

153 FERC ¶ 61,187  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Joint Consumer Representatives

Docket No. EL15-83-000

v.

PJM Interconnection, L.L.C.

ORDER DENYING COMPLAINT

(Issued November 19, 2015)

1. On June 30, 2015, Joint Consumer Representatives (Joint Consumers)<sup>1</sup> filed a complaint against PJM Interconnection, L.L.C. (PJM) under section 206 of the Federal Power Act (FPA),<sup>2</sup> requesting that the Commission direct PJM to update its 2015 PJM Region Peak Load Forecast values for purposes of certain capacity auctions, so as to reflect the impact of recent enhancements to PJM's load forecasting model (Complaint). Joint Consumers contend that failure to use the updated load forecasting model will lead to substantial and imprudent over-procurement of capacity, resulting in unjust and unreasonable capacity prices for consumers. For the reasons discussed below, we deny Joint Consumers' Complaint.

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<sup>1</sup> Joint Consumers consist of the following entities: PJM Industrial Customer Coalition, Sustainable FERC Project/Natural Resources Defense Council, Sierra Club, New Jersey Board of Public Utilities, New Jersey Division of Rate Counsel, Maryland Office of People's Counsel, Office of the People's Counsel for the District of Columbia, Pennsylvania Office of Consumer Advocate, Delaware Public Service Commission, Delaware Division of the Public Advocate, West Virginia Consumer Advocate Division, and Maryland Public Service Commission.

<sup>2</sup> 16 U.S.C. § 824e (2012).

## I. Background

### A. Capacity Procurement in PJM

2. Capacity suppliers offer into PJM's Base Residual Auction (BRA) to provide capacity for a Delivery Year three years in the future. Through that auction, PJM procures virtually its entire capacity requirement for that Delivery Year,<sup>3</sup> and the offer price of the marginal resource sets the clearing price that is paid to all cleared resources.<sup>4</sup> In addition to the BRA that procures the bulk of capacity for any given Delivery Year, PJM also conducts three Incremental Auctions between the date of the BRA and the beginning of the associated Delivery Year, to enable PJM and capacity resources to further sell or buy capacity obligations for that Delivery Year.

3. To determine the amount of capacity to be procured in each BRA, PJM performs a Peak Load Forecast, which estimates the amount of capacity necessary to meet the PJM region's reliability requirements for a given Delivery Year.<sup>5</sup> The Peak Load Forecast is calculated pursuant to the load forecast model, which produces a forecast of monthly and seasonal peak load and load management, for each PJM zone, selected combinations of zones, and the PJM region.<sup>6</sup>

4. On June 9, 2015, the Commission accepted a filing by PJM (the Capacity Performance Filing) to establish a new capacity product, a Capacity Performance Resource, to ensure that PJM's capacity market provides sufficient incentives to ensure resource performance.<sup>7</sup> As part of the Capacity Performance proceeding, the Commission accepted PJM's proposal to procure Capacity Performance Resources for a portion of PJM's reliability needs in the 2015 BRA for the 2018-2019 Delivery Year, and

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<sup>3</sup> As discussed below, until recently PJM did not procure all of its capacity requirement in the BRA (*see* P 5, *below*).

<sup>4</sup> *See generally PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006).

<sup>5</sup> PJM Open Access Transmission Tariff (OATT), Attachment DD, sections 2.55 and 5.10(d).

<sup>6</sup> Complaint at 4 n.7 (citing PJM Manual 19 § 1.1, available at <http://www.pjm.com/~media/documents/manuals/m19.ashx>).

