not showing up. In contrast, the IMM's proposal stipulates that LSEs require the data centers to enter into 15 year bilateral contracts with new generation resources that assign costs and risks between the two parties to the bilateral contract. The IMM proposal adds obligations to the RAA that require LSEs serving data center loads to demonstrate that the data centers have entered into bilateral contracts for new capacity that meet defined criteria. This is analogous to the requirements for FRR entities.

The preferred option for LSEs serving data centers that add load to the PJM system is for LSEs to require, as a term and condition of service for such data centers, that the data centers bring their own new generation (BYONG).³ For those LSEs serving data centers that do not bring their own new generation that meets the defined requirements, the IMM proposes that PJM run a reliability backstop auction (RBA) designed to meet all LSEs' expected data center load that has not entered into a 15 year bilateral contract with new generation.

The IMM proposes a specific reliability backstop auction design. The goal is to incorporate market forces as much as possible and to minimize planning choices by PJM or others. The

¹ The Supreme Court has recognized FERC's jurisdiction to ensure resource adequacy through the RAA and auctions conducted under the RAA, and, further, that these federal rules preempt state actions interfering with that regulatory construct. *See Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 155 (2016) (recognizing FERC's and RTO's authority, including through capacity market auctions, to "ensure the availability of an adequate supply of power at some point in the future.").

² See the "*Analysis of the 2027/2028 RPM Base Residual Auction – Part A*," (January 5, 2026) <https://www.monitoringanalytics.com/reports/Reports/2026/IMM_Analysis_of_the_20272028_RPM_Base_Residual_Auction_Part_A_20260105.pdf>.

³ The MW of new generation to meet data center load is in UCAP terms and includes reserves based on the system target reserve margin.

proposed IMM design does not impose data center costs or risks on LSEs or EDCs or PJM or other customers, consistent with the Principles defined by the National Energy Dominance Council and the PJM Governors and the Pledge by defined hyperscalers.⁴

The IMM design creates a dedicated mechanism for LSEs serving new large data center load designed to complement, not replace, PJM's existing RPM construct. It is intended to ensure long term resource adequacy for data center load by directly linking LSEs' service to new data center load with dedicated new generation, creating transparent investment signals based on a 15 year contract term.

Only organic load and existing data center load as of June 1, 2026, would be included in the 2028/2029 BRA and in the 2029/2030 BRA. The maximum price for these BRAs would be based on the IMM's CT net CONE calculations from the most recent quadrennial review, updated to reflect current market conditions as necessary.⁵ There would be no floor price. All forecast data center load would be removed from the 2028/2029 BRA and from the 2029/2030 BRA. All LSEs serving data center load that was not online on June 1, 2026, would be required to commit to requiring that data center loads have contracts that meet the requirements of the BYONG option, or to participating in the reliability backstop auction. LSEs serving data center load would have the option to commit to requiring a specific future BYONG plan that meets the necessary terms and conditions and not be included in the auction. If a data center load does not meet the requirement to bring new generation, the data center load would be subject to the curtailment alternative. If data center load takes the BYONG option, the IMM's proposal is that the bilateral BYONG contracts be required to have the same basic characteristics as the bilateral contracts resulting from the reliability backstop auction, e.g. a 15 year term, must offer obligation in the capacity market at zero price, must offer obligation in the energy market at cost-based offers, location in the same child LDA, and matching energy output duration with load duration on an hourly basis. All capacity resources would be treated as capacity resources under the PJM Tariff rules.

The IMM's design for the reliability backstop auction is to run a full single clearing price auction using the BRA capacity market clearing model for data center load. LSEs would require data centers to participate in the reliability backstop auction if they do not have a bilateral contract

⁴ See National Energy Dominance Council, Statement of Principles Regarding PJM (January 16, 2026) <<https://www.energy.gov/documents/statement-principles-regarding-pjm>>; see also White House, "Ratepayer Protection Pledge Proclamation," (March 4, 2026) <<https://www.whitehouse.gov/presidential-actions/2026/03/ratepayer-protection-pledge-proclamation/>>.

