

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

AES WR Limited Partnership)
) Docket No. ER26-880-000
)

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

Pursuant to Rules 212 and 213 of the Commission's Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor ("Market Monitor") for PJM Interconnection, L.L.C. ("PJM"),² submits this answer to the comments submitted by PJM on December 31, 2025 ("PJM Comments") to the request for waiver ("Waiver") submitted by AES WR Limited Partnership on December 22, 2025 ("Warrior Run"). The filing requests an extension of the deadline for the expiration of Capacity Interconnection Rights ("CIRs"). The waiver request states (at 1) that it is needed to: "(1) facilitate WR LP's efforts to return Warrior Run to service and ensure its eligibility for subsequent Base Residual Auction ("BRA") and Incremental Auction participation in PJM, and (2) avoid the permanent deactivation of Warrior Run." The waiver requests an extension to December 31, 2026. If granted, the total extension beyond the requested deactivation date of June 1, 2024, would be two years, six months and 30 days. Holding these CIRs prevents the deliverability associated with the CIRs from being available to other potential capacity resources.

¹ 18 CFR §§ 385.212 & 385.213 (2025).

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").

The most fundamental point about this waiver request is that it will not provide economic energy in the PJM markets. PJM needs sources of economic energy and not resources that exist solely to collect the current high price of capacity. The Warrior Run facility was retired by AES because it was not just uneconomic but extraordinarily uneconomic.³

Warrior Run was not economic on a standalone basis even prior to retirement. There has been no evidence provided that Warrior Run will be an economic source of energy if restarted. Warrior Run had been operated only based on above market payments by Maryland customers. AES filed to terminate the agreement with Maryland to save customers money. As the petition stated:

First, while the WR Project EEPA has provided energy, capacity and some ancillary services to PE for resale on behalf of its customers, the cost of the agreement to PE's customers has been excessive as compared to other available sources. Through calendar year 2022, the WR Project EEPA has cost PE customers nearly \$1.3 billion (the difference between payments to the WR Project versus revenues received from the market sales for the facility output). PE has analyzed the projected impact to its customers through the remaining EEPA term (July 1, 2023 through February 10, 2030) and estimates that additional losses will be significant and approach \$436 million in nominal dollars.⁴

Because the request for waiver does not meet the Commission's requirements for supporting a waiver, it should be denied. In its comments, PJM does not provide the missing justification.

³ See *In the Matter of the Potomac Edison Company's Proposed (A) Stranded Cost Quantification Mechanism; (B) Price Protection Mechanism; And (C) Unbundled Rates Petition for Consent and Approval to Terminate PURPA Contract with AES WR Limited Partnership*, Public Service Commission Of Maryland, Case No. 8797 (April 17, 2023), included as an Attachment.

⁴ *Id.* at 5.

Waiving the rules for retaining CIRs to favor Warrior Run over other suppliers in the interconnection queue that are seeking CIRs would be unduly discriminatory and cause harm to the public interest in the efficient procurement of capacity resources. The record does not demonstrate that the unit would be returned to service as an available economic resource that would actually contribute to the reliability and efficiency of PJM markets. The rules on CIRs exist for a reason. If anything, the rules are already too lenient in allowing resources to hold their CIRs off the market for a full year rather than returning the deliverability to the pool immediately upon deactivation.

By order issued May 30, 2025, the Commission granted a waiver to Warrior Run so that it would have “additional time to undertake potential repairs, reestablish coal supply agreements, and make other contractual agreements necessary to support the operation.”⁵ The current waiver request states (at 6) that Warrior Run “requires additional time to complete long lead time procurement of necessary parts (including baghouse fabric filters), complete necessary supply contract renegotiations, and hire the necessary workforce to ensure safe and reliable operation of the facility.”

PJM states (at 3): “While PJM does not take a position on Warrior Run’s representations of its efforts to reactivate the underlying generation resource, allowing Warrior Run to retain its existing CIRs through December 31, 2026 could produce additional capacity in the short run that may help to alleviate some of the resource adequacy challenges faced by the PJM Region.” PJM’s support does not address the requirements for a waiver of its rules. PJM does not evaluate the actual likelihood of Warrior Run returning to service. PJM does not explain why Warrior Run could not meet the conditions of its first waiver or why PJM expects a different outcome this time. PJM does not evaluate whether Warrior Run would actually be economic in the event that the unit can hire a work force, secure a fuel source and ensure that the unit can run safely. PJM does not evaluate whether resources in

⁵ See AES WR Limited Partnership, 191 FERC ¶ 61,175 (2025).

the queue are more likely to “help to alleviate some of the resource adequacy challenges faced by the PJM Region.” The fact that PJM is short of capacity does not justify granting this waiver.

