

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

<b>Jackson Generation LLC</b>	)	
	)	
	)	<b>Docket No. EL21-82-000</b>
v.	)	
	)	
<b>PJM Interconnection, L.L.C.</b>	)	

**ANSWER OF PJM INTERCONNECTION, L.L.C.**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission’s (“Commission”),<sup>1</sup> and the Commission’s June 11, 2021 Notice of Complaint,<sup>2</sup> PJM Interconnection, L.L.C. (“PJM”) submits this Answer in response to the June 9, 2021 complaint (“Complaint”) of Jackson Generation LLC (“Jackson”). The Complaint alleges that PJM violated the Open Access Transmission Tariff (“Tariff”), Attachment DD, section 6.2(c) by failing to file a report concerning offer floor and other mitigation determinations made in connection with the Base Residual Auction for the 2022/2023 Delivery Year.<sup>3</sup>

As more fully explained below, the Commission should deny the Complaint on the ground that the filing requirement detailed in Tariff, Attachment DD, section 6.2(c) does not apply to all offer floor and other mitigation determinations. Rather, the plain language of this provision explicitly states that such filing requirement applies only to those mitigation “determination[s] made pursuant to Tariff, Attachment DD, section 5.14(h), Tariff, Attachment DD, section

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<sup>1</sup> 18 C.F.R. § 385.213.

<sup>2</sup> *Jackson Generation, LLC v. PJM Interconnection, L.L.C.*, Notice of Complaint, Docket No. EL21-82-000 (June 11, 2021).

<sup>3</sup> *Complaint of Jackson Generation, LLC v. PJM Interconnection, L.L.C.*, Docket No. EL21-82-000 (June 9, 2021) (“Jackson Complaint”).

6.5(a)(ii), or Tariff, Attachment DD, section 6.7(c) *identified in such sections as subject to the procedures of this section [6.2(c)].*<sup>4</sup> Given that the aforementioned sections do not identify Tariff, Attachment DD, section 6.2(c), there is simply no requirement for PJM to file a report concerning offer floor and other mitigation determinations with the Commission.

Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) no longer refer to Tariff, Attachment DD, section 6.2(c) because, as Jackson itself acknowledges, the filing requirement was added only as an interim measure to report mitigation determinations made by the Independent Market Monitor for PJM (“Market Monitor”). However, the provisions that gave rise to the Market Monitor’s discretion, along with the accompanying references to Tariff, Attachment DD, section 6.2(c) in the relevant provisions, have been eliminated since 2008. Consequently, PJM is no longer required to make a filing with the Commission on all offer floor and other mitigation determinations made in connection with the Base Residual Auction for the 2022/2023 Delivery Year.

## **I. ANSWER**

### **A. *PJM’s Tariff Does Not Require PJM to File a Report with the Commission on All Offer Floor and Other Mitigation Determinations Made In Connection with an RPM Auction.***

As an initial matter, PJM wholly agrees with Jackson that when the Tariff language is unambiguous, the plain language of the Tariff controls. To that end, Jackson cannot and should not ignore the plain and unambiguous language in Tariff, Attachment DD, section 6.2 that explicitly limits the filing requirement to only those mitigation determinations that are “*identified in such sections as subject to the procedures of this section.*”<sup>5</sup> The Complaint, however,

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<sup>4</sup> (Emphasis added) Tariff, Attachment DD, section 6.2(c).

<sup>5</sup> *Id.*

inexplicably disregards the plain language of the Tariff and erroneously concludes that *any* mitigation determination is subject to the proclaimed filing requirement. Such an assertion is invalid because there is no reference to the procedures of section 6.2(c) in Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c). The absence of this reference to section 6.2(c) in the aforementioned sections necessarily means that the Tariff does not require PJM to file a report with the Commission. In other words, contrary to Jackson’s assertion, the plain and unambiguous language of Tariff, Attachment DD, section 6.2(c) does not require PJM to file a report containing mitigation determinations made in connection with the 2022/2023 Base Residual Auction.

Thus, consistent with Jackson’s own argument,<sup>6</sup> PJM “does not have discretion to step outside the provision of its [T]ariff” and cannot simply file a report of all mitigation determinations made in connection with the recent Base Residual Auction, or any other RPM Auction, given that Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) do not contain any language referring to the reporting procedures detailed in Tariff, Attachment DD, section 6.2(c). In fact, doing so absent a specific and relevant Tariff requirement would violate the confidentiality provisions that bound PJM from disclosing any confidential Member information.<sup>7</sup>

***B. The Requirement to File a Report of Certain Mitigation Determinations Applied Only to Those Determinations Previously Made By the Market Monitor.***

It is no accident that Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) are now void of references to the filing requirements of Tariff, Attachment DD, section 6.2(c). As Jackson itself acknowledges, the filing requirement detailed in Tariff, Attachment DD, section 6.2(c) was added as an interim measure to address the Commission’s concern that the original RPM

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<sup>6</sup> Complaint at p. 9.