<sup>7</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (Capacity Performance Order).

in two Transition Auctions (separately from the Incremental Auctions already associated with each Delivery Year) for the 2016/2017 and 2017/2018 Delivery Years.<sup>8</sup>

5. In the Capacity Performance proceeding, the Commission accepted PJM's proposal to eliminate the 2.5 percent holdback requirement, whereby 2.5 percent of PJM's Peak Load Forecast amount would not be procured during the BRA, but would instead be procured during the Incremental Auctions.<sup>9</sup> The 2.5 percent holdback requirement was initially implemented in 2009 to enable short-lead time resources to participate in PJM's capacity market.<sup>10</sup> In their comments to the Capacity Performance Filing, Joint Consumers had argued that the 2.5 percent holdback should be retained because, according to Joint Consumers, it mitigates the effects of overstated load forecasts.<sup>11</sup> However, the Commission accepted PJM's proposal to eliminate the holdback, responding to Joint Consumers' concerns by stating that "we are not persuaded that a holdback requirement is necessary to address load forecast errors, or that the historical overstatements experienced to date are unavoidable or likely to recur at a level that requires mitigation."<sup>12</sup> The Commission further noted that "[i]n fact, PJM's stakeholders have discussed these issues, including proposed modeling changes, with load forecast adjustments recently adopted by PJM."<sup>13</sup>

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<sup>8</sup> *Id.* PP 6, 220. The 2015 BRA was held on August 10-14, 2015. The Transition Auction for the 2016/2017 Delivery Year was held on August 26-27, 2015. The Transition Auction for the 2017/2018 Delivery Year was held on September 3-4, 2015.

<sup>9</sup> Capacity Performance Order, 151 FERC ¶ 61,208 at P 394.

<sup>10</sup> *See PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at PP 68, 83-85 (2009) *modified by* 127 FERC ¶ 61,036, *order on clarification*, 127 FERC ¶ 61,104, *order on clarification and reh'g*, 128 FERC ¶ 61,157 (2009).

<sup>11</sup> Joint Consumers asserted that since the inception of PJM's three-year forward capacity market, "PJM's load forecast at the time of the BRA has been substantially overstated" by an average of 6.25 percent, and "[t]he primary benefit of the 2.5% Holdback . . . is to offset the persistent load over-forecasting that drives higher-than-necessary Reliability Requirement levels in the [BRAs]." Joint Consumers Protest, Capacity Performance Filing, Docket No. ER15-623-000, at 29, 4.

<sup>12</sup> Capacity Performance Order, 151 FERC ¶ 61,208 at P 396.

<sup>13</sup> *Id.* P 396 n.310 (citing PJM Interconnection, L.L.C., Load Analysis Subcommittee report, available at: [www.pjm.com/committees-and-groups/subcommittees/las.aspx](http://www.pjm.com/committees-and-groups/subcommittees/las.aspx)).

## B. Complaint

6. Joint Consumers state that, in parallel with PJM's efforts to develop and implement its Capacity Performance Filing, in late 2014 the PJM forecast team was tasked with developing a more comprehensive load forecasting model to improve its accuracy and address the PJM board and stakeholder concerns regarding recent peak load over-forecasts. Joint Consumers state that PJM presented updates of its investigation at several meetings of PJM's Load Analysis Subcommittee, which indicated significant reductions of PJM's initial load forecast for the 2016/2017, 2017/2018, and 2018/2019 Delivery Years.<sup>14</sup> Joint Consumers state that, despite PJM's representations that its enhanced load forecast model has been fully tested, PJM indicated that the enhanced load forecast model would not be ready for implementation until the fall of 2015.<sup>15</sup>

7. Joint Consumers contend that PJM's failure to use the results of the enhanced load forecast model for the 2015 BRA and Transition Auctions will result in unnecessary and substantial over-procurement of capacity. Joint Consumers contend that such over-procurement will result in unjust and unreasonable rates for millions of consumers in the PJM region who are ultimately responsible for billions of dollars in annual capacity costs. Joint Consumers state that use of this updated and more accurate load forecasting model in the 2015 BRA and Transition Auctions would reduce the Peak Load Forecast for the 2016/2017, 2017/2018, and 2018/2019 Delivery Years by approximately 7,000 MWs or more, and could result in savings to consumers of more than \$600 million.<sup>16</sup> Therefore, Joint Consumers contend that the Commission should require PJM to apply the results of its updated model in order to prevent significant and avoidable financial harm to consumers.

