

This matter concerns PJM's filing of revisions to the PJM OATT and RAA on September 6, 2024 ("September 6th Filing") that would prospectively remove the subsidy paid to energy efficiency ("EE") resources ("EER") under rules that are not and never were in the filed tariff.

PJM's September 6th Filing proposes to end subsidy payments to EE resources. Those subsidy payments have grown from \$0.4M in the 2016/2017 Delivery Year to \$130.8M in the 2024/2025 Delivery Year and would have increased to at least \$820.6M in the 2025/2026 Delivery Year but for actions taken by PJM to more carefully review unsupported and unverifiable measurement and verification plans.⁶ If the capacity price were to equal the maximum price in the next base residual auction for 2026/2027 of \$695.00 per MW-day and EE MW equaled the level in the 2024/2025 Delivery Year, customers would be forced to pay \$1.9B in subsidy payments.

Protesters rely on two false premises. The first false premise is that the September 6th Filing could violate the rule against retroactive ratemaking. In order to violate the rule against retroactive ratemaking, the rules must actually be included in the filed tariff in the first instance.⁷ The September 6th Filing does not change any filed rule. The rules that pay a subsidy to EE resources are not in the filed tariff, they are located only in the manuals. The September 6th Filing does not violate the rule against retroactive ratemaking because it does not change any filed tariff rule. In addition, the proposed changes are explicitly forward looking. The Protesters' claim is fanciful.

The second false premise is that EE resources currently participate as supply side resources in the PJM Capacity Market. PJM has not treated EE resources as capacity resources since 2016. The current rules exclude resources that are included in the PJM forecast from the

⁶ The \$820.6M is based on the capacity market clearing prices and the EE MW cleared in the prior BRA.

⁷ See Complaint of the Independent Market Monitor for PJM v. PJM, Docket No. EL24-148-000 (July 10, 2024). This complaint has been held in abeyance until November 20, 2024, by order issued September 16, 2024.

definition of EE resources. All EE resources are included in the forecast. Therefore no EE resources are capacity resources. EE resources receive a subsidy payment under the addback rule, a rule that is stated only in Section 2.4.5 of PJM Manual 18. The subsidy only adds to the bills paid by customers without providing any additional capacity. The September 6th Filing removes an out of market subsidy that no protester even attempts to defend. No protester explains why PJM has any obligation to pay a subsidy to EE resources. Protestors actually object to the Manual provision that provides for the subsidy.

The false premises also lead Protestors to raise issues that are not related to PJM's September 6th Filing. Although there are multiple irrelevant points raised, Protesters' ultimate point is that they disagree with PJM's decision in 2015 to remove EE resources from the capacity market because they are not capacity resources. That is not the issue in the September 6th Filing. The only question is whether customers in the PJM footprint should continue to be forced to pay CSPs an out of market subsidy in amounts that are already extremely high and will be dramatically higher if the September 6th Filing is not approved.

The answer is no. The September 6th Filing should be approved as just and reasonable.

I. ANSWER

A. Contrary to AMEA's Assertions, Energy Efficiency Is Not a Capacity Resource.

AMEA asserts (at 2) that PJM's September 6th Filing fails to justify why it is just and reasonable to eliminate a resource that FERC has consistently recognized as a valuable capacity resource. This assertion is simply incorrect as the defining language in the PJM Tariff and RAA makes clear. Under the current PJM market rules EE resources are not capacity resources and have not been since 2016. EE resource MW are not included in the supply of capacity in any PJM capacity market auction. EE resource MW cannot be used to replace capacity resources. EE MW do not contribute to PJM system reliability as defined by the capacity market.

