

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

PJM Interconnection, L.L.C.   )  
   )   Docket No. ER15-852-000  
   )

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

PJM Interconnection, L.L.C. (“PJM”), pursuant to Rule 213 of the Commission’s rules, 18 C.F.R. § 385.213, hereby answers<sup>1</sup> certain of the protests to and comments on PJM’s January 14, 2015 filing under section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, in this proceeding (“Stop-Gap Filing”) to amend PJM’s Open Access Transmission Tariff (“Tariff”) and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (“RAA”) to disable the current rules on Demand Resources and Energy Efficiency Resources and replace them with rules on Wholesale Load Response (“WLR”) and Wholesale Energy Efficiency Loads (“WEEL”).

**I. INTRODUCTION**

Whether end-user provided demand response is jurisdictional in Commission-regulated wholesale capacity markets is presently an open question. Notwithstanding arguments raised in certain protests, PJM can do nothing to either remove or compound this uncertainty. The only matter over which PJM and this Commission have any

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<sup>1</sup> PJM seeks leave to answer the protests and comments to the Stop-Gap Filing to assist the Commission’s decision-making process and clarify the issues. The Commission regularly allows answers in such cases. *See, e.g., PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,165, at P 24 (2012) (accepting answers to a protest because “they have provided information that assisted [the Commission] in [its] decision-making process”); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,031, at P 10 (2003) (accepting answer because “it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will [e]nsure a complete record upon which the Commission may act”).

measure of control in this regard is the tariff rules that govern PJM's upcoming May 2015 Base Residual Auction (the "May Auction"). As to this matter, PJM has sought to proceed as follows: Should the U.S. Supreme Court grant pending petitions for certiorari of the *EPSA* decision<sup>2</sup> before the May Auction, PJM will apply its existing demand response rules; however, should the Court deny certiorari, PJM has proposed alternate rules to serve as a "stop-gap" that would govern lawful participation of demand response in PJM's capacity market until such time as a more considered alternative is fashioned by the industry and this Commission.

That is all the Stop-Gap Filing seeks to accomplish. It does not, nor could it purport to, resolve the questions raised by *EPSA*, or the uncertainty injected by the pending complaint that seeks to extend *EPSA*'s jurisdictional holding to demand response in PJM's capacity market, or the preferred policy approach to demand response in organized markets over the longer term. Nor, given matters well beyond PJM's control, can PJM's filing guarantee a desired volume of demand response—volumes that some parties wish would remain at historic levels and that other parties wish would disappear altogether. The Commission may not have an optimal set of options. But in the case where the Supreme Court denies certiorari before the May Auction, the Stop-Gap Filing provides the Commission a choice.

The Commission can reject PJM's contingent "stop-gap" rules. In that case, capacity suppliers, including some that seek here to reject the alternative offered by PJM,

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<sup>2</sup> *Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014) ("*EPSA*"), *petitions for cert. filed, FERC v. Elec. Power Supply Ass'n*, No. 14-840 (U.S. Jan. 15, 2015) & *EnerNOC, Inc. v. Elec. Power Supply Ass'n*, No. 14-841 (U.S. Jan. 15, 2015) (finding that the Commission lacks jurisdiction to establish compensation for demand response provided by retail customers directly participating in wholesale energy markets).

undoubtedly would respond to a denial of certiorari by filing emergency motions with the Commission seeking to enjoin all Demand Resource offers in the May Auction. Should the Commission reject the Stop-Gap Filing and reject any such motions to enjoin, and should the May Auction instead proceed under PJM's existing rules, then there is no doubt that suppliers will litigate to void, re-run and re-price the May Auction to remove resources that, they will assert, unlawfully cleared. Others will respond to any such litigation that removing these resources outright would result in a May Auction which wholly fails to consider the region's demonstrated demand response capabilities, with the resulting over-procurement forcing load to pay an unjust and unreasonable price for capacity. Adding to these challenges, there is a significant possibility that if *EPSA* certiorari is denied and the May Auction is held under the current demand response rules, the demand response offers cleared in that auction could subsequently be nullified on jurisdictional grounds, and the Commission might then find itself with few options to preserve demand response offers made under status quo rules that were found *ultra vires*. That is not an outcome that PJM, the Commission or, based on their pleadings in this case, most of the stakeholders in PJM would favor.

In short, those urging rejection of the Stop-Gap Filing offer no alternative other than what promises to be, at best, extended litigation compromising a basic design objective of the PJM capacity market, i.e., revenue certainty to encourage investment, and at worst, capacity prices for the 2018/2019 Delivery Year that would not reflect any of the region's known demand response capability.