<sup>7</sup> See Operating Agreement, section 18.17 (PJM may only provide confidential Member information to the Commission during the course of an investigation or if the Commission “requests information from the Office of the Interconnection that is otherwise required to be maintained in confidence”).

settlement provided the Market Monitor with excessive discretion with respect to certain mitigation determinations.<sup>8</sup>

More specifically, in reviewing the initial RPM settlement, the Commission was concerned that certain mitigation provisions provided too much discretion to the Market Monitor and found such Market Monitor authority to be inappropriate.<sup>9</sup> However, in the interest of not delaying the start of the RPM Auctions, the Commission accepted the provisions of Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) on condition that if they are used in the initial Base Residual auctions, they would be subject to a review process by the Commission.<sup>10</sup>

In response to that order, PJM submitted a compliance filing on January 22, 2007 to add the reporting requirement in Tariff, Attachment DD, section 6.2(c).<sup>11</sup> Importantly, PJM also revised Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) to specify which mitigation determinations would be subject to the reporting requirements of Tariff, Attachment DD, section

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<sup>8</sup> See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at P 115 (2006) (“2006 RPM Order”).

<sup>9</sup> *Id.* Specifically, the excessive discretion that the Commission was concerned with as proposed under the initial RPM settlement were as follows:

- Under section 5.14 (h), the Minimum Offer Price Rule that applies to capacity sellers who are also net buyers, the Settlement would give the Market Monitor the discretion to reject certain bids, after negotiation with the seller, if the Market Monitor determined that the justification for the bid was not satisfactory, and replace the bid with an alternate value derived from objective criteria.
- Under section 6.5 (a) (ii), which applies to new entrants that meet specified conditions for market power, the Settlement would require the Market Monitor to use discretion to evaluate new entrant bids based on specified criteria. If the Market Monitor determines that a bid is not competitively justified, the entrant is provided an opportunity to submit an alternate bid. However, the Market Monitor could reject the alternate bid if, in its view, the alternate bid was not competitively justified according to the specified criteria.
- Under section 6.7 (c), which applies to existing generators that choose not to submit unit-specific data necessary to develop either an avoidable cost or opportunity cost default bid, the Settlement gave the Market Monitor the authority to develop alternative generic, safe-harbor default bids in consultation with stakeholders.

<sup>10</sup> *Id.*

<sup>11</sup> *PJM Interconnection, L.L.C.*, Compliance Filing, Docket Nos. ER05-1410-003 and EL05-148-003 (Jan. 22, 2007).

6.2(c).<sup>12</sup> Specifically, for Tariff, Attachment DD, section 5.14(h), PJM added the following blackline reference to section 6.2(c):<sup>13</sup>

**(3) If the Market Monitoring Unit determines that all of the criteria of Section 5.14(h)(2) are met, it shall notify the Capacity Market Seller of this determination. Within five business days, or such other period to which the Market Monitoring Unit consents, such Capacity Market Seller may supply the Market Monitoring Unit with specific information about the costs and operational parameters relating to its Sell Offer. If the Capacity Market Seller fails to supply any such information within the specified time, or if the Market Monitoring Unit determines (subject to the procedures in section 6.2(c) of this Attachment) that the information provided, combined with revenues that would be earned in PJM-administered markets as determined by PJM, does not support the offer, the applicable cost-based net Cost of New Entry determined in Section 5.14(h)(1) shall be used to establish an alternative Sell Offer. The alternative Sell Offer employed in place of the actual Sell Offer shall be equal to 90 percent of the applicable Net Asset Class Cost of New Entry or, if there is no applicable Net Asset Class Cost of New Entry equal to 80 percent of the Net Asset Class Cost of New Entry for the Reference Resource. Upon timely receipt of such information, the Market Monitoring Unit shall determine whether such Sell Offer is consistent with the real levelized (year one) competitive, cost-based, fixed, net cost of new entry were the resource to rely solely**

Likewise, for Tariff, Attachment DD, section 6.5, PJM added the following blackline reference to section 6.2(c):<sup>14</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at Tariff Changes (redline).

<sup>14</sup> *Id.* at Tariff Changes (redline).