Section L.1 of Schedule 6 to the RAA defines "Energy Efficiency Resources:"

An Energy Efficiency Resource is a project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, exceeding then-current building codes, appliance standards, or other relevant standards, designed to achieve a continuous (during peak summer and winter periods as described herein) reduction in electric energy consumption at the end-use customer's retail site that is not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed, and that is fully implemented at all times during such Delivery Year, without any requirement of notice, dispatch, or operator intervention [emphasis added].⁸

On March 26, 2009, FERC approved Tariff and RAA changes to allow EE Resources to participate in PJM Capacity Markets beginning with the Base Residual Auction conducted in May 2009 which committed capacity for the 2012/2013 Delivery Year.⁹ The Commission approved PJM's request to allow EE Resource participation beginning June 1, 2011, in the remaining 2011/2012 Incremental Auctions.¹⁰

The only reason that EE was included in the capacity market in the first place was that EE was asserted to not be included in the PJM load forecast used in the capacity market. PJM stated that EE was not fully reflected in the load forecast for four years based on the method in place at the time.¹¹ As soon as PJM explicitly included EE in the load forecast used in the

⁸ See also OATT Attachment DD-1 § L.1.

⁹ See PJM Interconnection, L.L.C., 126 FERC ¶ 61,275 (2009)

¹⁰ See Delegated Letter Order, Docket No. ER10-366-000 (January 22, 2010).

¹¹ See PJM Filing, Docket No. ER09-412-000 (December 12, 2008) at 32 (“An EE Resource is permitted to be offered as a Capacity Resource in the Base Residual or Incremental Auctions for four (4) consecutive Delivery Years. [footnote omitted] As discussed above, this ensures that a party contemplating an energy efficiency investment realizes the benefit of the investment's reduction in the PJM region's capacity needs before that reduction can be reflected in the load forecast used for RPM's forward auctions. After that reduction is reflected in the load forecast, the customer's load obligation, and capacity requirements, are reduced even without the changes proposed in this docket.”).

capacity market, PJM followed its tariff language and logic and eliminated EE from the capacity market effective with the 2016/2017 Delivery Year.

Revisions to the PJM load forecast to incorporate energy efficiency were endorsed at the November 19, 2015, MRC.¹² These revisions included improvements to comprehensively capture energy efficiency impacts through incorporation of projections from the U.S. Energy Information Administration (EIA) Annual Energy Outlook (AEO). The AEO forecast is based on a set of end use models for the residential, commercial, and industrial sectors. EIA accounts for state and utility efficiency programs by mapping regional EE program expenditures to end uses and tracks the number of units sold and associated efficiency information on an ongoing basis.¹³

The original rationale for the inclusion of EE in the PJM Capacity Market was that the load forecasts did not account for the impact of EE on demand for four years. Regardless of whether that was a good reason at the time, the original rationale was no longer true, effective for the 2016/2017 Delivery Year.

After recognizing that EE resources were not capacity resources, PJM implemented a subsidy payment to EE resources using the unnecessarily complicated addback mechanism that was included solely in Manual language and was not filed with and was not approved by the Commission. The addback mechanism was effective beginning at the time of the 2016/2017 Third Incremental Auction.

AMEA suggests (at 4), incomprehensibly, that PJM's motive behind its Section 205 filing is that EERs have become "too successful" under the current Tariff rules. Although AMEA repeatedly recognizes (at 2) that the addback was never approved by FERC, they

¹² See *Approved Minutes from the Markets and Reliability Committee*, <<https://www.pjm.com/-/media/committees-groups/committees/mrc/20151217/20151217-item-01-draft-minutes-20151119.ashx>> (December 17, 2015).

¹³ See U.S. Energy Information Administration. *Analysis of Energy Efficiency Program Impacts Based on Program Spending*, <<https://www.eia.gov/analysis/studies/buildings/efficiencyimpacts/pdf/programspending.pdf>> (Accessed January 18, 2024).

nonetheless characterize the \$904 million to date in customer subsidy payments to EE under the addback as a measure of EE's "success."