To avoid these outcomes, the Commission can accept the Stop-Gap Filing knowing it will go into effect only if certiorari is denied. While the shift to a Load Serving Entity ("LSE")-based approach as a jurisdictional "safe harbor" will likely result

in less demand response than cleared in the past under rules that allowed direct participation by retail customers and their Curtailment Service Provider (“CSP”) representatives, PJM’s approach will enable substantial participation by the demand side in the May Auction in a way that is far more likely, even if *EPSA* stands, to survive jurisdictional challenge. This approach will:

- Ensure that current LSE-based demand response programs are clearly recognized as such and reflected in the May Auction under rules that are more likely to withstand legal challenge;
- Enable a path for capacity market participants that recognized the challenges presented by *EPSA* when it was issued last May, and the opportunities presented by PJM’s LSE-based “stop-gap” plan when it was announced last October, to commit demand response in a form that they will be confident can survive until, and its value would in fact be recognized in, the 2018/2019 Delivery Year;
- Permit May Auction prices to reflect the true demand for capacity in a just and reasonable manner, and in manner that runs a considerably lower risk of successful jurisdictional challenge and the attendant risk that auction outcomes would be undone before the Delivery Year; and
- Preserve the Reliability Pricing Model’s (“RPM”) essential design objective of forward price and revenue certainty for all market participants, on both the demand side and supply side, in the May Auction.

Given that RPM procures capacity on a three-year forward basis, there always is some uncertainty about intervening events between the Base Residual Auction (“BRA”)<sup>3</sup> and the Delivery Year, but in this instance, the uncertainty engendered by the historic and potentially far-reaching *EPSA* decision is unprecedented. Therefore, PJM’s (and the Commission’s) choices are either: (i) ignore the possibility that there could be a very

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<sup>3</sup> Capitalized terms not otherwise defined herein have the meaning specified in, as applicable, the Tariff, RAA, or Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”).

substantial change after the BRA in the cleared capacity resources and clearing prices for the 2018/2019 Delivery Year, or (ii) confront that risk through rule changes *before* the BRA is conducted, when the options to minimize and avoid that risk are likely to be greater.<sup>4</sup>

PJM proposed an effective date of April 1, 2015 for the proposed Tariff and RAA revisions and asked the Commission to act on the proposed revisions by that date. However, PJM also has made clear that it will implement the changes only if the U.S. Supreme Court denies pending petitions for certiorari of *EPSA*. If the Supreme Court grants the Commission's petition for certiorari, then that clear indication that *EPSA* requires further review and consideration would counsel prudence in making any major demand response market rule changes until the Supreme Court's review runs its course. PJM therefore proposes to implement these changes only if the Supreme Court *denies*

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<sup>4</sup> While some argue that the Commission might be able to preserve the results of the May Auction even if it is held under status quo rules that are later invalidated, *see, e.g.*, Protest of Advanced Energy Management Alliance at 26 (“AEMA”); Protest of Public Interest Organizations at 8-9 (“PIOs”), the fact that *EPSA* found Commission jurisdiction over demand response *ultra vires*, coupled with the fact that the FE Complaint seeking removal of the capacity demand response rules, was filed nearly a year before the May 2015 BRA, creates substantial uncertainty about the Commission's remedial options in such a scenario. *See* Emergency Complaint and Request for Fast Track Processing of FirstEnergy Service Company, Docket No. EL14-55-000, at 1-2 (May 23, 2014) (“Initial FE Complaint”); Amended Complaint of FirstEnergy Service Company, Docket No. EL14-55-000, at 1-5 (Sept. 22, 2014) (“Amended FE Complaint”) (collectively, the “FE Complaint”). Moreover, such arguments ignore that running the May Auction under status quo rules that are so dependent on the ultimate disposition of *EPSA* and the FE Complaint creates a level of uncertainty about the 2018/2019 Delivery Year capacity prices that is completely at odds with the need for revenue certainty by those proposing investments in new capacity. Even if the Commission can ultimately work its way through all the litigation around these questions, that uncertainty in the interim period can have a significant chilling impact on the needed investment decisions during a critical period as the PJM Region adapts to major changes in emissions regulations.

certiorari. The Court's rules and posted schedule appear to indicate that the pending certiorari petitions will be considered before the 2015 BRA.<sup>5</sup> Given that, PJM again urges the Commission to issue its decision on PJM's Tariff and RAA changes in this docket by April 1, 2015, so that issues on the nature, scope and details of these changes are resolved over a month before that auction, and the only remaining question will be whether the Supreme Court grants or denies the pending certiorari petitions.<sup>6</sup>

## II. ANSWER

### A. The Stop-Gap Filing Provides a Reasonable Means to Mitigate the Risk of Both Prolonged Uncertainty and Adverse, After-the-Fact Changes to the 2015 BRA Results from the *EPSA* Decision and Related Litigation.

A number of parties contend that the Stop-Gap Filing is premature, and that PJM should not change the demand response rules for the May Auction, because the *EPSA* holding has not been applied by either the Commission or a court to demand response

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<sup>5</sup> Briefs in opposition to the petitions for certiorari must be filed by March 19, 2015. Under the Supreme Court's rules, certiorari petitions and briefs in opposition, as well as any timely-filed replies, will be distributed to the Court for its consideration no later than 14 days after the briefs in opposition are filed, i.e., by April 2, 2015. *See* Sup. Ct. R. 15.5. The Court's posted Case Distribution Schedule, which identifies "the dates on which those [distributed] petitions are scheduled to be considered by the Justices at Conference," indicates that petitions distributed by April 8, 2015 are currently scheduled to be considered at the Court's April 24, 2015 conference. *See* Supreme Court of the United States, Case Distribution Schedule, available at <http://www.supremecourt.gov/casedistribution/casedistributionschedule.aspx>. If not decided at the April 24 conference, the Court's next scheduled conference (on May 1, 2015) also precedes PJM's BRA.