PJM has failed to show or even to make a credible case for why granting the request for a second waiver would be consistent with the public interest. Granting the second waiver request is not consistent with the public interest, is not just and reasonable and should be rejected,

I. ANSWER

The Commission has granted limited tariff waivers to applicants where the requested waiver: (1) is made in good faith; (2) is of limited scope; (3) addresses a concrete problem that will be remedied; and (4) does not have undesirable consequences.⁶

The request does not demonstrate good faith because the request does not show a diligent effort to bring the units back into service before the expiration of Warrior Run’s CIRs. Market participants should act with diligence to conform their planning to the market rules rather than attempt to alter the rules to conform to their plans.

The request is not limited in scope. Warrior Run has not demonstrated that there are extraordinary circumstances applicable particularly to Warrior Run that support changing the otherwise generally applicable rules. This waiver request is not limited because it is the second waiver request for the same alleged problem and does not include a promise not to request a third waiver. In addition, Warrior Run has not addressed the issue raised by the Market Monitor in its proposed conditions.⁷ The unit should not be permitted to offer and

⁶ *Id.* at P 35.

⁷ See Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER25-2197-000 (May 28, 2025) at 4 (“The waiver should not be approved unless it includes these explicit conditions: [i] There should be no payment for capacity until the unit is in commercial service. [ii] The unit should not be permitted to sell capacity and then declare a forced outage if it is not back in commercial service. [iii] If the unit clears in the capacity market but is not in commercial

clear but then declare a forced outage because it is not yet back in service. That approach would require PJM customers to pay for capacity that is not in service and that does not contribute to actual reliability.

The request for waiver should be rejected because Warrior Run has not identified a concrete problem and granting the waiver harms third parties. A concrete problem means more than simply showing that compliance with the rules has an impact on the resource. Warrior Run has provided no evidence that it will be an economic resource. PJM does not need a capacity resource that is not a source of economic energy.

Warrior Run does not show that the alleged problem is anything other than the existing rules. As the Commission has repeatedly explained, “Simply having to follow [the] Tariff requirements . . . is not a concrete problem that warrants waiver of the Tariff’s requirements.”⁸ Warrior Run’s problem is that it cannot repair its unit before its CIRs terminate. Warrior Run does not need to retain its CIRs to repair Warrior Run and return it to service. Warrior Run can obtain interconnection service without undue discriminatory preferences relative to its competitors. Warrior Run has not shown a concrete problem required to support the extraordinary relief of waiving the applicable market rules.

service for the relevant delivery year, the unit should pay deficiency charges or purchase replacement capacity until it returns to commercial service. [iv] If the unit clears in the capacity market but then determines it is not economic to return to commercial service for the relevant delivery year, the unit should pay deficiency charges or purchase replacement capacity until it returns to commercial service.”).

⁸ *Brookfield Renewable Energy Trading & Mktg., LP*, 178 FERC ¶ 61,078 at P 13 n.27 (2022) (“The Commission has previously denied waiver where the waiver applicant merely sought to avoid following its tariff requirements.”), citing *Erie Power, LLC*, 148 FERC ¶ 61,038, at P 20 (2014).

Warrior Run does not show that granting the waiver will solve the problem. Warrior Run previously obtained a waiver for Warrior Run alleging the same problem.⁹ The waiver was granted and the problem remains.¹⁰

The rules provide for the termination of CIRs for good reason. The CIR retention rule was intended to ensure that CIRs are not withheld from the market, preventing new resources from competing to enter the market. Through CIRs, PJM allocates scarce system resources to procure capacity through competitive markets. The rules exist to avoid undue discrimination for or against competing resources. There is a substantial interconnection queue with potential entrants that need CIRs. CIRs are a scarce resource that provide access to the grid and to PJM markets for generation resources. Warrior Run does not address whether the waiver would create a precedent for ignoring the CIR retention rule whenever a resource requests it or why such precedent would not undermine PJM markets.

Undue discrimination in favor of low value units such as Warrior Run aggravates the harm to competition and the public interest. Warrior Run purportedly was in “mothball” status, a characterization which should describe a unit that can be returned service more quickly and easily than a unit that is fully retired. In fact, Warrior Run’s current state is retired. PJM does not list Warrior Run as a generator in mothball status.¹¹ The waiver requests demonstrate the difficulty of repairing the units, and the specific difficulty of repairing Warrior Run.