Although irrelevant to the September 6th Filing and unsupported by any actual facts, AMEA asserts (at 3) that during Winter Storm Elliot in December of 2022, EE resources performed better than actual capacity resources. AMEA's opinion is based on the relative quantity of PAI Bonus Payments awarded to EE resources. Bonus payments to EE were based on the MW quantity of EE resources approved in post-installation M&V reports by PJM in excess of that being paid through the addback mechanism that were submitted prior to the start of the 2022/2023 Delivery Year, nearly seven months prior to Winter Storm Elliot ("Elliot"). Contrary to AMEA, EE performance is not measured in actual operations, and there is no factual basis for any conclusions about the status of EE resources during Elliott. In fact, the bonuses paid to EE resources during Elliott were outside the time period during which the post-installation M&V reports were required to demonstrate savings. There was not even a purported basis for the assumed performance. The payment of bonuses demonstrates only the deeply flawed nature of the PJM rules governing EER.

B. The Tariff and RAA Do Not Guarantee that EE Will Receive Subsidies for Four Consecutive Delivery Years.

AMEA asserts (at 7) that the EER Filing would unjustly and significantly harm EER providers based on a convoluted set of nonsequiturs and irrelevant cites because PJM should pay each EE resource for four years. EE resources are not capacity resources. Therefore no reference to the tariff definition of capacity resources is relevant. The addback provisions of the Manuals do not even discuss the issue of payments for four years.

The Tariff and RAA state, "[a]n Energy Efficiency Resource that clears an auction for a Delivery Year may be offered in auctions for up to three additional consecutive Delivery Years, but shall not be assured of clearing in any such auction."¹⁴ After 2016, no EE resource

¹⁴ OATT Attachment DD-1, § L.4.; RAA, Schedule 6, § L.4.

has cleared in a capacity auction. The premise of the AEMA argument is incorrect and therefore the rest of the argument is incorrect. All of the AEMA cites are to irrelevant tariff provisions.

C. Protesters Assert That There Is No Need for Evidence that Energy Efficiency Sellers Cause Reductions in Energy Usage.

AMEA contends (at 18) that PJM's Tariff does not require that EER Providers demonstrate "causation" of EER product purchases. That is not correct. Rather than present a reasoned argument based on a logical interpretation of PJM's governing documents, AMEA references (at 20) ISO New England's rules and closes by characterizing a causality requirement as "bogus."

This is a startling admission and assertion. AMEA dismisses the notion that payments for an asserted product should be linked to the actual provision of the product. That is exactly the problem at the heart of the Protestors' broader case, although it is not relevant to PJM's September 6th Filing.

The OA defines an EE resource as a project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, exceeding then-current building codes, appliance standards, or other relevant standards, designed to achieve a continuous reduction in electric energy consumption at the End-Use Customer's retail site that is not reflected in the peak load forecast prepared for the delivery year. EE resources are therefore required to cause decreases in energy consumption at an end use customer's location. EE resources are intended to cause changes in end use customer behavior resulting in a reduction in energy usage beyond what they would have otherwise.

D. Protestors Misunderstand Markets.

Affirmed Energy claims (at 13) that PJM's filing to terminate EE would create a "perverse outcome" where energy efficiency providers bear the cost of deploying resources, yet PJM receives the full value of those savings without compensating the providers as promised. Affirmed goes on to claim that this situation would never occur with conventional generation, where exclusion from market participation means that the resource does not

operate, and no benefits are delivered to PJM. For energy efficiency, Affirmed argues (at 13–14), “the savings are real and ongoing,” and “PJM’s refusal to provide compensation effectively robs providers of the value.

These arguments demonstrate Affirmed’s basic misunderstanding of markets. In Affirmed’s view, every action taken by customers to reduce energy usage should be compensated as capacity through a payment to Affirmed. In Affirmed’s view that is true regardless of whether any Affirmed activity led to the reduction in usage. The logical endpoint to this argument is that there is no rational limit to the dollars that should be paid to those CSPs creative enough to claim the rights to those savings.

