UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. Docket No. ER26-3380-000

COMMENTS OF THE INSTITUTE FOR POLICY INTEGRITY AT NEW YORK UNIVERSITY SCHOOL OF LAW ON PJM INTERCONNECTION, L.L.C. SECTION 205 FILING TO IMPLEMENT RELIABILITY BACKSTOP PROCUREMENT

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)[1] respectfully submits the following comments to the Federal Energy Regulatory Commission (FERC) regarding PJM Interconnection, L.L.C. (PJM)'s Federal Power Act (FPA) Section 205 proposed tariff implementing Reliability Backstop Procurement (RBP). Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

On July 31, 2026, pursuant to Section 205 of the FPA, PJM filed for revisions to its Open Access Transmission Tariff to implement RBP, which will include a Reliability Backstop Auction (Backstop Auction). These revisions are designed to address the capacity shortfall in the 2028/2029 Base Residual Auction (BRA, or Legacy Capacity Market) and future BRA shortfalls that PJM anticipates will occur.[2] Part I of these comments provides context for PJM's proposed tariff revisions. Part II explains that FERC should reject PJM's proposed tariff because PJM has

[1] This document does not purport to present the views, if any, of New York University School of Law.
[2] PJM Interconnection, L.L.C., Reliability Backstop Procurement to Address Resource Adequacy Concerns Stemming from Large Loads, 7-8, 27-28 (filed July 31, 2026) (hereinafter, Tariff Filing).

failed, for multiple reasons, to meet its burden to show that the Backstop Auction is just and reasonable. These reasons include:

1) PJM cannot sufficiently determine whether long-term, systemic problems exist in the capacity market before three consecutive BRA shortfalls occur;
2) The Backstop Auction will not isolate the Legacy Capacity Market from the costs of large load growth;
3) PJM can address its resource adequacy problems at lower cost and with less risk of cost-shifting through other means.

Part III asserts, in the alternative, that FERC should find that PJM can demonstrate its proposed tariff is just and reasonable only if PJM amends the design of the Backstop Auction to mitigate the likelihood that it will result in unjust and unreasonable rates.[3] Part III sets out tariff amendments that PJM can adopt to reduce the risk that its tariff will result in unjust and unreasonable rates.

I. BACKGROUND

On December 17, 2025, PJM announced that the 2027/2028 BRA cleared 6,623 MW short of its procurement target.[4] In a report investigating the causes of this shortfall, PJM

[3] In its tariff filing, PJM notes that it "consents to the Commission's exercise of authority to modify and/or sever any element of the proposed Tariff . . . to the extent necessary and permitted under section 205 of the FPA and *NRG Power Marketing, LLC v. FERC*, where such modification and/or severance is consistent with PJM's overarching objectives in this filing." Tariff Filing, *supra* n. 2, 5. While *NRG Marketing* limits FERC's ability to unilaterally propose modifications to section 205 tariff filings, PJM has the authority to consent to accept FERC's proposed modifications. 862 F.3d 108, 114 (D.C. Cir. 2017).

[4] PJM Interconnection, L.L.C., 2027/2028 BASE RESIDUAL AUCTION TARGET SHORTFALL REPORT 1-2 (Feb. 9, 2026), https://perma.cc/Z5A7-GYJ2 (hereinafter, BRA Shortfall Report); *PJM Auction Procures 13,479 MW of Generation Resources*, PJM INSIDE LINES (Dec. 17, 2025), https://perma.cc/2P3E-4Z75. PJM's procurement target for the BRA is based on load forecasts submitted by Electric Distribution Companies (EDCs) for each zone. PJM Manual 19: Load Forecasting and Analysis, Section 1.1 (June 30, 2026), https://perma.cc/7KMP-FY3K (hereinafter, PJM Manual 19). PJM may implement future BRAs with more reliable load forecasts, since the PJM Board recently directed PJM Staff to implement a host of reforms to the load forecasting process, including state review of large load additions, addressing duplicative requests, and the use of additional third-party review and increased transparency. *PJM Board Decisional Letter on Critical Issue Fast Path - Large Load Additions*, 2 (Jan. 16, 2026), https://perma.cc/3HXP-SYJF.

predicted that capacity market shortfalls would likely continue over the next decade, driven by forecasted demand growth from data centers and other customers.[5] PJM's report also found that the administrative price collar imposed on the capacity market likely exacerbated the deficit.[6]

On January 15, 2026, the White House Natural Energy Dominance Council and the PJM Governors' Coalition signed a "Statement of Principles Regarding PJM" (Statement of Principles), which directed PJM to "[p]rovide 15-year price certainty for *new* capacity resources."[7] The Statement of Principles suggested PJM could provide price certainty by "holding a Reliability Backstop Auction to procure new capacity resources commencing no later than September 2026."[8] In response, the PJM Board initiated a Critical Issue Fast Path (CIFP) process to develop an RBP proposal and PJM subsequently convened a series of stakeholder meetings to solicit feedback.[9] In the same CIFP, PJM also solicited stakeholder feedback on Interim Resource Adequacy Service (IRAS), formerly denoted "Connect and Manage," a program that would require new large loads to bring their own new capacity to the grid, or be subject to interruptible service under certain emergency conditions.[10] On July 14, 2026, in the midst of the RBP stakeholder process, PJM announced that the 2028/2029 BRA cleared short of its procurement target by 6,831 MW.[11]

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[5] If FERC approves the IRAS proposal that PJM recently submitted, then PJM's predictions of future capacity market shortfalls become significantly less likely. *See infra* § II.D.1 for further discussion.
[6] *See generally* BRA Shortfall Report, *supra* n. 4.
[7] White House National Energy Dominance Council & PJM Governors' Coalition, Statement of Principles Regarding PJM (Jan. 15, 2026), https://perma.cc/8U3F-U79Q (hereinafter, Statement of Principles).
[8] *Id*.
[9] PJM Interconnection, L.L.C., *Reliability Backstop Procurement Issue Charge*, 1 (Apr. 10, 2026), https://perma.cc/MQ3E-ZFN9; PJM Interconnection, L.L.C., Critical Issue Fast Path - Reliability Backstop Procurement / Connect & Manage Landing Page (accessed Aug. 11, 2026), https://perma.cc/ZU49-2CRA.
[10] PJM Interconnection, L.L.C., *Reliability Backstop Procurement Issue Charge* (May 22, 2026), https://perma.cc/RTH7-95HT.
[11] *PJM Capacity Auction Procures 138,318 MW of Generation Resources as Work Continues to Address Growing Electricity Demand*, PJM INSIDE LINES (July 14, 2026), https://perma.cc/3THF-LHPQ.

