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Monitoring Analytics

VIA EMAIL & FEDEX

November 4, 2026

The Honorable Bernard Logan, Clerk
State Corporation Commission
Document Control Center
Tyler Building, First Floor
1300 East Main Street
Richmond, Virginia 23219

Re: *Dominion Energy, Inc., et al. and NextEra Energy, Inc.*, SCC Case No. PUR-2026-00112

Dear Mr. Logan:

Pursuant to the Order for Notice and Hearing issued July 21, 2026, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"), submits for the Commission's consideration in this proceeding the protest filed by the Market Monitor on September 29, 2026, with the Federal Energy Regulatory Commission ("FERC") in Docket No. EC26-131. FERC is reviewing the same merger that is the subject of this proceeding. FERC is reviewing the proposed acquisition of Dominion Energy, Inc. ("Dominion") by NextEra Energy, Inc. ("NextEra") under Section 203 of the Federal Power Act to determine whether the merger is consistent with the public interest.[1] The Market Monitor included with its protest the "Market Power Report: NextEra/Dominion Merger" dated September 29, 2026 ("Market Power Report").

The concerns raised in the Market Monitor's protest and Market Power Report affect the interests of all customers in the PJM Region. Because of Dominion Energy's preeminent market position in Virginia, the same concerns affect the interests of customers in the Commonwealth of Virginia. The Market Monitor's protest and Market Power Report are relevant to the Commission's review and determination of whether "adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition."[2] The Market Monitor requests that the Market Monitor's protest and Market Power Report be included for the Commission's consideration in the record of this proceeding. The Market Monitor is prepared to undertake analysis in addition to that included in the Market Power Report at the discretion and direction of the Commission.

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1 16 U.S.C. § 824b.

2 Code of Virginia § 56-90.

The Market Monitor's protest is provided as Attachment A. The redacted public version and a confidential version filed under seal of the Market Power Report is provided as Attachment B. The confidential version includes PJM market sensitive information that must be strictly withheld from disclosure. The Market Monitor designates the information as covered under the "Ruling Providing Additional Protective Treatment for Extraordinarily Sensitive Contracts and Prices Information," and its attached form of nondisclosure certificate included as Attachment C, issued October 6, 2026.

Based on the concerns identified in the report, the Market Monitor recommends that the merger be rejected. No behavioral remedies are sufficient to mitigate the market power created by the merger or the acquisition of market power in PJM by NextEra, which has different incentives than Dominion currently has as a standalone Virginia utility and power supplier.

If, nevertheless, the merger is approved, it should only be approved on condition of the inclusion of specific behavioral remedies necessary to address, at least in part, the insufficiency of specific and defined market power mitigation elements of PJM's tariff and to protect customers in Virginia from the exercise of market power. None of the behavioral commitments would create a burden on applicants because all are designed to help ensure competitive behavior.

Behavioral commitments recommended by the Market Monitor (at 12–13) include:

1. Develop cost-based energy market offers using a fuel cost policy that passes the Market Monitor'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.

8. Will remain in the PJM Regional Transmission Organization.

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The Market Monitor recommends that the Commission reject the proposed merger. If the Commission determines to accept the merger, the Market Monitor recommends that any order approving the merger include the recommended behavioral commitments.

WHEREFORE, the Market Monitor respectfully requests that the Commission issue an order accepting the Market Monitor's protest and Market Power Report into the record and consider it along with the Market Monitor's recommendations when resolving the issues raised in this proceeding.

Respectfully submitted,



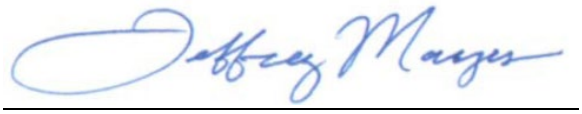
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Dated: November 4, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled in this proceeding and attached hereto.

Dated at Eagleville, Pennsylvania,
this 4th day of November, 2026.



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Attachment A

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NextEra Energy, Inc.	)	Docket No. EC26-131-000
Dominion Energy, Inc.	)	

PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rules 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 this protest of the filing on July 15, 2026 ("July 15th Filing"), requesting approval of a proposed transaction ("Transaction" or "Merger") under Section 203 of the Federal Power Act in which NextEra Energy, Inc. ("NextEra") will acquire Dominion Energy, Inc. ("Dominion" and, together with NextEra, the "Applicants").[3] According to NextEra, the Merger will create the "largest power company and third largest company in the energy sector in the United States" and "number one in America in total power generation, the world's leader in renewables and energy storage, America's number one gas generator and second largest nuclear generator," also combining

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1 18 CFR §§ 385.211 (2026); 16 U.S.C. § 824b.

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT"), the PJM Operating Agreement ("OA") or the PJM Reliability Assurance Agreement ("RAA").

3 The July 15th Filing states that after the Transaction, shareholders of NextEra will own approximately 74.5 percent of the combined company and shareholders of Dominion will own approximately 25.5 percent of the combined company.

two vertically integrated utilities in four Southeast states, each with captive rate payers.[4] Both companies have generation, transmission, and distribution assets as part of their regulated utilities. The Merger also involves merchant generation, merchant transmission, and natural gas pipelines. Both companies are highly involved in serving current and future data center load. The Merger would result in an unprecedented amount of economic and political power for NextEra. The Commission's standard merger review process does not contemplate all of the implications of the Merger. The potential harms to the public interest include deterrence of potential competition, control of inputs to production, control of access to customers, rent seeking, expansion of monopoly power, incentives for further increases in the concentration of asset ownership in PJM, and potential impacts on PJM's governance.[5]

The July 15th Filing fails to address increases in market power created by the Merger. The July 15th Filing should be rejected. The July 15th Filing (at 2) states that "over the longer term, the combined company's scale, financial strength, and operational breadth is likely to yield customer benefits." The July 15th Filing fails to explain how this "likely" result could occur over the longer term and how long the longer term is. The July 15th Filing provides no mechanism that would result in long term customer benefits. The July 15th Filing does not define the relevant customers in this claim. Scale, financial strength, and operational breadth all enhance market power and any economic gains are more likely to accrue to investors rather than customers. The Applicants have not asserted that this Merger enhances competition or market efficiency. The Applicants have not explained why the Merger is

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[4] *See* NextEra Energy presentation to investors, "NextEra Energy + Dominion Energy: Forming America's leading utility business and energy infrastructure company to reliably and affordably meet America's historic power demand," (May 18, 2026) ("NextEra Merger Presentation") at 12–13; and *See* NextEra Energy, Inc. and Dominion Energy, Inc. Merger Call (May 18, 2026) ("NextEra Merger Call")), <*https://www.investor.nexteraenergy.com/~/media/Files/N/NEE-IR/news-and-events/events-and-presentations/2026/2026-05-18%20NEED_%20Transcript.pdf*> at 3.

[5] Rent seeking is defined as economically wasteful expenses incurred to secure or maintain a monopoly position in a market. *See* Tirole, Jean, *The Theory of Industrial Organization*, Cambridge: MIT Press, (2000) at 76.

consistent with the public interest.[6] Approval of the Merger under Section 203 of the Federal Power Act requires a finding that it is consistent with the public interest. Although Section 203 has been interpreted not to require Applicants to show benefits to the public interest, it cannot be approved if concerns about harm to competition are supported with evidence in the record, and those concerns are not mitigated.[7] The Merger cannot be approved "on balance," where on balance the transaction is harmful because the Applicants do not show that benefits offset unmitigated harms.[8] In this case, Applicants show no offsetting benefits. The Merger cannot be approved, including on balance, without a finding that benefits to the public interest offset the harm identified in the record.[9] Applicants have not explained why the Merger is consistent with the public interest.

Consideration of the impact of the Merger on market power is critical to determine whether the Merger is in the public interest, given that competitive markets are relied upon

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6 *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").

7 *See* 16 U.S.C. § 824b; *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 77 FERC ¶ 61,263 (1996) (*mimeo*), FERC Stats. & Regs. ¶ 31,044 (1996) ("Merger Policy Statement"), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) ("Merger Policy Statement"); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) ("Order No. 642"); *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005) ("Order No. 669"), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 ("Order No. 669-A"), *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006) ("Order No. 669-B").

8 *See* Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 68597 ("we recognize that there may be unusual circumstances in which, for example, a merger that raises competitive concerns may nevertheless be in the public interest because customer benefits (such as the need to ensure reliable electricity service from a utility in severe financial distress) may clearly compel approval. Consistent with the Guidelines, the Commission would continue to account for such circumstances and could, in a particular case, conclude that on balance the merger is consistent with the public interest").

9 *See* 16 U.S.C. § 824b(b) ("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").

to ensure just and reasonable rates in PJM.[10] The Commission has already noted that the application was incomplete and insufficient to assess changes in structural market power.[11] Applicants provide results showing no HHI screen failures for the PJM market. The Market Monitor's attached market power analysis shows that the Merger would result in small increases in structural market power relative to Dominion's current market power and dominant market position in PJM and based on existing assets under historic market conditions. The analysis also shows that NextEra would purchase market power and that NextEra's market power in the PJM markets would increase significantly.

Equally or more important impacts of the Merger are the elimination of a significant competitor in generation and transmission, deterrence of potential competition from smaller, innovative potential entrants, control of inputs to production, control of access to customers, rent seeking, expansion of monopoly power, the incentive for other very large competitors to engage in further acquisitions to keep pace with the merged company with the result being a greater concentration of asset ownership in PJM markets, and potential impacts on PJM's governance.

I. COMMENTS

A. The Harm to Competition Due to the Merger Requires Consideration of Competitive Effects that Cannot be Measured by Traditional Metrics.

The competitive effects of the Merger extend far beyond the change in HHI or the change in pivotal supplier metrics based on the existing generation assets owned by NextEra and Dominion in the PJM market. As the Department of Justice and Federal Trade Commission pointed out in their comments on the Commission's merger guidelines: "Structural measures, such as market shares and market concentration, should be the starting

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[10] *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).

[11] *See* Deficiency Letter, Docket No. EC26-131 (September 23, 2026).

point of an analysis of market power, not its end."[12] [13] The Commission's rules also call for further analysis, and the Commission has stressed the importance of considering other evidence of anticompetitive effects.[14]

Dominion is the second largest owner of capacity in the PJM market and the largest owner of capacity in the constrained Chesapeake submarket, which includes Northern Virginia's Data Center Alley and the Baltimore-Washington D.C. metropolitan area.[15] NextEra already has plans to build at least 4.3 GW of generation in PJM, particularly in southwest Pennsylvania, which would place it in the top ten owners of PJM capacity without the Merger.[16] NextEra also has an approved transmission project, the MidAtlantic Resiliency Link, that connects southwest Pennsylvania to Data Center Alley.[17] The new and expanding Mountain Valley Pipeline natural gas project, partially owned by NextEra, connects the same area of Pennsylvania to a critical point on the Transco pipeline in the Dominion Zone of Virginia.[18] None of these factors was, or could be, included in analysis of historical data, given the rapidly evolving changes. This combination of existing and future assets, along with

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12 *Cf*. U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 4 (Aug. 19, 2010) (discussing use of market shares and concentration to assess competitive effects of merger), <*https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf*>.

13 Comment of the U.S. Department of Justice and the Federal Trade Commission, Docket No. RM16-21-000 (November 28, 2016) at 2–3.

14 *See* 138 FERC ¶ 61,109 (2012) at P 36.

15 *See* Monitoring Analytics, L.L.C., *2026 Quarterly State of the Market Report for PJM: January through June*, Section 5: Capacity at Table 5-4.

16 *See* NextEra Energy, "NextEra Energy, U.S. Department of Commerce and Government of Japan finalize commercial terms; reach funding milestone for up to 10 GW of gas-powered generation," News Release (August 12, 2026), <https://www.investor.nexteraenergy.com/news-and-events/news-releases/2026/08-12-2026-211611676>.

17 *See* NextEra Energy Transmission, LLC., "MidAtlantic Resiliency Link," website, <*https://www.midatlanticresiliencylink.com/map*>.

18 *See* Mountain Valley Pipeline, Project Overview, Website, accessed September 29, 2026, <https://www.mountainvalleypipeline.info/project-overview>.

Dominion's market position with access to captive customers, a regulated rate base and the largest concentration of current data center load and future data center load growth in PJM, creates a significant threat to competition in the PJM markets. Applicants' limited market power analysis does not and cannot adequately account for all the horizontal and vertical competitive effects, including immediate and future, this Merger would create in the PJM market alone.

The screens required by the Commission's Merger Policy Statement do not definitively determine whether a merger will cause harm to the public interest.[19] In 2023, the Department of Justice and Federal Trade Commission antitrust agencies adopted new merger guidelines that emphasize the importance of considering harm to competition that goes beyond static measures of market concentration.[20] The Agency Guidelines state that:

> Mergers that substantially lessen competition or tend to create a monopoly increase, extend, or entrench market power and deprive the public of these benefits [of competition]. Mergers can lessen competition when they diminish competitive constraints, reduce the number or attractiveness of alternatives available to trading partners, or reduce the intensity with which market participants compete.[21]

The Merger of NextEra and Dominion, would reduce competition by eliminating a competitive merchant generator and a competitive transmission company in the PJM market, by reducing competition from alternative suppliers of new thermal generation, new renewable generation, new energy storage resources in Virginia, by eliminating a competitor

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19 *See* 18 CFR Part 33; *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) ("Order No. 642"); *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005) ("Order No. 669"), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 ("Order No. 669-A"), *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006) ("Order No. 669-B").

20 United States Department of Justice and Federal Trade Commission, *Merger Guidelines* (December 18, 2023), <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>. ("Agency Guidelines")

21 Agency Guidelines at 1.

to build new transmission, by reducing competition through entry deterrence, and by creating an incentive for further increases in the concentration of asset ownership in PJM. Each of these causes of competitive harm can be tied to one or more of the enumerated Agency Guidelines, which identify the various ways a merger can harm competition.[22]

1. The Merger will Reduce Competition from New Entry and Remove an Active Competitor in the PJM Market.

The Applicants' static and traditional market power analysis in the July 15th Filing relies on a view of markets from before competitive wholesale power markets existed, fails to consider the actual current and evolving competitive environment, and fails to look forward and recognize the effects on the incentives for the entry of new, innovative, competitive suppliers of generation and transmission in PJM and other markets.

