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

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|---|---|---|
| Bridgeport Energy LLC | ) | Docket No. EC26-63-000 |
| Essential Power Massachusetts, LLC | ) | |
| Essential Power Newington, LLC | ) | |
| Essential Power OPP, LLC | ) | |
| Essential Power Rock Springs, LLC | ) | |
| Hamilton Liberty LLC | ) | |
| Hamilton Patriot LLC | ) | |
| Hamilton Projects Acquiror, LLC | ) | |
| Lakewood Cogeneration, L.P. | ) | |
| Nautilus Power, LLC | ) | |
| Revere Power, LLC | ) | |
| Rumford Power LLC | ) | |
| Tiverton Power LLC | ) | |
| Vistra Corp. | ) | |

## COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 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 these comments responding to the filing on February 6, 2026 ("February 6th Filing"), requesting approval of a proposed transaction under Section 203 of the Federal Power Act. The February 6th Filing requests approval of the transaction ("Transaction") in which Vistra Corp. ("Vistra"), indirectly through its subsidiary Vistra Operations Company LLC ("Vistra Operations") acquires 100 percent of voting equity

[1] 18 CFR § 385.211 (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").

interest in each of the following Cogentrix Public Utilities: Bridgeport Energy LLC ("Bridgeport"), Essential Power Massachusetts, LLC ("EPMA"), Essential Power Newington, LLC ("Newington"), Essential Power OPP, LLC ("OPP"), Essential Power Rock Springs, LLC ("Rock Springs"), Hamilton Liberty LLC ("Hamilton Liberty"), Hamilton Patriot LLC ("Hamilton Patriot"), Hamilton Projects Acquiror, LLC ("Hamilton Acquiror"), Lakewood Cogeneration, L.P. ("Lakewood"), Nautilus Power, LLC ("Nautilus"), Revere Power, LLC ("Revere"), Rumford Power LLC ("Rumford"), Tiverton Power LLC ("Tiverton"). The Cogentrix Public Utilities are ultimately owned by Trafigura Group Pte. Ltd ("Trafigura") and Quantum Capital Group.

The Cogentrix Public Utilities that own generation in PJM are OPP, Rock Springs, and Lakewood, which are wholly owned by Nautilus, and Hamilton Liberty and Hamilton Patriot, which are wholly owned by Hamilton Acquiror. Nautilus is a wholly owned subsidiary of Q-Generation, LLC ("Q-Generation") and Hamilton Acquiror is 75 percent owned by Q-Generation and the remaining 25 percent of ownership interest is held by BCPG Hamilton US Acquisition Co. LLC ("BCPG"). BCPG is a wholly owned direct subsidiary of BCPG USA Inc., which is a Thailand based energy company that is publicly traded on the Stock Exchange of Thailand. Q-generation is a wholly owned subsidiary of Q-Generation Holdings, LLC ("Q-Generation Holdings"), which is owned by Q-Generation Partners, LLC ("Q-G Partners") and certain individuals. The only two entities that own 10 percent or more of the voting interest in Q-G Partners are an entity controlled by Quantum Capital Group and a subsidiary of Trafigura. Trafigura is a Singaporean company that is controlled by the Farringford Foundation, a Panamanian private interest foundation. Quantum Capital Group is a Texas based private equity energy firm. The Cogentrix Public Utilities are also affiliated with a subsidiary of The Williams Company, Inc. ("Williams"), through the appointment of a non independent board member on the board of directors for Q-Generation. Williams is an energy company publicly traded on the New York Stock Exchange.

OPP owns a 383 MW simple cycle natural gas-fired peaking generation facility located in Lakewood, New Jersey. Rock Springs owns a 773 MW simple cycle natural gas fired

peaking generation facility located in Rising Sun, Maryland. Hamilton Liberty owns a 870 MW natural gas fired generation facility located in Bradford County, Pennsylvania. Hamilton Patriot owns 870 MW natural gas fired generation facility located in Montgomery, Pennsylvania. Lakewood owns a 237 MW gas fired generation facility located in Lakewood, New Jersey. Vistra is the third largest owner of capacity in PJM.[3] Vistra owns and controls 14,270 MW of generation in PJM. Vistra's ownership will increase by 2,828 MW to 17,098 MW of generation in PJM if the Commission approves the Transaction.

The Applicants have not asserted that this Transaction enhances competition or market efficiency. The Applicants have not explained why the Transaction is consistent with the public interest.[4]

Consideration of the impact of Vistra's acquisition of the Cogentrix assets on market power is critical to determine whether the Transaction is in the public interest, given that competitive markets are relied upon to ensure just and reasonable rates in PJM.[5] The Market Monitor's market power analysis shows that the Transaction would result in an increase in structural market power for Vistra as measured by a decrease in Vistra's energy and capacity market pivotal supplier scores. Vistra currently has market power in the PJM Capacity Market and in the PJM energy market and the Transaction would increase that market power. The Market Monitor's market power analysis also shows that the Transaction would result in an increase in PJM energy and capacity market HHIs. The fact that the Transaction does

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[3] *See* Monitoring Analytics, L.L.C., *2025 State of the Market Report for PJM,* Vol 2 Section 5: Capacity Market, at Table 5-4.

[4] *See* 16 U.S.C. § 824b ("the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest").

[5] *See* Shell Energy N. Am. (US), L.P. v. FERC, 107 F.4th 981, 986–987 (DC Cir. 2024); Public Citizen, Inc. v. FERC, 7 F.4th 1177, 1193–1195 (2021).

not fail the Commission's HHI thresholds in the Applicants' Delivered Price Test ("DPT") analysis does not ensure that the Transaction does not increase market power.

The Commission does not require a pivotal supplier analysis in the initial evidentiary support in applications for approval of transactions that pass the Commission's market power screens.[6] The Commission has found that the Market Monitor's analyses and findings of market power do not "cast doubt on the results of Applicants' DPT."[7] The Commission has relied on the DPT alone, using HHI only, in determining whether a transaction is in the public interest.

The Market Monitor has demonstrated that HHI results are not a reliable indicator of market power.[8] The Market Monitor's pivotal supplier analysis shows that Applicants have market power as defined by the Commission approved PJM tariff provisions for market power mitigation, and that this market power would increase as a result of the Transaction.[9] There are gaps in the market power mitigation rules for the PJM energy, capacity, and ancillary services markets. The existence of pivotal suppliers in the PJM markets, along with insufficient market power mitigation, means that all increases in structural market power undermine the competitiveness of the PJM markets. In addition, the Market Monitor recommends that the Commission consider the implications of ownership consolidation in the PJM market, including consideration of pivotal suppliers, as defined by the Commission approved PJM tariff.[10] The Market Monitor opposes the proposed Transaction unless it includes the condition that any order approving the Transaction require specific behavioral

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6 *See* 192 FERC ¶ 61,074 at P 130 (2025).

7 193 FERC ¶ 61,124 at P 65 (2026).

8 *See* Monitoring Analytics, L.L.C., *2025 State of the Market Report for PJM*, Vol.II, Section 3: Energy Market at 239-246.

9 *See* PJM OATT, Attachment K, Schedule 1, Section 6.4.1 and Attachment DD, Section 6.3.

10 *Id.*

commitments by Vistra, none of which creates a burden on applicants because all are designed to help ensure competitive behavior. Absent the acceptance of the identified conditions, the Market Monitor opposes the Transaction because it would increase structural market power without any mitigating factors and therefore would not be consistent with the public interest. The Market Monitor recommends that the Transaction be rejected and that Vistra be required to resubmit its 203 application including behavioral commitments. The Transaction as filed does not provide assurance that market power will not be exercised, and, as filed, it is not consistent with the public interest.[11]

The Market Monitor requests that the Commission consider whether any transaction that results in increases in market power in the PJM Capacity Market without clear behavioral conditions should be approved as consistent with the public interest given the fact that the PJM Capacity Market is already characterized by endemic market power.[12] [13]

## I. COMMENTS

### A. The Transaction Increases Structural Market Power.

Vistra's existing assets in PJM consist of 14,270 MW of generation, including coal fired, gas fired, and nuclear resources in the AEP, APS, ATSI, Comed, DEOK, DOM, DPL, DUQ, JCPL, Meted, PECO, and PPL Zones of PJM . With the Transaction, Vistra's assets in PJM will consist of 17,098 MW of generation and include the Penelec Zone of PJM.

The Transaction would increase market power in the PJM markets. Vistra has local market power created by binding constraints in the PJM energy market before the Transaction, and the Transaction would increase Vistra's local market power with respect to multiple transmission constraints. Vistra is a pivotal supplier in the aggregate energy and

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11 *See* 16 U.S.C. § 824b.

12 *See id*.

13 *See* Monitoring Analytics, L.L.C., *2025 State of the Market Report for PJM*, Vol. 2, Section 5: Capacity at 313-314.

capacity markets before and after the Transaction. The Transaction would increase Vistra's market power. The sale of the Cogentrix assets to Vistra would increase local market power for multiple constraints. The Transaction would increase energy and capacity market concentration at the aggregate level. The market power report discusses specific local areas in the energy and capacity markets where market power would be increased.

The current need for new generating capacity in PJM is an opportunity for increased competition and new entry. Instead, ownership of existing generation is being consolidated in a small group of owners. Vistra has been one of the largest owners of generation in PJM since it merged with Dynegy in 2018. Vistra is one of the top five owners of PJM capacity and recently acquired three nuclear plants the Beaver Valley, Davis Besse and Perry nuclear plants, and three gas fired plants, the Fairless Energy Center and Garrison Energy Center combined cycles and the Hazelton combustion turbine.[14] [15] Other owners in the top five also have recent and/or pending transactions: Constellation, Talen, and ArcLight.[16] The market power created by this ownership consolidation creates the potential for additional upward pressure on PJM energy and capacity prices, at a time when data center load growth is already resulting in noncompetitive prices.[17] Price increases that result from market power are inefficient, unjust and unreasonable. The Commission's consideration of this trend in consolidation with every 203 application review is necessary to ensure that the transactions are consistent with the public interest.

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[14] *See* Monitoring Analytics, L.L.C., *2025 State of the Market Report for PJM*, Vol. 2, Section 5: Capacity Market at Table 5-4.