(C) Where the two conditions stated in Paragraph (B) are not met, or the Sell Offer is pivotal, the Market Monitoring Unit shall (1) compare each such Sell Offer to Sell Offers submitted in other LDAs (with due recognition for locational differences) and to the Cost of New Entry for the LDA in which the offer otherwise would clear and other LDAs (with due recognition for locational differences); (2) evaluate potential barriers to new entry on the basis of interviews with potential suppliers and other market participants; and (3) determine (subject to the procedures in section 6.2(c) of this Attachment), based on that analysis, whether to reject such Sell Offer as non-competitive. Following the conduct of the applicable auction and before the final determination of clearing prices, in accordance with Section 6.2(b) above, the Market Monitoring Unit shall notify a Capacity Market Seller whose Sell Offer is deemed non-competitive and allows such Capacity Market Seller an opportunity to submit a revised Sell Offer. The Office of the Interconnection then shall clear the auction with such revised Sell Offer in place if the Market Monitoring Unit determines that such revised offer is competitive in accordance with the above criteria. If the revised Sell Offer is not deemed competitive, it will be rejected.

Finally, PJM added the following reference to section 6.2(c) in Tariff Attachment DD, section 6.7:<sup>15</sup>

(c) Potential auction participants identified in subsection (b) above need not submit the data specified in that subsection for any Generation Capacity Resource:

- i. that is in an Unconstrained LDA Group or, if this is the relevant market, the entire PJM Region, and is in a resource class determined by the Market Monitoring Unit as *not likely to include the marginal price-setting resources in such auction; or*
- ii. for which the potential participant commits that any Sell Offer it submits as to such resource shall not include any price above the level identified for the relevant resource class by the Market Monitoring Unit.

The Market Monitoring Unit shall determine (subject to the procedures in section 6.2(c) of this Attachment), in its discretion, following stakeholder consultation, the resource classes and corresponding prices described in this subsection and shall identify such resource classes and prices in the posting required by section 6.2(a). Nothing herein precludes the Market Monitoring Unit from requesting additional information from any potential auction participant as deemed necessary by the Market Monitoring Unit, including, without limitation, additional cost data on resources in a class that is not otherwise expected to include the marginal price setting resource; and compliance with such request shall be a condition of participation in any auction. Any Sell Offer submitted in any auction that is inconsistent with any commitment made pursuant to this subsection shall be rejected, and the Capacity Market Seller shall be required promptly to resubmit a Sell Offer that complies with such commitments. If the Capacity Market Seller does not timely resubmit its Sell Offer, it shall be deemed to have submitted a Sell Offer that complies with the

Clearly, only those specific provisions of Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) that explicitly referenced the reporting requirements of Tariff, Attachment

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<sup>15</sup> *Id.* at Tariff Changes (redline).

DD, section 6.2(c), which the Commission accepted,<sup>16</sup> would have been the subject of any filing requirement – particularly given that Tariff, Attachment DD, section 6.2(c) specifically limits the reporting requirements only to those “identified in such sections as subject to the procedures of this section.”<sup>17</sup> Thus, it is incorrect to argue that the plain language of the Tariff requires PJM to file all mitigation determinations beyond those previously specified in Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c).

As noted above, the specific references to the reporting requirements of Tariff, Attachment DD, section 6.2(c) in Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) were later intentionally removed because, in compliance with the 2006 RPM Order, PJM proposed changes to these sections that eliminated the Commission’s initial concerns about the Market Monitor’s excessive discretion and substituted those provisions with more objective criteria.<sup>18</sup> In doing so, PJM removed the references to Tariff, Attachment DD, section 6.2(c) from Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) since there would no longer be a need to file a report of mitigation determinations under the revised rules that eliminated the Market Monitor’s excessive discretion.<sup>19</sup> The mere retention of Tariff, Attachment DD, section 6.2(c) does not mean that this section can now be broadened to apply to all mitigation determinations made in connection

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<sup>16</sup> *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318 (2007).

<sup>17</sup> (Emphasis added) Tariff, Attachment DD, section 6.2(c).

<sup>18</sup> *PJM Interconnection, L.L.C.*, Compliance Filing, Docket Nos. ER05-1410-006 and EL05-148-006 (Sept. 24, 2007).

<sup>19</sup> *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,264 (2008).

to an RPM Auction.<sup>20</sup> Rather, this section is effectively obsolete now that the references to section 6.2(c) have been removed from Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c).<sup>21</sup>

In short, the Tariff requirement to file a report of mitigation determinations with the Commission applied only to the specific provisions of Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c) that had referenced Tariff, Attachment DD, section 6.2(c) and nothing more. Now that those references have been removed, the plain language of Tariff section 6.2(c) cannot be impermissibly broadened to include a reporting requirement for any and all mitigation determinations outside of those previously enumerated provisions.