Economists have long recognized the incentive and ability of a large incumbent firm (or "first mover") to deter entry in a market using its access to capital, information, or cost advantages to signal a competitive advantage that would limit the profitability of its potential competitors.[23] The competitors, receiving the signal of lower potential profits for themselves, scale back their plans or do not enter the market, leaving higher profits for the large incumbent. Industries with economies of scale and barriers to entry, like electric power, are more vulnerable to this exercise of market power. NextEra has claimed competitive advantages due to the Merger, including taking advantage of their regulated business with ratepayer guaranteed returns on investments, enhanced access to credit, lower financing costs, greater access to supply chain inputs, established analytics capabilities, and access to both captive ratepayers and data center customers.[24] These advantages signal NextEra's

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22 *See* Agency Guidelines at 2-3.

23 *See* Tirole, Jean. *The Theory of Industrial Organization.* Cambridge: MIT Press (2000) at Chapter 8: Entry, Accommodation, and Exit, especially discussion of Bain (1956), *Barriers to New Competition.*

24 *See* NextEra Merger Presentation at 18–24, 33, 34.

expectations of profitability and strategic advantages that would deter entry by other competitors capable of competing in the market to build new generation and transmission. If competitors believe that NextEra can undercut their costs, access limited inputs to production before them, reduce their profitability or push them out of the market, they will be less likely to enter and compete, even if they could have otherwise entered with an expectation of profitability. In addition, the same factors provide a strong incentive for other large incumbents to further consolidate ownership of assets in PJM markets, further increasing overall structural market power.

NextEra's value proposition case for the Merger relies on market dominance. To summarize, NextEra states "that starts with scale."[25] The benefits of scale available to the nation's largest utility would be to "buy more efficiently, build more efficiently, finance more efficiently, operate more efficiently."[26] This would be done primarily in "constructive regulatory environments" by growing the NextEra/Dominion rate base of "regulatory capital employed at 11 percent through 2032."[27] NextEra explains the many measures by which the merged company would be number one in the nation.[28] NextEra explains how the "combined company's scale would enable significant buying power," which it explains would combine with size and experience to translate into the ability to "build more efficiently," and how NextEra's guarantee of debt would increase Dominion's credit rating, leading to lower cost financing.[29] NextEra asserts that these advantages will drive "operating and capital efficiency to drive affordability while meeting increased power demand."[30] The discussion of the

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25 *See* NextEra Merger Call at 3.

26 *See* NextEra Merger Presentation at 6.

27 *See* NextEra Merger Call at 3.

28 *See* NextEra Merger Presentation at 8.

29 *See* NextEra Merger Presentation at 20–22.

30 *See* NextEra Merger Presentation at 19.

benefits of scale, number one status, and growing regulatory capital serves as a signal of strength to the market indicating an intention of NextEra to be the primary builder of new generation and transmission in its service territories and beyond. Even the promised $2.25 billion in bill credits to customers signals NextEra's commitment to its competitors of future growth and profitability. NextEra's value proposition leaves little room to imagine a competitive market where other suppliers would bid for opportunities to provide major generation and transmission projects to meet load growth expectations.

NextEra touts some of these advantages as sources of potential cost savings to customers, along with reliability, customer service, and $2.25 billion in bill credits.[31] These claims are unprovable and are not guaranteed. For example, how will the Merger improve the reliability of local utility service? There is no reason to expect that the merged profit maximizing company with fiduciary responsibilities to its shareholders will pass on the benefits of any market power advantages to customers.[32] Regardless of the unsupported claims, the result of the Merger will be that the PJM market will be less competitive. That result should be avoided because reduced competition will hurt customers. The effects of deterred competition from other developers of gas-fired generation, renewable energy, energy storage resources, and transmission infrastructure would remain. The effects of deterred entry are not only a lack of price competition in the wholesale electricity market. They also include the lack of growth opportunities for other providers of new generation for data centers and the lack of new innovations spurred by competition to build merchant generation and transmission assets. In addition, the Merger would create an incentive for further increases in the concentration of asset ownership in PJM as existing large companies will have an incentive to merge with or acquire other existing assets. These anticompetitive

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31 *See* NextEra Merger Presentation at 16.

32 *See Id*.; *see also* Presentation "NextEra Energy + Dominion Energy: Forming America's leading utility business and energy infrastructure company to reliably and affordably meet America's historic power demand," (May 18, 2026) ("NextEra Merger Presentation") at 16–24.

effects are long lasting and can change the trajectory of an industry or of a market. In the long run, reduced competition results in higher prices for customers. Applicants have not actually demonstrated or even explained in detail the benefits of the merger to customers or to competition or to the markets or to PJM.

In addition to deterring other competitors, the Merger would remove a competitor from the PJM market. NextEra's purchase of Dominion's access to the captive ratepayers of Virginia would shift NextEra's historic participation in the PJM market as a competitive developer of merchant generation and merchant transmission to a role that relies on guaranteed regulated investments, eliminating a substantial competitor in the PJM market.[33] This shift would remove the risk inherent in participating as a competitive supplier. It would also combine NextEra's merchant assets and the Dominion assets, increasing the risk of coordination among operating companies.[34] The regulated advantage also serves as a significant entry deterrent, reducing competition from other potential suppliers of new generation and transmission, because NextEra's competitors would know that NextEra faces no risk of loss on its regulated investments, while they face competitive market risks.

NextEra's advantages with creditors and in financing also stem from the regulated rate base model, as the guaranteed rate of return reduces risks to purchasers of equity and lenders. NextEra explains in its public statements how this would translate to a dominant market position and profitability for its investors.[35] Lower credit requirements and lower financing costs provide the ability for NextEra to outbid competitors for merchant projects and to justify building its own generation rather than contracting for new Dominion

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[33] *See* Agency Guideline 2: "Mergers Can Violate the Law When They Eliminate Substantial Competition Between Firms."

[34] *See* Agency Guideline 3: "Mergers Can Violate the Law When They Increase the Risk of Coordination."

[35] *See* NextEra Merger Presentation at 30–37.

generation through existing competitive solicitation processes.[36] Currently, both NextEra and Dominion already have this type of advantage. There is no evidence that combining the companies is necessary in order to create incentives to build new generation or new transmission in PJM or in any other market. The combined company would have a stronger financing advantage, but, more importantly, each would no longer have the other as a competitor with a similar cost advantage. This is another way in which the Merger would reduce the intensity of competition by both eliminating a competitor and deterring entry by other competitors, especially smaller companies.

2. The Merger would Further Entrench Monopoly in Virginia.

Dominion is currently the largest vertically integrated utility in the PJM region. It provides electricity to captive customers at regulated rates as a monopoly provider. It also builds transmission and generation in its service territory with a guaranteed rate of return on investment. Its competition is limited. Large customers may shop for competitive energy suppliers but under rules that some argue do not provide a level playing field.[37] In some cases, Dominion must demonstrate that its own investments in new construction are competitive with alternative suppliers or procure new generation through a competitive process.[38] The fact is that all major thermal generation projects built in its service territory in the last decade have been built by Dominion, and Dominion has two more large combined cycle projects planned.[39]

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[36] For examples, see Dominion Energy website, "Dispatchable Generation Proposals," <https://www.dominionenergy.com/about/making-energy/dispatchable-generation-proposals> and "Solar, Onshore Wind, and Energy Storage Proposals," <https://www.dominionenergy.com/about/delivering-energy/renewable-projects/solar-onshore-wind-and-energy-storage-proposals>.

[37] *See* Virginia Code § 56-577(A).

[38] *See*, for example, Virginia HB 895/SB 448 and Virginia Code § 56-585.1:4.

[39] For power plants built by Dominion in the last decade, *see Application of Virginia Electric and Power Company*, Case No. PUE-2012-00128, Final Order (Va. State Corp. Comm'n Aug. 2, 2013) *and see Application of Virginia Electric and Power Company*, Case No. PUE-2015-00075, Final Order (Va. State

NextEra has stated its plans clearly. The gains it sees in the merger lie in its building new generation and transmission funded by access to advantages based on Dominion's regulated rate base and captive customers.[40] The plan to focus on the regulated monopoly business model as the source of growth for NextEra would further entrench the dominant monopoly position of the largest utility in Virginia and in the PJM region.[41] NextEra states that it expects the opportunities to build more generation in PJM to "accrue to the rate regulated utilities that are in PJM" to support data center load growth.[42] There is a trend

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Corp. Comm'n Mar. 29, 2016); for new planned power plants proposed by Dominion, *see Dominion Energy, Inc.*, Cumberland Energy Center <*https://www.dominionenergy.com/about/making-energy/power-stations/cumberland-energy-center* *and see Dominion Energy, Inc*., Chesterfield Energy Reliability Center <*https://www.dominionenergy.com/about/making-energy/power-stations/chesterfield-energy-reliability-center*>; for the most recent merchant power plant in Virginia *see Panda Stonewall LLC*, Docket No. ER16-2643-000 (Sept. 22, 2016); for the list of solar projects acquired by Dominion, *see* Triennial Market Power Analysis for Northeast Region of Virginia Electric and Power Company, et al. under ER10-1410, et al. at 3-5; for the evidence identified by Virginia SCC that Dominion's lack of competitive procurement, utility ownership, ratepayer risk and the absence of third-party alternatives in developing Coastal Virginia Offshore Wind ("CVOW") project, *see Application of Virginia Electric and Power Co.*, Case No. PUR-2018-00121, Final Order (Va. State Corp. Comm'n Nov. 2, 2018), at 8-16. <*https://www.sec.gov/Archives/edgar/data/715957/000119312526063120/d-20251231.htm*>.

40 *See* NextEra Merger Presentation at 30–36.

41 *See* Agency Guideline 6: "Mergers Can Violate the Law When They Entrench or Extend a Dominant Position."

42 *See* NextEra Energy, Inc. and Dominion Energy, Inc. Merger Call (May 18, 2026), <*https://www.investor.nexteraenergy.com/~/media/Files/N/NEE-IR/news-and-events/events-and-presentations/2026/2026-05-18%20NEED_%20Transcript.pdf*> at 11.

towards consolidation of generation ownership in the PJM market in the last five years.[43] [44] The current trend toward consolidation in generation ownership and the expressed desire of some utilities in PJM to "reregulate" the currently competitive business of generation procurement raises the risk of harm to competition due to the Merger.[45] [46] For example, PPL has called for a change to Pennsylvania law that would "allow regulated electric utilities to invest in generation resources, up to and including owning and operating generation resources again."[47] Exelon has also been lobbying for changes to state laws to allow it to build

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[43] *See* Monitoring Analytics, L.L.C., annual state of the market reports for PJM, years 2020 through 2025, for more information. Specifically, *see* Volume. 2, Section 3: Energy Market, "Completed transfers of entire resources," and "Completed transfers of partial ownership of resources,". (2020 Report, Tables 3-82 and 3-83; 2021 Report, Tables 3-97 and 3-98; 2022 Report, Tables 3-98 and 3-99; 2023 Report, Tables 3-93 and 3-94; 2024 Report, Tables 3-92 and 3-93; 2025 Report, Tables 3-95 and 3-96) within each report.

[44] *See* Agency Guideline 7: "When an Industry Undergoes a Trend Toward Consolidation, the Agencies Consider Whether It Increases the Risk a Merger May Substantially Lessen Competition or Tend to Create a Monopoly."

[45] *See* Straus, Gabriel, "Utilities lobby for re-regulation across PJM: Timeline tracks private meetings, legislation, advertising," Energy & Policy Institute (March 31, 2026), <*https://energyandpolicy.org/utilities-lobby-for-re-regulation-pjm/*>, accessed September 27, 2026.

[46] *See Wood Mackenzie,* Is the competitive power market model broken? Energy Gang Podcast (August 5, 2026) at 36:14. (Carim Khouzami, Executive Vice President for Transmission and Development at Exelon said "[W]e need to let the utilities once again own generation.") <https://www.woodmac.com/podcasts/energy-gang/is-the-competitive-power-market-model-broken/>; *see also* PPL Corporation, First-Quarter 2026 Earnings Results (May 8, 2026), ("… enable the utility to own generation again, which we obviously support. … [Hyperscalers] like the fact that we can control everything in the integrated utility.") <https://investors.pplweb.com/events>.

[47] Martin, Christine. "Opinion – Addressing Pennsylvania's looming energy crisis: Put the power back in Pennsylvania," PPL Electric Utilities News Release (January 27, 2025), <*https://news.pplweb.com/Opinion-Addressing-Pennsylvanias-looming-energy-crisis-Put-the-power-back-in-Pennsylvania*>.

and own regulated generation.[48] NextEra itself states the expectation that "it's going to be up to the incumbent utilities to really help drive and solve the problem" of PJM's capacity market shortage. NextEra touts this move away from competitive markets as an advantage of the merger for NextEra.[49] While it is the stated objective of some existing transmission owners in PJM to return to the cost of service model for building generation, that model is not consistent with competitive markets. NextEra is stating clearly that one of their goals is to undercut competitive markets by building generation underwritten by the captive utility customers of Dominion.

3. The July 15th Filing Does Not Consider Planned New Generation Projects in the PJM Market.

Perhaps the most crucial market in PJM today is the market for new generating capacity to support data center load growth. Data from the PJM generation interconnection queue shows that both NextEra and Dominion are actively involved in the market for new generation. Table 1 shows the sum of requested MW of the Applicants' generation interconnection projects submitted in the Transition Cycle 1 ("TC1"), Transition Cycle 2 ("TC2") and Cycle 01 ("C01") as well as their market share (each company's requested MW divided by PJM total requested MW in all the cycles) by service request status along with PJM total requested MW by service request status.[50] [51] Dominion requested 10.2 GW, or 4.6

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48 Kearney, Laila. "Exelon to intensify push to own Mid-Atlantic power plants, CEO says," Reuters (September 23, 2025), <*https://www.reuters.com/sustainability/boards-policy-regulation/exelon-intensify-push-own-mid-atlantic-power-plants-ceo-says-2025-09-23/*>.

49 *See* NextEra Merger Call at 10.

50 *See PJM* Cycle Service Request Status <*https://www.pjm.com/planning/m/cycle-service-request-status*> (The Table is based on Generation Interconnection project data and withdrawn projects are excluded. The Serial Service Requests are not included for confidentiality reasons. MW refers to the Capacity MW.)