The Market Monitor supports additional economic capacity in the PJM markets that provides the reliable energy needed by customers. However, Warrior Run has not established that, if returned to service, it is a viable source of capacity and energy or whether it would be

⁹ 191 FERC ¶ 61,175.

¹⁰ *Id.*

¹¹ See PJM, Generation Deactivations. *Deactivated Generators currently mothballed*, <<https://www.pjm.com-/media/DotCom/planning/gen-retire/deactivation-mothballed-units.xlsx>> (Accessed January 12, 2026).

a better source of capacity and energy than the alternatives that it would displace. PJM needs reliable and economic energy and not just nameplate capacity.

The retention of CIRs by Warrior Run does have an opportunity cost. The deliverability associated with the retained CIRs will not be available to new generation in the interconnection queue seeking capacity status in PJM. Warrior Run has not demonstrated or even addressed the question of whether the retention by Warrior Run of the CIRs would be better, more efficient or more cost effective for the provision of reliable energy in the PJM markets than returning the CIRs to the market and permitting competitive new entry.

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 protests, answers, or requests for rehearing unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.¹² 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 answer as the Commission resolves the issues raised in this proceeding.

¹² 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).

Respectfully submitted,

A blue ink signature of the name "Jeffrey W. Mayes".

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Dated: January 12, 2026

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 12th day of January, 2026.



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Attachment

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF THE POTOMAC)
EDISON COMPANY'S PROPOSED:) Case No.: 8797
(A) STRANDED COST QUANTIFICATION)
MECHANISM; (B) PRICE PROTECTION)
MECHANISM; AND (C) UNBUNDLED)
RATES)

**PETITION FOR CONSENT AND APPROVAL TO TERMINATE PURPA CONTRACT
WITH AES WR LIMITED PARTNERSHIP**

The Potomac Edison Company (“PE” or the “Company”) hereby files this Petition seeking authorization from the Maryland Public Service Commission (the “Commission”) to close a recommended transaction between PE and AES WR Limited Partnership (“WR”), the owner of the Warrior Run Public Utility Regulatory Policies Act of 1978 (“PURPA”) project (“WR Project”). The proposed transaction would terminate the existing contract between PE and WR, and was agreed to by PE and WR, subject to approval by the Commission and various other conditions, on March 23, 2023 (the “Termination Agreement”).

As explained further herein and in the supporting testimony being filed concurrently with this Petition, terminating the WR PURPA contract is expected to produce substantial benefits for PE's customers over the next nearly seven years. Termination will significantly reduce projected future surcharge payments by customers related to Warrior Run and will also eliminate bill volatility associated with the surcharge. The Company respectfully requests Commission approval by no later than the end of June, so that the transaction can close on June 30 and customers may begin accruing the benefit of the termination in the month of July. Moreover, any delay beyond that date will result in the proposed transaction becoming null and void.

This Petition is supported by the Direct Testimonies of Robert B. Reeping, Manager, Regulated Commodity Sourcing for FirstEnergy Service Company; Stephanie L. Fall, Manager of Rates and Regulatory Affairs for West Virginia and Maryland with FirstEnergy Service Company; and John R. Bitler, Vice President of Levitan & Associates, Inc.

I. BACKGROUND

a. History and current status of the Warrior Run PURPA plant and contract

The WR Project is a 229-megawatt (“MW”) (nameplate rating) cogeneration facility located three miles south of Cumberland, Maryland in Allegany County. The plant qualifies as a PURPA facility as a coal-fired generator and through cogeneration by providing steam to an onsite liquid carbon dioxide production facility. Under the existing Commission-approved Electric Energy Purchase Agreement (“EEPA”), PE is responsible for purchasing up to 180 MW per hour from the facility through February 10, 2030.

In Order No. 73834, the Commission established a process for each of the investor-owned utilities operating in Maryland to develop company-specific restructuring plans to address issues relating to retail choice, stranded costs, and related matters.¹ Pursuant to Paragraph 10 of a September 23, 1999 Settlement Agreement approved by the Commission in Order No. 75851, and affirmed in Supplemental Order No. 76009, part of PE’s overall electric restructuring was for there to be a surcharge set “equal to the Warrior Run [EEPA] payments less revenues from the sale of the Warrior Run generation output, including, but not limited to, all energy, capacity and any ancillary services.” The output was to be sold “into the wholesale market through a competitive

¹ *Re Provision and Regulation of Electric Service*, 88 MD PSC 249 (1997).

bidding process.”² Several competitive solicitations for the Warrior Run output were held subsequent to those orders.