PJM's final RBP proposal comprises two elements to occur in parallel, only one of which requires FERC approval. First, PJM will facilitate matching between customers and suppliers who want to enter bilateral capacity contracts. PJM's consultant issued a Request for Proposals on June 9, 2026, and the matching process will occur over the course of six to nine months, expected to start in late August.[12] PJM need not amend the tariff for this private contracting process because PJM will merely facilitate voluntary negotiations and not participate as a party. Second, PJM proposes to run a Backstop Auction, starting on September 30, 2026, to procure enough capacity to cover the 2028/2029 BRA shortfall.[13] That Backstop Auction would be subject to the following proposed rules:

- The Backstop Auction would accept supply bids only from "new"[14] capacity resources, which can have an in-service date any time after the 2028/2029 DY and before June 2032;
- The Backstop Auction would secure capacity for 15-year terms. If a supplier bids capacity that will begin service later than 2028/2029 DY, the contract term would extend to the remainder of the 15-year term (e.g., a generator coming online in 2032 would only have a ten-year contract);

[12] Tariff Filing, *supra* n. 2, 30-31; PJM Interconnection, L.L.C., *CIFP Reliability Backstop Procurement - PJM Board Decision*, 1 (July 31, 2026), https://perma.cc/EA2Q-X5JD (hereinafter, RBP Board Decision); Charles River Associates, *PJM Reliability Backstop Procurement Bilateral Request for Proposal* (June 9, 2026), https://perma.cc/BN29-2UAF.

[13] PJM will target September 30, 2026 to begin bid solicitation, which would close three weeks later (October 21, 2026). The subsequent clearing and selection process would conclude six weeks after the offer submission window closes, and the sellers would be notified as soon as practicable once the backstop auction ends. Tariff Filing, *supra* n. 2, 27, 48. The initial target for the backstop auction is approximately 6.8 GW, which PJM will reduce based on evidence of bilateral contracts for new capacity. *See infra* fn. 16.

[14] PJM defines "new" capacity to determine which supply qualifies to bid into the backstop auction more narrowly than PJM defines "new" capacity to determine what qualifies to decrement the procurement target. Tariff Filing, *supra* n. 2, 36, 51.

- Each Backstop Auction contract would work as a "contract for differences" against future capacity auction prices with PJM as the counterparty;[15]
- The procurement target would be set as the amount of the 2028/29 BRA shortfall, less any capacity secured in bilateral contracts prior to the Backstop Auction or subject to state peak shaving laws;[16]
- The auction mechanism would be "pay-as-bid"[17] with a price cap set at $555/MW-day UCAP (1.5 x Net Cost of New Entry) for the volume-weighted average of the levelized cost of all selected offers;[18]
- PJM would allocate Backstop Auction costs to zones based on each zone's pro rata share of the total costs. PJM would then allocate costs within zones to Load Serving Entities (LSEs) based on cost allocation methodologies submitted by the state or Relevant Electric Retail Regulatory Authority (RERRA);
- If states or RERRAs do not provide PJM with a cost allocation methodology, PJM would revert to using Peak Load Contribution to allocate Backstop Auction costs among LSEs.[19]

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[15] *E.g.* For any capacity contracted in the RBP for 2030, suppliers will bid that capacity into the 2030 BRA at $0, and either suppliers or Load Serving Entities (LSEs) will pay the difference between the RBP price and the BRA price, depending on which is higher. So, for example, if the BRA clears at $100/MW-day, but PJM accepts a supplier's bid for capacity at $200/MW-day in the backstop auction, that supplier would receive $100/MW-day in the BRA, and PJM would compensate that supplier with an additional $100/MW-day, so the supplier receives a total of $200/MW-day. Conversely, if the BRA clears at $200/MW-day, and the backstop auction clears at $100/MW-day, the suppliers would have to pay back $100/MW-day to the LSEs and would effectively receive a total of $100/MW-day.

[16] The window for suppliers to submit bids will run three weeks after the auction opening date (PJM proposes that this will start on September 30, 2026, but acknowledges that there may be delays). If the auction opens on September 30, as proposed, the window for bid solicitation will close on October 21, 2026. At any time during this window, LSEs can submit evidence of bilateral contracts and PJM will subtract these contracts from the procurement target.

[17] Under a pay-as-bid system, suppliers are paid the amount of the bid they offer, as opposed to the clearing price.

[18] For example, a supplier could bid in an offer over $555/MW-day and its bid may still be accepted if enough other suppliers bid in below the price cap, such that the overall average of all bids remains below $555/MW-day.

[19] Tariff Filing, *supra* n. 2, 97-99. There are limited opt-out provisions for (1) zones that can demonstrate an inability to allocate costs to large loads; and (2) states that demonstrate they have peak-shaving programs codified in

II. FERC should reject the proposed tariff revisions because PJM has failed to demonstrate that the Backstop Auction is just and reasonable.

PJM has not met its burden to demonstrate that the Backstop Auction is just and reasonable for the following reasons:

1) PJM has not adequately explained why it is appropriate to run the Backstop Auction before three consecutive BRA shortfalls indicate long-term, systemic market problems;
2) PJM has not adequately explained why the Backstop Auction is appropriate given that it will not isolate the capacity market from the impacts of large load growth; and
3) PJM has not adequately explained why the Backstop Auction is warranted given that other alternatives will address the same problems at lower cost and with less risk of cost-shifting.

Because PJM cannot demonstrate that its proposed tariff is within the zone of reasonableness and has not provided substantial evidence showing that the revisions will result in just and reasonable rates, FERC should reject the proposed tariff revisions.[20]

A. PJM must prove that its proposed tariff revisions are just and reasonable and supported by substantial evidence.

Under FPA section 205, a party seeking to revise its tariff bears the burden of proof to demonstrate that its revisions will result in "just and reasonable" rates.[21] The just and reasonable

state law. *Id*. at 44-45. PJM indicates that the first category is "designed to address a limited regulatory gap faced by cooperatives and municipal utilities whose rates are not regulated by the states." *Id*.

[20] 16 U.S.C. § 824d(e); *New York Pub. Serv. Comm'n v. FERC*, 104 F.4th 886, 890 (D.C. Cir. 2024) (*NYPSC v. FERC*).

[21] *See id*.

standard requires "a balancing of investor and consumer interests."[22] Rates must be high enough to allow utilities to recover their costs and maintain financial integrity, but they must be low enough to avoid imposing excessive costs on consumers.[23] Rates may also be unjust and unreasonable if they fail to ensure reliable service, or do not assign costs to customers "roughly commensurate" according to who benefits from such costs.[24] FERC must find that a rate proponent has provided "substantial evidence" that its filing is just and reasonable before FERC can approve the revised tariff.[25] This inquiry is equivalent to "arbitrary and capricious" review under the Administrative Procedure Act.[26]

PJM filed its revised tariff pursuant to section 205, which requires PJM to prove that its proposed revisions are just and reasonable, *i.e.,* that its rates will not excessively burden consumers, unfairly allocate costs, or lead to reliability problems. If FERC finds that PJM has not provided substantial evidence supporting its assertion that the proposed tariff revisions are just and reasonable, FERC must reject the filing.[27]

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[22] *Federal Power Comm'n v. Hope Natural Gas Co*., 320 U.S. 591, 603 (1944) (finding that the just and reasonable standard requires a balancing of investor and consumer interests); *Jersey Cent. Power & Light v. FERC*, 810 F.2d 1168, 1172 (D.C. Cir. 1987) (applying the *Hope* holding to electric rates).
[23] *Id*.; *NYPSC v. FERC*, 104 F.4th at 890 ("[T]here is not a single 'just and reasonable rate' but rather a "zone of reasonableness" bounded "on one end by investor interest and [on] the other by the public interest against excessive rates.").
[24] *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 661 (D.C. Cir. 2017) (finding that failure to provide reliable service is relevant to the just and reasonable standard); *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1255 (D.C. Cir. 2018) (*Old Dominion*) (establishing the cost causation principle); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) (finding that the cost causation principle requires benefits to be "roughly commensurate" with costs) (*ICC v. FERC*).
[25] 16 U.S.C. § 824l(b); *New Jersey Bd. of Public Utils. v. FERC*, 744 F.3d 74, 93 (3rd Cir. 2014) (finding that the substantial evidence standard requires "more than a scintilla, but . . . less than a preponderance of the evidence.") (*NJBPU v. FERC*).
[26] *Maryland People's Counsel v. FERC*, 761 F.2d 768, 774 (D.C. Cir. 1985) (finding that the "substantial evidence" standard is equivalent to "arbitrary and capricious" review under the Administrative Procedure Act); *Ass'n of Data Processing Service Orgs. v. Bd. of Governors of the Fed. Reserve Sys.*, 745 F.2d 677, 681-86 (D.C. Cir. 1984).
[27] *See NJBPU v. FERC*, 744 F.3d at 93 (elaborating on the "substantial evidence" standard).