51 Engineering Planning ("EP") status refers to a project that is completed between zero and 25 percent. Under Construction ("UC") status refers to a project that is completed between 26 and 100 percent. Under Construction, Partially In Service ("UC-ISP") status refers to projects with UC status while

percent of PJM total requested queue and NextEra requested 5.4 GW, or 2.4 percent of PJM total requested queue. Dominion is the owner of 100 percent of the PJM cycle queue generation interconnection projects with Under Construction status and 98.6 percent of the projects with Under Construction (Partially In Service) in TC1, TC2 and C01 cycles. In other words, Dominion's generation portfolio is likely to increase in the near future. NextEra's requested MW includes 4 GW of the new gas-fired generation to serve large load in Pennsylvania that is part of the U.S.-Japan trade deal.[52]

Table 1 Cycle Service Requested MW by Dominion and NextEra by Service Requests Status

	Dominion		NextEra		PJM
Service Requests Status	Capacity MW	Share	Capacity MW	Share	Total
Active	7,979.5	3.7%	5,358.0	2.5%	216,712.7
Engineering and Planning	450.0	8.8%			5,133.6
Under Construction	1,206.2	100.0%			1,206.2
Under Construction (Partially In Service)	576.6	98.6%			584.6
Total	10,212.3	4.6%	5,358.0	2.4%	223,637.0

The generation interconnection process, as well as generation equipment procurement, involves long lead times. Gas turbine supply is constrained and the gas turbine manufacturers' backlog is growing due to demand growth from large load additions, both grid connected and behind the meter.[53] As a result, developers who have secured

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part of the project is in service. *See* PJM Manual 14C: Interconnection Facilities, and Network Upgrade Construction.

52 *See U.S. Department of Commerce*, Fact Sheet: New Energy Projects from U.S. - Japan Trade Deal (March 20, 2026) <*https://www.commerce.gov/news/fact-sheets/2026/03/fact-sheet-new-energy-projects-us-japan-trade-deal*>.

53 *See* Charles River Associates Review of Data Center Forecast Methodology presented at Load Analysis Subcommittee on August 26, 2026 <*https://www.pjm.com/-/media/DotCom/committees-groups/subcommittees/las/2026/20260826/20260826-item-04---charles-river-associates-review-of-data-center-forecast-methodology.pdf*>; *see also GE Vernova Inc.*, 2025 Investor Update (December 9, 2025) <*https://www.gevernova.com/sites/default/files/gev_webcast_presentation_12092025.pdf*>; *see also S&P Global* (December 2, 2025) Navigating the US data center power crunch: On-site solutions offer a faster path to power <*https://www.spglobal.com/en/research-insights/special-reports/look-forward/data-center-frontiers/navigating-us-data-center-energy-demand*>.

interconnection positions backed by turbine orders, such as Dominion and NextEra, benefit from preemptive control of the scarce resources, creating a new barrier to entry against potential new entrants.[54] In fact, NextEra stated that its inventory in the current market "should allow [NextEra] to secure premium returns."[55] The Merger combines the two companies' secured orders for future gas turbines and existing relationships with data center customers, two crucial and scarce inputs to entry in the market for new generation to serve data center load. Any rival generation builder uses these inputs to compete with NextEra and Dominion. NextEra would have the incentive and ability to limit its competitors' access to these inputs.[56]

4. The Merger Would Reduce Competition for Transmission Projects.

NextEra and Dominion currently participate in PJM's competitive transmission procurement process developed under Order 1000. In one such project, NextEra is constructing the MidAtlantic Resiliency Link, which is expected to allow more power to flow on the PJM grid from the shale gas production region of PJM into the constrained Chesapeake submarket which faces gas pipeline and electric transmission constraints along with a

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[54] *See NextEra Energy, Inc.* 2026 September Investor Presentation (September 8, 2026) ("Secured initial gas turbine capacity with GE Vernova for 4 GW of combined-cycle gas plant capacity.") <*https://www.investor.nexteraenergy.com/~/media/Files/N/NEE-IR/news-and-events/events-and-presentations/2026/September%20Investor%20Presentation_%20vF.pdf*> and *Dominion Energy, Inc.* Q4 2025 Earnings Call Presentation (February 23, 2026) ("6.5 GW of capacity turbines secured") <*https://s2.q4cdn.com/510812146/files/doc_financials/2025/q4/2026-02-23-DE-IR-4Q-2025-earnings-call-slides-vTCI.pdf*>.

[55] *See NextEra Energy, Inc.* 2025 Investor Conference (December 8, 2025) <*https://www.investor.nexteraenergy.com/news-and-events/events-and-presentations/2025/12-08-2025*> ("[T]he pool of developers that are actually able to have inventory in 2029 and 2030 is pretty thin. Remember, very few people have the ability to have safe harbor equipment, fewer still have supply chain expertise to deal with the tariffs, and no one has the inventory that we have. For us, this market should allow us to secure premium returns. And in fact, I'm hopeful to take market share in this market." Webcast at 1:23:00).

[5656] *See* Agency Guideline 5: "Mergers Can Violate the Law When They Create a Firm That May Limit Access to Products or Services That Its Rivals Use to Compete."

disproportionate amount of data center load growth.[57] This new 500 kV transmission line will connect NextEra's proposed 4 GW natural gas fired generation in Pennsylvania to northern Virginia near Data Center Alley.[58] The requested in service year for both of NextEra's new generation and transmission projects is the same, 2031. In other words, NextEra's new 4 GW generation in Pennsylvania may immediately be in the same submarket as Dominion's generation, a market structure that would lead to different market power analysis results.

Dominion also has multiple high voltage regional transmission projects in progress. With a limited number of transmission owners and developers, including major competitors like NextEra in the competitive transmission process is important. Currently, NextEra and Dominion both compete to build transmission in PJM. The Merger would remove a significant competitor from the market for competitively developed transmission. It would also reduce or eliminate NextEra's incentive to engage in competitive transmission projects in PJM because it would gain access to more opportunities as a PJM transmission owner to invest its capital in noncompetitive projects in Virginia with a guaranteed rate of return as the regulated monopoly.

Approved projects, both cost of service and competitive, become part of PJM's Regional Transmission Expansion Plan ("RTEP"). The approved RTEP projects include multiple high voltage and lower voltage transmission lines, including those of NextEra, that will modify the existing submarkets in PJM. The traditional, static market power analysis of the Merger cannot capture the impact of potential market power created by these new

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57 *NextEra Energy, Inc.* MidAtlantic Resiliency Link <https://www.midatlanticresiliencylink.com/>.

58 For the PJM board approval of multiple RTEP projects *see PJM Board Whitepaper February 2026* presented at Transmission Expansion Advisory Committee on February 2, 2026 <https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2026/20260203/20260203-pjm-board-whitepaper-february-2026.pdf>; For NextEra's transmission project *see NextEra Energy, Inc.* MidAtlantic Resiliency Link <https://www.midatlanticresiliencylink.com/>; For NextEra's new natural gas power plant location *see NextEra Energy, Inc*. Application of NextEra Energy Transmission MidAtlantic, Inc., Docket Nos. A-2026-3060856 & A-2026-3060921 (Pa. P.U.C. Apr. 23, 2026).

projects that are already approved and expected to be in service in the near future. This failure of the current model to capture the evolution of markets is even more significant in the current environment characterized by the rapid expansion of generation and transmission capability largely to meet data center load. The Applicants are investing heavily in order to own more PJM assets. There is no good reason to combine these two competitors

Table 2 shows estimated project costs for the approved RTEP projects of Dominion and NextEra that are in active, under construction or planning status (excluding cancelled, withdrawn or already in service projects). Table 2 also includes NextEra and Dominion's share and the PJM total RTEP estimated project costs.[59] Table 2 separately shows the cost estimates for the subset of RTEP projects that are high voltage projects, those at 500 kV or above. Of all RTEP project costs, 26.2 percent is for Dominion's RTEP projects, the largest share among transmission owners in PJM, while 4.1 percent is for NextEra's RTEP projects, the 9th largest share. The Applicants' shares of high voltage lines is significantly greater than their share of all transmission RTEP projects. The combined investment of the Applicants is 30.3 percent of all transmission projects and 53.1 percent of all high voltage RTEP project costs.

Table 2 RTEP project costs allocated to PJM customers for Dominion and NextEra transmission projects by Voltage Level (in millions) [60]

	All Voltage Cost Allocation	Share	High Voltage Cost Allocation	Share
Dominion	$ 15,986.2	26.2%	$ 9,474.0	41.9%
NextEra	$ 2,519.1	4.1%	$ 2,513.1	11.1%
PJM Total	$ 60,933.9		$ 22,592.4	

[59] *See PJM* Project Status & Cost Allocation <https://www.pjm.com/planning/m/project-construction>. The table shows the sum of TEAC cost for all projects (including baseline, supplemental and network projects) with the status in one of the following: Active, Engineering & Procurement, Partially In Service – Under Construction, Under Construction and Planning.

[60] *See* PJM Interconnection, L.L.C., "Project Status & Cost Allocation" webpage, <https://www.pjm.com/planning/m/project-construction>, accessed September 29, 2026.

The Applicants are two major market participants competing for transmission projects in PJM. Dominion is already the largest transmission owner in PJM, owning the most transmission line miles of any single entity.[61] With generation and energy markets already experiencing consolidation, the proposed combination of the two major transmission owners raises concerns of both horizontal and vertical market power. The Merger would combine entities that hold a large and increasing share of generation and transmission assets in PJM.

B. The July 15th Filing Does Not Accurately Evaluate Vertical Market Power.

NextEra owns a 36.02 percent share of the Mountain Valley Pipeline ("MVP") which brings gas from the shale gas production region of West Virginia and Pennsylvania into Virginia.[62] It intersects the Transcontinental Gas Pipeline ("Transco") at Station 165 in Transco Zone 5. The MVP has a significant impact on delivered natural gas prices in Virginia. In fact, the pricing structure for Zone 5 was changed as a direct result of the MVP.[63] The price for delivered gas is now significantly different for Zone 5 North, which is north of the MVP connection at Station 165, versus Zone 5 South, which runs from Station 165 to the Georgia-South Carolina border. Delivered natural gas prices have been much higher for Transco Zone 5 South.[64]

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61 U.S. Fish and Wildlife Service. (2024). US electric power transmission lines. <https://gis-fws.opendata.arcgis.com/datasets/fws::us-electric-power-transmission-lines/about>.

62 *See* NextEra Energy, Inc. Form 10-K. U.S. Securities and Exchange Commission (February 13, 2026). <https://www.sec.gov/Archives/edgar/data/753308/000075330826000015/nee-20251231.htm>.

63 *See* S&P Global, "Platts to change Transco, zone 5 delivered South methodology, launch new Transco, Station 165 index" (June 6, 2024), <https://www.spglobal.com/energy/en/pricing-benchmarks/our-methodology/subscriber-notes/060624-platts-to-change-transco-zone-5-delivered-south-methodology-launch-new-transco-station-165-index>, accessed September 23, 2026.

64 *See*, for example, Platts Gas Daily, Vol. 43, Issue 158 (August 20, 2026), <https://spglobal.scene7.com/is/content/spglobalcom/Platts_Gas_Daily_20_August_2026pdf>, accessed September 27, 2026. The weekly average price for Transco Zone 5 North was $2.155 per MMBtu, while the price for Transco Zone 5 South was $4.089 per MMBtu.

Applicants' analysis of the vertical market power due to the MVP evaluates the HHI of Transco Zone 5 as a whole, finding an HHI of 1645, which is below but near the threshold for a highly concentrated market of 1800.[65] If Applicants properly evaluated Zone 5 North and Zone 5 South separately, it is likely that the HHI would exceed the 1800 HHI threshold. At a minimum Zone 5 North and Zone 5 South should be separately evaluated. Applicants should be required to submit additional analysis that takes into account the realities of the natural gas transmission constraints that exist within Virginia.

C. The July 15th Filing Does Not Adequately Address Reliance on Captive Customers.

NextEra touts the benefits of its and Dominion's status as regulated utilities to its investors.[66] Any derived benefit of such status that accrues to any entity other than the ratepayers raises questions about whether the asserted benefits of the Merger derive from actual increases in competition or actual cost cutting or actual efficiency rather than simple reliance on an increased base of low risk revenues from captive local ratepayers. Those benefits are not a benefit to customers but a benefit to shareholders derived from the customers of the regulated utilities that are part of the Merger. The July 15th Filing (33) cites the Commission's concern with "potential benefits being transferred from the public utility's captive customers to the public utility's shareholders." However, it does not explain how the return on the investments NextEra plans to make by building new generation, transmission, and energy storage in Dominion's service territory would be reinvested or returned to customers. Clearly NextEra intends its investments in the Dominion states to create benefits for longer than the two year period of customer bill credits. The July 15th Filing provides no explanation of how NextEra will ensure that all benefits would accrue to the public utility's captive customers rather than to shareholders.

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65 *See* July 15th Filing at 29.

66 *See* NextEra Merger Presentation at 7, 12, 22, 30.

The asserted benefits of regulated utility status, like access to capital, benefits of scale, and credit ratings, also benefit NextEra's other subsidiaries and unregulated investments. For example, NextEra explains how NextEra's credit rating will benefit from adding Dominion to its rate base.[67] By growing the regulated rate base through the Merger, NextEra plans to use these benefits, derived from the captive customers of Dominion, to increase its profitability. The Merger would also create an incentive for NextEra to invest in projects where ratepayers take on risk and not in competitive projects where investors take on risk, contrary to the public interest. The July 15th Filing does not explain how the profits earned by NextEra's unregulated business units that benefit from the assets, economies of scale, and protection from risk derived from the regulated rate base will be returned to customers. It is clear that these profits will not be returned to customers.

The July 15th Filing explains (at 34–38) the review processes under state law that protects customers from "untoward utility and affiliate practices." Simply citing state laws does not adequately demonstrate that utility ratepayers will not be the source of benefits to shareholders. The issue lies in the fact that the market power, company growth, and benefits of scale that benefit NextEra as a whole are ultimately derived from the captive ratepayers that are a significant part of both companies' revenues. The Merger filing is explicit that there are significant benefits to the new company based on the significant, low risk revenues from captive ratepayers. This is not a matter of accounting or tracking or untoward practices. It is a fact, recognized in the July 15th Filing, that reliance on a base of regulated revenues will provide benefits to the market activities of the new company, including investments in generation and transmission. This is another reason why the July 15th Filing should be rejected.

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67 *See* NextEra Merger Presentation at 22.

D. Applicants Provided Insufficient Information Identifying the Assets Involved in the Merger.

The July 15th Filing states (at 16) that NextEra owns and controls 66 MW of "uncommitted" generation in PJM. The July 15th Filing states (at 16) that Dominion owns and operates 24,575 MW of "uncommitted" generation in PJM. NextEra's ownership will increase by 24,575 MW to 24,641 MW of generation in PJM if the Commission approves the Merger. Across the United States and Canada, NextEra owns or controls approximately 81,500 MW of generation capacity and Dominion owns or controls approximately 30,700 MW of generation capacity.