[15] *See* FERC Docket Nos. EC23-74 and EC25-97.

[16] *See* FERC Docket Nos. EC25-43,, EC25-121, EC25-125, EC26-59, EC25-106, EC25-121, EC25-123, and EC26-39.

[17] *See* Monitoring Analytics, LLC, *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*>.

**B. HHI Is Not a Definitive Test of Market Power.**

The Commission's review of transactions under Section 203 of the Federal Power Act relies in part on the Herfindahl-Hirschman Index (HHI) as a measure of the concentration of ownership in a market. The HHI is the sum of the squared market shares of all market participants.

Notwithstanding whether the HHI level, or the change in the HHI level, exceeds the Commission defined levels for concern, a supplier may have the ability to raise market prices above the competitive level. If reliably meeting the PJM system load requires energy from a single supplier, that supplier is singly pivotal and has monopoly power in the aggregate energy market. If a small number of suppliers are jointly required to reliably meet the PJM system load, those suppliers are jointly pivotal and have oligopoly power. The number of pivotal suppliers in the energy market is a more precise measure of structural market power than the HHI. The same is true in the capacity market. If the capacity of a single supplier is needed to clear the capacity market, that supplier is pivotal. The HHI is not a definitive measure of structural market power. The capacity market illustrates the mismatch between the HHI metric and the pivotal supplier metric. The identification of jointly pivotal suppliers as a source of market power does not require an assumption that the suppliers collude. There are multiple mechanisms that would permit the exercise of market power when there are limited suppliers providing relief to a constraint. FERC's definition of highly concentrated markets, based on an HHI greater than 1800, includes between five and six owners with equal market shares while the three pivotal supplier test evaluates whether three suppliers are jointly required in order to clear the market.

The current market power mitigation rules for the PJM energy market rely on the assumption that the aggregate market includes sufficient competing sellers to ensure competitive market outcomes. With sufficient competition, any attempt to economically or physically withhold generation would not result in higher market prices, because another supplier would replace the generation at a similar price. This assumption requires that the

total demand for energy can be met without the supply from any individual supplier or without the supply from a small group of suppliers. This assumption is not correct when there are pivotal suppliers in the energy market. In 2025, there were pivotal suppliers in the aggregate energy market on 95.3 percent of days.[18]

The Market Monitor's market power analysis shows an increase in the capacity market and energy market HHIs based on the Transaction. The Market Monitor's analysis shows that Vistra is a pivotal supplier in the PJM Capacity Market and in the PJM Energy Market. Using either metric, the results show that Vistra's ability and incentive to exercise market power would increase due to the Transaction.

The overall market context of this proposed Transaction is also important. PJM's Capacity Market is extremely tight and was actually short in the 2026/2027 and 2027/2028 auctions. The capacity market is likely to remain extremely tight for the foreseeable future, resulting in prices that are extremely high by PJM capacity market historical standards, which increases the potential impact of market power and results in every capacity owner being singly pivotal.[19] When there is endemic market power, effective mitigation is essential to ensure competitive pricing. It is consistent with the public interest to condition the approval of transactions that increase market power on behavioral conditions that address market power.

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[18] *See* Monitoring Analytics, L.L.C., *2025 State of the Market Report for PJM*, Vol. 2, Section 3: Energy Market at 136.

[19] *See* Monitoring Analytics, L.L.C., *Analysis of the 2025/2026 Base Residual Auction*, Parts A through H,<https://www.monitoringanalytics.com/reports/Reports/2024.shtml>, the *Analysis of the 2026/2027 RPM Base Residual Auction—Part A* (October 1, 2025). <https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20262027_RPM_Base_Residual_Auction_Part_A_20251001.pdf> and 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>, which can also be found at <https://www.monitoringanalytics.com/reports/Reports/2025.shtml> *and* <https://www.monitoringanalytics.com/reports/Reports/2026.shtml>.

### C. Applicants Should Commit to Keep Existing Capacity in the PJM Capacity Market.

On January 9, 2026, Vistra announced that it had entered into 20-year power purchase agreements ("PPAs") with Meta Platforms, Inc. ("Meta"), pursuant to which Vistra agreed to supply Meta with 2,609 MW, including the capacity from three existing nuclear power plants and associated uprates in PJM.[20] In its 2025 annual report, Vistra stated that it "continues to pursue and execute on additional opportunities for the prospective sale of power from our generation fleet facilities pursuant to long-term agreements to supply large load facilities."[21] On March 25, 2026, Vistra filed a response brief regarding PJM's filing in response to the Commission's December 18, 2025, order on transmission service for co-located loads.[22] Vistra's comments indicate its interest in co-located load arrangements for data centers in PJM. Such arrangements threaten the reliability and economics of the PJM market if they result in the removal of existing capacity from the market to serve large data center loads. The 2027/2028 Base Residual Auction ("BRA") resulted in a capacity procurement shortfall, falling below PJM's installed reserve margin for the second time in successive auctions.[23] All capacity in PJM was pivotal prior to the current extreme conditions in the capacity market.

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20 *See* Vistra Corp. Form 8-K. U.S. Securities and Exchange Commission (January 9, 2026). <*https://www.sec.gov/Archives/edgar/data/1692819/000119312526008508/d20785d8k.htm*>.

21 *See* Vistra Corp. Form 10-K. U.S. Securities and Exchange Commission (February 27, 2026). <*https://www.sec.gov/Archives/edgar/data/1692819/000169281926000006/vistra-20251231.htm*>.

22 *See* Vistra, Corp., Response Brief of Vistra Corp., Docket No. EL25-20 (March 25, 2026).

23 *See* Analysis of the 2027/2028 RPM Base Residual Auction—Part A ("2027/2028 BRA Report—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*>.

The current market shortage conditions due to growing data center load amplify that market power by making every individual capacity resource pivotal.[24]

The potential removal of existing capacity from the capacity market by Vistra would have a negative impact on the competitiveness of PJM markets. The potential removal of existing capacity from the capacity market by Vistra would have a negative impact on the rates paid by the customers in PJM markets. The Market Monitor has documented and quantified the negative impact of data center loads on the competitiveness of the capacity market and on the prices in the capacity market for PJM customers in the last three BRAs.[25]

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[24] *See* Market Monitor Comments in Docket Nos. EC25-148, EC25-151, EC26-13, EC26-31, EC26-39, EC26-58.

[25] *See* Monitoring Analytics, LLC, "Analysis of the 2025/2026 RPM Base Residual Auction—Part A," (September 20, 2024) <*https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_A_20240920.pdf*>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part B," (October 15, 2024) <*https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_B_20241015.pdf*>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part C," (October 15, 2024) <*https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_C_20241106.pdf*>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part D," (December 6, 2024) <*https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_D_20241206.pdf*>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part E," (January 31, 2025). <*https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_E_20250131.pdf*>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part F," (February 4, 2025) <*https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_F_20250204.pdf*>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part G Revised," (June 3, 2025); <*https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_G_20250603_Revised.pdf*>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part H," (July 31, 2025) <*https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_H_20250731.pdf*>; "Analysis of the 2026/2027 RPM Base Residual Auction—Part A," (October 1, 2025) <*https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20262027_RPM_Base_Residual_Auction_Part_A_20251001.pdf*>; "Analysis of the 2026/2027 RPM Base Residual Auction—Part B," (March 3, 2026) <*https://www.monitoringanalytics.com/reports/Reports/2026/IMM_Analysis_of_the_20262027_RPM_Base_Residual_Auction_Part_B_20260303.pdf*>.

The Market Monitor has also documented and quantified the negative impact of data center loads removing capacity from the capacity market on the competitiveness of the energy market and prices in the energy market.[26] Removal of capacity from the capacity market would also make PJM less reliable. The fact that PJM is already short of its reliability target and that PJM faces very significant levels of forecast data center load makes this reliability impact an even greater risk. Allowing the removal of capacity to serve data center load would shift the costs and risks of data centers from data centers to all other PJM customers. This is inconsistent with the policy goal of ensuring that data centers do not impose their costs and risks on other customers.[27]

The current rules in the PJM tariff do not explicitly address the removal of capacity resources from the capacity market to serve data center load. Although the Market Monitor does not agree, PJM staff have publicly stated that the rules that apply to deactivating units do not apply to the removal of capacity resources to serve data center load. Although the Market Monitor does not agree, PJM staff have publicly stated that the deactivation rules that define the PJM analysis and the Market Monitor analysis of proposed deactivations and their conclusions do not apply to the removal of resources to serve data center load.[28] For example, if the deactivation rules do not apply, PJM does not have to make a reliability determination

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[26] *See* Monitoring Analytics, LLC "*Potential Impacts of the Creation of Maryland FRRs*," <http://www.monitoringanalytics.com/reports/Reports/2020/IMM_Potential_Impacts_of_the_Creation_of_Maryland_FRRs_20200416.pdf> (April 16, 2020). Comments to the Maryland PSC Senate Bill 1 Co-location Study Administrative Docket PC 61 (September 24, 2024); <https://www.monitoringanalytics.com/filings/2024/IMM_Comments_MDPSC_PC61_20240924.pdf>; Supplemental Comments to the Maryland PSC Senate Bill 1 Co-location Study Administrative Docket PC 61 (December 13, 2024). <https://www.monitoringanalytics.com/filings/2024/IMM_Supplemental_Comments_re_MDPSC_PC61_Co_Located_Load_20241213.pdf>;

[27] *See* National Energy Dominance Council, Statement of Principles Regarding PJM (January 16, 2026), <https://www.energy.gov/documents/statement-principles-regarding-pjm> ("Principles").

[28] *See* PJM, Co-Located Load Order Workshop (March 18, 2026) <https://www.pjm.com/committees-and-groups/workshops/cllsco>.

and the Market Monitor does not make a market power determination. For example, if the deactivation rules do not apply, there are no rules governing Section V (RMR) status for resources that would exit the market to serve data center load.