8. Further, Joint Consumers allege that the acquisition of Capacity Resources that are not needed for reliability and will not be "used and useful" in serving customers is imprudent.<sup>17</sup> Joint Consumers note that the Commission has consistently reviewed public utilities' charges to ensure that such costs are prudently incurred.<sup>18</sup> Joint Consumers

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<sup>14</sup> *Id.* 5 n.10 (citing PJM Load Analysis Subcommittee, Follow Up Analysis of Proposed Changes to the PJM Load Forecast Model (May 27, 2015), available at <http://www.pjm.com/~media/committeesgroups/subcommittees/las/20150527/20150527-item-03-forecast-changes-update.ashx>).

<sup>15</sup> Complaint at 8.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 10 n.22 (citing *United Dist. Cos. v. FERC*, 88 F.3d 1105, 1190 n.101 (continued ...))

contend that, given that PJM has repeatedly expressed confidence in the capabilities of the enhanced load forecast model to provide a more accurate Peak Load Forecast than its current load forecast model, the decision not to use the updated load forecasting model for the upcoming Transition Auctions and 2015 BRA violates the Commission's prudence standard by resulting in the acquisition of capacity resources that will not be necessary or used and useful in service to consumers.

9. Joint Consumers contend that, if the Commission does not require PJM to use the enhanced load forecast model, it should order PJM to reinstate the 2.5 percent holdback for the Transition Auctions and 2015 BRA. Joint Consumers explain that the holdback provision was just and reasonable primarily as a mitigating offset to PJM's significant over-forecasting. Joint Consumers state that, given the Commission's acknowledgement in the Capacity Performance Order of PJM's historic over-procurement under the current load forecasting model, and its acknowledgement of the relationship between the 2.5 percent holdback and persistent load over-forecasting, the 2.5 percent holdback cannot be eliminated until the updated load forecasting model is in place.<sup>19</sup>

10. Alternatively, Joint Consumers request that the Commission order PJM to delay the Transition Auctions and the 2015 BRA until November 2015 or later, consistent with PJM's representation that the updated load forecasting model would be ready for implementation at this time. Joint Consumers contend that in order for the Capacity Performance Filing to achieve the stated purpose of increasing the likelihood of capacity resource performance when called upon during emergencies, the Peak Load Forecast must accurately reflect the quantity of capacity needed to satisfy the reliability requirement for the delivery year.

## **II. Notice of Complaint and Responsive Pleadings**

11. Notice of Joint Consumers' Complaint was published in the *Federal Register*, 80 Fed. Reg. 39,764 (2015), with answers, interventions, and protests due on or before July 20, 2015. Timely motions to intervene were filed by Calpine Corporation (Calpine), PJM Power Providers Group (P3), Exelon Corporation (Exelon), the Independent Market Monitor for PJM (IMM), Direct Energy Business Marketing, Homer City Generation, Electric Power Supply Association (EPSA), Duke Energy Corporation, Inertia Power I, NRG Companies (NRG), Wabash Valley Power Association, American Municipal Power

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(D.C. Cir. 1996)).

<sup>19</sup> *Id.* at 11. Joint Consumers note that the issue of whether elimination of the 2.5 percent holdback is just and reasonable remains pending before the Commission in the Capacity Performance proceeding, Docket No. ER15-623-000, because the rehearing stage of that proceeding is still in progress (Complaint at 8).

(AMP), PSEG Companies (PSEG), Office of the Ohio Consumers Counsel (OCC), Public Power Association of New Jersey (PPANJ), NextEra Energy Resources, East Kentucky Power Cooperative, North Carolina Electric Membership Corporation, FirstEnergy Service Company, Talen Energy Marketing, American Electric Power Service Corporation (AEP), Dayton Power and Light Company, and Buckeye Power. An out-of-time motion to intervene was submitted by Dominion Resource Services (Dominion).

12. PJM and Exelon Corporation submitted timely answers. Timely protests were submitted by EPSA, the PJM Utilities Coalition,<sup>20</sup> PJM Power Providers Group, and jointly by Calpine and NRG (together, Indicated Suppliers). Comments were submitted by OCC, AMP, NextEra, PSEG, and PPANJ. Dominion submitted out-of-time comments. On July 27, 2015, PJM submitted a limited supplemental answer. On July 30, 2015, Joint Consumers submitted an answer to the answers and protests, on August 4, 2015, PJM submitted a second supplemental answer, and on August 6, 2015, the PJM Utilities Coalition submitted an answer to Joint Consumers' July 30 answer.