On September 15, 2026, the Commission issued a letter informing Applicants that the July 15th Filing is deficient ("Deficiency Notice"). The Deficiency Notice requests that Applicants provide additional details that were omitted in the July 15th Filing. The omitted details are necessary for an accurate analysis of the Merger, including a complete list of Applicants public utility subsidiaries and a complete list of generation owned or controlled by Applicants. Neither the July 15th Filing nor the Affidavit of Edo Macan ("Macan Affidavit") provide enough detail to substantiate the total generation owned by NextEra or Dominion, and the two sources within the filing are inconsistent. Applicants do not specify what generation resources are fully committed or uncommitted, based on power purchase agreements ("PPA"). The July 15th Filing does not provide enough detail for all intervening parties to analyze the Merger without using additional data sources. The Market Monitor relies on PJM market data for its market power analysis but is unable to verify that the supply assets included in the Macan Affidavit are the same.

Table 3 shows the total MW of generation owned by NextEra in PJM as reported in Exhibit B-1 of the July 15th Filing. According to Exhibit B-1 of the July 15th Filing NextEra is affiliated with 694.1 MW of generation in PJM. According to the Macan Affidavit (at 11), NextEra owns or purchases a total of 799.0 MW of generation in PJM. Additionally, the Macan Affidavit states (at 11) that NextEra owns 66.0 MW of uncommitted generation in PJM but also states (at 57) that NextEra owns 98.0 MW of uncommitted capacity.

Table 3 Generation Resources owned by NextEra in PJM, according to Exhibit B-1 of the July 15th Filing and the Macan Affidavit

Generation Name	Capacity Rating (MW)
Cherrywood Solar I, LLC	145.0
Chesapeake Solar Project, LLC	118.0
Energy Storage Holdings, LLC	2.0
PL Energy Illinois Wind LLC - Battery	20.0
PL Energy Illinois Wind LLC - Wind	217.5
Green Mountain Storage, LLC	10.4
Allentown Wastewater	0.9
Blue Ridge Landfill Gas	6.4
Community Refuse Landfill Gas	6.4
Crayola BTM Solar	0.9
Cumberland County BTM Landfill Gas	4.8
East Lycoming School District BTM Solar	0.3
Frey Farm Landfill Gas	3.2
Frey Farm Wind	3.2
Greater Lebanon Landfill Gas	3.2
Lycoming - County/Prison Landfill Gas	6.4
Northern Tier Landfill Gas	1.6
Pennsauken Solar 3	2.4
SUEZ Water I and II BTM microgrid	16.0
Warren County Solar	2.6
Western Berks Landfill Gas	3.0
NextEra Energy Bluff Point, LL	119.9
Total Affiliated MW as Reported in Exhibit B-1	694.1
Total Owned/Purchased MW as Reported in the Macan Affidavit (Table 1)	799.0
Total Uncommitted MW as Reported in the Macan Affidavit (Table 1)	66.0
Total Uncommitted MW as Reported in the Macan Affidavit (Table 17)	98.0

Table 4 shows the total MW of generation owned by Dominion in PJM as reported in Exhibit B-2 of the July 15th Filing, including committed and uncommitted MW. According to Exhibit B-2 of the July 15th Filing, Dominion is affiliated with approximately 24,446 MW in

PJM.[68] According to the Macan Affidavit (at 11), Dominion owns or purchases a total of 26,476 MW in PJM. Additionally, Exhibit B-2 of the July 15th filling states that Dominion owns 21,083 MW of uncommitted capacity, while the Macan Affidavit states (at 11) that Dominion owns 24,577 MW of uncommitted capacity but also states (at 57) that Dominion owns 17,034 MW of uncommitted capacity.

Without additional details on each generation resource owned by NextEra and Dominion, the discrepancies in the July 15th Filing and the Macan Affidavit cannot be accounted for. Applicants are required to report the supplier name, generation unit name, fuel type, and capacity for every generation unit.[69] Applicants are required to report the counterparty and contract duration for long term contracts when Applicants exclude fully committed generation units from their market share.[70] With the exception of the 11 solar energy subsidiaries of Dominion (See Table 4), Applicants do not provide all of the required information for their generation resources and instead aggregate total capacity in various ways throughout the July 15th Filing.

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68 Applicants report that Virginia Electric and Power Company owns approximately 21,000 MW of generation in PJM, rather than the actual total.

69 *See* 18 CFR 33.3(d)(1).

70 *See* 18 CFR 33.3(c)(4)(i)(A).

Table 4 Generation Owning Affiliates of Dominion in PJM, according to Exhibit B-2 of the July 15th Filing and the Macan Affidavit

Energy Subsidiary or Affiliate	Capacity (MW)	Committed Capacity (MW)	Uncommitted Capacity (MW)
Virginia Electric and Power Company	21,000.0	0.0	21,000.0
Buckeye Plains Solar Project, LLC	99.8	99.8	0.0
Eastern Shore Solar, LLC	80.0	80.0	0.0
Foxhound Solar, LLC	83.0	0.0	83.0
Greensville County Solar Project, LLC	80.0	80.0	0.0
Hardin Solar Energy LLC	150.0	150.0	0.0
Pickaway County Solar Project, LLC	99.8	99.8	0.0
Scott-II Solar LLC	20.0	20.0	0.0
Southampton Solar LLC	100.0	100.0	0.0
Summit Farms Solar, LLC	60.0	60.0	0.0
Wilkinson Solar LLC	74.0	74.0	0.0
OSW Project, LLC (under development)	2,600.0	2,600.0	0.0
Total Affiliated MW as Reported in Exhibit B-2	24,446.6	3,363.6	21,083.0
Total MW as Reported in the Macan Affidavit (Table 1)	26,476.0	1,899.0	24,577.0
Total Uncommitted MW as Reported in the Macan Affidavit (Table 17)			17,034.0

In the Market Monitor's attached market power analysis, generating units are assigned to the owner controlling the resource in the PJM market. The entity controlling each of the units is not clear in the data provided with the July 15th Filing, especially for the NextEra units. This is the case even when combining the information in the July 15th Filing with additional information provided by NextEra and Dominion. Additionally, power purchase agreements, which affect the uncommitted capacity assignments, are temporary, and the effects of this merger would be long lasting. More information is required to determine if refinements to the unit assignments in the Market Monitor's analysis are necessary. The Market Monitor will provide an updated analysis as needed if the response to the September 15th Deficiency Letter is sufficient to do so.

E. The Merger Would Increase Structural Market Power.

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. [71] The structural market power created by this ownership consolidation undermines competition and creates the potential for the exercise of market power, at a time when data center load growth is already resulting in noncompetitive prices.[72] Price increases that result from market power are noncompetitive, inefficient, unjust and unreasonable. The Commission's consideration of this trend in the concentration of asset ownership in PJM with every Section 203 application review is essential to ensure that the transactions are consistent with the public interest and that PJM competitive markets remain competitive. Each transaction that creates a larger company sets a precedent. The largest owner of generation in PJM, Constellation, recently increased its assets through the acquisition of Calpine.[73] This Merger would significantly expand the size of the largest, PJM utility by size, by combining Next Era with the second largest owner of capacity in PJM, Dominion. [74]

F. The Merger Would Create the Ability to Exercise Market Power and to Increase Prices in the PJM Chesapeake Submarket Above the Competitive Level.

The Commission has focused on the definition of submarkets within the PJM region.[75] Based on the Commission's orders, a submarket consists of an area within a broader market

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71 *See* Monitoring Analytics, L.L.C., annual state of the market reports for PJM, years 2020 through 2025, for more information. *Specifically*, see Volume. 2, Section 3: Energy Market, "Completed transfers of entire resources," and "Completed transfers of partial ownership of resources,". (2020 Report, Tables 3-82 and 3-83; 2021 Report, Tables 3-97 and 3-98; 2022 Report, Tables 3-98 and 3-99; 2023 Report, Tables 3-93 and 3-94; 2024 Report, Tables 3-92 and 3-93; 2025 Report, Tables 3-95 and 3-96) within each report.

72 *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*>.

73 192 FERC ¶ 61,074 (July 23, 2025).

74 *See* Agency Guideline 7: "When an Industry Undergoes a Trend Toward Consolidation, the Agencies Consider Whether It Increases the Risk a Merger May Substantially Lessen Competition or Tend to Create a Monopoly."

75 *See KMC Thermo, LLC*, 195 FERC ¶ 61,082 at PP 35–42 (2026).

with higher prices than neighboring areas, defined by transmission constraints that bind for more than five percent of annual hours, especially during high demand conditions.[76] Such submarkets exist in PJM, and the Merger creates the ability and incentive for NextEra to raise prices in a specific submarket, the Chesapeake submarket, where Dominion is already the dominant supplier of energy.

The Merger increases Dominion's existing market power with respect to the constraints that define the Chesapeake submarket. In addition, NextEra's planned 4 GW of generation in PJM is in a location that also affects the constraints into the Dominion Zone and the larger Chesapeake submarket. The Applicants' traditional, static analysis of generation ownership does not account for NextEra's planned generation and planned transmission in evaluating market power in PJM or in any PJM submarkets.

G. 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 defined market.[77] The HHI is the sum of the squared market shares of all market participants.

The Commission's Merger Policy Statement requires applicants to file a Delivered Price Test ("DPT") analysis.[78] The DPT analysis is designed to serve as a screen for impacts on competition. Applicants filed a DPT analysis, the Macan Affidavit, that did not identify any competitive concerns. In response to concerns raised that Section 203 proceedings should

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[76] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 268 (2007); *see also Exelon Corp.* 138 FERC ¶ 61,167 at P32 (2012) ("The Commission has stated that any proposal to use an alternative geographic market must include a demonstration regarding whether there are frequently binding transmission constraints during historical seasonal peaks and at other competitively significant times that prevent competing supply from reaching customers within the proposed alternative geographic market.").

[77] *See* U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, 57 Fed. Reg. 41,552 (1992); Merger Policy Statement, FERC Stats. & Regs. at 30,119–20.

[78] *See* 18 CFR Part 33; Merger Policy Statement.

not turn on "that the proposed filing requirements place the Commission in a position of relying on merger applicants' potentially biased analysis," the Commission indicated that it "will continue to use all means available to ensure that merger applications are complete, accurate, and free from bias."[79] A check on whether Applicants' analyses contain bias is the consideration of alternative analyses. In the Merger Policy Statement, the Commission recognized the limits of the DPT analysis, particularly when applied to wholesale power markets rather than the prior vertically integrated utility status quo at the time of the Merger Policy Statement.[80] The Merger Policy Statement explicitly welcomes alternative analyses from intervenors.[81] Rejecting alternative analyses without explanation because they are not

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79 Order No. 642 *mimeo* at 24–25.

80 *See* Order No. 642 *mimeo* at 17 ("One value of the screen process is that some mergers may be quickly approved if the evidence as to the lack of effect on competition is convincing and verifiable and the merger is otherwise found to be consistent with the public interest. The screen process may also be useful in narrowing issues that may require further analysis. This can be especially helpful to intervenors. In addition, the screen process is useful to suggest possible mitigation measures if there is a potential competitive concern.").

81 *See id.* at 68600 ("[T]he Commission will need to evaluate the relevant product and geographic markets affected by each merger proposal; these markets, in turn, depend on the specific characteristics of the merger applicants and the products and markets in which they potentially trade. Consequently, mergers may require analysis of different product and geographic markets due to factors (such as the existence of constrained transmission paths) that affect the size of a particular market or the hours in which trade of the product is critical to determine whether merger applicants possess market power. Such distinguishing factors will need to be identified and analyzed on a case-by-case basis. Thus, the analytical process explained in this Policy Statement is a framework under which appropriate adjustments may be required to be incorporated to take account of factors unique to a merger. Furthermore, as noted above, this Policy Statement also is intended to be sufficiently flexible to accommodate the kinds of new merger proposals that will be presented to the Commission as the energy industry evolves to meet the challenges of a more competitive marketplace."); see also Order No. 642 *mimeo* at 37 ("The Commission emphasized in the NOPR that the horizontal screen is not meant to be a definitive test of the likely competitive effects of a proposed merger. Instead, it is intended to provide a standard, generally conservative check to allow the Commission, applicants and intervenors to quickly identify mergers that are unlikely to present competitive problems. The horizontal screen approach allows applicants, intervenors and the Commission to have a common starting point from which to evaluate proposed mergers. Failing the initial screen does not necessarily mean the Commission will reject the merger. Rather, it means only that the Commission must take a closer look at the competitive impacts of the proposed merger.").

the DPT analysis contradicts the Merger Policy Statement, which are rules. Decisions of the Commission cannot properly ignore rules.[82] The Market Monitor's analysis has been accepted for consideration in other proceedings.[83] The Market Monitor's analysis provides a more granular look at the impacts on PJM markets, taking into account how PJM markets operate. The Market Monitor's analysis can and does identify concerns that a DPT analysis can and does miss, even when the DPT analysis is performed as designed. The DPT analysis does not take into account that PJM markets rely on locational marginal pricing ("LMP"). LMP markets are dynamic, and transmission constraints bind at specific times and locations. The DPT analysis can serve its intended purpose as a screen, but the impacts on competition cannot be properly evaluated in an LMP market in reliance on the DPT analysis alone. The Macan Affidavit demonstrates that the traditional DPT analysis does not detect the kind of market power concerns identified in the Market Monitor's analysis.

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 better 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

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82 *See, e.g.*, Arizona Grocery Co. v. Atchison, T. & S. F. R. Co., 284 U.S. 370, 389 (1932) ("Where … the Commission has made an order having a dual aspect, it may not in a subsequent proceeding, acting in its quasi-judicial capacity, ignore its own pronouncement promulgated in its quasi-legislative capacity.").

83 *See Dynegy Inc., et al.*, 150 FERC ¶ 61, 231 (2015); *Exelon Corporation, Constellation Energy Group, Inc.*, 138 FERC ¶ 61,167 (2012); *NRG Energy Holdings, Inc., Edison Mission Energy*, 146 FERC ¶ 61,196 (2014); *see also Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109 (2012).

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 as a result of the interaction between demand and available incremental supply. That is the definition of a pivotal supplier or group of pivotal suppliers. In the first six months of 2026, there were pivotal suppliers in the aggregate energy market on 93.4 percent of days.[84]

The Market Monitor's market power analysis shows an increase in the capacity market and energy market HHIs based on the Merger. The Market Monitor's analysis shows that Dominion and NextEra are pivotal suppliers in the PJM Capacity Market, and Dominion is a pivotal supplier in the PJM Energy Market. The Market Monitor's analysis identifies a relevant submarket in PJM for which competition is adversely affected by the Merger using

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

the Commission's criteria for identifying frequently binding constraints, the Chesapeake submarket. The Market Monitor's pivotal supplier analysis includes both three pivotal supplier tests with a market defined by supply within 150 percent of the competitive market price and singly pivotal supplier tests with a market defined by supply within 105 percent of the competitive market price. The 105 percent threshold is consistent with the market definition used for the DPT, and the one pivotal supplier test is consistent with the Commission's pivotal supplier screen used for Market Based Rates.[85] Under multiple metrics, the results show that NextEra's ability and incentive to exercise market power would increase as a result of the Merger, primarily due to Dominion's existing market power, but also enhanced by NextEra's existing assets.