The inclusion of purchases of LED light bulbs through big box stores illustrates the issue. CSPs claim the rights to asserted savings by customers who buy the lightbulbs regardless of any CSP actions and because the asserted baseline technology, incandescent bulbs, are no longer available. The use of more efficient cable TV set top boxes are another illustration. The cable TV seller provides more efficient set top boxes as part of its normal course of business and the CSPs claim credit for the savings. PJM approved the asserted savings.¹⁵

Customers react to prices in all kinds of markets every day. Customers buy more or less of products for various reasons. The assertion that CSPs should be able to monetize every customer decision to reduce energy usage is extreme overreaching. Customers will make choices and customers will bear the costs of and reap the benefits of their choices directly by paying more or less for energy. That is where the story begins and where the story ends. That is how markets work.

¹⁵ See PJM. *Energy Efficiency Education*, <<https://pjm.com/-/media/committees-groups/committees/mic/2023/20231206/20231206-item-03-1---energy-efficiency-education.ashx>> (December 6, 2023).

E. Protestors Misunderstand the Addback.

AMEA has the causality backwards. AMEA conflates (at 11) PJM's adoption of the addback language in its Manuals with the reason PJM seeks to eliminate EE from the capacity market. PJM eliminated EE from the capacity market in 2016 consistent with the tariff. PJM then implemented a calculation method (the addback method) solely for the purpose of paying EE a subsidy equal to the capacity clearing price.

As a result of the fact that EE was not a capacity resource, the addback mechanism had no impact on prices in the capacity auctions.¹⁶

AMEA notes that the Manual changes implementing the addback were never filed by PJM pursuant to a Section 205 proceeding to amend the Tariff and therefore cannot legally impact the status of EERs and/or justify removal of EERs as a capacity resource.¹⁷ The Market Monitor agrees that the Addback Rule is unjust and unreasonable, and that the rule is not in the filed tariff.

However EE Resources are not capacity resources by definition. Because the Addback Rule creates a charge to customers and a payment to the providers of resources that purport to be EE resources but are not EE Resources as the tariff defines them, the Addback Rule is a rate or charge.¹⁸ Such rates and charges cannot be included in the PJM manuals, which are not filed with the Commission under Section 205. The Addback Rule, as unlawfully implemented by PJM, harms consumers because it requires consumers to pay for EE resources at the capacity market clearing prices despite the fact that PJM recognizes that EE resources are not capacity resources.

¹⁶ Presentation to the MIC, "IMM EE Package Proposal," July 10, 2024 <https://www.monitoringanalytics.com/reports/Presentations/2024/IMM_MIC_EE_Package_Proposal_2024_0710.pdf>.

¹⁷ *Id.*

¹⁸ 16 U.S.C. § 824d(d).

Contrary to AMEA's assertion, the reason PJM seeks to eliminate these subsidy payments to EE resources is that customers should not be required to make massive payments to energy efficiency providers when PJM's peak load forecast used to set the demand curve already includes the projected net impacts of energy efficiency actions, which was not the case when the Commission last reviewed participation of energy efficiency in PJM's Capacity Market.¹⁹ The addback was simply the mechanism used by PJM to continue to pay EE Resources even after they were no longer capacity resources.

F. EE Measures Are Included in the Load Forecast.

PJM effectively rebuts AMEA's claims regarding inclusion of EE in the load forecast. As Mr. Gledhill explains in his affidavit, "[s]tatistical analysis strongly supports the inference that the energy efficiency capability embedded in the peak load forecast exceeds the Energy Efficiency Resources that clear or are offered in the RPM."²⁰ Mr. Gledhill concluded that the current end-use intensity methodology does an effective job of accurately estimating energy efficiency impacts.²¹

PJM recognized the double counting that would result from failing to follow its Tariff in 2016 when Energy Efficiency was incorporated into its load forecast. In its September 6th Filing, PJM noted that if energy efficiency capability captured on the demand side of an RPM Auction through a reduction of the peak load forecast is also allowed, on the supply side, to contribute toward meeting the PJM Region Reliability Requirement, the EE MW will be double counted, would result in capacity under procurement and risk the reliability of the grid.