B. FERC should reject the proposed tariff because PJM has not adequately explained why it is appropriate to run the Backstop Auction before three consecutive BRA shortfalls indicate long-term, systemic market problems.

PJM's current tariff authorizes PJM to hold a reliability backstop auction when three consecutive BRAs clear short of the procurement target.[28] It is important that PJM can run a backstop auction only when there are long-term systemic issues in the BRA, not based on short-term market dynamics, because consistent and stable market rules are critical for investment. FERC should reject the revised tariff because PJM has not provided substantial evidence to justify its decision to depart from the backstop provisions in its existing tariff, particularly given rapid and substantial reform occurring at the state and federal levels.[29]

Although the BRA cleared short of its target two years in a row, these shortfalls do not provide sufficient evidence that revising PJM's current tariff is warranted. First, it is unclear whether the two BRA shortfalls would count towards triggering a backstop auction. The current tariff triggers a backstop auction only after three consecutive BRA shortfalls.[30] But the tariff contemplates that BRAs will acquire capacity three years in advance of the targeted delivery year. PJM has strayed from the auction schedule stipulated in the tariff and held the last two auctions to acquire capacity for delivery years closely proximate to the auction year.[31] Because of these delays, PJM has demonstrated evidence for only two near-term years of capacity shortfalls.[32] PJM has not adequately explained why two years of near-term predicted capacity shortfalls are sufficient to identify systemic problems in the BRA, when the current tariff

[28] *PJM Interconnection, L.L.C.*, Open Access Transmission Tariff, Attachment DD, section 16 (effective July 31, 2026) (hereinafter, Tariff).
[29] 16 U.S.C. § 824l(b); *NJBPU v. FERC*, 744 F.3d at 93 (establishing the "substantial evidence" standard).
[30] Tariff, *supra* n. 28, Attachment DD, section 16.
[31] *FERC Order Delays Capacity Auction to Allow for Consideration of Resource Adequacy Reform*, PJM INSIDE LINES (June 12, 2023), https://perma.cc/9QVK-YF3G.
[32] *See id*.

requires PJM to establish a showing of long-term resource adequacy issues (i.e., shortfalls expected in three, four, and five years in the future) before authorizing a backstop auction.

Second, PJM has not adequately explained why tariff revisions are appropriate considering recent efforts to encourage more investment in capacity resources and to accelerate resource interconnections. PJM and its member states initiated a slew of reforms after the 2027/2028 BRA shortfall specifically designed to bring more supply online. These reforms need time to work. PJM recently implemented comprehensive interconnection reform to clear its queue backlog and substantially reduce waiting times.[33] The window for the first group of applicants under PJM's new "first ready, first served" interconnection process concluded in April 2026 with over 800 projects representing 220 GW of capacity.[34] PJM recently filed tariff revisions to reform its interconnection process even further to comply with Order 2023.[35] These reforms are pending before the Commission and PJM will likely implement them soon.[36] FERC also recently approved PJM's proposal for an Expedited Interconnection Track, a temporary process to quickly advance large projects that address urgent capacity needs.[37] This new program took effect July 31, 2026, so PJM would not be able to judge its effectiveness before running the Backstop Auction.

PJM member states are also acting to attract investment in capacity. Virginia passed a law in April 2026 that comprehensively reformed the solar siting process, creating a uniform

[33] PJM Interconnection, L.L.C., *New, Faster Generation Interconnection Process Fact Sheet* (May 21, 2026), https://perma.cc/T79X-RQAP.
[34] *Over 800 New Generation Projects Seek to Connect Under PJM's Reformed Process*, PJM INSIDE LINES (Apr. 29, 2026) https://perma.cc/4DAR-4RQP.
[35] *PJM Interconnection, L.L.C.*, Order Nos. 2023 and 2023-A Further Compliance Filing of PJM Interconnection, L.L.C., Accession No. 20260615-5149 (filed June 15, 2026).
[36] *See id*.
[37] *PJM Interconnection, L.L.C.*, Order Accepting Tariff Revisions, 195 FERC ¶ 61,197, P 1 (2026); *see also* Order Accepting Tariff Revisions re PJM Interconnection, L.L.C., 190 FERC ¶ 61,084, (2025) (approving PJM's one-time Reliability Resource Initiative to open an interconnection transition cycle to 50 additional shovel-ready projects).

statewide process that exempts larger solar projects from certain local regulations.[38] Virginia also created a task force to advance energy affordability and distributed energy, and passed a law increasing battery storage targets for state utilities.[39] In New Jersey, Governor Mikie Sherrill signed legislation to launch a new procurement process for nuclear generation.[40] In Pennsylvania, the legislature passed a bill to improve load forecast transparency, which may impact PJM's demand growth projections.[41]

PJM has not explained how or why the proposed tariff revisions are appropriate given these recent developments, including its own efforts to get new resources online more quickly. PJM has not adequately explained why it is appropriate to lock in new capacity contracts for 15-year terms when state and regional reforms will likely result in more abundant supply for future BRAs. Accordingly, FERC should not approve the tariff revisions because PJM has not adequately explained or provided substantial evidence that its departure from the terms of the current tariff is just and reasonable.

C. The Backstop Auction will not isolate the Legacy Capacity Market from the impacts of large load growth.

PJM has not adequately justified its decision to run the Backstop Auction given that the Backstop Auction will not shield the Legacy Capacity Market from the rate impacts of large load growth. Running a backstop auction, regardless of how PJM designs it, will inevitably impact the

[38] Code of Virginia §§ 15.2-2288.7-8.
[39] Virginia Acts of Assembly, 2026 Reconvened Session, Chapter 997, S 223 (approved Apr. 22, 2026) (establishing the task force); Code of Virginia § 56-585.5 (enacting increased storage targets for Virginia utilities).
[40] State of New Jersey Governor Mikie Sherrill, Governor Sherrill Signs Legislation Launching Procurement Process for New Nuclear Energy & Setting Strong Safeguards to Protect Ratepayers from Costs (July 13, 2026), https://perma.cc/9S98-WZGB.
[41] Diana DiGangi, *Pennsylvania data centers face increased oversight under new law*, UTILITYDIVE (July 14, 2026), https://perma.cc/EF3J-BQQQ. PJM has taken additional measures to reform load forecasting, such as contracting consultant Charles River Associates to conduct a third-party verification of large load forecasts. Emmanuel Bobbio, PJM INTERCONNECTION, L.L.C., *Third-Party Review of Large Load* Adjustments (June 5, 2026), https://perma.cc/M2CF-PE9P.