In 2007, Levitan & Associates, Inc. (“Levitan”) conducted an analysis of regional power market conditions and the prices paid for the output from Warrior Run that resulted from the competitive solicitations. Based on the results of that analysis, it was recommended that the auctions be discontinued in favor of direct sales of the Warrior Run output into the PJM wholesale markets. On November 28, 2007, in Order No. 81725, the Commission approved amended language to revise the Settlement Agreement.³ Since January 2008, the energy output of the Warrior Run generating facility has been offered directly into the day-ahead PJM wholesale market, and capacity of the facility has been offered into the PJM forward capacity market.

Every three years, an outside expert validates whether market sales remain the best course. Levitan conducted reviews of the sale of Warrior Run output into the PJM markets in 2010, 2013, 2016, 2019, and 2022, all of which concluded that the market conditions and related factors that led to the recommendation in 2007 to sell the Warrior Run output into the PJM wholesale markets had not fundamentally changed and supported continuation of these sales. All five of Levitan’s reports have been filed with the Commission in this docket.

The surcharge that effectuates the current WR EEPA and Settlement Agreement provision is entitled the Cogeneration PURPA Project Surcharge and is contained in the Company’s retail Maryland Tariff, Electric P.S.C. Md. No. 54. Again, the surcharge currently recovers the difference between the contract price and the value obtained by the direct sale of the output and capacity in the respective PJM markets. To be clear, the Company does not make any profit off

² Order No. 76009, 91 Md. P.S.C 106, 112 (2000).

³ Order No. 81725, 2007 Md. PSC 34 (2007).

the arrangement either currently or under the proposed transaction; in either case the surcharge is a 100% passthrough.

b. Proposed Termination Agreement

In early 2022, AES Corporation (the parent company of WR) announced its intent to exit coal generation by the end of 2025. In the second half of 2022, PE and WR began to discuss options for the WR EEPA that would significantly reduce PE's market price exposure under the agreement for its customers and would give WR flexibility on a path forward for the plant. The Termination Agreement was reached by PE and WR, subject to approval by the Commission and various other conditions, on March 23, 2023.

Pursuant to the terms of the Termination Agreement, PE will pay WR approximately \$4.577 million per month for 78 months, or a total of \$357 million, to fix PE's financial obligation under the EEPA effective July 1, 2023, and have no further obligation to purchase power from the facility at any time after June 30, 2023. The WR Project will continue to provide capacity to PE for PJM's Reliability Pricing Model ("RPM") market for the 2023/2024 planning year. PE will receive the RPM revenues for this period; however, any penalties under RPM will be the financial responsibility of WR. Any future RPM awards for the plant prior to approval of the proposed Termination Agreement will be transferred to WR effective June 1, 2024. The signed Termination Agreement is attached to the Direct Testimony of Robert B. Reeping as Exhibit RBR-1.

Importantly, the value to be paid, and the calculated benefits for customers, depend on approval by the Commission and closing by June 30, 2023. Because the \$357 million termination payment schedule was negotiated based upon an effective date of no later than July 1, 2023, any

delay beyond June 30, 2023, will make the proposed transaction null and void.⁴ Even assuming both parties are amenable to beginning new negotiations, it would require the parties to determine a new price due to the delay in the transaction closing, which would almost certainly reduce the potential value of termination for the Company's customers. It would also keep PE's customers at risk to market fluctuations and to plant operations, which could lead to more significant losses for customers. Again, the proposed Termination Agreement stands only to benefit PE's customers; the Company itself has nothing to gain from closing the transaction.

II. BENEFITS OF TERMINATION

The Company believes that, should the proposed Termination Agreement be approved and the transaction closed, PE's customers will benefit in several ways. First, while the WR Project EEPA has provided energy, capacity and some ancillary services to PE for resale on behalf of its customers, the cost of the agreement to PE's customers has been excessive as compared to other available sources. Through calendar year 2022, the WR Project EEPA has cost PE customers nearly \$1.3 billion (the difference between payments to the WR Project versus revenues received from the market sales for the facility output). PE has analyzed the projected impact to its customers through the remaining EEPA term (July 1, 2023 through February 10, 2030) and estimates that additional losses will be significant and approach \$436 million in nominal dollars.

Fixing the EEPA exposure through the Termination Agreement will eliminate the price volatility of the surcharge to customers and, based on the forecast used for the evaluation, will provide an 18% discount and save customers nearly \$79 million dollars for the applicable

⁴ Additionally, the termination payment is a fixed amount for any termination date prior to July 1, 2023. Thus, if Commission approval can be obtained by June 1, 2023, customers will avoid another month of expense and market exposure under the current contract and create greater savings under the termination transaction.

renegotiated contract term. In addition to the market evaluation for the nominal value and net present value of the contract, a stochastic review was also conducted by the Company. Based upon the review, the random probability distribution shows a nearly 90% confidence interval that the proposed transaction will be economically beneficial for PE's customers. This is all true even in light of recent wholesale market volatility. These calculations are discussed further in the Direct Testimony of Robert B. Reeping and affirmed in the Direct Testimony and associated report sponsored by John R. Bitler of Levitan.