The overall market context of this proposed Merger is also important. PJM's Capacity Market is extremely tight and was short in the 2026/2027, 2027/2028, and 2028/2029 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.[86] Every capacity market owner is required in order to clear the market. When there is endemic market power, effective market power mitigation is essential to ensure competitive pricing. Conditioning the approval of transactions that increase market power

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85 *See* 119 FERC ¶ 61,295 (2007) and 153 FERC ¶ 61,065 (2015).

86 *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>.

on behavioral conditions that address market power would help ensure that the public interest is not harmed.

H. Resources Should Not be Permitted to Remove Capacity from the PJM Markets to Serve Data Center Load.

NextEra's acquisition of Dominion is motivated by a desire to build generation to supply Dominion's projected data center load growth.[87] This motivation indicates a potential interest in co-located load arrangements for data centers in the Dominion Zone, and NextEra is already building generation in Pennsylvania meant to serve data center load.[88] 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. Investing in new generation to meet data center load is appropriate. The impact on competition from the growth of load from data centers is the most critical issue affecting PJM markets and the public interest in competitive outcomes today. A comprehensive solution has not been defined. In the meantime, consolidation in the markets continues and is evaluated transaction by transaction. The Commission was in a similar situation in 1996 when it adopted the Merger Policy Statement. Open access was the overriding issue at that time, and the Commission exercised its conditioning authority to make open access a condition for approval of mergers.[89] The Commission's conditioning authority can and should be invoked

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87 *See* NextEra Merger Presentation at 12, 18, 19, 30.

88 *See* NextEra Energy, "NextEra Energy, U.S. Department of Commerce and Government of Japan finalize commercial terms; reach funding milestone for up to 10 GW of gas-powered generation," News Release (August 12, 2026), <https://www.investor.nexteraenergy.com/news-and-events/news-releases/2026/08-12-2026-211611676>.

89 *See, e.g.*, 16 U.S.C. § 824b; Merger Policy Statement at 68598 ("The Commission's interpretation of the public interest standard has never been static. … [O]ur view of what it takes to mitigate market power sufficiently to allow approval of a merger had evolved over time. We pointed out that as the industry had become more competitive, we began examining market power in transmission more closely, and that comparable access was now required. … [W]hile in the past we had focused only on increases in market power, we no longer believed that we could find any merger to be consistent with the public interest, whether or not the merger created increased market power, unless the merging

today to address a new issue requiring priority attention. Indeed, the condition recommended by the Market Monitor, a commitment to not remove resources from the markets to serve data centers is less burdensome than the requirement to provide open access was in the mid 1990s. Applicants have provided no information on how the inclusion of such a commitment would affect their plans, if at all.

The 2028/2029 Base Residual Auction ("BRA") resulted in a capacity procurement shortfall, falling below PJM's installed reserve margin for the third time in successive auctions.[90] [91] Capacity owners in PJM were pivotal in almost all RPM auctions prior to the current extreme conditions in the capacity market. The current market shortage conditions due to growing data center load amplify that market power by making every individual capacity resource pivotal.[92]

The potential removal of existing capacity from the capacity market by NextEra and Dominion would be a form of withholding and result in PJM market prices that exceed the competitive level to the benefit of NextEra and Dominion's other generation. The purchase of Dominion by NextEra would allow NextEra to remove capacity from PJM to serve data center load and benefit from the negative implications to the market. The Market Monitor has documented and quantified the negative impact of data center loads on the

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utilities provided open access. We adopted this revised view of the public interest in light of EPAct's goal of encouraging greater wholesale competition and the significant increase in actual competition."), citing El Paso Electric Company and Central and Southwest Services Inc., 68 FERC ¶ 61,181 61,914–15 (1994), *dismissed*, 72 FERC ¶ 61,292 (1995).

90 *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>.

91 *See* PJM Interconnection, L.L.C., 2028/2029 Base Residual Auction Report, (July 14, 2026), <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2028-2029/2028-2029-bra-results-report.pdf>, accessed July 16, 2026.

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

competitiveness of the capacity market and on the prices in the capacity market for PJM customers in the last three BRAs.[93] 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.[94] There is, thus, significant evidence in the record showing the adverse impact on competition in the capacity market and in the energy market resulting from the removal of resources from the markets to serve data centers. Removal of capacity from the capacity market would also make PJM

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93 *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*>.

94 *See* Monitoring Analytics, LLC 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*>;

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.[95]

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 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.[96] For example, if the deactivation rules do not apply, PJM does not have to make a reliability determination 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 scope of this proceeding does not include revising or supplementing PJM's market rules. The PJM market rules are the context within which the impact of the Merger must be evaluated.[97] The existing rules do not address or mitigate the potential adverse

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

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

97 *See* Merger Policy Statement at 68598 ("We believe that if the Commission is to fulfill its statutory responsibilities, it must determine what is consistent with the public interest in light of conditions in the electric industry in general as well as the specific circumstances presented by a proposed merger. In an era of traditional, cost-of-service based regulation, the Commission defined its public interest responsibilities consistent with that structure. Today, we believe that the public interest requires policies that do not impede the development of vibrant, fully competitive generation markets. We are refining our analysis of the effects of proposed mergers on competition in order to protect the public interest in the development of such highly competitive markets....").

impact on competition from the removal of resources from the markets to serve data center loads, a reasonably foreseeable consequence of the Merger. A commitment by the Applicants to not remove resources from the markets to serve data centers could address this issue, protect the public interest and would have no impact on the Applicants if they have no plans to engage in this behavior.

The Merger cannot be approved as consistent with the public interest while ignoring the identified adverse impact to competition and to rates, including the prices paid by customers for capacity, energy and transmission. Competitive market power screens that evaluate HHI changes 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 July 15th 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.[98]

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.[99] The Commission's new investigation of the adequacy of PJM's tariff to deal with data center issues is in its early stages.[100] The Commission can protect the market from the potential harm of transactions that

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98 *See* 18 CFR § 33.2; *See* Tucson Elec. Power Co., 156 FERC ¶ 61,170 (2016) ("This finding is consistent with the 1996 Merger Policy Statement, where the Commission noted that the merger guidelines "contemplate using remedies to mitigate any harm to competition."), citing Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,118.

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

100 *See, e.g., PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217 (2025), *order reh'g*, 195 FERC ¶ 61,209 (2026).

threaten the competitiveness and reliability of the PJM market by requiring commitments that protect PJM capacity in the interim.

The Merger enhances NextEra's and Dominion'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. These negative impacts are not consistent with the Commission's definition of the public interest.

NextEra should be required to state that they will not remove any 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. [101] [102] 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 therefore would not be consistent with the public interest as the Commission has defined it.

I. The Merger Creates Uncertainty for PJM Stakeholders and Harms PJM's Governance Process.

If approved, the Merger would create the "largest power company and third largest company in the energy sector in the United States."[103] As noted in the discussion with former Kentucky PSC Chair Kent Chandler (R Street Institute Senior Fellow) and Dr. Joseph Bowring

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101 *See* The White House, "Ratepayer Protection Pledge" (March 4, 2026), <https://www.whitehouse.gov/releases/2026/03/ratepayer-protection-pledge/?utm_source=wh_social_share_button>, Proclamation No. 11014, 91 Fed. Reg. 11439 (March 4, 2026) ("Pledge"). On July 23, 2026, over 200 additional entities joined the pledge. *See* The White House, "President Trump's Ratepayer Protection Pledge Secures American AI Dominance, Protects Consumers" (July 23, 2026), <https://www.whitehouse.gov/releases/2026/07/president-trumps-ratepayer-protection-pledge-secures-american-ai-dominance-protects-consumers/?utm_source=wh_social_share_button>.

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

103 *See* NextEra Merger Presentation at 12–13.

(Market Monitor) with Commissioners at the Commission-Led Technical Conference on PJM Governance and Stakeholder Reforms on July 23, 2026, PJM leadership can be vulnerable to leverage exercised by its members, especially large generation and transmission owners, without which PJM cannot operate.[104] One of the four themes that the Commission listed in its post-conference notice requesting comment was PJM board independence.[105] Allowing one of the largest stakeholders to get larger can only exacerbate the problem of the board independence from the stakeholders. Leverage can be exercised by the threat that NextEra could remove Dominion and its critical assets, particularly transmission assets, from the PJM Region. NextEra has not been a transmission owner in an RTO. As NextEra's acquisition of Dominion will put Dominion under new management, the continued commitment to Dominion's participation in PJM is not clear.

Because stakeholders in Virginia and the rest of the PJM Region have no control of the new entity's continued commitment to remain in PJM, their ability to plan their business and to avoid potential disruption is reduced.

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104 *See* Tr. at 198:16 –199:4, Docket No. AD26-7-000 (July 23, 2026) ("I don't think you will get the optimal level of regional transmission planning in PJM, which is a significant hurdle to getting new capacity online, until and unless you fix the independence issue with -- in some way with -- voluntary RTO membership. And I think the fact that transmission owners in PJM and in any RTO can effectively threaten or say they're going to leave the RTO if they don't get their way, and effectively take the backbone of the RTO with them, given their inherit capital bias to invest in transmission, and the benefits of regional transmission planning, and leading to more cost effective transmission investment rather than utility by utility investment, leads to sub-optimal outcomes in regional transmission planning"): ;*id*. at 209:22–210:6 ("And one last piece of independence, which was raised by Kent, is the TO. Now, if there's a veto power anywhere, it's the TO's veto power, the ability to leave, and that has to be addressed. While I don't expect the Commission to rule that membership is mandatory in an RTO, I do think there need to be clear, specific, rules about when a TO could leave, and when that threat could be credible. Otherwise, that threat hangs over every decision that PJM staff and the PJM board makes.").

105 Federal Energy Regulatory Commission. PJM Governance and Stakeholder Reforms under Docket No. AD26-7-000. (July 30, 2026)

As an RTO, PJM is required to operate independent of any market participant or group of participants.[106] Because of its size and control of transmission assets that define the PJM control area, Dominion already has significant influence in the PJM governance process. NextEra's ownership will enhance that influence.

The independent governance of PJM is important to the public interest in well functioning wholesale energy markets and efficient operation and planning of the grid in the PJM Region. The Merger, particularly without mitigative steps, may harm the public interest. Accordingly, the Merger should not be approved as consistent with the public interest without securing a long term commitment from the new entity to continue participation as a transmission owner in PJM. Similar commitments have been secured in other large scale mergers.[107] Requiring a commitment to continued participation in PJM is appropriate for a transaction of the scale presented in this case and would protect the public interest and PJM's independent governance.

J. Behavioral Recommendations are Necessary but Not Sufficient to Address the Exercise of Market Power Due to the Merger.

No behavioral remedies are sufficient to mitigate the threats to market competition created by the Merger. The July 15th Filing should be rejected. Market power mitigation rules in PJM are not sufficient to address the identified increases in structural market power and the resultant potential exercises of market power.

If the Merger is approved, some of the ability to exercise the newly enhanced structural market power would be mitigated by the Market Monitor's proposed conditions.

The Market Monitor recommends the following behavioral conditions as part of approval:

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106 *See* 89 FERC ¶ 61,285, *mimeo* at 152-237 ("Order 2000")

107 *See*, for example, AEP/CSW merger order, 90 FERC ¶ 61,242 (March 15, 2000) at 19-22.

1. A commitment, for all resources owned or controlled by NextEra, 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 NextEra, 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 PJM's least cost offer determination when a resource has local market power as determined by the TPS test.[108]
3. A commitment, for all resources owned or controlled by NextEra, to submit only operating parameters based on physical limits, as defined in the PJM tariff, in the energy market, would ensure that NextEra 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 NextEra, 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 NextEra, 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

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[108] This restriction is necessary for effective market power mitigation until PJM implements its Commission approved solution in Docket No. 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.

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 NextEra, 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 SoftBank meets its offer commitments and therefore that the energy market is competitive.
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.
8. Any order approving the merger should be conditioned on Applicants' commitment to remain in PJM.

K. The Comment Deadline is Insufficient Due to the Deficiency of the July 15th Filing.

Considering the Deficiency Notice, the Commission should extend the comment deadline until 30 days after Applicants respond to the Deficiency Notice. The Commission has deemed the July 15th Filing incomplete. There are significant details omitted from the July 15th Filing that impact interested parties' ability to review the Merger. If the Commission does not extend the comment deadline, the Commission should explicitly clarify that comments following Applicants' response to the Deficiency Notice not be limited to the scope of the Deficiency Notice.

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,



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September 29, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 29th day of September, 2026.



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Attachment - Market Power Analysis - PUBLIC

Monitoring Analytics

PUBLIC

Market Power Report
NextEra / Dominion Merger

The Independent Market Monitor for PJM

September 29, 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 the proposed merger of NextEra and Dominion on the structure of the PJM energy and capacity markets, its direct impacts on static measures of local and aggregate market power in both markets, and its impacts on competition that are not captured by the traditional, static analysis. In conducting this analysis, the IMM used market data including market shares and the results from the three pivotal supplier test (TPS), the PJM test for structural market power. As part of the IMM review, the IMM used market data to define the relevant markets and to examine the effects of the proposed merger on those markets. The report finds that the NextEra/Dominion merger ("Merger") results in small increases in structural market power based on existing generation assets and market definitions. Dominion has substantial market power in PJM and in submarkets within PJM. NextEra would acquire that market power as a result of the merger. More importantly, the Merger would remove a significant competitor from the market for generation and transmission in PJM. NextEra and Dominion are planning to build new large generation projects in PJM that, by definition, are not included in the analysis of historical data. The IMM's analysis, relying on historical data, and the analysis based on historical data submitted by NextEra and Dominion, cannot capture the actual effects of the Merger on competition in the PJM market because they do not include the future plans of the companies, the trajectory of load growth and consolidation in the industry, and the threat to future competition created by the Merger.[1] The broader point is that, regardless of the details, no analysis of historical data can address the impact of the Merger on post merger competition.

In conducting this analysis, the IMM addresses the Commission's feedback in the May 1, 2026, Order regarding ArcLight's purchase of KMC Thermo's Brandywine plant.[2] The IMM will continue to develop its approach to the analysis of mergers and acquisitions under Section 203 of the FPA. The IMM used publicly available market data on frequently binding constraints, using the Commission's duration criterion, and market prices to define a relevant submarket, as requested.[3] The IMM also used confidential PJM market data, including market shares and the results from the three pivotal supplier test (TPS), the PJM test for structural market power. The IMM used both public data and confidential PJM market data to examine the effects of the proposed Merger on PJM markets.