Legacy Capacity Market. As proposed, the Backstop Auction and the Legacy Capacity Market are tied together by a contract-for-differences structure. Each supplier who clears a bid in the Backstop Auction would also have to bid its committed capacity into the Legacy Capacity Market at $0.[42] Suppliers would then receive the BRA clearing price, either topped up or subtracted, to match the price they received in the Backstop Auction.[43] Under this structure, the results of the Backstop Auction would inevitably affect prices in the Legacy Capacity Market. And these effects would persist for the next 15 years because capacity committed through the Backstop Auction must also bid into the BRA for each year of its contract. Even if PJM did not opt to run the Backstop Auction as a contract-for-differences, any version of a backstop auction would still affect the Legacy Capacity Market. PJM would still have to account for capacity committed through a backstop auction by adjusting the BRA procurement target.[44]

The exact relationship between the Backstop Auction and the Legacy Capacity Market would change depending on how accurately PJM sets the procurement target for the Backstop Auction. PJM sets the procurement target for the Legacy Capacity Market based on load forecasts submitted by Electric Distribution Companies (EDCs), and PJM proposes to set the procurement target for the Backstop Auction as the amount of shortfall in the 2028/2029 BRA, approximately 6.8 GW.[45] If PJM has set the target too high and procures more capacity in the Backstop Auction than is actually necessary to serve data centers, the offer requirement for new backstop resources will depress clearing prices in the Legacy Capacity Market. The BRA clearing price would fall because capacity committed through the Backstop Auction would flood

[42] Tariff Filing, *supra* n. 2, 56.
[43] *See supra* n. 15 for example and explanation. Capacity committed through bilateral contracts also must bid into the Legacy Capacity Market. Tariff, *supra* n. 28, § 6.6.
[44] In its tariff filing, PJM argued that the contract-for-differences structure is just and reasonable, but it did not provide any reason for choosing the contract-for-differences structure over any alternatives. Tariff Filing, *supra* n. 2, 80-81.
[45] PJM Manual 19, *supra* n. 4, Section 1.1.

the Legacy Capacity Market with supply priced at $0. If the Backstop Auction depresses the prices in the Legacy Capacity Market enough, prices may not be high enough to compensate existing suppliers, and they may retire, leading to resource adequacy problems. If enough generators retire, it could force PJM to rely on expensive emergency procedures, such as Reliability Must Run (RMR) agreements or requesting the Department of Energy (DOE) to issue emergency orders under FPA section 202(c).[46] Even if the market eventually responds to these retirements with price increases, PJM would still be forced to rely in the short-term on costly, and inefficient reliability fixes may impose excessive burden on consumers, which could result in unjust and unreasonable rates.

If PJM has set the procurement target too low, and procures less capacity than data centers need, it could lead to similar outcomes. In a tight market for supply, there may not be enough capacity to meet the procurement target for both the Backstop Auction and the Legacy Capacity Market. A tight supply market is not an unlikely scenario, since supply is scarce in PJM, due to a variety of problems including supply chain shortages and interconnection queue delays.[47] When there is not enough supply to go around, suppliers will be more likely to offer their resources into the Backstop Auction, which has a higher price cap than the upcoming 2029/2030 BRA.[48] The Backstop Auction may also be appealing to resources that are further

[46] RMRs are short-term contracts which transmission providers use to retain generators that are necessary to address immediate reliability problems until a long-term solution is implemented. Transmission providers can also request that the DOE issue an FPA 202(c) emergency order, which mandates certain power plants to continue running past their planned retirement dates. A recent report found that DOE 202(c) mandates could cost ratepayers between $3.1 billion and $5.9 billion per year, depending on how many plants DOE mandates to remain open. MICHAEL GOGGIN, GRID STRATEGIES LLC, THE COST OF FEDERAL MANDATES TO RETAIN FOSSIL-BURNING POWER PLANTS 9 (Aug. 2025) https://perma.cc/94M2-HQUD (hereinafter, 202(c) Report).

[47] BRA Shortfall Report, *supra* n. 4, 5.

[48] Tariff Filing, *supra* n. 2, 61. Even though suppliers must bid capacity committed through the backstop auction into the BRA, the BRA price cap does not apply to backstop auction resources. The backstop auction is likely to be more attractive to suppliers than the BRA as long as the BRA has a price cap lower than the backstop auction. But even if the BRA price collar expires, suppliers may still prefer to bid into the backstop auction because it has a flexible "soft cap" which may accept offers above the $555/MW-day price cap, as long as the average cost per MW-hour is less than $555/MW-day. By contrast, even without the $325/MW-day price collar imposed on the BRA, the

advanced in the interconnection queue, such as projects approved under the Reliability Resource Initiative (RRI), because the Backstop Auction offers price certainty for 15 years, whereas the Legacy Capacity Market offers one-year contracts.[49]

If enough suppliers opt for the Backstop Auction instead of the Legacy Capacity Market, the Legacy Capacity Market may not be able to maintain resource adequacy as large loads come online. Thus, the Backstop Auction would not insulate non-large load ratepayers from the impacts of large load growth. If PJM implements IRAS, more new large load growth than expected will not cause problems for the Legacy Capacity Market, since the new large loads would be interruptible unless they bring their own new capacity. But if FERC does not approve IRAS, the Backstop Auction would likely lead to resource adequacy issues in the Legacy Capacity Market, which may require PJM to implement costly short-term reliability fixes.**[50]** Allowing the costs of new large load growth to bleed into the Legacy Capacity Market would be inconsistent with the Statement of Principles, which instructed PJM to "allocate the cost of any new capacity through the . . . Reliability Backstop Auction to load serving entities (LSEs) with new data centers that have not self-procured new capacity or agreed to be curtailable."**[51]** The Backstop Auction may also be unjust and unreasonable if it cannot isolate the impacts of large load growth from the Legacy Capacity Market because the auction would not allocate costs "roughly commensurate" to the customers which incurred those costs.**[52]**

BRA typically has a "hard cap" reflecting the maximum price that demand is willing to pay for new capacity, set at the cost of new entry, which varies from region to region. CONGR. RSCH. SERV., PJM'S ELECTRIC CAPACITY MARKET: BACKGROUND AND CURRENT ISSUES 5 (June 2025), https://www.congress.gov/crs-product/R48553 (hereinafter, CRS Report).

[49] *PJM Chooses 51 Generation Resource Projects to Address Near-Term Electricity Demand Growth*, PJM INSIDE LINES (May 2, 2025), https://perma.cc/A48B-UY7N.

[50] *See* 202(c) Report, *supra* n. 46, 9.

[51] Statement of Principles, *supra* n. 8.

[52] *Old Dominion*, 898 F.3d at 1255 (establishing the cost causation principle); *ICC v. FERC*, 576 F.3d at 477.

D. FERC should reject the tariff revisions because PJM can address its resource adequacy mechanisms through other means at lower cost and with less risk of cost-shifting.