**A. PJM's Answer to the Complaint**

13. PJM states that it has complied with its OATT by establishing the Peak Load Forecast for the 2015 BRA in accordance with its manuals, and posting the Peak Load Forecast by February 1, 2015.<sup>21</sup> With regard to the Transition Auctions, PJM states that the Commission has accepted its proposal to procure Capacity Performance Resources based on the reliability requirements previously established for the 2016/2017 and 2017/2018 Delivery Years.<sup>22</sup>

14. PJM further states that, contrary to Joint Consumers' argument, the enhancements to the load forecasting model to which Joint Consumers refer are not finalized. PJM explains that there are three key areas that must be finalized before the updated load forecasting model can be used to develop the 2016 Peak Load Forecast: (1) the accuracy

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<sup>20</sup> PJM Utilities Coalition includes American Electric Power Service Corporation, The Dayton Power and Light Company, and FirstEnergy Service Company, each on behalf of its affected affiliates, Buckeye Power and East Kentucky Power Cooperative, who have intervened separately.

<sup>21</sup> PJM Answer at 1 (citing OATT, Attachment DD, section 5.10(d) (PJM "shall establish the Preliminary PJM Region Load Forecast for the Delivery Year in accordance with the PJM Manuals by February 1, prior to the conduct of the Base Residual Auction for such Delivery Year"))).

<sup>22</sup> PJM Answer at 5 (citing Capacity Performance Order, 151 FERC ¶ 61,208 at PP 253-254).

of the model as to Transmission Owner zones and Locational Deliverability Areas; (2) the appropriate weather simulation period; and (3) that the Peak Load Forecast appropriately accounts for energy efficiency resources which are likely to clear in the capacity auction. PJM anticipates seeking endorsement of the manual changes necessary to implement the updated load forecasting model through PJM's Markets and Reliability Committee in the October/November 2015 time frame.<sup>23</sup> PJM reasons that, if the updated Peak Load Forecast model is not ready to use in developing the 2016 Peak Load Forecast, it is wholly unreasonable to argue that such load forecast model can be employed to update the load forecasts for the Transition Auctions and 2015 BRA.

15. PJM contends that it should be granted deference in determining if its load forecasting model enhancements are completed and ready for implementation, including the updating of a previously determined Peak Load Forecast. PJM acknowledges that it shared the results of its analysis of the proposed changes to its load forecast model during the Load Analysis Subcommittee meetings in April and May in order to show the accuracy and effectiveness of the enhancements, but states that these stakeholder materials are not evidence that the updated model is ready for implementation. PJM states that before implementation, it must be sure the enhancements have been adequately analyzed to ensure the resulting load forecasting model will be more accurate than they are today, and based on the status of review and analysis, it does not believe the model enhancements are final.<sup>24</sup> PJM notes that the Commission has expressly found appropriate its "use of some reasonable discretion in modeling."<sup>25</sup> In addition, PJM notes that the Commission has affirmed that PJM "should have full discretion" in applying Tariff-specified criteria, because planning "has been recognized as one of the key functions of an RTO," and "PJM, as an RTO, has always been in the best position to conduct such objective analysis."<sup>26</sup>

16. PJM further explains that, even if the Joint Consumers' claim were accurate that the enhancements to the load forecasting model were already completed and ready for implementation, PJM could not incorporate an updated Peak Load Forecast and other

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<sup>23</sup> *Id.* at 6-7.

<sup>24</sup> *Id.* at 11.

<sup>25</sup> *Id.* at 12 (citing *PPL Energy Plus v. PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,263 at P 43, *reh'g denied*, 136 FERC ¶ 61,060 (2011), *aff'd*, 503 F. App'x 1 (D.C. Cir. 2013)).