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1 *See* Protest of the Independent Market Monitor for PJM, Docket EC26-133 (September 29, 2026).

2 *See* 195 FERC ¶ 61,082 (2026).

3 *See id*, Chang and LaCerte concurrence at P 4.

Assets Involved in the Transaction

On September 15, 2026, the Commission issued a letter informing Applicants that the July 15th Filing is deficient ("Deficiency Notice"). The Deficiency Notice requests that Applicants provide additional details that were omitted in the July 15th Filing, including a more complete description of Applicants, their public utility subsidiaries, and their generation resources. As a result of the incomplete nature of the July 15th Filing, per the Deficiency Notice, the IMM relies on PJM market data for this report and additional information provided to the IMM by NextEra and Dominion on September 4, 2026, to supplement the inconsistent generation data provided in the July 15th Filing and the Macan Affidavit. The IMM is in the unique position of having access to PJM data that can supplement the Applicants' filed data. Regardless, Applicants should be required to provide and make public all details, in a clear, transparent, and fully descriptive manner, of each generation resource owned or controlled by NextEra and Dominion.

The NextEra generation portfolio includes 66 MW of generation in PJM, including natural gas, landfill gas, solar and battery resources in the COMED, DOM, JCPL, METED, PENELEC, and PSEG Zones of PJM. The Dominion generation portfolio includes 24,577 MW of generation in PJM, including nuclear, natural gas, coal, fuel oil, solid waste, pumped hydro, run of river hydro, solar, wind, and battery resources in the AEP and DOM Zones of PJM.[4] After the Merger, the NextEra generation portfolio will consist of 24,643 MW of generation in PJM, including nuclear, natural gas, coal, fuel oil, solid waste, pumped hydro, run of river hydro, solar, wind, and battery resources in the AEP, COMED, DOM, JCPL METED, PENELEC, and PSEG Zones of PJM.

Table 1 shows the total MW of generation owned by NextEra in PJM as reported in Exhibit B-1 of the July 15th Filing.[5] The Applicants' data is inconsistent and incomplete. According to Exhibit B-1 of the July 15th Filing, NextEra owns 694.1 MW of generation in PJM. According to the Macan Affidavit (at 11), NextEra owns or purchases a total of 799.0 MW of generation in PJM. The Macan Affidavit also states (at 11) that NextEra owns 66.0 MW of "uncommitted generation" in PJM but also states (at 57) that NextEra owns 98.0 MW of "uncommitted capacity" in PJM. The Applicants define "committed capacity" as capacity subject to a Power Purchase Agreement (PPA). The July 15th Filing does not clarify which generation resources are committed or uncommitted pursuant to a PPA.

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[4] Total generation for NextEra and Dominion includes uncommitted MW, zone, and fuel as reported in the Macan Affidavit at 15 through 17.

[5] Applicants report nameplate capacity for hydro, solar, wind, and storage resources and summer installed capacity for other resources.

Table 1 Generation Resources owned by NextEra in PJM, according to Exhibit B-1 of the July 15th Filing and the Macan Affidavit

Generation Name	Capacity Rating (MW)
Cherrywood Solar I, LLC	145.0
Chesapeake Solar Project, LLC	118.0
Energy Storage Holdings, LLC	2.0
PL Energy Illinois Wind LLC - Battery	20.0
PL Energy Illinois Wind LLC - Wind	217.5
Green Mountain Storage, LLC	10.4
Allentown Wastewater	0.9
Blue Ridge Landfill Gas	6.4
Community Refuse Landfill Gas	6.4
Crayola BTM Solar	0.9
Cumberland County BTM Landfill Gas	4.8
East Lycoming School District BTM Solar	0.3
Frey Farm Landfill Gas	3.2
Frey Farm Wind	3.2
Greater Lebanon Landfill Gas	3.2
Lycoming - County/Prison Landfill Gas	6.4
Northern Tier Landfill Gas	1.6
Pennsauken Solar 3	2.4
SUEZ Water I and II BTM microgrid	16.0
Warren County Solar	2.6
Western Berks Landfill Gas	3.0
NextEra Energy Bluff Point, LL	119.9
Total Affiliated MW as Reported in Exhibit B-1	694.1
Total Owned/Purchased MW as Reported in the Macan Affidavit (Table 1)	799.0
Total Uncommitted MW as Reported in the Macan Affidavit (Table 1)	66.0
Total Uncommitted MW as Reported in the Macan Affidavit (Table 17)	98.0

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Table 3 shows the total MW of generation owned by Dominion in PJM as reported in Exhibit B-2 of the July 15th Filing, including committed and uncommitted MW. According

to Exhibit B-2 of the July 15th Filing, Dominion owns approximately 24,447 MW in PJM.[6] Of the approximately 24,447 MW reported in Exhibit B-2 of the July 15th Filing, Dominion operates approximately 21,083 MW of generation in PJM. The output of the remaining 3,364 MW is or will be committed to third parties, pursuant to PPAs. According to the Macan Affidavit (at 11), Dominion owns or purchases a total of 26,476 MW in PJM. Exhibit B-2 of the July 15th Filing also states that Dominion owns 21,083 MW of uncommitted capacity, while the Macan Affidavit states (at 11) that Dominion owns 24,577 MW of uncommitted capacity but also states (at 57) that Dominion owns 17,034 MW of uncommitted capacity.

Table 2 Generation Owning Subsidiaries and Affiliates of Dominion in PJM, According to Exhibit B-2 of the July 15th Filing and the Macan Affidavit

Energy Subsidiary or Affiliate	Capacity (MW)	Committed Capacity (MW)	Uncommitted Capacity (MW)
Virginia Electric and Power Company	21,000.0	0.0	21,000.0
Buckeye Plains Solar Project, LLC	99.8	99.8	0.0
Eastern Shore Solar, LLC	80.0	80.0	0.0
Foxhound Solar, LLC	83.0	0.0	83.0
Greensville County Solar Project, LLC	80.0	80.0	0.0
Hardin Solar Energy LLC	150.0	150.0	0.0
Pickaway County Solar Project, LLC	99.8	99.8	0.0
Scott-II Solar LLC	20.0	20.0	0.0
Southampton Solar LLC	100.0	100.0	0.0
Summit Farms Solar, LLC	60.0	60.0	0.0
Wilkinson Solar LLC	74.0	74.0	0.0
OSW Project, LLC (under development)	2,600.0	2,600.0	0.0
Total Affiliated MW as Reported in Exhibit B-2	24,446.6	3,363.6	21,083.0
Total MW as Reported in the Macan Affidavit (Table 1)	26,476.0	1,899.0	24,577.0
Total Uncommitted MW as Reported in the Macan Affidavit (Table 17)			17,034.0

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Applicants should be required to provide and make public all details, in a clear, transparent, and fully descriptive manner, of each generation resource owned or controlled by NextEra and Dominion.

[6] Applicants report that Virginia Electric and Power Company owns approximately 21,000 MW of generation in PJM, rather than the actual total.

In the IMM's analysis, units are assigned to the owner controlling the resource in the PJM market. The entity controlling each of the units is not clear in the data provided with the July 15th Filing, especially for the NextEra units. This is the case even when combining the information in the July 15th Filing with the additional information provided by NextEra and Dominion. The parties have not explained why they believe that PPAs are relevant to ownership and control. PPAs are temporary, and the effects of this merger would be long lasting. More information is required to determine if changes to the unit assignments in the IMM's analysis are necessary. The IMM will provide an updated analysis if the response to the September 15th Deficiency Letter provides the complete data requested by the Commission.

Summary of Market Power Findings

The IMM analyzed the effect of the NextEra/Dominion Merger on market power in the PJM local energy markets and aggregate energy market using data for the 24 month period from June 2024 through May 2026. The IMM analyzed the effect of the NextEra/Dominion Merger on market power in the PJM Capacity Market using auction data for the 2026/2027, 2027/2028, and 2028/2029 Base Residual Auctions.

The IMM finds small increases in structural market power, as determined by pivotal supplier analysis, in the PJM Capacity Market, in the aggregate energy market, and in energy market submarkets defined by local constraints that bind for more than five percent of hours. The Delivered Price Test ("DPT") analysis provided by applicants shows no screen failures in the PJM market nor in the previously established submarkets that include both Dominion and NextEra generation for which applicants submitted analysis, which are AP South and PJM West submarkets. Applicants also found no screen failures for the Dominion submarket and did not analyze the PJM East submarket.

There are frequently binding transmission constraints in the PJM market that limit the flow of low marginal cost energy from the shale gas production regions of Pennsylvania and West Virginia into Maryland and Virginia and neighboring areas of other states. These frequently binding constraints, which the IMM identifies in this report, create a significant submarket within PJM, which the IMM has identified as the Chesapeake submarket. Dominion is the largest supplier and the dominant supplier in the Chesapeake submarket, and the merger increases structural market power in the Chesapeake submarket by a small amount relative to Dominion's large position.

The IMM recommends that the transaction be rejected. No behavioral remedies are sufficient to mitigate the market power created by the transaction or the acquisition of market power in PJM by NextEra, which is likely to have different incentives than Dominion currently does as a standalone Virginia power supplier.

However, if the transaction is to be approved, the transaction should only be approved under specific behavioral remedies that would address the insufficiency of specific and defined market power mitigation elements of PJM's tariff. Each of the behavioral conditions proposed by the IMM meets this Commission defined standard. None of the

behavioral commitments would create a burden on applicants because all are designed to help ensure competitive behavior.

Aggregate Energy Market

The IMM analyzed the effect of the merger on the aggregate energy market. In each case, the IMM calculates the increase in PJM market power acquired by NextEra and the increase in PJM market power for Dominion. The increases in market power for NextEra are large because NextEra has a relatively small current position in PJM and is acquiring a company with a large position in PJM and with significant existing structural market power. For the same reasons, the increases in market power for Dominion are correspondingly small.

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- There are no rules in the PJM tariff to address aggregate market power in the energy market.

Local Energy Markets

The IMM analyzed the impact of the Merger on frequently binding constraints for June 2024 through May 2026 to measure the effect of the merger on local market power using a one pivotal supplier test ("OPS") with a five percent price threshold and a three pivotal supplier test ("TPS") with a 50 percent price threshold.

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- 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 for which the Commission has approved a solution but for which PJM has failed to identify an implementation date. The IMM's behavioral recommendations address the insufficiency of the existing rules to address market power mitigation.

Capacity Market

- The IMM analyzed the 2026/2027, 2027/2028, and 2028/2029 BRA results for all modeled LDAs to measure the effect of the NextEra/Dominion Merger on the PJM Capacity Market.
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The IMM's behavioral recommendations partially address the insufficiency of the existing rules to address market power mitigation in the capacity market. If the Merger is approved, the IMM's behavioral conditions are necessary but insufficient to mitigate the harm to competition.

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.[7] 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 merger requires explicit mitigation to ensure market power is not exercised.[8] Each of the behavioral conditions proposed by the IMM meets this Commission defined standard. None of the commitments creates a burden on the company because all are designed to ensure competitive behavior. If the Merger is approved, the IMM's behavioral conditions are necessary but insufficient to mitigate the harm to competition.

The IMM has established that the market power mitigation rules in the PJM tariff are insufficient to mitigate local market power in in the PJM Energy Market. PJM agreed and filed to modify the market power mitigation rules in the energy market. On October 25, 2024, the Commission approved changes to PJM's market power mitigation process in the energy market that would remedy the flaws identified by the IMM.[9] PJM has failed to set an implementation date and has no deadline for doing so.[10] The result is that it is clearly established that PJM's market power mitigation rules are insufficient to mitigate local market power in the energy market.

The IMM's recommended behavioral remedies for local market power in the energy market in this report address the demonstrated insufficiency of the local market power mitigation rules. This is not a general market issue but a specific insufficiency in the rules. The proposed behavioral rules are an explicit mitigation of this issue. (See proposed behavioral rules 1, 2, 3 and 6.)

The IMM has established that the market power mitigation rules in the PJM tariff are insufficient to mitigate aggregate market power in the energy market. PJM has no market

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7 *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).

8 Order No. 697-A at P 111.

9 *See* 189 FERC ¶ 61,060 (2024) ("October 2024 Order").

10 *See* id.

power mitigation in place for aggregate market power in the energy market. This is a fact that demonstrates the insufficiency of the market power mitigation rules in PJM. This is not a general market issue but a specific insufficiency in the rules. The proposed behavioral rules are an explicit mitigation of these issues. The proposed behavioral rules are an explicit mitigation of this issue. (See proposed behavioral rules 1, 2, 3 and 6.)

The IMM has established that PJM does not enforce the must offer obligation of capacity resources to offer the full ICAP MW equivalent of all cleared UCAP capacity MW in the day-ahead and real-time energy markets every day.[11] This is a fact that demonstrates the insufficiency of the market power mitigation rules in PJM. This is not a general market issue but a specific insufficiency in the rules. The proposed behavioral rules are an explicit mitigation of this issue. (See proposed behavioral rules 4 and 5.)

The IMM's position is that the current market power mitigation rules in the capacity market are insufficient in a specific area. 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.[12] These rules are insufficient to prevent the exercise of market power because they permit capacity market offers in excess of competitive levels when energy market net revenues exceed the sum of all avoidable costs, including the CPQR component. This is not a general market issue but a specific insufficiency in the rules. The proposed behavioral rules are an explicit mitigation of this issue. (See proposed behavioral rules 4 and 5.)

The 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. PJM market rules require no market power review and no reliability review. Removal of capacity from the market can have a significant impact on market prices and reliability that benefits other generating resources in a company's portfolio and increases market prices above the competitive level.[13] Such removal of capacity is a current issue in PJM with potentially extreme consequences for the markets and for customers in the PJM markets. The absence of any rules governing the dedication of existing resources to data center load means that the PJM rules are insufficient to prevent the exercise of market power. This is not a general market issue but a specific insufficiency in the rules. The proposed behavioral rules are an explicit mitigation of this issue. (See proposed behavioral rule 7.)

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11 *See* Monitoring Analytics, L.L.C., *2026 Quarterly State of the Market Report for PJM: January through March*, Section 3: Energy Market at p. 166-167.

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

13 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. *See PJM Interconnection, L.L.C., et al.*, 193 FERC ¶ 61,217 (2026).

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.
8. Will remain in the PJM RTO.

Cost-based Energy Market Offers

As a result of the Merger, NextEra would have market power more frequently in local energy markets and in the aggregate energy market. The PJM energy market has no market power mitigation rules for aggregate market power. To help ensure competitive energy market offers, the IMM recommends that NextEra 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.[14]

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

[14] 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.