¹⁹ September 6th Filing at 2a.

²⁰ Gledhill Affidavit at para. 31

²¹ *Id.* at para. 30

AMEA and CA's arguments about the forecast method are nothing more than a rejection of the top down approach used by PJM in favor of a bottom up approach. These criticisms of PJM's approach are conjecture, wholly unsupported and should be rejected.

G. Claims that PJM Failed to Provide an Adequate Transition Mechanism for the Removal of EE Are Inaccurate.

Affirmed Energy claims (at 12) that PJM's Failure to include any transition mechanism in its proposal is not just and reasonable. Like AMEA, Affirmed erroneously claims (*id.*) that an EER that clears an auction is permitted up to three additional consecutive years of eligibility. This interpretation is inconsistent with the plain language in the market rules. Affirmed claims (at 14) that PJM's failure to provide any orderly transition mechanism reflects a disregard for its own tariff, past practices, and stakeholder guidance.

Affirmed fails to acknowledge that PJM's proposal allows for continued participation by EE through February 2025 (Third Incremental Auction for the 2025/2026 Delivery Year) with payments to EE resources continuing through May 31, 2026.²² A transition mechanism beyond what is already proposed in PJM's 205 filing is not warranted and would impose significant and unjustified costs on PJM customers.

Protesters also ignore the fact that there has been a transition process that began in 2015. Payment of subsidies to EE resources despite the fact that they are not capacity resources has been a transition to the recognition that PJM customers should not pay such subsidies. CSPs had no right to the payments to date and certainly have no entitlement to ongoing subsidies. PJM customers have paid a lot to EE resources since 2015. There is no reason to continue to do so.

²² PJM's proposal would allow for EE participation through the Third Incremental Auction for the 2025/2026 Delivery Year in February 2025. Resource payments for the 2025/2026 Delivery Year continue through the conclusion of the delivery year on May 31, 2026.

H. Order No. 2222 Does Not Bar the September 6th Filing.

Protesters claim that Order No. 2222 entitles EE resources to participate in the PJM market as supply side resources.²³ PJM correctly responds that Order No. 2222 includes no such requirement, citing a recent decision holding that the New York Independent System Operator (“NYISO”) was not required to include EE resources as supply.²⁴ However, the current PJM rules do not treat EE Resources as supply. The rules exclude EE resources from supply by definition. Current payments to EE resources until Section 2.4.5 of the Manual 18 are subsidies paid under a framework designed to ensure that PJM does not rely on EE resources as supply. Order No. 2222 is not relevant to the revisions proposed in the September 6th Filing.

I. No Technical Conference Is Warranted.

Protesters request for a technical conference should be denied. PJM stakeholders initiated a holistic review of Energy Efficiency Resources participation in PJM markets in November of 2023. There were numerous meetings, including several special sessions of the Markets and Implementation Committee, where stakeholders provided various proposals to amend the existing participation of Energy Efficiency Resources in PJM’s wholesale markets. The issues have been discussed at length since November of 2023 at the PJM MIC, MRC and MC. Ultimately, these meetings culminated in endorsement of the substance of the September 6th Filing by a sector weighted super majority of PJM’s stakeholders at the MRC and the MC on August 21, 2024.²⁵

²³ See *Participation of Distributed Energy Resource Aggregations in Markets Operated by RTO/ISOs*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh’g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh’g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

²⁴ See PJM at 4, citing *NYISO*, 179 FERC ¶ 61,198 (2022), *reh’g denied*, 181 FERC ¶ 61,054 (2022).

²⁵ September 6th Filing at 41.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.²⁶ In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this pleading and approve the September 6th Filing with an effective date of November 6, 2024.

Respectfully submitted,



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²⁶ See, e.g., PJM Interconnection, L.L.C., 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); California Independent System Operator Corporation, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); New Power Company v. PJM Interconnection, L.L.C., 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); N.Y. Independent System Operator, Inc., 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

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Dated: October 14, 2024

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 14th day of October, 2024.



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