<sup>26</sup> PJM Answer at 12 (citing *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218 at P 25 (2006), *see also PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,060 at P 26 (2014)).

planning parameters in time for the upcoming auctions.<sup>27</sup> PJM states that the Commission has recognized the need for advance notice to post planning parameters and has declined to require PJM to use an updated load forecast so close to the commencement of an auction.<sup>28</sup>

17. With regard to the 2.5 percent holdback provision, PJM contends that the Joint Consumers inaccurately allege that the provision was previously included in the OATT to mitigate the harm associated with PJM's over-forecasting under the current forecasting model, and argues that their request to reinstate the provision is a collateral attack on the Capacity Performance Order. PJM further states that, contrary to the Joint Consumers' claim, the Commission did not rely on the development of load forecast updates as a basis for accepting PJM's proposal to eliminate the 2.5 percent holdback, given that the Commission stated in the Capacity Performance Order that "we are not persuaded that a holdback requirement is necessary to address load forecast errors, or that the historical overstatements experienced to date are unavoidable or likely to recur at a level that requires mitigation."<sup>29</sup>

18. Finally, PJM states that the Joint Consumers' alternative request that the 2015 BRA and Transition Auctions should be delayed beyond November 2015 is unfounded and should be rejected. PJM notes that it sought and was granted a limited delay in the 2015 BRA in April of this year, but points to the Commission's statement that "we recognize that some protestors argue that delaying the auction will harm them," but that "PJM has proposed to conduct the auction no later than mid-August, which mitigates the potential impacts on market participants."<sup>30</sup> PJM contends that Joint Consumers' request

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<sup>27</sup> PJM's witness explains that updating the planning parameters "requires significant effort on the part of PJM planning and markets staff to re-calculate, for all zones and applicable [Locational Delivery Areas], the Reliability Requirements . . . [and] the [Demand Response] Reliability Targets still in effect for 2016/2017 and 2017/2018 Delivery Years and the limited-availability constraints for the 2018/19 Delivery Year. This effort would require six weeks to complete." PJM Answer at 12-13 (citing Falin Affidavit, Exhibit 1 to PJM Answer, at P 11).

<sup>28</sup> PJM Answer at 13 (citing *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at P 200 & n.78 (indicating the issue was already under discussion in the PJM stakeholder process), *modified on other grounds by* 127 FERC ¶ 61,036, *order on clarification*, 127 FERC ¶ 61,104, *order on clarification and reh'g*, 128 FERC ¶ 61,157 (2009)).

<sup>29</sup> PJM Answer at 14-15 (citing Capacity Performance Order, 151 FERC ¶ 61,208 at P 396).

<sup>30</sup> PJM Answer at 16 n.35 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067, at P 28 (2015)).

for delay, by contrast, would result in holding the BRA for up to 6 months after the OATT deadline, and argues that Joint Consumers have failed to show their requested delay is reasonable or warranted.<sup>31</sup>

19. In its supplemental answer, PJM states that its OATT already mitigates against harm to consumers that may result from over-procuring capacity in a BRA, because the OATT requires it to sell back excess capacity during the Incremental Auctions leading up to a given Delivery Year and load serving entities (i.e., ultimately consumers) are refunded.<sup>32</sup> Therefore, PJM argues that the dire picture that the Complaint and its supporters paint with regard to customers enduring unjust and unreasonable rates as a result of an over-forecast is not accurate.<sup>33</sup>

### **B. Comments/Protests**

20. PPANJ, NextEra, OCC and AMP urge the Commission to grant the Complaint. These parties contend that PJM has consistently over-forecasted peak load. These parties state that the requested relief is necessary to prevent PJM from over-procuring capacity in the 2015 BRA and Transition Auctions, thereby protecting consumers from excessive rates and charges.<sup>34</sup> In addition to supporting the Complaint, PPANJ urges the Commission to monitor PJM's long-term efforts to further identify and correct flaws in the load forecast method through semi-annual reporting, and to encourage PJM to engage an outside consultant for another thorough review of the forecasting methodology, and to adopt such expert's recommendations.

21. PSEG, Exelon, P3, EPSA, Dominion, Indicated Suppliers, and PJM Utilities Coalition oppose the Complaint. PSEG, Indicated Suppliers, and PJM Utilities Coalition

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<sup>31</sup> PJM Answer at 15-16.