***C. The Results of The 2022/2023 Base Residual Auction Are Valid and Must Stand.***

As explained, there is no relevant Tariff requirement that requires PJM to file a report containing mitigation determinations made in connection with the 2022/2023 Base Residual Auction. As such, there is no reason to require PJM to file such a report now. Furthermore, without providing any evidence, Jackson appears to make an unsupported assumption that had PJM filed such a report, the Commission would have agreed with Jackson's objection to the final calculated unit-specific floor price.

To the contrary, the Commission's earlier order required PJM to "consider Jackson's documentation regarding a different asset life"<sup>22</sup> and nothing more. PJM did precisely that and provided an updated floor price based upon Jackson's proposed asset life. However, that unit-specific floor price may not have been lower than the floor price determined in 2019, which the

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<sup>20</sup> As Jackson acknowledges in the Complaint, PJM has not made any filing on mitigation determinations since the references to Tariff, Attachment DD, section 6.2(c) were removed from Tariff, Attachment DD, sections 5.14(h), 6.5(a)(ii), and 6.7(c). Notably, no Market Participant has ever raised this issue in the years since because this requirement simply no longer applies.

<sup>21</sup> To the extent necessary, PJM can remove this obsolete provision if directed by the Commission. Alternatively, PJM could simply remove this provision as part of its next Tariff clean up filing.

<sup>22</sup> *Jackson Generation, LLC v. PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,116 (2021).



Commission had previously permitted Capacity Market Sellers to utilize.<sup>23</sup> While Jackson also attempted to update other components of the unit-specific floor price after the recent Commission order pertaining to the asset life issue, PJM could not validate those other aspects of Jackson's unit-specific floor price. Therefore, Jackson was ultimately not satisfied with its unit-specific floor price because neither its 2019 floor price nor its revised unit-specific floor price were low enough to clear the 2022/2023 BRA.<sup>24</sup> This result is not due to any impropriety by PJM (or the Market Monitor) in calculating the unit-specific floor price, but rather the result of determining a competitive offer floor for Jackson's new gas-fired combined-cycle plant based upon the cost data submitted by Jackson itself prior to the Tariff deadline, with the additional adjustment of a longer asset life as ordered by the Commission.

## **II. ADMISSIONS AND DENIALS**

Pursuant to Rule 213(c)(2) of the Commission's Rules,<sup>25</sup> except as stated in this Answer, PJM admits to no facts in the form and manner stated in the Complaint. Any fact or allegation in the Complaint is not explicitly admitted in this answer is denied.

## **III. NOTICES AND COMMUNICATIONS**

All correspondence and other communications regarding this proceeding should be directed to:

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<sup>23</sup> See *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 at P 292 (2020).

<sup>24</sup> Jackson disclosed and made public that the resource did not clear in the 2022/2023 Base Residual Auction. See Complaint at p. 6.

<sup>25</sup> 18 C.F.R. § 385.213(c)(2).

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#### IV. CONCLUSION

For the reasons provided herein, the Complaint should be denied because the plain language of Tariff, Attachment DD, section 6.2(c) applies only to certain mitigation determination provisions of the Tariff that have since been removed.<sup>26</sup> There is simply no Tariff requirement for PJM to file a report of all mitigation determinations made in connection with the 2022/2023 Base Residual Auction.

Respectfully submitted,

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*On behalf of  
PJM Interconnection, L.L.C.*

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<sup>26</sup> PJM also notes that Jackson admits it did not even attempt to discuss this matter with PJM prior to filing the instance complaint as required under Operating Agreement, Schedule 5, section 3.1. The Commission has previously dismissed as premature complaints that seek to contravene dispute resolution procedures prescribed in a utility's tariff and could also do so here in the event it does not issue an order on the merits. *See, e.g., Strategic Energy L.L.C. v. Cal. Indep. Sys. Operator Corp.*, 95 FERC P 61,312, at 62,069 (2001), *aff'd on reh'g*, 96 FERC P 61,146, at 61,629 (2001) (denying a complaint as premature because the complainant did not follow the alternative dispute resolution procedures set forth in the tariff); *J.P. Morgan Ventures Energy Corp. v. California Independent System Operator Corporation*, 141 F.E.R.C. P61,191 (2012).

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on those parties on the official Service List compiled by the Secretary in these proceedings.

Dated at Audubon, Pennsylvania this 22nd day of June, 2021.

*/s/ Chen Lu* \_\_\_\_\_

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