There is no single just and reasonable rate, and PJM may choose from a range of options within the "zone of reasonableness."[53] Nevertheless, PJM must adequately explain and support its decisions with substantial evidence in order to meet its burden to demonstrate that the proposed tariff is just and reasonable.[54] Here, PJM has failed to carry its burden because PJM has not adequately explained its decision to amend the tariff. While PJM's tariff filing cites demand growth and generator retirements as reasons to run the Backstop Auction earlier than the current tariff authorizes, PJM does not explain why it is opting to hold the Backstop Auction given that existing or forthcoming resource adequacy mechanisms would solve the same problems at lower cost and with less risk of resulting in unjust and unreasonable rates.[55]

PJM is more likely to achieve just and reasonable rates by implementing IRAS, encouraging the bilateral trading process among sophisticated large loads, and focusing on its capacity market redesign efforts than by implementing a Backstop Auction with fixed, 15-year terms. Considering this alternative, PJM has not adequately explained its decision to resolve its resource adequacy problems through the Backstop Auction.

1. Implementing IRAS is more likely to result in just and reasonable rates.

PJM has not adequately explained why tariff revisions are appropriate considering that the IRAS proposal is still pending before FERC. If accepted, IRAS would be a significant step toward resolving the resource adequacy and affordability problems posed by large load growth. A mandatory IRAS system would incentivize new large loads to bring their own new capacity,

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[53] *NYPSC v. FERC*, 104 F.4th at 890 (finding that rates must fall within a zone of reasonableness).
[54] 16 U.S.C. § 824l(b); *NJBPU v. FERC*, 744 F.3d at 93 (elaborating on the "substantial evidence" standard).
[55] Tariff Filing, *supra* n. 2, 28.

because they will be subject to interruptible service if they do not do so.[56] If large loads do not bring their own capacity, IRAS would mitigate the need for PJM to procure expensive capacity resources for large loads, because they will be interruptible under certain conditions when the grid is stressed.[57] IRAS advances affordability because PJM would not have to procure as much capacity (costs that may be difficult to allocate perfectly to large loads). IRAS advances resource adequacy because PJM would be less likely to face capacity shortfalls if large load customers were interruptible. Both benefits are likely to result in just and reasonable rates because increased affordability and reliability reduce the likelihood that large load growth will burden customers who are not responsible for the capacity deficits caused by large loads. PJM has not adequately explained why the Backstop Auction is appropriate given that its IRAS proposal would solve the same problems at a lower cost and with less risk of cost-shifting.

2. Bilateral trading for sophisticated large loads is less likely to result in unjust and unreasonable rates than the Backstop Auction.

PJM has not adequately explained why the Backstop Auction is appropriate given that available alternatives, such as the bilateral trading process, are less likely to result in unjust and unreasonable rates. PJM can and should act to further encourage bilateral trading among sophisticated large load customers.

a) Bilateral trading for sophisticated large load customers is less likely to result in unjust and unreasonable rates.

Bilateral trading for sophisticated large loads, in conjunction with IRAS, is less likely to result in unjust and unreasonable rates because bilateral trading will address PJM's resource adequacy issues at lower cost and with less risk of cost-shifting than the Backstop Auction.

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[56] PJM Interconnection, L.L.C., Proposal of PJM Interconnection, L.L.C. to Establish Interim Resource Adequacy and a Large Load Registry to Address System Reliability, 21-22, Accession No. 20260813-5118 (filed Aug. 13, 2026) (hereinafter, IRAS Filing).
[57] *Id*.

Unlike the Backstop Auction, bilateral trading (1) avoids the need to develop artificial proxies for demand, (2) allows sophisticated parties to reach greater efficiencies through customized contracts, and (3) more precisely allocates costs to the parties responsible for incurring greater capacity needs.

First, bilateral contracting is less likely to result in unjust and unreasonable rates because it does not require PJM to develop artificial indicators of demand. Under any version of the Backstop Auction, PJM must select proxies for demand. Demand includes the quantity of capacity customers wish to purchase (the procurement target) and customers' "willingness-to-pay" for that capacity (the price cap, usually derived from the net cost of new entry). PJM proposes to approximate willingness-to-pay by creating a "soft cap" on the levelized cost per MW of capacity at $555/MW-day.[58] As opposed to a "hard cap," like a price collar or a price cap, the soft cap would allow bids over the limit as long as the total average paid per MW does not surpass $555/MW-day.[59] While centralized auctions are generally considered to result in more efficient price discovery than private contracts, it is less likely that the Backstop Auction will accurately and efficiently balance the dynamics of supply and demand since PJM has to select artificial proxies for demand and willingness-to-pay.

Additionally, the Backstop Auction may not result in efficient price signals because the auction, as designed, encourages participants to place speculative bids not based on actual marginal costs. For example, PJM proposes to run the Backstop Auction under a pay-as-bid format, as opposed to the single-clearing price format. Under this design, suppliers may try to maximize profit and their odds of clearing by guessing the clearing price and the offer

[58] Tariff Filing, *supra* n. 2, 61.
[59] In the absence of a price collar, PJM generally applies a price cap based on a proxy for demand's maximum "willingness-to-pay" which is based on regional net cost of new entry. *See* CRS Report, *supra* n. 48, 5.

distribution (i.e., the various prices at which other suppliers will bid into the auction). This design is not ideal because a market which encourages bidders to speculate may not strike the right balance between keeping prices affordable and compensating suppliers enough to make a reasonable return on investment.[60]

It is not clear that PJM would achieve improved market efficiencies even by running the auction with a hard cap. With a hard cap and a pay-as-bid format, suppliers may be incentivized to bid right at the cap regardless of their marginal costs, raising prices for customers. Regardless of the market design, running a backstop auction would force PJM to make administrative decisions to approximate real-world market forces. Making these decisions is particularly difficult in the context of large load growth, since so much of this demand is speculative.[61] And if PJM incorrectly gauges its proxies, the Backstop Auction will either not procure enough capacity, leading to potential reliability problems, or procure too much capacity, leading to affordability problems and excessive consumer burden.[62] Conversely, bilateral trading does not require PJM to make artificial design choices under rapidly evolving conditions. PJM can avoid the design choices required by centralized auctions by relying on bilateral contracts, which are thus less likely to result in unjust and unreasonable rates.

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[60] Single clearing price auctions are typically more efficient than pay-as-bid, but the combination of pay-as-bid and the soft cap makes the outcomes difficult to predict. *See* ALFRED E. KHAN, ET AL., BLUE RIBBON PANEL REPORT, PRICING IN THE CALIFORNIA POWER EXCHANGE ELECTRICITY MARKET: SHOULD CALIFORNIA SWITCH FROM A UNIFORM PRICING TO PAY-AS-BID PRICING? 3 (Jan. 2001), https://perma.cc/YJ6P-XJPV.

[61] Even when data center loads materialize, their energy consumption can be less than anticipated. E3, FORECASTING LARGE LOADS IN THE AGE OF AI AND DATA CENTERS 3 (Dec. 2025) https://perma.cc/F8FU-WUCR (hereinafter, Large Load Forecasting White Paper). Or they may increasingly favor behind the meter bilateral, private supply arrangements with resources that are not grid-connected. *See* Disha Raychaudhuri & Valerie Volcovici, *Pollution from Musk's unpermitted xAI power project hits hardest in Black communities*, REUTERS (July 14, 2026) https://perma.cc/P3E5-5BCD; Marlene Wilden, *Texas approves AI data center co-location next to wind farm, with curtailment caveats*, UTILITYDIVE (July 30, 2026), https://perma.cc/A7WB-BPFA.