<sup>32</sup> PJM First Supplemental Answer at 2 n.6 (citing Tariff, Attachment DD, sections 5.4(c) and 5.4(c)(3)).

<sup>33</sup> PJM First Supplemental Answer at 2-3.

<sup>34</sup> NextEra agrees with Joint Consumers that using the updated load forecasting model could reduce costs in the 2016/2017 and 2017/2018 Delivery Years by \$113.6 million and \$160.5 million, respectively. NextEra comments at 3 n.5 (citing Complaint at 9). PPANJ suggests that considering improved forecasts for energy efficiency, a drop in demand, and a smaller growth rate could reduce capacity auction prices by approximately \$55/MW-day, amounting to a reduction in total costs for one year of approximately \$3 billion. PPANJ comments at 5 n.3 (citing UBS Securities, LLC, US Electric Utilities & IPPs, July 14, 2015, page 3, found at <https://neo.ubs.com/shared/d102ZPqChxy/>).

contend that Joint Consumers have failed to meet their FPA section 206 burden. PSEG argues that Joint Consumers have not identified any statutory provision or regulatory requirement that PJM has violated, or any OATT provision that allows PJM to implement a forecast model change, rerun the model and utilize the results for the capacity market auctions outside of the OATT-approved process.<sup>35</sup> PSEG contends that because the Complaint is without statutory basis and the allegations upon which the Complaint relies are not supported by any credible evidence, the Commission should dismiss the Complaint for failure to comply with the Rules of Practice and Procedure.<sup>36</sup>

22. Indicated Suppliers and PJM Utilities Coalition argue that Joint Consumers have not shown that PJM's current load forecasting model or load forecasts generated using that model are unjust and unreasonable. Indicated Suppliers state that forecasts are imprecise, and the FPA does not demand perfection, only that the resulting rates fall within a zone of reasonableness. Indicated Suppliers state that the Commission has long made clear that "[t]he just and reasonable standard under the FPA is not so rigid as to limit rates to a 'best rate' or 'most efficient rate standard.'"<sup>37</sup> Indicated Suppliers contend that the Commission has already determined that any past forecasting inaccuracies under the current model do not rise to the level of being unjust and unreasonable, stating, just last month, that it was "not persuaded...that the historical overstatements experienced to date are unavoidable or likely to recur at a level that requires mitigation," and the

Commission expressly rejected arguments by some of the Joint Consumers in the Capacity Performance proceeding that "a holdback requirement is necessary to address load forecast errors."<sup>38</sup>

23. PSEG, Exelon and P3 argue that the Complaint should be dismissed because it is premature, and because any allegation of harm is speculative. These parties, along with Indicated Suppliers, PJM Utilities Coalition, EPSA, and Dominion note that the updated load forecasting model still needs to be vetted through the stakeholder process. P3 states that the Commission has consistently recognized that provisions adopted through a RTO

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<sup>35</sup> PSEG Protest at 4-6.

<sup>36</sup> PSEG Protest at 7 (citing *Citizens Task Force and Save Our Unique Lands v. Midwest Reliability Organization, et al.*, 144 FERC ¶ 61,006 (2013)).

<sup>37</sup> Indicated Suppliers Protest at 4 n.15 (citing *Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282 at P 29, *on reh'g sub nom. E.ON U.S. LLC, et al.*, 116 FERC ¶ 61,020 (2006)).

<sup>38</sup> Indicated Suppliers Protest at 4 nn.16-17 (citing Capacity Performance Order, 151 FERC ¶ 61,208 at P 396).

stakeholder process will be given due deference, provided they are otherwise just and reasonable.

24. Exelon further notes that PJM has already taken significant action to address the potential that its current load forecasting model results in the over-procurement of capacity resources, in that PJM introduced a new binary variable to its current load-forecasting model that has reduced peak and energy forecasts in 2018 by more than 2.5 percent.<sup>39</sup> Exelon states that since PJM has taken concrete action to mitigate the concerns expressed by Joint Consumers, the Commission should reject their request for the implementation of a new forecasting model that is still being developed.