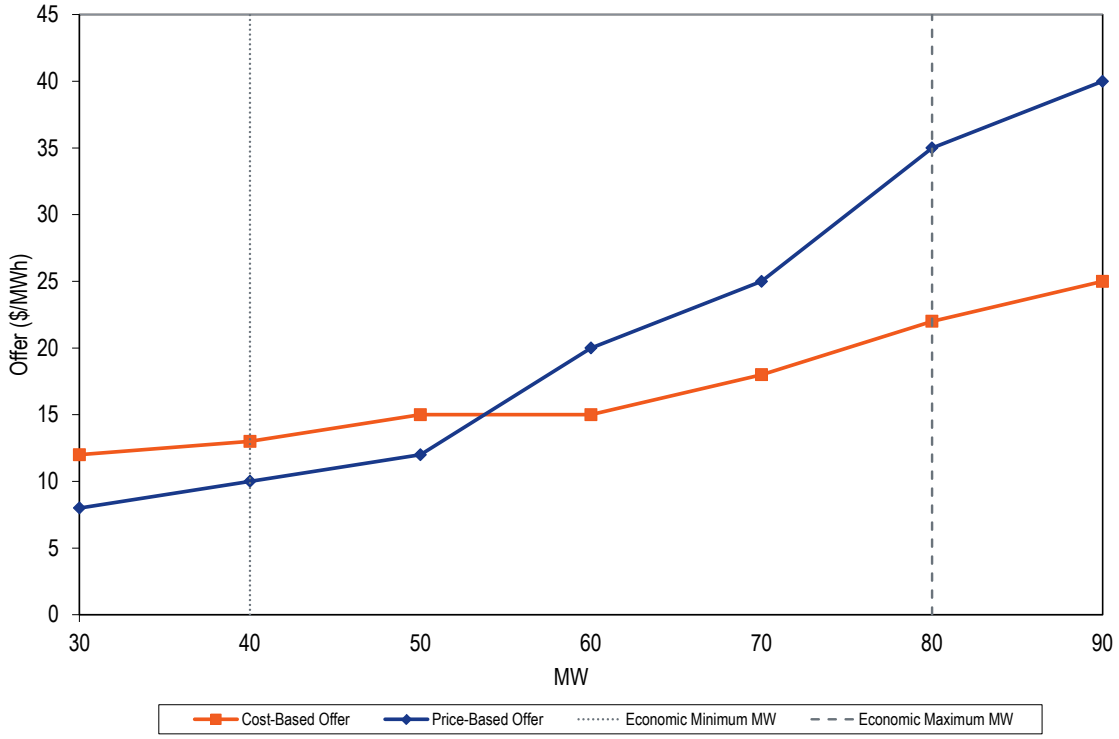
the projected dispatch point in the day-ahead market.[15] Figure 1 shows an example of offers from a unit that has a negative markup at the economic minimum MW level and a positive markup at the economic maximum MW level. The result would be that a unit that failed the TPS test would be committed on 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.

To help ensure competitive energy market offers, the IMM recommends that the NextEra's offers not be permitted to include crossing price-based and cost-based energy market offer curves (markup switching). This recommendation is consistent with the Commission approved solution.

[15] On October 25, 2024, in Docket No. ER24-2905-000, 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.[16]

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 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

[16] *See* OA Schedule 1 § 6.6.

cold weather alerts.[17] 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.

To help ensure competitive energy market offers, the IMM recommends that the NextEra's offers be required to submit only operating parameters based on physical limits, as defined in the PJM tariff, in the energy market. This recommendation is consistent with the Commission approved solution.

To help ensure competitive energy market offers, the IMM recommends that NextEra's offers comply with the Commission approved solution.

Capacity Market Seller Offer Cap

To help ensure competitive capacity market offers, the IMM recommends that NextEra 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 short of the reliability requirement in the 2026/2027, 2027/2028, and 2028/2029 auctions. As a result, any generation retirements would have a significant effect on the market. Given the

[17] On October 25, 2024, in Docket No. ER24-2905-000, 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.

increase in NextEra's market power in the capacity market due to the Merger, the IMM recommends that NextEra retire units only if verified analysis, including the IMM's required analysis, shows that the resource is expected to be uneconomic, defined to mean that projected avoidable costs exceed projected net revenues from the energy, ancillary services and capacity markets, after accounting for identified risks. The retirement of economic units can be a mechanism for the exercise of market power through physical withholding by making the balance of the portfolio more profitable and more than offsetting the lost net revenue from the retired asset.

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.[18] 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.[19] 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. In order to help ensure a competitive energy market, the IMM recommends that NextEra 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

Bilateral capacity purchases of existing capacity resources by data center load from PJM generators 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 capacity from the PJM markets via bilateral capacity contracts is a form of physical withholding. The removal of existing capacity provides more benefits to the seller than simple retirement because the removals simultaneously provide above market revenue through the bilateral contracts, increase capacity market prices to the benefit of the rest of the seller's portfolio, and increase energy market prices to the benefit of the seller's portfolio.

In order to help ensure competitive capacity and energy markets, the IMM recommends that NextEra be prohibited from removing capacity and energy from the PJM markets to serve data centers.

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[18] OA Schedule 1 § 1.10.1A(d).

[19] *See Monitoring Analytics, L.L.C., 2026 Quarterly State of the Market Report for PJM: January through June,* Section 3: Energy Market, p. 212-213.

Remain in the PJM RTO

The Commission has expressed concerns related to PJM governance, including the leverage that large stakeholders have with the PJM staff and PJM Board.[20] This is especially the case for transmission owners and large generation owners. The Merger will result in a significant increase in size, status, and leverage for NextEra in the PJM governance process. The threat of removing a large transmission owner, like Dominion, from PJM is perhaps the most powerful leverage available to any market participant. Only a binding commitment that Dominion's transmission assets will remain part of PJM can alleviate this threat to the PJM market.

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."[21] In this report, the IMM focuses on the first factor, the effect on competition. One part of evaluating the impact on competition is calculating the impact on the structure of relevant markets based on historical actual market data. However, in the case of the Merger, market structure metrics based on historical market data are not sufficient to assess the effects of the Merger. The IMM also identifies the facts that the Merger will eliminate a significant competitor, reduce competition and create an incentive for further consolidation of asset ownership in PJM. The effect on competition also includes the effect on rates because the level of market competition affects market prices. The IMM also addresses the impact on regulation of the Applicants as the Merger will affect the PJM governance process.

Any analysis of market structure depends on an accurate definition of the relevant markets and market participants. The IMM's analysis of historical data on market structure relies on actual market data. Market power analysis depends on properly identifying and evaluating potential substitutes for a given product and their costs. In the DPT analysis, substitutes are limited to suppliers that can increase output to meet load within a defined market. All supply MW that can access a market, either a balancing authority or a submarket based on transmission zones, at a price less than 105 percent of the market price are considered to be perfect substitutes. Publicly available data from a variety of sources plus commercially available data in some cases allows applicants to construct static supply curves based on estimates of marginal cost. This is in contrast to the actual functioning of wholesale power markets, like PJM, where demand is defined by constraints including the RTO power balance constraint, transmission constraints, and

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[20] *See* Federal Energy Regulatory Commission, "Commission Led Technical Conference on PJM Governance," Docket No. AD26-7 (July 23, 2026).

[21] 18 CFR § 33.2(g).

ancillary service requirement constraints. All MW are perfect substitutes with respect to the power balance constraint, but not for transmission constraints. MW are weighted by their electrical proximity to constraints using a distribution factor (dfax) that measures the share of the power output from the generators' electrical location to the constraint. Prices are determined both by suppliers that can raise output and suppliers that can reduce output to relieve constraints that limit power flow into a defined submarket. Within organized markets data are available, and should be used, to assess market power based on how generating units are evaluated and dispatched to meet demand using their own market offers and transmission constraints, based on network relationships between resources and load, relative costs, operational availability and operational parameters. Such an approach provides measures of market power based on actual operational data related to the participants and the markets in which they operate.

The data needed to define local markets include constraint data and data reflecting the impact of generating units on those constraints. Data on binding transmission constraints is publicly available on PJM's website. The energy market distribution factor ("dfax") data is not made public by PJM. It is necessary to determine each generating units' effect on each transmission constraint.[22]

Regardless of how accurately existing local markets are defined, wholesale power markets are extremely dynamic. Within organized markets, relevant submarket definitions can change significantly over time as a result of changes in fuel costs, generation mix, load and transmission system expansion. Submarket definitions are dynamic. No submarket 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 submarkets 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. The IMM has analyzed the relevant submarkets 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 frequently binding constraints identified in this analysis are, following the Commission's preference, those that were binding for 876 or more hours from June 2024 through May 2026, or five percent of hours. The relevant capacity markets in this analysis are those that resulted from the actual operation of the markets for the 2026/2027, 2027/2028, 2028/2029 Delivery Years, the last three Base Residual Auctions run by PJM.

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22 *See* PJM Data Miner 2, Real-Time Marginal Value, <https://dataminer2.pjm.com/feed/rt_marginal_value/definition>.

The IMM analysis of the relevant submarkets reflects the information available based on the actual operation of the PJM wholesale power markets in the last two years. For different resources and different time periods, market conditions change, and the relevant identified local markets change.

The nature of PJM markets means that market dynamics will change, in unpredictable ways. In addition to analysis of historical data, consideration of the impacts of mergers and acquisitions must also consider changing market structures and the impacts of mergers and acquisitions on the number of future competitors. Consolidating ownership of assets in smaller numbers of owners will always increase structural market power. If further concentration of ownership is allowed, strong behavioral remedies are the only way to help mitigate the impacts of increased concentration on competitive outcomes. However, there is a limit to the corrective effects of behavioral remedies, especially given the potential ability of large market participants to affect the rules that define acceptable behavior. 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. The IMM recommends that the Commission consider such issues in a separate rulemaking.

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.[23] The 1992 Guidelines predate the creation of the PJM wholesale power market in 1999 and the subsequent evolution of the markets and ownership structures.[24] The Commission reevaluated and reconfirmed its Merger Guidelines in 2012.[25] The Commission has not

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[23] *See* O*rder 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).

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

[25] 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).

reevaluated and updated its guidelines based on subsequent revisions to the Department of Justice and Federal Trade Commission's guidelines.[26]

The Commission has reserved the option to consider alternative approaches to 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.[27]

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."[28]

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."[29] 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.[30] 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

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26 *See* United States Department of Justice and Federal Trade Commission, *Merger Guidelines* (December 18, 2023), <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>. ("Merger Guidelines").

27 *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 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).

28 1992 Guidelines at 2.

29 1992 Guidelines at 15.

30 *Id*. at 16.

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."[31]

The HHI on its own 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 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.[32]

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 Commission has relied on pivotal supplier analysis as an indicative screen for market power since at least 2007 with Order No. 697, reaffirmed in 2015 with Order No. 816.[33] The Commission uses a market share screen together with a pivotal supplier screen, stating that "[u]se of the two screens, therefore, provides a more complete picture of a Seller's ability to exercise market power."[34]

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31 *Id.*

32 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*>.

33 See 119 FERC ¶ 61,295 (2007) and 153 FERC ¶ 61,065 (2015).

34 Federal Energy Regulatory Commission, "Horizontal Market Power," <https://www.ferc.gov/horizontal-market-power>, last updated February 18, 2022.

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.

The three pivotal supplier test (TPS) recognizes that market power exists even in the presence of market share and HHI concentration levels that fall below 1992 Guidelines for a competitive market structure.[35]

Three Pivotal Supplier Test

In the IMM analysis, the basic metrics used for each market include market share, the Herfindahl-Hirschman Index (HHI), the three pivotal supplier test (TPS) and a one pivotal supplier test (OPS), both pivotal supplier tests based on a standard residual supplier index. 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 indices are a summary measure of market share. The concentration index 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

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

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 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.[36]

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."[37] 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

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[36] 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*>.

[37] AEP Order at P 72.

> 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.[38]

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 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 marginal costs 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's pivotal supplier screen 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

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[38] *Id*. at P 103.

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.[39] 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 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.

A benefit of the TPS test is that it defines the market based on the electricity network, rather than geography. Power on the grid does not flow based on geographic boundaries. Transmission zone borders are historical artifacts that define transmission owner responsibilities and have no special significance for defining actual power flow based submarkets. 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 constraints that create markets, using distribution factors greater than, or equal to, the dfax used by PJM in market 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.

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[39] 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.

The three pivotal supplier test uses the correct electrical definition of the relevant market, instead of a strictly geographic definition. However, use of the correct definition of the relevant electrical market does not require the use of the three pivotal supplier test.

The Chesapeake Submarket

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.[40]

NextEra and Dominion's Delivered Price Test considers the PJM RTO market as well as submarkets recognized in previous Section 203 and Market Based Rates proceedings, PJM West and AP South, and also a submarket within the Dominion Zone, although the Applicants are not clear about the exact definition of this Dominion Submarket. 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 become actionable in submarkets that do not yet exist. The IMM analyzed all submarkets based on historic market data, not limited to the subset of markets analyzed in the Applicants' Delivered Price Test analysis. The IMM analysis shows that Dominion has local market power in PJM and that local market power would increase with the NextEra merger.

A portion of the PJM footprint around the Chesapeake Bay has been transmission constrained historically but has not been formally defined as a submarket. This area includes the DOM, BGE, and PEPCO transmission zones, but also extends into transmission zones in Pennsylvania and Delaware. Dominion is the largest pivotal supplier in the Chesapeake Submarket, NextEra also has generation in the Chesapeake submarket, and NextEra has 4 GW of planned generation in Pennsylvania that is in an area that affects the constraints defining the Chesapeake Submarket.

The exact list of transmission constraints defining the Chesapeake submarket has changed over time and will continue to change, but it includes many of the same transmission elements over time, which limit the flow of energy from the shale gas production regions of Pennsylvania and West Virginia into the Baltimore and Washington, DC metropolitan areas, including Data Center Alley in Northern Virginia. These constraints are frequently

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

binding in the PJM energy market, as defined by the Commission, and bind at times of system peak loads.[41]

Table 5 provides the congestion event hours for the frequently binding PJM constraints that meet the Commission's criterion of binding at least five percent of annual hours.