[62] *NYPSC v. FERC*, 104 F.4th at 890 (finding that just and reasonable rates cannot impose "excessive burden" on consumers).

Second, bilateral contracting is less likely to result in unjust and unreasonable rates because it allows for customization. All contracts in the Backstop Auction would have the same terms and product definitions, aside from some variation in term length.[63] But matching data centers with supply can involve complex, non-standard transactions. Some data centers may prefer to contract for higher or lower reliability standards.[64] Other companies may be interested in nontraditional supply options that cannot easily bid into the market. For example, Google recently contracted with Voltus, Inc., a virtual power plant operator, to purchase capacity in the form of aggregated distributed energy resources.[65] Bilateral contracts can also include complex risk hedging provisions such as price indexing, which can benefit consumers if prices drop years after the contract is executed.[66] For these types of complex transactions, centralized auctions may inhibit communication between buyers and sellers and preclude efficiencies from creative contract design that could lower prices and benefit both suppliers and customers.[67] Because centralized auctions cannot capture the efficiencies likely to arise in bilateral contracts between sophisticated large loads and energy resources, the backstop is more likely to result in unjust and unreasonable rates.

Third, bilateral contracts are less likely to result in unjust and unreasonable rates because they are more likely to allocate data center costs to LSEs that actually serve data centers, or to

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[63] Tariff Filing, *supra* n. 2, 54.
[64] Herman K. Trabish, *Data centers are ready to negotiate flexibility for speed*, UTILITYDIVE (June 26, 2026), https://perma.cc/EMG2-CJX2.
[65] *Voltus and Google to Deliver Grid Capacity and Local Economic Benefits Through Bring Your Own Capacity Agreement*, VOLTUS (June 2, 2026), https://perma.cc/P25B-28LM. Although PJM's proposed tariff revisions would allow DER to participate in the backstop auction, its requirement for DER providers to provide agreements with each of its providers up front, for a 15-year auction, is an onerous disincentive and may be prohibitive for this type of supply. *See infra* § III.C.
[66] *See e.g.*, Nicola Bartolini, Silvia Romagnoli & Amia Santini, *Renewing Reliability: Valuation and Credit Risk Adjustments for Renewable Power Purchase Agreements* 2-3 (arXiv, Working Paper No. 2607.04781v1, 2026) https://perma.cc/QS8N-7Q49.
[67] *NYPSC v. FERC*, 104 F.4th at 890 (finding that just and reasonable rates cannot impose "excessive burden" on consumers).

the data centers themselves. Precise cost allocation is consistent with the Statement of Principles and the White House Ratepayer Protection Pledge, in which leading data center companies in the United States committed to paying for their own capacity and infrastructure costs.[68] PJM would require all LSEs to participate in the Backstop Auction, unless they qualify for one of the two limited opt-out categories, and would allocate costs to each zone based on the zone's pro rata share of the procurement target. Within each zone, PJM would allocate costs to LSEs based on a cost allocation method provided by the relevant state or RERRA.[69] But it is not likely that PJM will be able to accurately predict how large load growth will develop in each zone over the next 15 years.[70]

While PJM does not have to ensure perfect cost causation to achieve just and reasonable rates, PJM does have to demonstrate that it allocates rate burdens "roughly commensurate" with benefit.[71] Given that the Backstop Auction is acquiring capacity so far in advance and for such long contract terms, it is likely that new large load demand will materialize much differently than forecasts predict.[72] If this is the case, PJM's cost allocation for the Backstop Auction is unlikely to even be "roughly commensurate" with the participants who receive the benefit of that capacity. Bilateral contracts, on the other hand, directly allocate capacity costs to LSEs serving large loads, or to the large loads themselves. While bilateral contracts may not perfectly isolate residential ratepayers from data center costs, this allocation is more likely to result in just and

[68] White House Ratepayer Protection Pledge (Mar. 4, 2026), https://perma.cc/TW4A-3UMN (hereinafter, Ratepayer Protection Pledge).
[69] Tariff Filing, *supra* n. 2, 97-99.
[70] *See generally* Large Load Forecasting White Paper, *supra* n. 61. For example, AEP Ohio cut its large load forecast by more than 50% after regulators approved a new large load tariff. Ethan Howland, *Manufacturers say AEP Ohio still inflating data center demand after halving forecast*, UTILITYDIVE (Feb. 6, 2026), https://perma.cc/UT57-LYLQ.
[71] *Old Dominion*, 898 F.3d at 1255; *ICC v. FERC*, 576 F.3d at 477.
[72] *See generally* Large Load Forecasting White Paper, *supra* n. 61.

reasonable wholesale rates because the parties who incur the need for new capacity will be the only ones paying for it.[73]

b) PJM can play a valuable role in facilitating more bilateral trades among sophisticated large load customers.

PJM can play a valuable role in the bilateral trading process by serving as a matchmaker between supply and demand, setting clear rules for interruptible service, and providing transparent information about the expected cost of network upgrades. First, PJM can add value through the facilitated bilateral matchmaking program it has proposed to operate in parallel with the Backstop Auction. This approach, preferred by most PJM members, may speed up the contracting process and lower overall costs, since PJM's service as a facilitator may reduce transaction costs associated with these negotiations.[74]

Second, PJM will encourage more bilateral contracts by setting clear rules implementing IRAS. If FERC approves it, IRAS will make service to new large loads interruptible under certain conditions if they do not commit to bringing their own new capacity before connecting to the grid.[75] Finalizing the rules and operating procedures will reduce uncertainty for market participants, which will further expedite bilateral negotiations by setting out clear rules of the road.

Third, PJM can add value and reduce uncertainty in the bilateral trading process by increasing transparency on the cost of transmission network upgrades necessary to serve new

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[73] *Old Dominion*, 898 F.3d at 1255 (establishing the cost causation principle). If an LSE serving data centers executes a bilateral contract with a supplier, the LSE may still spread the cost of that capacity to its non-data center customers. But this is a matter of retail cost allocation, which is outside FERC's jurisdiction. 16 U.S.C. § 824(a). Additionally, even if LSEs do not perfectly allocate costs to data centers, allocating costs to LSEs with data center load is an improvement over the backstop auction, which may allocate backstop auction costs to LSEs with no data centers at all.

[74] *Critical Issue Fast Path - Reliability Backstop Procurement PJM Proposal* 3, PJM INTERCONNECTION, L.L.C. (Apr. 16, 2026), https://perma.cc/2RSW-J9EL.