The Transaction cannot be approved as consistent with the public interest while ignoring the adverse impact to competition and to rates, including the prices paid by customers for capacity, energy and transmission. The Market Monitor has calculated the cost impact on customers of removing capacity to serve data center loads.[29] Competitive market power screens are not relevant to the specific market power issue of removing existing resources from the markets to serve data center load and, therefore, cannot be relied on to support a presumption that market power is lacking or to reasonably shift the burden of proof away from the Applicants. In the January 30th Filing the Applicants did not address this issue, did not provide any analysis of the potential financial impact of such removal, did not include any statement about plans to serve data centers, and did not propose any associated mitigation.[30]

The Commission's new co-location rules create a special framework for transmission service for a range of load configurations, but these new rules do not approve or address the removal of existing resources from the market to serve data center load and the associated adverse reliability and affordability impacts on existing customers.[31]

The Transaction enhances Vistra's ability to exercise market power adverse to competition and adverse to rates, and those adverse impacts on competition and rates cannot be ignored in this proceeding.

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29 *See* 2027/2028 BRA Report—Part A.

30 *See* 18 CFR § 33.2.

31 *See PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217 (2025).

Vistra should be required to state that they will not remove the Cogentrix assets from the PJM Capacity Market to serve data center load. The White House Ratepayer Protection Pledge and the Principles issued by the National Energy Dominance Council and the PJM Governors make explicit that new data center load should be met by new generation.[32] Removing this capacity from the PJM Capacity Market would be directly counter to the Pledge and the Principles, would shift risks and costs to PJM customers, would have a negative impact on PJM competitive markets, and would not be consistent with the public interest.[33]

### D. Behavioral Recommendations Would Address the Exercise of Market Power Due to the Transaction.

Market power mitigation rules in PJM are not sufficient to address all actual and potential exercises of market power. As a result, the Commission cannot ensure that the Transaction would have no adverse effects on competition in the PJM markets.

In order to ensure that market power is not exercised as a result of the Transaction, the Market Monitor recommends the following behavioral conditions as part of approval:

1. A commitment, for all resources owned or controlled by Vistra, to develop cost-based offers using a fuel cost policy that passes the Market Monitor's defined review criteria, and to limit price-based offers to a markup no greater than $1 per MWh, would prevent the exercise of aggregate market power in the energy market.
2. A commitment, for all resources owned or controlled by Vistra, to not use crossing price-based and cost-based energy market offer curves (markup switching), would ensure that a price-based offer curve with a high markup would not be chosen by

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[32] *See* White House, "Ratepayer Protection Pledge Proclamation," (March 4, 2026), <*https://www.whitehouse.gov/presidential-actions/2026/03/ratepayer-protection-pledge-proclamation/*> accessed March 20, 2026 ("Pledge").

[33] *See* National Energy Dominance Council, Statement of Principles Regarding PJM (January 16, 2026), <*https://www.energy.gov/documents/statement-principles-regarding-pjm*> ("Principles").

PJM's least cost offer determination when a resource has local market power as determined by the TPS test.[34]

3. A commitment, for all resources owned or controlled by Vistra, to submit only operating parameters based on physical limits, as defined in the PJM tariff, in the energy market, would ensure that Vistra cannot use market power to operate inflexibly during weather alerts, emergencies, and periods when its units fail the TPS test.
4. A commitment, for all resources owned or controlled by Vistra, to propose retirement only if the unit is expected to be uneconomic, defined to be when projected avoidable costs exceed projected net revenues, after accounting for identified risks, would ensure that retirements of economic resources are not used to exercise market power in the energy and capacity markets.
5. A commitment, for all supply owned or controlled by Vistra, to use a market seller offer cap equal to its net Avoidable Cost Rate (ACR), including Capacity Performance Quantifiable Risk ("CPQR") in gross ACR prior to subtracting net revenues would ensure competitive capacity market offers. The net ACR is the marginal cost of capacity and is the competitive offer for a capacity resource.
6. A commitment, for all supply owned or controlled by Vistra, to offer the full ICAP MW equivalent of all their cleared UCAP capacity MW in the day-ahead and real-time energy markets every day would ensure that Vistra meets its offer commitments and therefore that the energy market is competitive.

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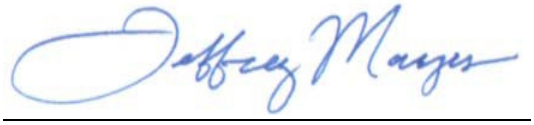
[34] This restriction is necessary for effective market power mitigation until PJM implements its Commission approved solution in Docket ER24-2905. There is currently no deadline for implementation because PJM is waiting for a long delayed software fix for other issues. There is no reason for PJM to wait to implement this solution.

7. A commitment to not remove resources from the PJM Capacity Market to serve data center load would help ensure that the capacity market and energy market are competitive.

## 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

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

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*

Nicholas O'Brien
Market Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
*Nicholas.OBrien@monitoringanalytics.com*

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*

Philip Barnet
Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
*Philip.Barnet@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*

Kyungjin Yoo
Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403

April 7, 2026

# Attachment – Public Market Power Analysis

Monitoring Analytics

PUBLIC

# Market Power Analysis: Vistra/Cogentrix Transaction

The Independent Market Monitor for PJM

April 7, 2026

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# Introduction

This report was prepared by PJM's Independent Market Monitor (IMM). The report provides an assessment of the impact of Vistra's proposed purchase of the 2,828 MW Cogentrix assets on the structure of the PJM energy and capacity markets and its implications for local and aggregate market power in both markets. In conducting this analysis, the IMM used market data including market shares and the results from the PJM test for structural market power, the three pivotal supplier test (TPS). The IMM used market data to define the relevant markets and to examine the effects of the proposed acquisitions on those markets.

The Cogentrix assets in PJM include 2,828 MW of natural gas fired generation in the DPL, Penelec, PPL, and JCPL Zones of PJM. Vistra's assets in PJM consist of 14,270 MW of generation, including coal fired, gas fired, and nuclear resources in the AEP, APS, ATSI, Comed, DEOK, DOM, DPL, DUQ, JCPL, Meted, PECO, and PPL Zones of PJM. Table 1 shows the generation assets included in the transaction, the control zone where they are located, the nameplate rating, the fuel type and the technology type. Table 2 shows Vistra's generation assets in PJM before the Transaction. Vistra's generation capacity in PJM would increase by 2,828 MW to 17,098 MW with the transaction.

**Table 1 Transaction Assets**

| Unit LLC Name | Unit Name | Control Zone | Summer Rating (MW) | Fuel | Technology |
|---|---|---|---|---|---|
| Hamilton Liberty LLC | Hamilton Liberty | Penelec | 765 | Natural Gas | CC |
| Hamilton Patriot LLC | Hamilton Patriot | PPL | 795 | Natural Gas | CC |
| Lakewood Cogeneration, L.P. | Lakewood | JCPL | 265 | Natural Gas | CC |
| Essential Power OPP, LLC | Ocean Peaking Power | JCPL | 336 | Natural Gas | CT |
| Essential Power Rock Springs, LLC | Rock Springs | DPL | 667 | Nautral Gas | CT |
| Total Transaction Assets | | | 2,828 | | |

**Table 2 Vistra assets pre and post Transaction for existing and pending assets**

| Vistra Asset | Control Zone | Summer Rating (MW) | Fuel | Technology |
|---|---|---|---|---|
| Beaver Valley | DUQ | 1,808 | Nuclear | Steam |
| Calumet Energy | Comed | 326 | Natural Gas | CT |
| Davis Besse | ATSI | 894 | Nuclear | Steam |
| Dicks Creek | DEOK | 136 | Natural Gas | CT |
| Fairless Energy Center | PECO | 1,280 | Natural Gas | CC |
| Fayette Energy Facility | APS | 668 | Natural Gas | CC |
| Garrison Energy Center | DPL | 309 | Natural Gas | CC |
| Hanging Rock Energy Facility | AEP | 1,365 | Natural Gas | CC |
| Hazelton | PPL | 146 | Natural Gas | CT |
| Hopewell Cogeneration | DOM | 378 | Natural Gas | CC |
| Kendall County Generation Facility | Comed | 1,140 | Natural Gas | CC |
| Kincaid Generation | Comed | 1,112 | Coal | Steam |
| Liberty Electric Power Plant | PECO | 562 | Natural Gas | CC |
| Miami Fort | DEOK | 1,076 | Coal | CT |
| Ontelaunee Energy Center | Meted | 539 | Natural Gas | CC |
| Perry | ATSI | 1,240 | Nuclear | Steam |
| Pleasants Energy | APS | 338 | Natural Gas | CT |
| Sayreville Cogeneration Facility | JCPL | 292 | Natural Gas | CC |
| Washington Energy Facility | AEP | 661 | Natural Gas | CC |
| Total Vistra Assets | | 14,270 | | |

The Vistra acquisition of the Cogentrix assets would increase Vistra's market power in the aggregate energy market and local energy markets as measured by Vistra's pre and postacquisition market share and pivotal supplier test scores. The Vistra acquisition of the Cogentrix assets would increase market power in the aggregate energy market as measured by the increase in the hourly average HHI and the increase in frequency with which all the top 10 pivotal suppliers fail the three pivotal supplier test. Vistra's local market power in the energy market would increase with respect to multiple transmission constraints. The Vistra acquisition of the Cogentrix assets would increase concentration in the capacity market as measured by HHI and would increase Vistra's market power in the capacity market as measured by Vistra's pivotal supplier score. Vistra currently has market power in the PJM energy and capacity markets and adding the Cogentrix assets would increase that market power.

The IMM recommends behavioral remedies that would address flaws in PJM's energy local market power mitigation rules, address gaps in the rules governing retirements and the removal of capacity to serve data center load, and help ensure that Vistra cannot exercise market power as a result of the Cogentrix assets acquisition. The IMM's

behavioral remedies would also protect against potential exercises of market power in the capacity market.

