

May 26, 2023

VIA ELECTRONIC MAIL

The PJM Board of Managers
c/o Mark Takahashi, Chair, PJM Board of Managers
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, Pennsylvania 19408

Re: FERC Filing of Stakeholder-Sponsored Capacity Performance Penalties
Solution

Dear Chairman Takahashi and PJM Board of Managers:

We are writing in response to the Board of Managers' May 23, 2023 [letter](#) addressed to certain Members, Stakeholders, and Commissioners. The Board's letter follows multiple communications from stakeholders regarding voting at the Special Meeting of the Markets and Reliability Committee (MRC) on May 4, 2023, and the Special Meeting of the Members Committee (MC) on May 11, 2023, that overwhelmingly endorsed the stakeholder-sponsored Capacity Performance Penalties Solution (Member-Endorsed Solution). Comments in some of these communications expressed concern that reliability may be impacted as the basis for urging the Board not to file the Member-Endorsed Solution with the Federal Energy Regulatory Commission (FERC).

From the May 23, 2023 letter, it appears that the Board was swayed by these communications. The undersigned are writing to draw the Board's attention to information from the stakeholder process demonstrating that the Member-Endorsed Solution would not harm reliability. The Member-Endorsed Solution would actually promote reliability by avoiding potential reliability issues inherent in the alternative PJM Staff/LS Power proposal that the Members rejected in favor of the Member-Endorsed Solution at the May 4 MRC meeting.

[Materials](#) posted for the May 11 MC meeting demonstrate that the maximum number of Performance Assessment Intervals (PAI) during which a capacity resource would fail to perform before hitting the stop-loss under both the status quo and the Member-Endorsed Solution is 548 intervals. In contrast, that number would drop to 72 intervals under the PJM Staff/LS Power proposal. Thus, under the PJM Staff/LS Power proposal, a non-performing generator would not have faced any incentive from Non-Performance Charges to perform following an outage during continuous PAIs lasting as little as six hours. The undersigned supported the Member-Endorsed Solution because it would promote reliability by continuing to apply the Non-Performance Charge incentive for 45.6 hours of PAIs.

It should be noted further that the stop-loss provision included in the PJM Staff/LS Power proposal would have capped a generator's annual Non-Performance Charge exposure at \$21,112 per megawatt UCAP, while the Member-Endorsed Solution includes a \$15,834 stop-loss. Both of these proposals embrace a substantial reduction from the excessive status quo \$160,533 stop-loss. So it is inaccurate to suggest, as the "Multiple Members" did in their May 17, 2023 [letter](#) to the Board, that PJM Staff opposed significant reductions in the effective level of Non-Performance Charges faced by generators. Such a view narrowly focuses on the Penalty Charge Rate itself and ignores the limits imposed by the stop-loss.

The Board's May 23 letter also cites "concerns regarding the filed-rate doctrine and settled expectations," which presumably refers to vague allegations in the Multiple Members' May 17 letter. The Multiple Members' alleged "settled expectations" are unreasonable given that they cannot possibly have predicted the billion-dollar windfall they expect to receive following Winter Storm Elliott, for example, and it is unlikely they built any realistic expectation of such enormous performance bonuses into their capacity offers for the 2023/2024 and 2024/2025 Delivery Years. Similarly, the Public Interest Organizations' unsupported arguments in their May 23, 2023 [letter](#) asserting that the Member-Endorsed Solution shifts risks to consumers merely seek to perpetuate the current unbalanced penalty structure. We note that the current high penalty rate/high stop-loss limit combination failed to prevent over 47,000 MW of forced outages during Winter Storm Elliott and resulted in massive penalties, bankruptcies and threats of default.

Arguments that the Member-Endorsed Solution would violate the filed-rate doctrine also ring hollow. The foundation of the filed-rate doctrine is "the 'cardinal principle of ratemaking,' which prohibits a public utility from changing the rates collected for services rendered."¹ But the services to be provided here include UCAP to be made available in future delivery years. Moreover, "[t]he onus of determining the legality of a filing falls on the Commission,"² not PJM. This principle applies universally, independent of whether the filing relates to the PJM Tariff or the PJM Operating Agreement.

The Members Committee endorsed market design changes that strike an appropriate (*i.e.*, just and reasonable) balance between risk, compensation, non-performance penalties, and stop-loss limits, while maintaining reliability. The PJM Board has [previously respected](#) "the Members' intent as expressed in the vote" when filing the unmodified proposal approved by Members in an earlier CIFP process, and the Board should do so here. The undersigned Members therefore urge the PJM Board to reconsider the filing strategy outlined in the May 23 letter and direct PJM to expediently file the

¹ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109, at P 163 (2023) (citing *City of Piqua v. FERC*, 610 F.2d 950, 954 (D.C. Cir. 1979)).

² *Duquesne Light Co. v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,052, at P 27 (2021).

Member-Endorsed Solution at FERC to enable it to be effective for the 2023/2024 Delivery Year that begins on June 1, 2023.

Sincerely,

John Horstmann
Sr. Director RTO Affairs
AES US Services LLC on behalf of its
affiliates
john.horstmann@aes.com

Steven Lieberman
Vice President of Transmission &
Regulatory Affairs
American Municipal Power, Inc.
slieberman@amppartners.org