⁵ See PJM. Markets and Reliability Committee, Quadrennial Review Issues < <https://www.pjm.com/-/media/DotCom/committees-groups/committees/mrc/2025/20250925/20250925-item-05b---quadrennial-review-imm-proposal---presentation.pdf>> (September 25, 2025).

for new generation that meets the requirements of such contracts. This reliability backstop auction would be run soon after the 2028/2029 BRA. Such an auction design could be repeated in the future as needed to address additional new data center load that is not included in the first reliability backstop auction but would not be required and would not be run on a predefined schedule. The reliability backstop auction would include the location and MW of each data center that participates, the location and MW of proposed generation that participates, full PJM CETO/CETL parameters net of the impacts from the applicable BRA, and any resultant locational price separation. The only product offered would be 15 year generation capacity at a maximum offer price equal to the nominal levelized equivalent of the IMM's calculated combustion turbine Gross CONE provided in the latest quadrennial review, updated to reflect current market conditions as necessary, net of defined energy and ancillary service net revenues in each year of the contract. That equivalent, in \$/MW-day, would be higher than the calculated net CONE in year one because the product is based on a 15 year levelized gross CONE while the current cap is based on a 20 year levelized gross CONE net of net revenues for year one.

The reliability backstop auction would result in cleared generation capacity by LDA. If offers are less than demand, the demand offers would clear in order from highest to lowest. If demand is less than offers, the supply offers would clear in order from lowest to highest. After the auction, a matching algorithm would be used to match individual cleared generation resources with individual data centers subject to locational constraints such that the number of bilateral contracts are minimized.

In order to meet the intended incentive goal, the total payments received for new generation should equal Gross CONE, including both net revenue from the energy and ancillary services markets and capacity payments. The net revenues would be explicitly incorporated. The actual annual payments under the contracts would include the defined energy and ancillary service net revenues calculated annually for each year and the remaining net CONE not covered by the net revenues. The contracts would be for total payments including energy and ancillary services net revenues and the remaining net cost of capacity. The energy and ancillary services revenues could be calculated annually on a forward looking basis or on an historical basis. A single method should be selected that applies to all contracts.

In the reliability backstop auction, the demand for generation capacity would be equal to the specific demand for 15 year capacity from individual data centers, plus the required reserve margin, for each data center, to ensure reliability. There is no forecast of demand, by EDCs or by PJM. All data centers with expected demand greater than or equal to 5.0 MW would be included in the auction. A goal of the defined size is to prevent artificial segmentation of data center load to circumvent the size threshold. The maximum price for the demand bids would equal the maximum offer price for new generation.

Sellers in the reliability backstop auction would be new generation only, with clearly defined eligibility. New generation would not include upgrades to existing generation, uncleared capacity, repowered capacity, units that retired after June 1, 2025, demand side resources or relicensing. This definition ensures that all cleared capacity represents investment in new physical supply rather than redefining existing resources. The goal is to support new generation and to prevent gaming of the rules by reclassifying existing capacity resources as new. The new generation must be located within the same child LDA as the data center to help ensure long term deliverability to that load over the 15 year life of the contract. The output of the new generation must reasonably match the hour by hour load profile of the data center. (This is not capacity factor matching.) For example, a standalone solar resource would not qualify but a combined solar and battery resource could qualify. The energy output of the new generation must equal or exceed the data center load whenever the new generation is available, subject to locational constraints.

Generation selected in the reliability backstop auction would be required to comply with all requirements of the PJM capacity market. For example, new generation capacity is required to have CIRs and to be deliverable and has an RPM must offer obligation. All of this generation would also be required to have the same obligations in the energy market as committed generation capacity resources, including an energy market must offer obligation.