Table 3 Frequently binding constraints: June 2024 through May 2026

Frequently Binding Constraints (June 2024 - May 2026)			
Facility	Real-Time Congestion Event Hours	Percent of Hours	Chesapeake Submarket
Lenox - North Meshoppen	7,419	42.3%	
Kewanee	2,621	15.0%	
East Towanda - Hillside	2,547	14.5%	
Nottingham	2,399	13.7%	Yes
Haumesser Road - Steward	2,225	12.7%	
Chicago Ave - Praxair	1,754	10.0%	
Graceton - Manor	1,707	9.7%	Yes
Dune Acres - Michigan City	1,603	9.1%	
Prest - Tibb	1,427	8.1%	
Conastone - Northwest	1,257	7.2%	Yes
Burnham - Munster	1,044	6.0%	
Bedington - Black Oak	1,029	5.9%	Yes

The Chesapeake submarket includes but is not limited to the BGE, DOM, and PEPCO transmission zones. Rather than using transmission zone definitions, a more accurate definition of the electrical submarket uses the pricing nodes affecting flows on the frequently binding constraints. The list of frequently binding constraints includes those that define the Chesapeake submarket and also includes other frequently binding constraints. A negative dfax indicates the high price side of the constraint in the load pocket, and all pnodes with a negative dfax to the identified constraints greater than three percent are defined to be inside the submarket.[42] A positive dfax indicates the low price side of the constraint where resources have the ability to exercise market power by creating uneconomic flows on the transmission constraint in order to cause or exacerbate

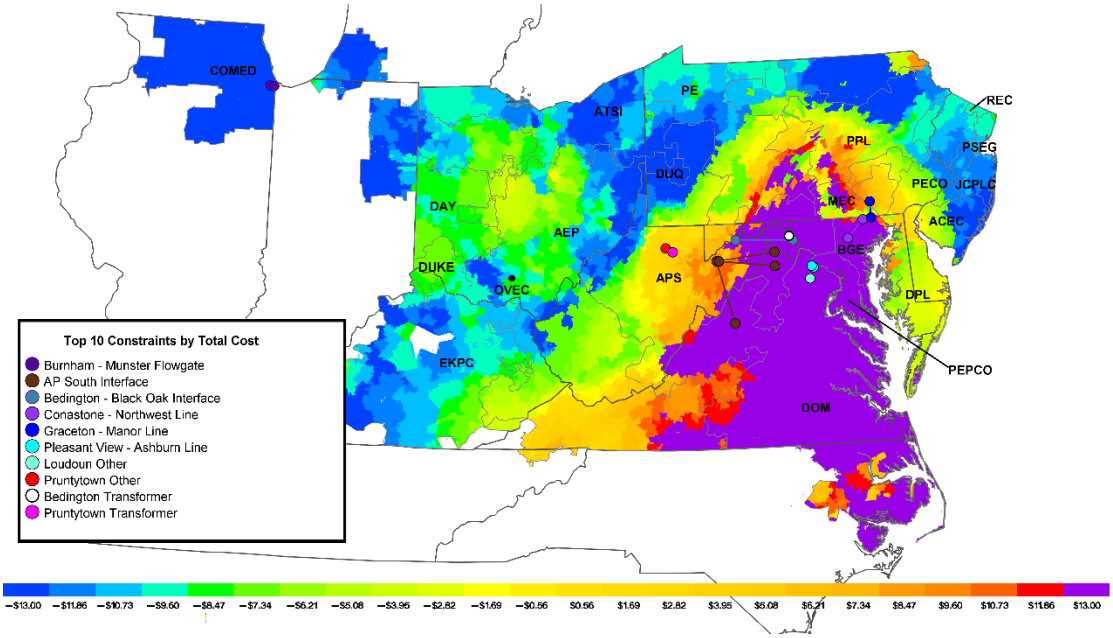
[41] For example, during Winter Storm Fern, the winter peak of January and February 2026, and during the May 18 to 20, 2026, heatwave, PJM required capacity demand response to curtail in the DOM, BGE, and PEPCO Zones due to binding constraints. See PJM Emergency Procedures Postings at <https://emergencyprocedures.pjm.com/ep/pages/dashboard.jsf>.

[42] The dfax threshold is used to exclude resources that do not have a significant impact on a constraint. Three percent is the threshold used by PJM to determine whether a generating unit is eligible for offer capping for local market power mitigation.

price separation, and all pnodes with a positive dfax to the identified constraints greater than three percent are defined to be outside the submarket.

Figure 2 shows the price separation directly resulting from binding constraints, along with the location of the constraints. The map plots the congestion component of LMP ("CLMP") associated with binding constraints by pnode for the constraints that caused the most price separation and related congestion costs, in the first six months of 2026. The CLMP measures the amount a pnode is priced above or below the PJM system marginal price ("SMP") due to binding constraints.[43] The AP South, Bedington-Black Oak, Bedington Transformer, Conastone-Northwest, and Graceton-Manor constraints that define the purple area, priced more than $13 per MWh above the SMP. The surrounding red and dark orange areas are priced more than $10 per MWh above the SMP due to the same binding constraints. Binding constraints at Pleasant View-Ashburn and Loudon further constrain flows into Data Center Alley within the Chesapeake submarket. Only three constraints in the top 10 constraints by congestion cost are not associated with the Chesapeake submarket, Burnham-Munster, Pruntytown, and Pruntytown Transformer.

Figure 2 Map of price differences resulting from the top 10 binding constraints by total congestion cost: January through June 2026



The Commission previously accepted the PJM West submarket, including some of the same constraints that define the Chesapeake submarket, but includes AP; AEP; ATSI;

[43] *See* the *2026 Quarterly State of the Market Report for PJM: January through June*, Section 11: Congestion and Marginal Losses, (August 13, 2026) at Figure 11-17, <https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2026.shtml>.

BGE; ComEd; DAY; DOM; DEOK; DLCO; EKPC; OVEC; PENELEC; and PEPCO.[44] [45] The constraints that defined the PJM West submarket included Nottingham, Conastone-Northwest, Graceton-Safe Harbor, Lenox-North Meshoppen, and Fremont-Fremont. The analysis considered the sign, but not the magnitude, of the dfax between the constraints and zonal load aggregates, rather than individual pnodes. As a result, the PJM West submarket is much larger than the Chesapeake submarket and includes transmission zones where generation does not have a significant effect on the Chesapeake submarket constraints. As the map shows, prices vary considerably within the PJM West submarket. Because the DPT analysis does not consider dfax in determining the amount of relief that generation can provide to demand in the submarket, the PJM West submarket does not accurately capture the extent of local market power present in the Chesapeake submarket. In the actual operations of the PJM market, the Chesapeake submarket is a relevant submarket. To accurately define the submarket by generators with an electrical location that can actually provide constraint relief and, therefore, affect prices in the submarket, the IMM has limited the pnodes defining the Chesapeake submarket based on a dfax greater than three percent in magnitude.

As the pnodes and constraints defining this submarket may shift over time, updating the submarket definition based on frequently binding constraints and shifting distribution factors is essential to accurate analysis. All of the binding constraint data is available on PJM's website.[46] All of the CLMP data is available on PJM's website.[47]

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. 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.

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44 192 FERC ¶ 61,073 (July 23, 2025) at P.56.

45 *See* PJM. PJM Transmission Zone Map <https://www.pjm.com/library/-/media/B7455E69D97B45FFB390EEFAD84AD50D.ashx>.

46 *See* PJM Data Miner 2, Real-Time Marginal Value, <https://dataminer2.pjm.com/feed/rt_marginal_value/definition>.

47 *See* PJM Data Miner 2, Settlements Verified Five Minute LMPs, <https://dataminer2.pjm.com/feed/rt_fivemin_mnt_lmps/definition>.

Energy Market Results

Aggregate Market Power

The IMM analyzed the impact of the proposed Merger on aggregate energy market concentration using actual generation data for the two year period, June 2024 through May 2026.[48] The IMM uses data from PJM's real-time energy market.

The IMM calculates concentration metrics including the market share for energy and the HHI for energy in the aggregate PJM market. The IMM calculates pivotal supplier scores for the aggregate day-ahead energy market.

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Table 4 NextEra's average hourly market share of PJM generation premerger and postmerger: June 2024 through May 2026

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Table 5 Energy market HHI premerger and postmerger: June 2024 through May 2026

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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'

[48] *See* 192 FERC ¶ 61,074 at 131.

available economic capacity in the peak hour of the operating day in order to meet demand.

When NextEra or Dominion 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. The merger would increase NextEra's aggregate market power, increasing its incentive and ability to raise prices.

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Table 6 Day-ahead aggregate energy market three pivotal supplier frequency pre and post merger: June 2024 through May 2026

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Table 7 Day-ahead aggregate energy market one pivotal supplier frequency pre and post merger: June 2024 through May 2026

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Local Market Power

The IMM also analyzed the real-time energy market results for frequently binding constraints for more than five percent of hours in the two year period, June 2024 through May 2026.[49] The analysis identifies constraints for which Dominion and/or NextEra had market power, or would have market power as a result of the Merger, 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. Dominion and NextEra frequently have incremental, effective MW available to provide constraint relief in PJM's energy market meaning that NextEra and Dominion have local market power as measured by TPS test failures both before and after the transaction.

Table 10 identifies the constraints on the PJM system for which Dominion and/or NextEra had market power or would have market power as a result of the Merger and that were

[49] *See* 192 FERC ¶ 61,074 at 131.

frequently binding based on the Commission's criteria of more than 876, or 5 percent, of hours during the period, June 2024 through May 2026.[50] The tables provide the number of hours for which NextEra would have failed the TPS Test as a result of the Merger. The postmerger pivotal supplier results attribute all Dominion supply to NextEra. The zero or N/A results for Dominion simply mean that Dominion will no longer exist as a standalone entity.

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Table 8 Real-time hours with TPS test failures for identified constraints premerger and postmerger: June 2024 through May 2026

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Table 11 identifies the constraints on the PJM system for which Dominion and/or NextEra had market power, or would have market power as a result of the Merger and that were binding for more than 876 or 5 percent of hours during June 2024 through May 2026. The tables provide the average TPS score that Dominion and NextEra would have as a result of the Merger. A TPS score of less than 1.0 indicates that a supplier has market power.

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Table 9 Premerger and Postmerger TPS scores for identified constraints as determined by the real-time energy market TPS test: June 2024 through May 2026

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Table 12 identifies the constraints for which Dominion and/or NextEra had market power, or would have market power with the transaction and that were binding for more than 876 or 5 percent of hours during June 2024 through May 2026. Table 12 provides the average HHI of effective MW used in the TPS test for the identified constraints and the

[50] The IMM increased the number of constrained hours in its analysis from 200 hours in two years to 876 hours (5 percent of hours in two years) in response to the Commission's requests in Docket No. EC26-39-000.

average HHI the constraints would have with the transaction. The market hours are limited to hours in which Dominion or NextEra could provide relief supply to the constraint.

Table 10 Premerger and postmerger HHI as determined by the real-time energy market TPS test for identified constraints: June 2024 through May 2026

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The OPS test considers incremental, effective MW available to provide relief to binding constraints in the energy market. The OPS analysis uses the same basic incremental, effective MW logic as the TPS analysis, except that the OPS defines whether a single supplier is pivotal and the OPS uses a price threshold of 105 percent instead of 150 percent to define competitive suppliers.

Table 13 identifies the constraints for which Dominion and/or NextEra had market power, or would have market power with the transaction and that were binding for more than 876 or 5 percent of hours during June 2024 through May 2026. The tables provide the number of hours for which Dominion and NextEra would have failed the OPS Test as a result of the Merger.

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Table 11 Real-time hours with OPS test failures for identified constraints premerger and postmerger: June 2024 through May 2026

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Table 14 identifies the constraints for which Dominion and/or NextEra had market power, or would have market power with the transaction and that were binding for more than 876 or 5 percent of hours during June 2024 through May 2026. The tables provide the average OPS score for Dominion and NextEra and the average OPS score Dominion and NextEra would have with the transaction. An OPS score of less than 1.0 indicates that a supplier has market power.

Table 12 Premerger and Postmerger OPS scores for identified constraints: June 2024 through May 2026

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Table 15 identifies the constraints for which Dominion and/or NextEra had market power, or would have market power as a result of the Merger and that were binding for more than 876 or 5 percent of hours during June 2024 through May 2026. Table 15 provides the average HHI of effective MW used in the TPS test for the identified constraints and the average HHI the constraints would have with the transaction. The market hours are limited to hours in which Dominion or NextEra could provide relief supply to the constraint.

Table 13 Premerger and postmerger HHI as determined by the real-time energy market OPS test for identified constraints: June 2024 through May 2026

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Capacity Market Results

Market Design

The Reliability Pricing Model (RPM) Capacity Market design was implemented in PJM 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.[51] 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.[52]

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.[53]

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51 *See* 190 FERC ¶ 61,117.

52 *See id*.

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

RPM prices are locational by LDA and may vary depending on transmission constraints between LDAs and local supply and demand conditions within LDAs.[54] 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.[55] The capacity market, following the implementation of

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[54] 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.

[55] 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") <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

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.

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

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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>; Analysis of the 2027/2028 RPM Base Residual Auction - Part B," (July 9, 2026) <https://www.monitoringanalytics.com/reports/Reports/2026/IMM_Analysis_of_the_20272028_RPM_Base_Residual_Auction_Part_B_20260709.pdf>.

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.[56]

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.[57]

Market Analysis

The analysis of the impact of the NextEra/Dominion merger 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 premerger and a postmerger basis for each market.

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.

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56 *See* 2025/2026 BRA Reports.

57 *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).

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.[58] When the LDAs are nested, the analysis becomes more complex.

For this analysis, the actual sell offer prices and offered MW quantities in the 2026/2027, 2027/2028, and 2028/2029 RPM BRAs were used.[59]

Aggregate Market: HHI

Table 16 shows the pre and post merger HHIs for the 2026/2027, 2027/2028, and 2028/2029 RPM Base Residual Auctions, including all modeled LDAs for each BRA. The HHIs in Table 16 measure concentration of ownership for all cleared capacity in the identified LDAs.

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Table 14 Premerger and postmerger HHI

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[58] *See* 2025/2026 BRA Reports.

[59] 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 premerger and postmerger cases.

Locational Capacity Markets: Pivotal Supplier Tests

The pivotal supplier analysis uses the pre and postmerger One Pivotal Supplier (OPS) and Three Pivotal Supplier test scores to measure the change in market power for the RTO and LDAs. The OPS analysis uses the same basic residual supplier logic as the TPS analysis, except that the OPS defines whether a single supplier is pivotal and the OPS uses a price threshold of 105 percent instead of 150 percent to define competitive suppliers. Table 17 shows the postmerger OPS scores for NextEra, Dominion, and the merged company. Table 18 shows the postmerger TPS scores for NextEra, Dominion, and the merged company. The postmerger pivotal supplier results attribute all Dominion supply to NextEra. The zero or N/A results for Dominion simply mean that Dominion will no longer exist as a standalone entity.

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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.

Table 15 Premerger and postmerger OPS results

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Table 16 Premerger and postmerger TPS results

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Attachment B

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