25. With regard to Joint Consumers' alternate request for relief regarding the 2.5 percent holdback, PSEG, PJM Utilities Coalition, P3, EPSA, Indicated Suppliers and Exelon argue that Joint Consumers are legally barred from seeking reinstatement of the 2.5 percent holdback since the issue was recently litigated in the Capacity Performance proceeding. P3 and EPSA argue that the 2.5 percent holdback issue is also pending in the requests for rehearing of the Capacity Performance Order, and P3 states that the courts have routinely held that petitioners seeking review of Commission orders must first petition for rehearing of those orders.

26. Finally, as to Joint Consumers' request that the Commission require PJM to delay the auctions, Indicated Suppliers contend that the Commission has previously recognized that it will be severely "disruptive to the market to change the forecast" at such a late date.<sup>40</sup> EPSA contends that the requested delay could easily push the 2015 BRA well into the spring and cause what is supposed to be a three-year forward auction to be a two-year forward auction. Indicated Suppliers and Exelon argue that such delay could interfere with market participants' plans and expectations, and could harm the PJM region as a whole by disrupting the development of new resources. Indicated Suppliers also note that the Commission has recognized that "several market parameters are critically dependent on the load forecast being available to market participants and the [Independent Market Monitor] three months prior to the auction."<sup>41</sup>

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<sup>39</sup> Exelon Answer at 3.

<sup>40</sup> Indicated Suppliers Protest at 6 n.23 (citing *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at P 200, *order on clarification*, 127 FERC ¶ 61,104, *order on clarification and reh'g*, 128 FERC ¶ 61,157).

<sup>41</sup> Indicated Suppliers at 6 n.22 (citing *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at P 200, *on clarification*, 127 FERC ¶ 61,104, *on clarification & reh'g*, 128 FERC ¶ 61,157).

## 1. Further Pleadings

27. In their July 30 answer to PJM's answer and supplemental answer, Joint Consumers assert that, contrary to PJM's assertion in its supplemental answer, PJM's sell-back of excess capacity through the Incremental Auctions will not sufficiently mitigate the substantial costs of over-procurement that will be imposed on consumers, absent the granting of Joint Consumers' Complaint. Joint Consumers allege that both the quantity and the price of capacity repurchased in the Incremental Auctions are fractions of the quantity and cost of the capacity that is over-procured in the BRA.<sup>42</sup> Joint Consumers additionally note that the actual cost to consumers of PJM's inaccurate load forecasting model is much greater when one considers the impact that the over-forecast

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<sup>42</sup> Joint Consumers July 30 Answer at 4. Joint Consumers note that in the 2016/2017 Second Incremental Auction, which was completed on Friday, July 24, 2015, PJM sold back 4,307.7 MW due to a decrease in the 2015 PJM Load Forecast, refunding \$73.6 million to customers. However, the cost to customers of acquiring these same 4,307.7 MW initially in the BRA for the 2016/2017 Delivery Year was \$128.4 million. Joint Consumers allege that, when viewed in totality, addressing the over-procurement/over-forecast issue in the 2016/2017 Second Incremental Auction, rather than preventing the over-procurement initially in the BRA, appears to have cost consumers approximately \$54.9 million. *Id.* at 4-5.

issue has on the setting of the marginal clearing price of the BRA.<sup>43</sup> Joint Consumers allege that PJM cannot reasonably deny that use of the current load forecasting model will result in over-procurement of capacity in the 2016/2017 and 2017/2018 Transition Auctions and the 2015 BRA, and the only issue in dispute is when the enhancements should be considered sufficiently final to allow the new and improved load forecast model to be used.

28. In its response to Joint Consumers' answer, PJM and the PJM Utilities Coalition reiterate that PJM's decision to evaluate its existing rules does not render those rules unjust and unreasonable. Rather, PJM must be able to respond to changing market conditions and to improve its methodologies and rules through an orderly, considered process.

### **III. Procedural Matters**

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we grant the unopposed, late-filed intervention submitted by Dominion, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest, an answer to an answer, and an answer to a rehearing request, unless otherwise ordered by the decisional authority. We accept the two supplemental answers filed by PJM, the answer filed by Joint Consumers and the answer filed by the PJM Utilities Coalition in this case because they have provided information that has assisted us in our decision-making process.