When the clearing process is complete and each generation offer is associated with one or more identified data center loads, the LSEs would require that generators and data center loads enter into 15 year bilateral contracts that do not permit any cost or risk shifting to other customers. The contracts would be based on a tariff defined standard contract. The risks associated with the load changing or withdrawing and generation changing or failing would be fully addressed in the bilateral contracts. New generation capacity resources clearing in the reliability backstop auction would have an initial capacity accreditation based on the recent EFORd performance of comparable generation and would, after two years of operation, have unit specific ELCC values based on actual unit performance and therefore subject to management by the generator. The risks associated with changes in capacity accreditation values would be fully addressed in the bilateral contracts.

When the bilateral contracts are final, including bilateral contracts reached under the BYONG option, the data center load plus the reserve margin has an RPM must buy obligation and the corresponding generation capacity has an RPM must offer obligation, after the capacity commercial operation date, in future BRAs as price takers for the 15 year contract term. A contract for differences would ensure that the load pays and the generation receives the contract price in the financial settlement.

The IMM's proposal addresses any potential state/federal jurisdictional issues. LSEs would be required, as a condition of service, in the RAA, to show that each data center that they serve has a bilateral contract(s) in place with a source of generation for at least 15 years that meets

the identified requirements of such contracts. The bilateral contracts would address all pricing and risk issues solely between the parties to the contract with no recourse to other customers.

Under the IMM proposal, the qualifying bilateral contracts assign all risks to the bilateral counterparties and no risks are assignable to EDCs, LSEs, PJM or any other customers. The LSEs must ensure that the data centers meet the requirement to have a bilateral contract based on the requirements of the RAA, but the LSEs are not counterparties to the capacity supply contract. LSEs that do not maintain their obligations under the RAA will face consequences defined in the RAA.⁶ The data center and the generation capacity seller are the counterparties to the capacity supply contracts. PJM and other PJM participants provide no credit support of any kind for the contracts. There is no recourse to PJM or its members. Credit issues are entirely between the parties to the bilateral contracts.

⁶ See RAA § 5.2, referencing OA § 15.1. The RAA can be amended only by action of the PJM Board and FERC approval, per RAA § 16.4.

ATTACHMENT B

Technical Appendix

A. Issues with PJM's maximum price

Table 2 shows PJM CT Gross and Net CONE, including the PJM Net CONE value based on August 2025 forwards and an estimated Net CONE value based on August 2026 forwards

Table 2 PJM CT Gross and Net CONE

	PJM CT Gross & Net CONE (\$/MW-Day)					
	EMAAC	SWMAA C	Rest of RTO	WMAAC	COMED	RTO
Gross CONE (ICAP)	\$596	\$608	\$590	\$592	\$679	\$613
Forward E&AS (67th percentile)	\$159	\$343	\$394	\$320	\$214	\$361
Net CONE (ICAP)	\$438	\$265	\$195	\$271	\$465	\$228
Gross CONE (UCAP)	\$754	\$769	\$747	\$749	\$860	\$776
Net CONE (UCAP)	\$554	\$336	\$247	\$343	\$589	\$325
VRR Curve (UCAP)						
a1) 1.15 x Gross CONE - 0.75 x Net E&AS	\$718	\$560	\$483	\$557	\$785	\$555
a2) 0.2 x Gross CONE	\$151	\$154	\$149	\$150	\$172	\$155
Point A (99% of RR, max of a1,a2)	\$718	\$560	\$483	\$557	\$785	\$555
Point B (101.5% of RR, 0.5 x Point A)	\$359	\$280	\$242	\$278	\$393	\$278
Point C (106.0% of RR, \$0)	\$0	\$0	\$0	\$0	\$0	\$0
a1) 1.15 x Gross CONE - 0.75 x Net E&AS (EAS 24% higher)						\$473

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 August, 2026.



Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610)271-8053
jeffrey.mayes@monitoringanalytics.com