In addition, it is important to consider that the WR Project through the EEPA is incentivized to be available and produce energy, capacity and ancillary services. If the unit is not running or is derated, the WR Project either does not get paid or gets reduced payments. However, PE, and subsequently its customers through the WR surcharge, also bear operational risk when the unit is unexpectedly not available. In his Direct Testimony, Company Witness Reeping discusses an extreme example of this that occurred on December 24, 2022, during Winter Storm Elliot and resulted in a \$2.55 million net charge that is not recoverable through the EEPA and subsequently will get passed back through the surcharge.

Similarly, due to the extreme frigid weather conditions and high levels of forced generation outages across PJM, PJM implemented emergency procedures which led to Performance Assessment Intervals ("PAI") for Capacity Performance ("CP") resources such as the WR Project. CP resources are assessed penalties for non-performance during PAIs and resources that exceed their obligation are entitled to bonus payments from the collected penalties. The WR Project overperformed on December 23, 2022, but unfortunately underperformed on December 24, 2022. While the exact numbers are still not known, it appears that a net charge for capacity is also forthcoming with estimates currently around \$2 million.

While the events of December 23 and 24, 2022 are uncommon and excessive compared to normal conditions, removing these operational risks along with the market volatility risk can provide significant benefit and protection to PE's customers.

III. EFFECTUATION OF THE TERMINATION AGREEMENT THROUGH A REVISED SURCHARGE

In her Direct Testimony, Company Witness Stephanie L. Fall discusses PE's plan for revising the Cogeneration PURPA Project Surcharge to effectuate the Termination Agreement should the Commission approve the proposed transaction. Ms. Fall demonstrates that, while the surcharge is expected to increase in July 2023 with approval of the transaction, that increase will be much less than what it would have otherwise been due to changes in market conditions from when the surcharge was last re-calculated in November 2022. For an average residential customer using 1,000 kilowatt-hours ("kWh") per month, the Surcharge in the absence of the proposed transaction would need to be raised to \$0.01592 per month for the remainder of 2023, as compared to an amount of \$0.01142 per month if the transaction is approved by the Commission. Ms. Fall also illustrates that the proposed transaction would not only result in a lower Surcharge rate for the balance of 2023, but will also eliminate future volatility in customer rates since forecasted costs will not be dependent on Warrior Run generator output and subsequent wholesale market proceeds.

Based on an evaluation of the ratio of capacity-related and energy-related expenses for Warrior Run during the past 10 years, the Company proposes to allocate expenses to the various Company rate schedules using 65.30% capacity-related and 34.70% energy-related ratios throughout the entire 78-month term of the proposed Termination Agreement to help maintain the relative allocation weighting in customer rates.

If the termination is approved, any future proposed changes to the Surcharge will be filed with the Commission annually on or before December 1, to become effective the forthcoming

calendar year beginning January 1. Surcharge rates will be calculated from forecasted costs for the forthcoming calendar year as adjusted for reconciliation of prior period costs and revenues. The reconciliation will be based upon the deferral balance recorded on the Company's books as of October 31, and a forecast of any anticipated incremental change to the deferral balance for November and December.⁵ Aside from the aforementioned change to the allocation of expenses associated with the Termination Agreement, all other aspects of the Surcharge allocation and calculation will remain the same as they currently exist, including the accrual of interest at the prime rate for under/over-collections. Put another way, the surcharge will be reconciled each year in the same way it has been in the past, but the changes resulting from such reconciliations should be extremely small, since the major source of past variability – market changes in the price obtained from resale of the plant output – will be removed.

IV. CONCLUSION

For the reasons discussed herein as well as the supporting testimonies filed concurrently herewith, the Company respectfully requests that the Commission approve the proposed Termination Agreement and authorize the transaction to be closed by no later than June 30, 2023, so that PE's customers can begin to realize the meaningful benefits that are projected to follow from the proposed transaction.

[SIGNATURES TO FOLLOW]

⁵ The estimated deferral balance during November and December will be reconciled to actual amounts and included in the Company's subsequent Surcharge filing the following year.

Date: April 17, 2023

Respectfully submitted,

Jeffrey P. Trout /rde

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⁶ Pro haec vice motion to be filed.