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<sup>43</sup> Joint Consumers July 30 Answer at 5. Joint Consumers note that the total cost to consumers of capacity procured in the BRA for the 2016/2017 Delivery Year was \$5.5 billion. Joint Consumers contend that linear interpolation suggests that procuring 4,307.7 MW less capacity (i.e., the amount sold back in the Second Incremental Auction) in the 2016/2017 BRA would have resulted in total consumer costs of about \$4.3 billion, due to the lower clearing price for all capacity – a cost savings of approximately \$1.2 billion. Joint Consumers thus argue that the return to consumers of \$73.6 million, to mitigate an initial cost of \$1.2 billion based on procuring more capacity than turned out to be necessary, is insufficient to protect customers. *Id.* at 5-9.

#### IV. Discussion

31. We deny Joint Consumers' Complaint because they have failed to meet their burden under section 206 of the FPA, by demonstrating that PJM's compliance with its OATT was unjust and unreasonable or that the OATT itself is unjust and unreasonable.

32. We find that PJM has demonstrated, and Joint Consumers have not contested, that PJM complied with its OATT by developing its 2015 PJM Peak Load Forecast according to its manuals and posting it prior to February 1, 2015.<sup>44</sup> Joint Consumers have failed to demonstrate that PJM's current forecasting methodology as applied by PJM is unjust and unreasonable. For example, they failed to show that PJM's 2015 Load Forecast, established using its current load forecasting model, will over-procure capacity to the extent that it renders the resulting rates unjust and unreasonable. While there will inevitably be some difference between PJM's load forecast and the amount of capacity that PJM ultimately needs in a given Delivery Year,<sup>45</sup> the record indicates that PJM has taken steps to ensure the reasonableness of the 2015 Load Forecast, including making a statistical adjustment, based on a percentage of error it had seen in the load forecast over recent years, to account for the effects of energy efficiency programs.<sup>46</sup>

33. In addition, PJM has stated that its enhanced load forecast model is not ready for implementation now, because it is incomplete until it finalizes its methodology to ensure (1) the accuracy of the model as to Transmission Owner zones and Locational Deliverability Areas; (2) the appropriate weather simulation period; and (3) appropriate accounting for Energy Efficiency Resources which are likely to clear in the capacity market. In addition, PJM states that it will take its results to stakeholders for feedback and input, which may result in further changes. The mere fact that PJM is working on a revised forecast methodology does not render the prior one unjust and unreasonable. Rather, while the revised forecast methodology may be an improvement over the current methodology, PJM has demonstrated that the revised methodology is not yet complete. Therefore, until PJM finalizes its enhanced load forecast model, there is no basis for requiring its use.

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<sup>44</sup> See footnote 21 above.

<sup>45</sup> Load forecasting is not unlike rate design. See *Alabama Electric. Co-Op., Inc. v. FERC*, 684 F. 2d 2, 27 (D.C. Cir. 1982) ("ratemaking is, of course, much less a science than an art"); *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945) ("allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science").

<sup>46</sup> PJM Answer at 1-2.

34. We similarly deny Joint Consumers' contention that PJM's OATT is unjust and unreasonable because it no longer provides for the 2.5 percent holdback. Contrary to Joint Consumers' assertions, the Commission did not tie the elimination of the holdback to PJM's commitment to update its load forecasting model. Rather, the Commission specifically found in the Capacity Performance Order that the holdback was not necessary to address load forecast errors.<sup>47</sup> The issue of whether it is appropriate to remove the 2.5 percent holdback is currently pending on rehearing of the Capacity Performance Order and will be addressed in that proceeding.

35. Finally, because Joint Consumers have failed to show that PJM's use of its existing load forecast model, in compliance with its OATT, would be unjust and unreasonable, we reject Joint Consumers' alternative request to delay the Transition Auctions and the 2015 BRA.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>47</sup> Capacity Performance Order, 151 FERC ¶ 61,208 at P 396.