## *Sufficiency of PJM Market Power Mitigation*

In Section 203 applications and market based rate applications, the Commission relies on the sufficiency of the market monitoring and market power mitigation provisions in the RTO's tariff to mitigate local market power within the RTO region.[1] If the market monitoring and market power mitigation provisions in the RTO's tariff are insufficient, detailed analysis of submarkets created by constraints within the RTO is necessary and any market power created or enhanced by the merger or acquisition requires explicit mitigation to ensure market power is not exercised.[2]

On October 25, 2024, the Commission ordered changes to PJM's market power mitigation process in the energy market that would remedy the flaws identified by the IMM, but PJM has failed to set an implementation date and has no specific deadline for doing so.[3] The IMM recommends immediate implementation of the new rules. Unless and until the new rules are implemented, the behavior of participants must be appropriately mitigated. It would be significantly more administratively efficient for PJM to resolve its software issues and implement its approved rules immediately than to require that the IMM raise the same issue in multiple 203 filings. This administrative efficiency would also affect all market based rate filings for PJM resources. The IMM's recommended behavioral remedies for local market power in the energy market in this report resolve the same issue as the rules approved by the Commission that do not have an implementation date. The recommended behavioral remedies related to energy market offers would not be needed when those rules are implemented. The correction of the flaws in the application of local market power mitigation rules would not address other issues addressed by the behavioral remedies, including aggregate market power in the energy market, which occurs when a limited number of suppliers are pivotal for meeting daily demand, creating the incentive to exercise market power. PJM has no market power mitigation in place for aggregate market power in the energy market.

As the PJM markets have evolved, the IMM has identified significant flaws in the market power mitigation provisions of the PJM tariff. Some flaws permit market participants to evade the explicit intent of the PJM market power mitigation rules. Other flaws are gaps in the PJM market power mitigation rules. The Commission has previously corrected

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1 *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 241 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055 (2008).

2 Order No. 697-A at P 111.

3 189 FERC ¶ 61,060 (2024) ("October 2024 Order").

overstated Market Seller Offer Caps (MSOC) in the capacity market.[4] [5] PJM filed to weaken the market power mitigation rules in the capacity market by permitting standalone CPQR offers without net revenue offsets and permitting segmented offer curves and FERC accepted the changes.[6] Given that the Commission has approved these rules, the IMM will challenge specific noncompetitive offers if and when they occur.

Removal of capacity from the market through bilateral sales to data center load is not governed by the PJM market rules, including the rules for retirement of resources. It requires no market power review and no reliability review. Removal of capacity from the market can have a significant impact on market prices and reliability to the benefit of other generating resources in a company's portfolio. The Commission's order on transmission arrangements for co-located load does not address the effect of capacity removal on competition or prices or reliability. If removal of capacity is anticipated as part of the transaction, the market power analysis is incomplete without evaluation of the effects of capacity removal on competition. Unless disclosure and review of any plans to remove capacity from the market to serve data center load are part of market power analysis, the Market Monitor recommends a commitment to keep all capacity in the PJM market as a condition of the transaction.

## Summary

The Transaction would increase market power in the PJM markets. Vistra has aggregate market power in the energy and capacity markets before and after the transaction. Vistra has local market power created by binding constraints in the PJM energy market before and after the transaction. The sale of the Cogentrix assets to Vistra would increase local market power for multiple constraints. The transaction would increase energy and capacity market concentration at the aggregate level. **{BEGIN CUI/PRIV} REDACTED. {END CUI/PRIV}.**

The IMM analyzed the effect of the Vistra purchase of the Cogentrix assets on market power in the PJM aggregate energy market and local energy markets using data from January 2024 through December 2025. The IMM analyzed the effects of the Vistra purchase of the Cogentrix assets on market power in the PJM Capacity Market using

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4 *See* "Analysis of the 2022/2023 RPM Base Residual Auction,"<http://www.monitoringanalytics.com/reports/Reports/2022/IMM_Analysis_of_the_20222023_RPM_BRA_20220222.pdf> (February 22, 2022). "Analysis of the 2022/2023 RPM Base Residual Auction - Revised," <http://www.monitoringanalytics.com/reports/Reports/2023/IMM_Analysis_of_the_20222023_RPM_BRA_Revised_20230113.pdf> (January 13, 2023).

5 *See Independent Market Monitor for PJM v. PJM*, 176 FERC ¶61,137 (2021), *reh'g denied*, 177 FERC ¶ 62,066 (2021), *further order on reh'g*, 178 FERC ¶61,121 (2022), *aff'd*, ArcLight Corp. et al. v. FERC, Case No. 21-1214 et al. (D.C. Cir August 15, 2023), *cert. denied*.

6 *See PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117 (2025); *reh'g denied*, 191 FERC ¶ 61,221 (2025).

auction data for the 2025/2026, 2026/2027, and 2027/2028 Base Residual Auctions. The transaction would increase Vistra's market power in all these markets.

The IMM opposes the proposed transaction without the condition that any order approving the transaction require specific behavioral commitments by Vistra, none of which creates a burden on applicants because all are designed to help ensure competitive behavior. Absent the acceptance of the identified conditions, the IMM opposes the transaction. If the identified conditions were accepted, the IMM does not oppose the transaction.

### Aggregate Energy Market

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- **{END CUI//PRIV}**
- There are no rules in the PJM tariff to address aggregate market power in the energy market.

### Local Energy Markets

- For the following constraints, with the acquisition of the Cogentrix assets, Vistra would have an increase in the number of hours in which they failed the TPS test in the real-time energy market from January 2024 through December 2025.
- **{BEGIN CUI//PRIV}**
- **REDACTED.**
- **{END CUI//PRIV}**
- There are identified issues with PJM's market power mitigation rules for local market power in the energy market that allow suppliers to exercise market power. The IMM's behavioral recommendations address these issues.

### Capacity Market

- The IMM analyzed the 2025/2026, 2026/2027, and 2027/2028 BRA results to measure the effect of the acquisition on the PJM Capacity Market.
- **{BEGIN CUI//PRIV}**
- **REDACTED**
- **{END CUI//PRIV}**
- The IMM's behavioral recommendations address the issues of competitive offers in the capacity market.

## *Behavioral Recommendations*

The IMM recommends that behavioral rules apply to Vistra's energy and capacity market offers to help ensure that market power mitigation is effective in preventing the exercise of market power. The IMM recommends that behavioral rules apply to Vistra's decisions to remove capacity from the PJM market. None of the commitments creates a burden on the company because all are designed to ensure competitive behavior.

## *Summary of Behavioral Recommendations*

1. Develop cost-based energy market offers using a fuel cost policy that passes the IMM's defined review criteria and limit price-based offers to a markup no greater than $1 per MWh.
2. Will not use crossing price-based and cost-based energy market offer curves (markup switching).
3. Submit only operating parameters based on physical limits, as defined in the PJM tariff, in the energy market.
4. Propose to retire unit only if the unit is expected to be uneconomic, defined to be when projected avoidable costs exceed projected net revenues, after accounting for identified risks.
5. Submit capacity market offers that do not exceed the net avoidable cost rate, including the CPQR component of avoidable costs.
6. Offer the full ICAP MW equivalent of all cleared UCAP capacity MW in the day-ahead and real-time energy markets every day.
7. Will not remove resources from the PJM capacity market to serve data center load.

## Cost-based Energy Market Offers

As a result of the transaction, Vistra would have market power more frequently in the aggregate energy market. The PJM energy market has no market power mitigation rules for aggregate market power. To ensure competitive energy market offers, the IMM recommends that Vistra always develop cost-based offers using a fuel cost policy that passes the IMM's review using the IMM's defined criteria, and limit price-based offers to a markup no greater than $1 per MWh.[7]

## No Crossing Curves (No Mark Up Switching)

Given the ability to submit offer curves with different markups at different output levels in the price-based offer, suppliers with market power can evade mitigation by using a low markup at low output levels and a high markup at higher output levels. Even when resources fail the TPS test, PJM frequently selects the price-based offer with the high markup based on its negative markup at low output levels. This occurs because PJM chooses between the price-based offer and the cost-based offer considering only the offers at the economic minimum output level in the real-time market and only the offers up to

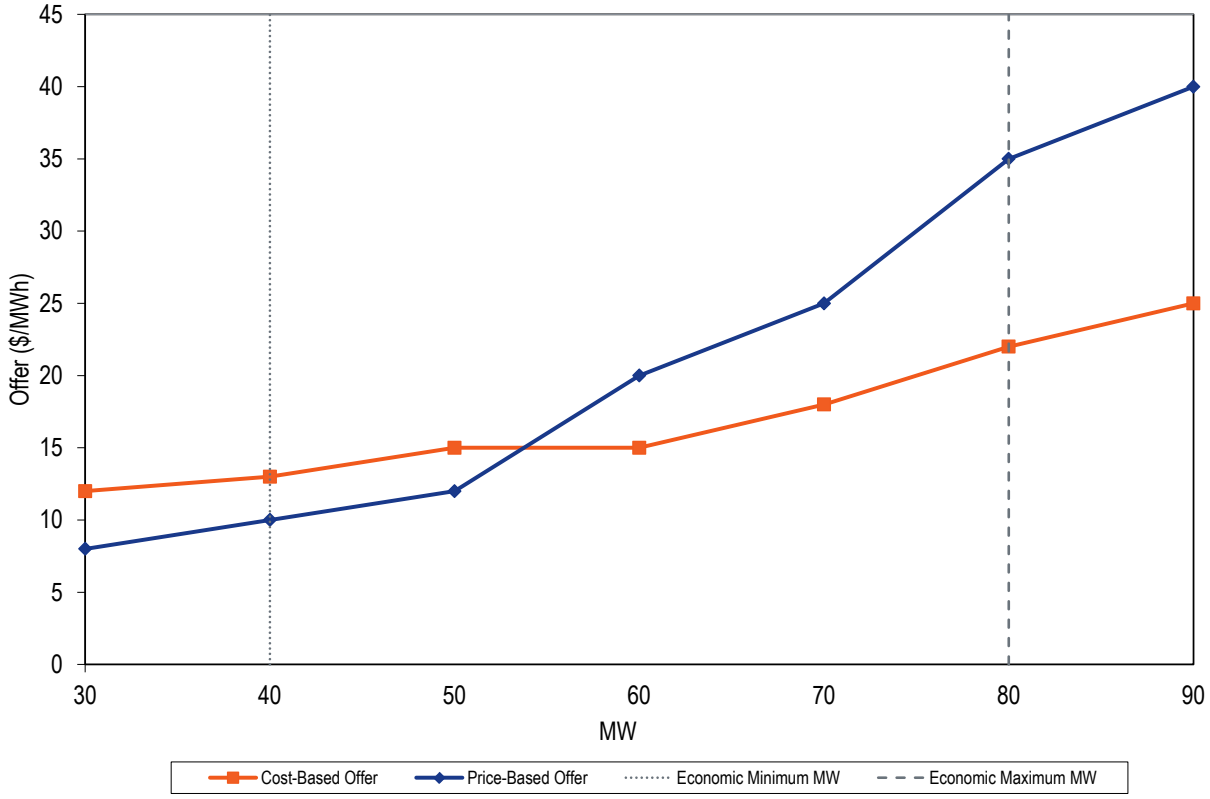
[7] The IMM provides a template for Fuel Cost Policies on its website, <https://www.monitoringanalytics.com/tools/tools.shtml>. As of June 30, 2025, 92 percent of all generating units in the PJM Energy Market had a Fuel Cost Policy that passed the IMM review. See Monitoring Analytics, L.L.C., *2025 Quarterly State of the Market Report for PJM: January through June,* Section 3: Energy Market at 266.

the projected dispatch point in the day-ahead market.[8] Figure 1 shows an example of offers from a unit that has a negative markup at the economic minimum MW level and a positive markup at the economic maximum MW level. The result would be that a unit that failed the TPS test would be committed on its price-based offer, even though the price-based offer is higher than the cost-based offer at higher output levels and includes positive markups, inconsistent with the explicit goal of local market power mitigation. Frequently, resources with crossing curves committed on the price-based offer are dispatched into the high markup range of the offer curve, allowing the exercise of market power.