[75] *CIFP Framework for Service During Periods of Insufficient Resource Adequacy - PJM Proposal*, PJM INTERCONNECTION, L.L.C. (July 31, 2026), https://perma.cc/CP8R-UVKH.

supply. Transmission costs are a significant element of the cost of providing power.[76] Suppliers must pay for the cost of network upgrades to serve their new supply, but it can be difficult to predict what these costs will be.[77] The resulting uncertainty makes it difficult to include these costs upfront in long-term bilateral contracts and forces many projects to drop out of the interconnection queue altogether. PJM is in the best position to predict these costs, and it can reduce uncertainty in bilateral negotiations by providing this information to developers. PJM could provide this information by implementing something similar to the Consolidated Planning Process (CPP), which is being pioneered by Southwest Power Pool Inc. (SPP), or develop a plan to improve network upgrade transparency that is more tailored to the PJM region.[78]

PJM should encourage more bilateral trading and rely on its existing resource adequacy mechanisms because PJM has failed to demonstrate that the Backstop Auction will yield a just and reasonable rate. The bilateral trading process would move more quickly and have greater benefits for ratepayers if PJM served as a matchmaker between supply and demand, finalized a mandatory IRAS framework, and increased transparency around the cost of network upgrades.

3. The capacity market redesign is likely to result in just and reasonable rates.

PJM has not adequately explained why the Backstop Auction is appropriate given that it may disrupt PJM's efforts to holistically redesign the capacity market. PJM is in the process of reconsidering the fundamentals of its market design.[79] Depending on how the process goes, PJM may transition to an energy-only market or adopt some other mechanism(s) to better ensure resource adequacy. PJM's reformed capacity market may also include a larger role for the states

[76] U.S. ENERGY INFO. ADMIN., Annual Energy Outlook 2026, Reference Case, Table 8 (Apr. 2026), https://perma.cc/RK7V-28PN.
[77] *Southwest Power Pool, Inc*., 194 FERC ¶ 61,192, P 11 (2026) (CPP Order).
[78] CPP Order, 194 FERC ¶ 61,192, at P 11.
[79] *See generally* POWERING RELIABILITY THROUGH MARKET DESIGN, PJM INTERCONNECTION, L.L.C. (May 2026), https://perma.cc/3MHN-CGMU.

to ensure resource adequacy. For example, New Jersey has indicated interest in directing its LSEs to procure a fixed percentage of long-term capacity as a hedge against future price volatility.[80] PJM may adopt tariff revisions that support state-level efforts to operationalize the Ratepayer Protection Pledge and ensure just and reasonable rates at the wholesale level.[81]

Implementing the Backstop Auction would complicate efforts to reform PJM's resource adequacy mechanisms because the Backstop Auction, as proposed, is structurally tied to the Legacy Capacity Market. It is possible that PJM may be able to find some way to structure payments for Backstop Auction capacity commitments that replaces the role of Legacy Capacity Market, such as developing a proxy for capacity market prices if the BRA no longer exists at some point in the next 15 years. But such a structure would add another layer of administrative complexity both to the implementation of the Backstop Auction, and to PJM's efforts to reform its capacity market. PJM's long-term efforts to reform its markets are critical to PJM's ability to achieve just and reasonable rates. For this reason, FERC should reject the proposed tariff revisions.

Once PJM implements IRAS, takes further steps to encourage bilateral trading among sophisticated large loads, and fully commits to its capacity market redesign efforts, PJM will have the necessary tools in place to meet its resource adequacy problems through just and reasonable rates. PJM's return to its normal three-year forward schedule for BRAs, and the ongoing implementation of Order 2023 interconnection reforms will also contribute to improved resource adequacy. Each of these reforms is close to implementation. For this reason, FERC should reject the proposed tariff revisions.

[80] MAHALA LAHVIS, ET AL., NEW JERSEY BD. OF PUB. UTIL., AN INVESTIGATION OF PJM'S CAPACITY MARKET 72 (Aug. 2026), https://perma.cc/847T-995D.
[81] Ratepayer Protection Pledge, *supra* n. 68.

III. If FERC permits PJM to implement the Backstop Auction, FERC should require PJM to adjust its proposed market design to mitigate the risk that the Backstop Auction will result in unjust and unreasonable rates.

FERC should reject the proposed tariff revisions because the Backstop Auction is not just and reasonable. But if FERC permits PJM to implement the Backstop Auction, it should require PJM to implement adjustments to the proposed market design which reduce the risk that the Backstop Auction will result in unjust and unreasonable rates.[82] FERC should require PJM to adjust its proposed market design to mitigate the risks of over-procurement, unfair cost allocation, and overpaying for capacity.

A. FERC should require PJM to adjust the Backstop Auction design to mitigate the risk of over-procuring capacity.

The Backstop Auction, as filed, is likely to result in unjust and unreasonable rates because it does not contain sufficient measures to protect against the risk of procuring too much capacity. Over-procuring capacity can lead to unjust and unreasonable rates because it can impose an excessive burden on ratepayers without providing commensurate reliability benefits.[83] FERC should find that PJM cannot meet its burden to demonstrate its proposed tariff revisions are just and reasonable unless PJM adopts amendments that mitigate the risk of capacity over-procurement. To that end, FERC should instruct PJM to amend its filing to set the procurement target by soliciting voluntary commitments from large loads (i.e., the large load opt-in or "subscription" model) and to delay the auction start date after the bilateral matching process

[82] In its tariff filing, PJM notes that it "consents to the Commission's exercise of authority to modify and/or sever any element of the proposed Tariff . . . to the extent necessary and permitted under section 205 of the FPA and NRG Power Marketing, LLC v. FERC, where such modification and/or severance is consistent with PJM's overarching objectives in this filing." Tariff Filing, *supra* n. 2, 5. While NRG Marketing limits FERC's ability to unilaterally propose modifications to section 205 tariff filings, PJM has the authority to consent to accept FERC's proposed modifications. *NRG Power Mktg., LLC v. FERC*, 862 F.3d at 114.

[83] *NextEra Energy Resources, LLC v. FERC*, 898 F.3d 14, 20 (D.C. Cir. 2018) (finding that a tariff which leads to overprocurement of capacity may be considered in the just and reasonable standard).

concludes. At a minimum, FERC should request that PJM clarify that orders from state public utility commissions suffice to meet the Backstop Auction peak-shaving exemption.

First, FERC should find that PJM cannot use the 2028/2029 BRA shortfall as the Backstop Auction procurement target because it is an arbitrary quantity not based on any long-term load growth forecasts. PJM proposes to set the procurement target for the Backstop Auction as the 2028/2029 BRA capacity shortfall.[84] PJM chose this number based on forecasts for one delivery year and did not forecast capacity needs over the next 15 years. Given that large load demand forecasts vary dramatically, an artificial target set by PJM is likely less efficient than a target based on large load's actual willingness-to-pay.[85]

FERC should direct PJM to adopt the subscription model proposed by the Joint Electric Distribution Companies and the Data Center Coalition. The subscription model was the only proposal to garner a majority of stakeholder votes in the CIFP–and for good reason.[86] Under the subscription model, large loads would voluntarily report how much capacity they want procured on their behalf and PJM would use that number to set the procurement target for the Backstop Auction.[87] If PJM does not have to rely on speculative demand growth forecasts, it would reduce the risk of over-procurement. Data centers would likely be more realistic about their capacity needs if they have to put down collateral. The subscription model would also simplify the cost allocation process because PJM would directly allocate costs to the large loads that opt into the Backstop Auction. The subscription model would mitigate the significant risk that the Backstop

[84] Tariff Filing, *supra* n. 2, 31.
[85] *See generally* Large Load Forecasting White Paper, *supra* n. 61.
[86] *CIFP – Reliability Backstop Procurement/Connect & Manage Summarized Poll Results*, PJM INTERCONNECTION, L.L.C. (July 2026), https://perma.cc/Q4A7-7PQ6.
[87] Joint EDCs & Data Center Coalition, Reliability Backstop Procurement Package (July 2026), https://perma.cc/HNN2-YK8R.