PJM filed a correction with the Commission to address this issue and the Commission approved the correction in the October 2024 Order. The revised rules require that sellers that fail the TPS test will be offer capped at their cost-based offers and that operating parameters will be mitigated. The schedule selection process between the price-based offer and the cost-based offer is removed, so the problem with incorrectly selecting an offer with markup when a resource has local market power would be eliminated if PJM implemented the Commission approved proposal.

[8] On October 25, 2024, in Docket ER24-2905, the Commission approved a new method for selecting among price and cost schedule that would resolve this issue, but PJM has not set an implementation date. The behavioral commitment is needed until implementation.

**Figure 1 Offers with varying markups at different MW output levels**




## Physical Operating Parameters

All resources in PJM are required to submit at least one cost-based offer. Cost-based offers, for a defined set of technologies, must include defined unit specific parameters, termed parameter limited schedules that are based on the physical or contractual capabilities of the units and are subject to review by PJM and the IMM.

All resources that choose to make price-based offers are required to make available at least one price-based parameter limited offer with the same parameters as the cost-based offer (referred to as price-based PLS). For resources that are not capacity resources, the price-based parameter limited schedule is used by PJM for committing generation resources when a maximum emergency generation alert is declared. For capacity resources, the price-based parameter limited schedule is used by PJM for committing generation resources when hot weather alerts and cold weather alerts are declared.[9]

The current implementation is not consistent with the goal of having parameter limited schedules, which is to prevent the use of inflexible operating parameters to exercise

[9] *See* OA Schedule 1 § 6.6.

market power. Instead of ensuring that parameter limits apply, PJM chooses the lower of the price-based schedule and the price-based parameter limited schedule during hot and cold weather alerts. [10] Instead of ensuring that parameter limits apply, PJM chooses the lower of the price-based schedule and the cost-based parameter limited schedule when a resource fails the TPS test. This occurs because PJM chooses between the price-based offer and the cost-based offer considering only the offers at the economic minimum output level in the real-time market and only the offers up to the projected dispatch point in the day-ahead market, and does not consider all of the physical operating parameters. The result is that PJM frequently selects price-based offer schedules with inflexible parameters for resources that have market power, undermining the purpose of parameter mitigation which is to require flexible parameters for resources with market power in order to limit the exercise of market power based on the parameters.

The October 2024 Order approved a solution to the problem. The revised rules require that sellers that fail the TPS test and sellers in emergencies will always be placed on a schedule with parameter limits. The schedule selection process between the price-based offer and the cost-based offer and between the price-based offer and the price-based parameter limited offer would be removed, so the problem with incorrectly selecting an offer with inflexible parameters when a resource has local market power or during emergency conditions would be eliminated if PJM implemented the Commission approved proposal.

## Market Seller Offer Cap

For capacity market offers, Vistra should be required to use a market seller offer cap equal to its net Avoidable Cost Rate (ACR), including CPQR in gross ACR prior to subtracting net revenues.

The net ACR is the marginal cost of capacity and is the competitive offer for a capacity resource.

## Generation Retirement

The PJM Capacity Market has become extremely tight in recent auctions and was actually short in the 2026/2027 and 2027/2028 auctions, and any generation retirements can have a significant effect on the market. Given the increase in Vistra's market power in the capacity market due to the transaction, the IMM recommends that, Vistra retire units only if analysis shows that the resource is expected to be uneconomic, defined to mean that projected avoidable costs exceed projected net revenues, after accounting for identified

[10] On October 25, 2024, in Docket ER24-2905, the Commission approved a new method for selecting among price and cost schedule that would resolve this issue, but PJM has not set an implementation date. The behavioral commitment is needed until implementation.

risks. The retirement of economic units can be a mechanism for the exercise of market power by making the balance of the portfolio more profitable.

### Energy Market Must Offer Requirement

Generation capacity resources are required to offer their full ICAP MW into the day-ahead and real-time energy markets, unless the unit is on an outage for the difference.[11] The full installed capacity (ICAP) is the ICAP of the resources that cleared in the capacity market. This is known as the ICAP must offer requirement. PJM's current enforcement of the ICAP must offer requirement is inadequate. The problem is a complex combination of generator behavior, and inadequate, inconsistent and unsynchronized reporting tools. Compliance is subject to mistakes and susceptible to manipulation. Vistra should be required to offer the full ICAP MW equivalent of all their cleared UCAP capacity MW in the day-ahead and real-time energy markets every day, unless the unit is on an outage for the difference.

### Data Center Load

On March 25, 2026, Vistra filed a response brief regarding PJM's filing in response to the Commission's December 18, 2025, order on transmission service for co-located loads.[12] Vistra's comments indicate its interest in co-located load arrangements for data centers in PJM. Such arrangements threaten the reliability and economics of the PJM market, because they would remove existing capacity from the market to serve large data center loads. Removing (delisting) capacity from the PJM markets via bilateral capacity contracts has the same effect on PJM markets as a retirement. Such removal can provide more benefits to the seller than simple retirement because the removal simultaneously provides above market revenue through the bilateral contract and increases the overall capacity market price to the benefit of the rest of the seller's portfolio. Vistra should agree not to pursue any arrangements to serve data centers that would remove capacity and energy from the PJM markets.

## Methods of Analysis

In analyzing whether a proposed merger or acquisition is consistent with the public interest, the Commission considers the "effect of the transaction on competition, rates, and regulation of the applicant by the Commission and state commissions with jurisdiction over any party to the transaction."[13] In this report, the IMM focuses on the first factor, the effect on competition, measured by the impact on the structure of relevant markets based on actual market data. The effect on competition also includes the effect on rates because the level of market competition affects market prices. The IMM evaluates the impact of

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11 OA Schedule 1 § 1.10.1A(d).

12 Vistra, Corp., Response Brief of Vistra Corp., Docket No. EL25-20 (March 25, 2026).

13 18 CFR § 33.2(g).

the merger or acquisition on competition using pivotal supplier analysis and concentration thresholds.

Any analysis of market structure depends on an accurate definition of the relevant markets. Market definitions depend on properly identifying and evaluating potential substitutes for a given product. Within organized markets data are available, and should be used, to define markets based on how the units are evaluated and dispatched to meet demand, based on network relationships between resources and load, relative costs, availability and operational parameters. Such an approach provides definitions of the relevant markets based on actual operational data related to the participants and the markets in which they operate. Regardless of how accurately existing local markets are defined, wholesale power markets are extremely dynamic. Within organized markets, relevant market definitions can change significantly over time as a result of changes in fuel costs, generation mix, load and transmission system expansion. Market definitions are dynamic. No market definition can be accurate for the long term and market power protections should recognize that fact rather than being linked closely to a single definition of relevant markets. This requires effective rules to mitigate market power in the PJM tariff or, where the PJM tariff is lacking, behavioral commitments by market sellers.

In the IMM analysis, the definition of the relevant local markets for the time period of the analysis is based on the actual substitutability among available, relevant resources which in turn is based on the physical facts of the system and how the PJM markets defined the substitutability among available resources in the relevant markets over the analysis period. Rather than limit the analysis to a predefined range of load and price levels, the IMM has analyzed the actual relevant markets defined by constraints in the real-time look ahead tool used by PJM to identify structural market power, known as Intermediate Term Security Constrained Economic Dispatch (IT SCED). The relevant PJM submarkets defined in this analysis are those local energy markets created by transmission constraints within the broader PJM market that occurred for two hundred or more hours from January 2024 through December 2025. The relevant capacity markets in this analysis are those that resulted from the actual operation of the markets for the 2025/2026, 2026/2027, and 2027/2028 Delivery Years, the last three Base Residual Auctions run by PJM.

The IMM analysis of the relevant markets reflects the information available based on the actual operation of the PJM wholesale power markets, rather than static market definitions that ignore dynamic changes in constraints. For different resources and different time periods, market conditions would change, and the relevant identified local markets would change. The information used to prepare the analysis included in this report is highly confidential and market sensitive as it relates to specific market participants.[14]

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[14] *See* OATT Attachment M–Appendix § I.

While analysis of actual markets is limited by available data and actual market dynamics, the nature of PJM markets means that those market dynamics will change, in unpredictable ways. Consideration of the impacts of mergers and acquisitions must also consider changing market structures. Consolidating ownership of assets in smaller numbers of owners will always increase structural market power. Structural remedies based on the recent history of market structures cannot remedy that fact. If further concentration of ownership is accepted, strong behavioral remedies are the only way to help mitigate the impacts of increased concentration on competitive outcomes. The Commission's merger policy does not address longer term trends in concentration or the effect of sequential transactions. The Commission's merger policy does not define a maximum level of concentration or a maximum market share that is consistent with competitive outcomes or the standard for defining such a maximum level of concentration or market share in reviewing mergers.

## Merger Standards

For the evaluation of the impact of a merger or acquisition on competition, FERC adopted the 1992 Horizontal Merger Guidelines ("1992 Guidelines") as the analytical framework as described in the Competitive Analysis Screen relied on by the Commission.[15] The 1992 Guidelines predate the creation of the PJM wholesale power market in 1999.[16] The Commission reevaluated and reconfirmed its Merger Guidelines in 2012.[17]

The Commission reserves the option to consider alternative approaches for analyzing the impact of proposed mergers and acquisitions, including pivotal supplier analyses similar to the analysis included in this report, when evaluating proposed mergers and acquisitions in PJM.[18]

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15 *See Order Adopting Guidelines for the Submission of Documents in Electronic Form*, Order No. 642, 93 FERC ¶ 61,177 *mimeo* at 4–*5* (November 15, 2000) ("Order No. 642"); U.S. Dept. of Justice & Federal Trade Commission, "Horizontal Merger Guidelines" (1992, revised April 8, 1997). DOJ and FTC modified their guidelines in 2010, increasing their HHI and market share thresholds and expanding the criteria used to define the relevant market. U.S. Dept. of Justice & Federal Trade Commission, "Horizontal Merger Guidelines" (August 19, 2010).

16 *See Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC¶61,257 (1997).

17 FERC considered whether to revise its policies to follow the DOJ and FTC 2010 modifications, but decided, after notice and inquiry, to retain the 1992 Guidelines. *See Analysis of Horizontal Market Power*, 138 FERC ¶61,109 (2012).

18 *See Id*. at P 38 ("We reiterate, however, that the Commission may consider arguments that a proposed transaction raises competitive concerns that have not been captured by the Competitive Analysis Screen. Likewise, while applicants must continue to provide a

The 1992 Guidelines adopted the analytical framework of the Department of Justice and the Federal Trade Commission concerning horizontal mergers subject to section 7 of the Clayton Act, Section 1 of the Sherman Act, and Section 5 of the Federal Trade Commission Act. As noted in the 1992 Guidelines, "[t]he unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or facilitate its exercise."[19]

The Commissions' Competitive Analysis Screen, based on the 1992 Guidelines, uses market concentration, measured by the HHI, as a basic metric of the structural competitiveness of a market. The 1992 Guidelines define three basic levels of market concentration while recognizing that "[o]ther things being equal, cases falling just above and just below a threshold present comparable competitive issues."[20] A market with an HHI of less than 1000 is considered to be unconcentrated. Mergers and acquisitions resulting in an HHI level less than 1000 are not considered to have adverse competitive effects. A market with an HHI between 1000 and 1800 is considered to be moderately concentrated. A merger or acquisition resulting in a moderately concentrated market is not considered to have an adverse effect on competition if it increases the market's HHI by less than 100 points. A merger or acquisition resulting in a moderately concentrated market is considered to "potentially raise significant competitive concerns" if it increases the market's HHI by 100 points or more.[21] A market with an HHI of 1800 or above is considered to be highly concentrated. A merger or acquisition resulting in a highly concentrated market is not considered to have an adverse effect on competition if it increases the market's HHI by less than 50 points. A merger or acquisition producing an increase in the market HHI of 50 points or more in a highly concentrated market "potentially raises significant competitive concerns."[22]

The HHI is of limited value in determining the impact of a merger on the structural competitiveness of a wholesale power market. In a market with an inelastic demand curve, the existence of one, two, or three, jointly pivotal suppliers, regardless of the amount of excess capacity available, does not provide a market structure that will result in a competitive outcome. An HHI in excess of 2500 does not demonstrate market power if the relevant owners are not jointly pivotal and are unlikely to be able to affect the market

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Competitive Analysis Screen, we will also consider any alternative methods or factors, if adequately supported."); *Exelon Corporation, NRG Energy Group, Inc.*, 138 FERC ¶ 61,167 (2012).

19 1992 Guidelines at 2.

20 1992 Guidelines at 15.

21 *Id*. at 16.

22 *Id*.

price. An HHI less than 2500 does not demonstrate the absence of market power if the relevant owners are jointly pivotal and are likely to be able to affect the market price.[23]

Higher concentration ratios indicate that comparatively small numbers of sellers dominate a market while lower concentration ratios mean larger numbers of sellers split market sales more equally. Lower aggregate market concentration ratios establish neither that a market is competitive nor that participants are unable to exercise market power. Higher concentration ratios do, however, indicate an increased potential for participants to exercise market power and an increased incentive to exercise market power. Despite their significant limitations, concentration ratios provide some useful information on market structure.

Notwithstanding the HHI level, a supplier may have the ability to raise market prices. If reliably meeting demand requires a single supplier, that supplier is pivotal and has monopoly power. If a small number of suppliers are jointly required to meet demand, those suppliers are jointly pivotal and have oligopoly power. The number of pivotal suppliers in the market is a more precise measure of structural market power than the HHI. The HHI is not a definitive measure of structural market power.

The residual supply index (RSI) is a measure of the extent to which one or more generation owners are pivotal suppliers in a market. A single generation owner is pivotal if the output of the owner's generation facilities is needed to meet demand. Multiple generation owners are jointly pivotal when the output of the owners' generation facilities, taken together, is needed to meet demand. When a generation owner is pivotal, it has the ability to affect market price. For a given level of market demand, the RSI compares the market supply, net of the supply controlled by one or more generation owners, to the market demand. The RSI value is calculated as a ratio, where total supply minus the supply of the tested suppliers is divided by the market demand. If the RSI is greater than 1.00, the supply of the specific generation owner(s) is not needed to meet market demand and that generation owner(s) has a reduced ability to influence market price. If the RSI is less than 1.00, the supply owned by the specific generation owner(s) is needed to meet market demand and the generation owner(s) is a pivotal supplier with an ability to influence price. When the RSI is reported for a market, the reported RSI is for the largest supplier or identified number of the largest suppliers.

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[23] For detailed examples, see Joseph E. Bowring, PJM Market Monitor. "MMU Analysis of Combined Regulation Market," PJM Market Implementation Committee Meeting (December 20, 2006) <*http://www.monitoringanalytics.com/reports/Presentations/2006/20061220-combined-regulation-market-mic.pdf*>.

The three pivotal supplier test (TPS) defines market power even in the presence of market share and concentration levels that fall below 1992 Guidelines for a competitive market structure.[24]

## Three Pivotal Supplier Test

In the IMM analysis, the basic metrics used for each market include market share, the Herfindahl-Hirschman Index (HHI), and the three pivotal supplier test (TPS), a residual supplier index used in the PJM markets to define locational market power. Market share measures the proportion of market output contributed by a supplier. Market share is calculated by dividing the output of a supplier by total market output. Concentration ratios are a summary measure of market share. The concentration ratio used here is the Herfindahl-Hirschman Index (HHI), calculated by summing the squares of the market shares of all firms in a market.

The IMM uses the three pivotal supplier test as the key measure of market structure and structural market power. The three pivotal supplier test is used in PJM markets to define the existence of local market power and as a trigger for market power mitigation. A test for local market power based on the number of pivotal suppliers has a solid basis in economics and is clear and unambiguous to apply in practice. There is no perfect test, but the three pivotal supplier test for local market power strikes a reasonable balance between the requirement to limit extreme structural market power and the goal of limiting intervention in markets when competitive forces are adequate.

The three pivotal supplier test is used by PJM for market power mitigation in the real-time energy market, the day-ahead energy market, the regulation market, and the capacity market. The three pivotal supplier test considers the interaction between individual participant attributes and features of the relevant market structure, and the three pivotal supplier test takes into account the incremental ability of resources to affect prices in a constrained area from both the loading and relief sides of the constraint. The three pivotal supplier test is an explicit test for the ability to exercise unilateral market power as well as market power via coordinated action which accounts for market shares and the supply-demand balance in the market.

The results of the three pivotal supplier test can differ from the results of the HHI and market share tests. The three pivotal supplier test can show the existence of structural market power when the HHI is less than 2500 or less than 1800. The three pivotal supplier test can also show the absence of market power when the HHI is greater than 2500. The three pivotal supplier test is more accurate than the HHI and market share tests because it focuses on the relationship between demand and the most significant aspect of the ownership structure of supply available to meet it. An HHI in excess of 2500 does not

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[24] *See AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 at P 111 (2004) ("AEP Order").

indicate market power if the relevant owners are not jointly pivotal and are unlikely to be able to affect the market price. An HHI less than 2500 does not indicate the absence of market power if the relevant owners are jointly pivotal and are likely to be able to affect the market price.[25]

The three pivotal supplier test was designed in light of actual elasticity conditions in constrained areas in wholesale power markets in PJM. The price elasticity of demand is a critical variable in determining whether a particular market structure is likely to result in a competitive outcome. A market with a specific set of market structure features is likely to have a competitive outcome under one range of demand elasticity conditions and a noncompetitive outcome under another set of elasticity conditions. It is essential that market power tests account for actual elasticity conditions and that evaluation of market power tests neither ignore elasticity nor make counterfactual elasticity assumptions. As the Commission stated, "In markets with very little demand elasticity, a pivotal supplier could extract significant monopoly rents during peak periods because customers have few, if any, alternatives."[26] The Commission also stated:

> In both of these models, the lower the demand elasticity, the higher the mark-up over marginal costs. It must be recognized that demand elasticity is extremely small in electricity markets; in other words, because electricity is considered an essential service, the demand for it is not very responsive to price increases. These models illustrate the need for a conservative approach in order to ensure competitive outcomes for customers because many customers lack one of the key protections against market power: demand response. [27]

## *TPS Test: Defining the Relevant Market*

The goal of defining the relevant market is to include those producers that actually compete to determine the market price. Conversely, the goal of defining the relevant market is to exclude those units that are not meaningful competitors and therefore do not have an impact on the clearing price. The existence of market power within that defined market depends on the ability of the producer to raise price while continuing to sell its

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25 For detailed examples, see Joseph E. Bowring, PJM Market Monitor, "MMU Analysis of Combined Regulation Market," PJM Market Implementation Committee Meeting (December 20, 2006) <*http://www.monitoringanalytics.com/reports/Presentations/2006/20061220-combined-regulation-market-mic.pdf*> .

26 AEP Order at P 72.

27 *Id*. at P 103.

output. A producer cannot successfully increase the market price above the competitive level if competitors would replace its output when it did so.