Auction would result in unjust and unreasonable rates since each of these benefits would lead to more precise cost allocation and lower capacity costs for wholesale customers.[88]

Second, if FERC does not instruct PJM to adopt the subscription model, FERC should, at a minimum, instruct PJM to mitigate over-procurement risk by clarifying that the opt-out provision for states with peak-shaving programs applies broadly. FERC should direct PJM to clarify that the tariff provision which allows states to opt out of the Backstop Auction if they have peak-shaving programs "codified in state law" applies to state statutes *and orders issued by a state public utility commission*. Some states have passed legislation codifying peak-shaving programs, but it is also common for states to implement these types of programs through orders issued by the public utility commission.[89] Public utility commission orders are enforceable and binding, so PJM must recognize their validity for the purpose of the limited exception to participation in the Backstop Auction. This clarification can mitigate the risk that the Backstop Auction would over-procure capacity and excessively burden consumers, resulting in unjust and unreasonable rates.

Third, regardless of whether FERC directs PJM to adopt the subscription model or clarify the peak-shaving exemption, FERC should also direct PJM to delay the start of the Backstop Auction to allow time for companies to execute bilateral contracts and for states to implement peak-shaving programs. According to PJM's own survey, most market participants would prefer

[88] *See Old Dominion*, 898 F.3d at 1255 (establishing the cost causation principle); *NYPSC v. FERC*, 104 F.4th at 890 (finding that just and reasonable rates cannot pose "excessive burden" on consumers).
[89] *See California Emergency Load Reduction Program*, CAL. PUB. UTIL. COMM'N (accessed Aug. 21, 2026), https://perma.cc/CGV7-ZW53; New York State Dept. Pub. Service, *Commission Improves Customer-Centered Electric Demand Response Programs* (Apr. 2026), https://dps.ny.gov/news/commission-improves-customer-centered-electric-demand-response-programs; Pub. Util. Comm'n of Texas, Project No. 56966, 16 TAC § 25.186, https://perma.cc/C2KF-62S3.

to purchase capacity through bilateral trades rather than through a centralized auction.[90] PJM is facilitating a bilateral matchmaking program to encourage these types of contracts, but the matchmaking process will not conclude until February 2027 at the earliest. PJM should allow time for parties to reach these agreements, which will offset the procurement target for the Backstop Auction. Offsetting the procurement target will help protect against the unjust and unreasonable rates that would result from over-procuring capacity for 15-year terms.

Delaying the auction start date would also allow time for states to implement peak-shaving programs. PJM filed the tariff revisions on July 31, 2026, which only leaves states with two months' notice if they wish to take advantage of the exception and do not already have statutorily mandated peak-shaving programs in place. Pushing back the start date would allow time for states and market participants to take actions that offset the procurement target, reducing the risk that the Backstop Auction would lock in expensive long-term contracts that burden consumers unnecessarily.

B. FERC should require PJM to adjust Backstop Auction design to mitigate the risk of unfair cost allocation.

PJM proposes to assign the costs of the Backstop Auction to zones based on their pro rata share of the procurement target, and then to allocate costs to LSEs based cost allocation mechanisms submitted by the relevant state or RERRA. Within each zone, PJM has stated that EDCs will have to create mechanisms to allocate costs to individual retail customers prior to the

[90] *CIFP – Reliability Backstop Procurement Proposal*, PJM INTERCONNECTION, L.L.C. (July 2026), https://www.pjm.com/-/media/DotCom/committees-groups/cifp-rbp/2026/20260630/20260630-item-02a---pjm-reliability-backstop-procurement-proposal---paper.pdf.

date on which the capacity acquired in the Backstop Auction will bid into the BRA for the delivery year it will be operational.[91]

Applying this cost allocation methodology to the Backstop Auction would not be just and reasonable because it entails serious risk that customers will pay for benefits that they do not receive. For the BRA, assigning capacity obligations to zones based on their pro rata share of the procurement target works well because PJM can reasonably predict an LSE's capacity needs three years forward by extrapolating from the LSE's existing customer base. But predictions are more difficult for the Backstop Auction, which would obtain capacity for 15-year terms. EDCs cannot reasonably predict an LSE's over such a long time horizon. Also, it is difficult to extrapolate capacity needs from an LSE's existing customer base because the Backstop Auction serves large load growth, much of which may be speculative and has not contracted with an LSE for service.

Although states and electric distributors may be able to reallocate costs among retail customers, this does not resolve the problem that large loads may not materialize as expected on the zonal level. If large load growth is expected in the Mid-Atlantic zone, but it actually materializes in the Western Region, LSEs in the Mid-Atlantic zone would still have to bear those costs. This cost allocation problem sits squarely within PJM's jurisdiction because incorrectly assigning capacity costs at the zonal level affects wholesale customers, not just retail customers.[92]

To mitigate this cost-shifting problem, PJM should allow LSEs to trade capacity credits with each other across different zones to serve load growth as needed. This provision was part of

[91] Tariff Filing, *supra* n. 2, at 96.
[92] 16 U.S.C. § 824(a); *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 277 (2016) (elaborating on the extent of FERC's jurisdiction over wholesale rates).

an earlier iteration of the Backstop Auction and has since been removed. Without taking steps to account for the speculative nature of large load growth forecasts over the next 15 years, PJM's proposed tariff revisions are unjust and unreasonable because there is a strong possibility that wholesale non-large load customers may have to pay for capacity costs from which they do not benefit.[93]

C. FERC should require PJM to adjust the Backstop Auction design to avoid overpaying for capacity.

FERC should instruct PJM that it cannot demonstrate its proposed market design is just and reasonable unless PJM adopts measures to mitigate the risk that the Backstop Auction will impose excessive burden on consumers. To do this, FERC should require PJM to eliminate the requirement that demand response resources must have a 15-year agreement in place to participate in the Backstop Auction.[94] Demand response resources are some of the least expensive capacity resources available and imposing onerous restrictions on their participation will artificially increase costs.[95] PJM allows other resources to place bids for capacity service beginning in 2032, so requiring demand response suppliers to commit starting in 2028/2029 DY is unduly discriminatory.[96]

IV. Conclusion

FERC should reject PJM's proposed tariff revisions because the Backstop Auction is not just and reasonable. In the alternative, if FERC is inclined to permit PJM to implement some version of the Backstop Auction, FERC should require PJM to refile its proposed tariff with

[93] *See Old Dominion*, 898 F.3d at 1255 (establishing the cost causation principle).
[94] Tariff Filing, *supra* n. 2, 54.
[95] *See generally* ACEE, FASTER AND CHEAPER: DEMAND RESPONSE SOLUTIONS FOR RAPID LOAD GROWTH (Feb. 2026), (Feb. 2026), https://perma.cc/4SQM-CU37 (report finding that demand response is one of the lowest cost resources to serve electricity demand).
[96] 16 U.S.C. § 824d(b).

adjustments that will mitigate the substantial risk that the rates resulting from the Backstop Auction will be unjust and unreasonable.

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