The Commission definition of the relevant market includes all suppliers with cost-based offers less than or equal to 1.05 times the clearing price. The Commission definition means that, if the marginal unit sets the clearing price based on an offer of $200 per MWh, all units with cost-based offers less than, or equal to, $210 per MWh are defined to have a competitive effect on the offer of the marginal unit. These units are all defined to be meaningful competitors in the sense that it is assumed that their behavior constrains the behavior of the marginal and inframarginal units. The TPS definition of the relevant market includes all suppliers with cost-based offers less than or equal to 1.50 times the clearing price. The three pivotal supplier definition means that, if the marginal unit sets the clearing price based on an offer of $200 per MWh, all units with costs less than, or equal to, $300 per MWh are defined to have a competitive effect on the offer of the marginal unit. These units are all defined to be meaningful competitors in the sense that it is assumed that their behavior constrains the behavior of the marginal and inframarginal units. The three pivotal supplier test incorporates a definition of meaningful competitors that is at the extreme high end of inclusive. It is questionable whether a unit with a competitive offer price of $300 meaningfully constrains the offer of a $200 unit. This broad market definition is combined with the recognition that multiple owners can be jointly pivotal. The three pivotal supplier test includes three pivotal suppliers while the Commission test includes only one pivotal supplier.

The three pivotal supplier test is designed to test the relevant market. For example, in the case of the market for out of merit generation needed to relieve a constraint in real time, the three pivotal supplier test examines the market specifically available to provide that relief. Under these conditions, the three pivotal supplier test measures the degree to which the supply from three generation suppliers is required in order to meet the demand to relieve a constraint, as defined by PJM's market solution software. The market demand is the amount of incremental, effective MW required to relieve the constraint.[28] The market demand is calculated as the difference between the defined MW limit on flow across the constraint and the flow in an economic dispatch solution if the limit did not exist (unconstrained flow). The market supply consists of the incremental, effective MW of supply available to relieve the constraint. This includes resources that can ramp up or start

[28] A unit's contribution toward effective, incrementally available supply is based on the distribution factor (dfax) of the unit relative to the constraint and the unit's incrementally available capacity over current load levels, if the capacity in question is available within the period that the relief will be needed. Effective, incrementally available MW from an unloaded 100 MW 15-minute start combustion turbine (CT) with a dfax of -0.05 to a constraint would be 5 MW relative to the constraint in question. Effective, incrementally available MW from a 200 MW steam unit, with 100 MW loaded, a 50 MW ramp rate and a dfax of -0.5 to the constraint would be 25 MW.

up to provide relief for the constraint as well as resources that can ramp down to provide relief for the constraint. The sign of the distribution factor (dfax) of a resource with respect to the defined constraint indicates whether a resource would relieve the constraint by increasing or decreasing output. A resource with a positive dfax with respect to a constraint provides relief by reducing its output, and a resource with a negative dfax with respect to the same constraint provides relief by increasing its output. A resource's incremental effective MW are the product of its incremental available MW and its dfax with respect to the constraint defining the market. For purposes of the test, incremental effective MW are attributed to specific suppliers on the basis of their control of the assets in question. Generation capacity controlled directly or indirectly through affiliates or through contracts with third parties are attributed to a single supplier.

Unlike structural tests that define markets by geographic proximity, the TPS test makes explicit and direct use of the incremental, effective MW of supply available to relieve the constraint at a distribution factor greater than, or equal to, the dfax used by PJM in operations. Only the supply that is part of the market as defined by the reality of the electric network, as measured by unit characteristics and distribution factors is included in the three pivotal supplier test. That supply is included only to the extent that it is incremental, effective MW of supply available at a price less than, or equal to, 1.5 times the clearing price that would result from the intersection of demand (constraint relief required) and the incremental supply available to resolve the constraint.

## *Constraints: Defining the Relevant Market*

In its Order Reaffirming the 1992 Guidelines, the Commission stated:

> The Commission will remain flexible in its approach and will reevaluate whether a previously recognized submarket continues to exist if the evidence shows that the persistent transmission constraints that led to the recognition of that submarket are no longer present. We clarify that we will not require applicants to submit a DPT for an identified submarket if the applicants do not have overlapping generation within the submarket and lack firm transmission rights to import capacity into that market.[29]

Vistra's Delivered Price Test considers the PJM RTO market, the submarkets recognized in previous 203 and Market Based Rates proceedings. Patterns of congestion and constraints have been and will continue to be dynamic in PJM. It is important to analyze existing submarkets but also to address the fact that market power is persistent and may be actionable in submarkets that do not yet exist. The IMM analyzed all submarkets based on historic market data, not only the subset of markets analyzed in the Applicants'

[29] *See Analysis of Horizontal Market Power*, 138 FERC ¶ 61,109 at P 43 (2012).

Delivered Price Test analysis. The IMM analysis shows that Vistra has local market power in PJM and that local market power would increase with the acquisition of the Cogentrix assets.

The Commission's guidelines as implemented by Vistra do not accurately reflect the ability to exercise market power in an LMP market, like PJM. Mergers and acquisitions can affect submarkets created by transmission constraints whether or not there is overlapping generation on the high price side of the constraint. The IMM analysis considers all available supply that can relieve a constraint regardless of its location, which is the relevant supply that determines prices in an LMP market.

The broader point about congestion in an LMP market is that it is dynamic and unpredictable. Submarkets in one period may not be submarkets in subsequent periods. The analysis of market power and of mergers should reflect these basic facts. Local market power may not exist in one period and may exist in the next. Local market power may exist in one period and not exist in the next. It is essential that merger reviews recognize that, in a dynamic nodal and locational energy market, and in a dynamic and locational capacity market, increased concentration of ownership creates the potential for market power beyond the specific facts of a specific period. It is essential for that reason to have clear, workable and enforceable rules for market power mitigation that can address the dynamic reality of PJM markets and that are not narrowly linked to a static definition of relevant markets.

# Energy Market Results

## *Aggregate Market Power*

The IMM analyzed the impact of the proposed transaction on aggregate energy market concentration using actual generation data for a two year period, January 2024 through December 2025.[30]

The concentration metrics are the market share for energy and the HHI for energy in the aggregate PJM market. The IMM also uses a pivotal supplier screen for the aggregate day-ahead energy market.

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**Table 3 Vistra's average hourly market share of PJM generation: January 2024 through December 2025**

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[30] *See* 192 FERC ¶ 61,074 at 131.

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**Table 4 Energy market HHI: January 2024 through December 2025**

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To assess the number of aggregate pivotal suppliers in the day-ahead energy market, the IMM determines, for each supplier, the MW available for economic commitment that were already running or were available to start between the close of the day-ahead energy market and the peak load hour of the operating day. The available supply is defined as MW offered at a price less than 150 percent of the applicable locational marginal price. Generating units, import transactions, economic demand response, and virtual supply ("INCs"), are included for each supplier. Demand is the total MW required by PJM to meet physical load, cleared load bids, export transactions, and virtual demand ("DECs"). A supplier is pivotal if PJM would require some portion of the supplier's available economic capacity in the peak hour of the operating day in order to meet demand. Suppliers are jointly pivotal if PJM would require some portion of the joint suppliers' available economic capacity in the peak hour of the operating day in order to meet demand.

When Vistra is a pivotal supplier in the energy market, it has the ability to raise prices in the energy market which benefits the inframarginal energy resources that it owns. There are no market power mitigation rules to address aggregate market power in the PJM energy market. Acquiring the Cogentrix assets would increase Vistra's aggregate market power, increasing its incentive and ability to raise prices.

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**Table 5 PJM Day-ahead aggregate energy market pivotal supplier frequency: January 2024 through December 2025**

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## *Local Market Power*

The IMM also analyzed the real-time energy market results for the relevant submarkets defined by actual binding constraints for the two year period, 2024 and 2025. [31] The analysis identifies constraints for which Vistra has market power, as shown by failures of the TPS test.

The TPS test considers incremental, effective MW available to provide relief to binding constraints in the energy market. Congentrix's and Vistra's fleets frequently have incremental, effective MW available to provide constraint relief in PJM's energy market meaning that Vistra has local market power as measured by TPS test failures both before and after the transaction.

Table 6 identifies the constraints on the PJM system that were binding for more than 200 hours during the period including 2024 and 2025. It provides the number of hours for which Vistra failed the TPS Test and the number of hours for which Vistra would have failed the TPS Test with the acquisition.[32]

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**Table 6 Constraints where Vistra had market power as determined by the real-time energy market TPS test: January 2024 through December 2025**

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Table 7 identifies the constraints on the PJM system that were binding for more than 200 hours during January 2024 through December 2025. It provides the average TPS score for Vistra and the average TPS score Vistra would have with the acquisition. A TPS score of less than 1.0 indicates that a supplier has market power.

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**Table 7 Preacquisition and Postacquisition TPS scores for constraints where Vistra had market power as determined by the real-time energy market TPS test: January 2024 through December 2025**

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31 *See* 192 FERC ¶ 61,074 at 131.

32 The IMM increased the number of constrained hours in its analysis from 100 to 200 with the increase in the time frame from one year to two years.

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Table 8 identifies the constraints on the PJM system that were binding for more than 200 hours during 2024 and 2025. Table 8 provides the average HHI for constraints where Vistra had market power as determined by the real-time energy market TPS test and the average HHI the constraints would have with the acquisition.

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**Table 8 Preacquisition and Postacquisition HHI for constraints where Vistra had market power as determined by the real-time energy market TPS test: January 2024 through December 2025**

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# Capacity Market Results

## *Market Design*

The Reliability Pricing Model (RPM) Capacity Market design was implemented in the PJM region on June 1, 2007. The RPM Capacity Market is a forward-looking, annual, locational market, with a must offer requirement for Existing Generation Capacity Resources and mandatory participation by load, with performance incentives, that includes clear market power mitigation rules and that permits the direct participation of demand-side resources. Recent changes to the market power mitigation rules include ending the categorical exemption from the must offer requirement for intermittent and storage resources.[33] Capacity storage resources include hydroelectric, flywheel and battery storage. Intermittent resources include wind, solar, landfill gas, run of river hydroelectric, and other renewable resources. Demand resources remain exempt from the must offer requirement. In addition, the Commission recently approved the inclusion of standalone CPQR offers with no net revenue offset and segmented offers based on CPQR, both of which were opposed by the IMM as undermining market power mitigation.[34]

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33 *See* 190 FERC ¶ 61,117.

34 *See id*.

Under RPM, capacity obligations are annual. Base Residual Auctions (BRA) are held for delivery years that are three years in the future, although recent events have resulted in shorter lead times for BRAs. Effective with the 2012/2013 Delivery Year, First, Second and Third Incremental Auctions (IA) are held for each delivery year if there is time available.[35]

RPM prices are locational by LDA and may vary depending on transmission constraints between LDAs and local supply and demand conditions within LDAs.[36] Existing generation that qualifies as a capacity resource must be offered into RPM auctions, except for resources owned by entities that elect the fixed resource requirement (FRR) option. Participation on the demand side by LSEs is mandatory, except for those entities that elect the FRR option. Load must buy all cleared capacity. There is an administratively determined demand curve that defines shortage pricing levels and that, with the supply curve derived from capacity offers, determines market prices in each BRA. Under RPM there are explicit market power mitigation rules that define the must offer requirement, that define structural market power using the three pivotal supplier test, that define offer caps, that define the minimum offer price, and that have flexible criteria for competitive offers by new entrants. Market power mitigation is effective only when these definitions are up to date and accurate. Demand resources may be offered directly into RPM auctions and receive the clearing price without mitigation. Demand resources may exercise market power under the existing rules.

The capacity market is, by design, always tight in the sense that total supply is generally only slightly larger than demand.[37] The capacity market, following the implementation of

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35 *See* 126 FERC ¶ 61,275 at P 86 (2009).

36 Transmission constraints are local capacity import capability limitations (low capacity emergency transfer limit (CETL) margin over capacity emergency transfer objective (CETO)) caused by transmission facility limitations, voltage limitations or stability limitations.

37 Recent reports by the Market Monitor explain many of the current issues in the capacity market design. See "Analysis of the 2025/2026 RPM Base Residual Auction—Part A," (September 20, 2024) ("IMM BRA Report Part A"). <https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_A_20240920.pdf>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part B," (October 15, 2024) ("IMM BRA Report Part B") <https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_B_20241015.pdf> ; "Analysis of the 2025/2026 RPM Base Residual Auction—Part C," (November 6, 2025) ("IMM BRA Report Part C") <https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_C_20241106.pdf>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part D," (December 6, 2024) ("IMM BRA Report Part D") <https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_D_20241206.pdf>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part E," (January 31, 2025) ("IMM BRA Report Part E")

PJM's approach to the ELCC definition of capacity, is much tighter. Local LDA markets may have different supply demand balances than the aggregate market. Demand is inelastic because the market rules require loads to purchase the system capacity requirement. The result is that any supplier that owns more capacity than the typically small difference between total supply and the defined demand is individually pivotal and therefore has structural market power. Any supplier that, jointly with two other suppliers, owns more capacity than the difference between supply and demand either in aggregate or for a local market is jointly pivotal and therefore has structural market power.

The market design for capacity leads, almost unavoidably, to structural market power in the capacity market. Given the basic features of the PJM Capacity Market, including significant market structure issues, inelastic demand, tight supply-demand conditions, the relatively small number of nonaffiliated LSEs and supplier knowledge of aggregate market demand, the potential for the exercise of market power is high. Market power is and will remain endemic to the existing structure of the PJM Capacity Market.

Nonetheless, a competitive outcome can be ensured by appropriate market power mitigation rules. Attenuation of those rules would mean that market participants would not be able to rely on the competitiveness of the market outcomes. The market power rules are not perfect and, as a result, competitive outcomes require continued improvement of the rules and ongoing monitoring of market participant behavior and market performance.

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<https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_E_20250131.pdf>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part F," (February 4, 2025) ("IMM BRA Report Part F") <https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_F_20250204.pdf>; "Analysis of the 2025/2026 RPM Base Residual Auction—Part G Revised," (June 3, 2025) ("IMM BRA Report Part G") <https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_G_20250603_Revised.pdf>; Analysis of the 2025/2026 RPM Base Residual Auction—Part H," (July 31, 2025) ("IMM BRA Report Part H") <https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_H_20250731.pdf> ("2025/2026 BRA Reports"); Analysis of the 2026/2027 RPM Base Residual Auction - Part A," (October 1, 2025) <https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20262027_RPM_Base_Residual_Auction_Part_A_20251001.pdf>; 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>; Analysis of the 2026/2027 RPM Base Residual Auction - Part B," (March 3, 2026) <https://www.monitoringanalytics.com/reports/Reports/2026/IMM_Analysis_of_the_20262027_RPM_Base_Residual_Auction_Part_B_20260303.pdf>.

The capacity market currently has explicit market power mitigation rules designed to permit competitive, locational capacity prices based on limiting the exercise of market power. The capacity market construct has been consistent with the appropriate market design objectives of permitting competitive prices to reflect local scarcity conditions based on explicitly limiting market power. The capacity market design provides that competitive prices can reflect locational scarcity while not relying on the exercise of market power to achieve that design objective by limiting the exercise of market power via the application of the three pivotal supplier test and the resultant offer capping. The efficacy of the market power mitigation rules under recent rule changes remains to be seen and cannot be assumed. The modifications to the nature of the demand curve by PJM also create significant issues and have resulted in market prices above the competitive level.[38]

On February 20, 2025, FERC issued an order accepting proposed rules in Docket No. ER25-785-000 which became effective February 21, 2025, beginning with the 2026/2027 Delivery Year. The rule changes include elimination of the categorical RPM must offer exemption for Intermittent Resources, Capacity Storage Resources, and Hybrid Resources; modifying the Market Seller Offer Cap definition to include unit specific standalone Capacity Performance Quantifiable Risk (CPQR); and modifying the Market Seller Offer Cap definition to include segmented unit specific offer caps. The filing highlights the fact that market power mitigation rules are uncertain. The inclusion of offers based on standalone CPQR and segmented offers both undermine market power mitigation.[39]

## *Market Analysis*

The analysis of the impact of the Vistra acquisition of the Cogentrix assets on the capacity market examines the locational markets defined by the underlying economics of the market including supply and demand curves and transmission constraints. Each transmission zone is a Locational Deliverability Area (LDA) which can be a separate submarket if PJM models the zone as an LDA and market conditions result in binding transmission constraints and associated price separation in an auction. There are, in addition, several defined subzonal LDAs, including PSEG North, DPL South, and ATSI Cleveland.

For the defined submarkets, market concentration and HHI levels were calculated on a preacquisition and a postacquisition basis for each market.

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38 *See* 2025/2026 BRA Reports.

39 *See* Comments of the Independent Market Monitor for PJM, Docket No. ER25-785-000 (January 10, 2025); Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER25-785-000 (February 18, 2025); Request for Rehearing of the Independent Market Monitor for PJM, Docket No. ER25-785-000 (March 19, 2025).

As in the energy market, to the extent that total RTO demand for capacity can be met without any constraints binding, the optimal solution is defined by the intersection of the aggregate supply and demand curves. However, if the next increment of demand for capacity in an LDA cannot be met by the next economic increment of total supply and must be met by higher cost supply within the LDA, then the transmission constraint is binding and there is a separate market created. That separate market is defined by the incremental demand that must be met by capacity within the LDA and the higher cost incremental supply within the LDA available to meet that demand.

The ability to exercise market power in the LDA is determined by the ownership structure of the incremental supply and the relationship between incremental supply and incremental demand. The incentive to exercise market power in the LDA is a function of the ownership structure of all capacity in the LDA. Regardless of offer price and regardless of whether the capacity was incremental, all capacity in a constrained LDA receives the higher constrained clearing price. The ability to exercise market power can be measured most accurately by the TPS test while the HHI provides a measure of the incentive to exercise market power.

When the capacity market clears as a single market, total RTO supply and demand determine the clearing price and all resources receive the single market clearing price. When an LDA within the RTO clears as a separate market, the incremental locational supply available to meet the locational demand determines the clearing price for the LDA. All capacity resources in the LDA receive the single locational market clearing price, regardless of whether the capacity resources are incremental.

When there are multiple LDAs that clear as separate markets and the LDAs are not overlapping, the logic is exactly the same for each LDA separately and its relationship to the rest of RTO.[40] When the LDAs are nested, the analysis becomes more complex.

For this analysis, the actual sell offer prices and offered MW quantities in the 2025/2026, 2026/2027, and 2027/2028 RPM BRAs were used.[41]

## *Aggregate Market: HHI*

Table 9 shows pre and post Cogentrix acquisition HHIs for the 2025/2026, 2026/2027, and 2027/2028 RPM Base Residual Auctions, including all modeled LDAs for each BRA. The HHIs in Table 9 measure concentration of ownership for all cleared capacity in the identified LDAs.

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40 *See* 2025/2026 BRA Reports

41 If the ownership of assets changed between the conduct of the BRA and the present, the current parent company ownership was used in both the preacquisition and postacquisition cases.

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**Table 9 Preacquisition and postacquisition HHI**

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## *Locational Capacity Markets: TPS*

The pivotal supplier analysis uses the pre and postacquisition Three Pivotal Supplier test scores to measure the change in market power for the RTO and LDAs. Table 10 shows the preacquisition and postacquisition TPS scores for Vistra. Cogentrix would have no capacity resources in PJM following the transaction.

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The market for a constrained LDA is defined by the incremental supply available to meet the incremental demand when locational incremental demand must be met by capacity resources within the LDA. The RTO market is defined to include all supply that is not incremental supply in a constrained LDA. The RTO market includes all MW that resulted in the clearing price for the rest of RTO.

The three pivotal supplier (TPS) test measures the degree to which the incremental supply from three suppliers of capacity is required in order to meet the incremental demand in an LDA. In applying the TPS test in the capacity market, the relevant demand consists of the incremental MW of capacity required to relieve a constraint or clear a market. The relevant supply consists of the incremental MW of supply from generation resources available to relieve the constraint or clear the market. The supply does not include demand response resources.

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**Table 10 Preacquisition and postacquisition TPS results for Vistra and Cogentrix**

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# Attachment –

# Confidential Market Power Analysis

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**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 7th day of April, 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*