<sup>6</sup> As in similar cases in the past, PJM will be flexible in applying rules on receipt of needed information from auction participants before the BRA, including accepting alternative submissions under the existing and proposed rules and, as appropriate, relaxing final data submission deadlines to reflect the timing of the Supreme Court's action.

participation in capacity markets.<sup>7</sup> Some argue that even if the Commission was found (after the May Auction) to have no authority to approve wholesale capacity market compensation to end-users, the Commission could still fashion a remedy that ratifies any demand response offers by end-users that clear the May Auction.<sup>8</sup> Others contend that the Stop-Gap Filing is “disruptive,”<sup>9</sup> and that, by limiting demand response participation in the auctions to wholesale entities, it will lead to an increase in capacity clearing prices.<sup>10</sup> Some even assert that accepting the Stop-Gap Filing would essentially grant the pending complaint that seeks to apply *EPSA* to capacity market demand response<sup>11</sup> and

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<sup>7</sup> Protest and Motion to Reject of the Office of the Ohio Consumers’ Counsel at 3-6 (“Ohio OCC”); Protest of Joint Consumer Representatives at 5-11 (“JCR”); AEMA at 14-16; Protest of Maryland Public Service Commission at 2 (“MdPSC”); PIOs at 6; Protest of Steel Producers at 5-7 (“Steel Producers”); Protest of the Pennsylvania Public Utility Commission at 13-15 (“PaPUC”); Notice of Intervention and Comments of the Illinois Commerce Commission at 7-10 (“ICC”).

<sup>8</sup> See, e.g., AEMA at 26; ICC at 3, 13-14.

<sup>9</sup> Steel Producers at 7-8.

<sup>10</sup> See Ohio OCC at 3-6; AEMA at 26; Steel Producers at 8.

<sup>11</sup> See PaPUC at 14; AEMA at 3-4; 11-16. Their claim that the Stop-Gap Filing effectively asks the Commission to grant the relief in the FE Complaint is plainly incorrect. The FE Complaint seeks removal of all current PJM market rules on demand response participation in RPM, and proposes no substitute rules whatsoever to ensure that RPM clearing prices continue to reflect demand response. The entire focus of the Stop-Gap Filing, by contrast, is to establish a means for LSEs to bid their expected demand response directly into the BRA, and to adjust the Variable Resource Requirement (“VRR”) Curve to reflect those bids. Moreover, while the FE Complaint seeks to un-do the results of the 2014 BRA, and to end all compensation to Demand Resources after May 23, 2014 (regardless of when those Demand Resources were cleared or committed), the changes in the Stop-Gap Filing would be made effective only as of the 2015 BRA, and would preserve all commitments of previously cleared Demand Resources in RPM. Stop-Gap Filing at 6-7, 11-12.

would “destroy” the demand response community.<sup>12</sup> A number of parties also object that market participants and regulators do not have time before the May Auction to implement the WLR approach to demand response in that auction.<sup>13</sup>

PJM understands these concerns, but they are misdirected at PJM’s filing. The *EPSA* decision, not PJM’s filing, is the source of the current turmoil over the role of demand response in wholesale markets. It is *EPSA* that upsets over ten years of end-user demand response participation in PJM’s energy market, and the CSP business model that depends on aggregating those end-users. It is *EPSA* that implies a threat to Commission jurisdiction over demand response compensation in the capacity market. And, it is *EPSA* that forces stakeholders, including state regulatory bodies, to consider *EPSA*-compliant alternate arrangements sooner than they may prefer, given significant uncertainty over the required timing of changes to remedy a possible finding that the Commission lacks authority to regulate a given matter. That timing concern is especially hard to avoid for an auction conducted after the jurisdictional issue has been formally presented to the Commission, as is the case here.<sup>14</sup> While the *EPSA* mandate is presently stayed pending Supreme Court consideration, the Stop-Gap Filing is intended to take effect if certiorari is *denied*, and the Commission, state regulators, PJM, and other stakeholders are compelled to confront *EPSA* and its implications. In short, the Stop-Gap Filing is not the source of the adverse consequences cited by the parties for demand response and the May Auction. To the contrary, the Stop-Gap Filing is a just and reasonable solution under FPA section

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<sup>12</sup> AEMA at 12.

<sup>13</sup> ICC at 10-12; PaPUC at 27-29; Comments and Limited Protest of the Public Utilities Commission of Ohio at 7-9.

<sup>14</sup> Initial FE Complaint at 2; Amended FE Complaint at 5-7.



205 to *mitigate* those potential adverse consequences if the Supreme Court denies certiorari.

The present question, in the face of that uncertainty, is what reasonable rules could be employed to conduct a May 2015 BRA that secures capacity for the Delivery Year commencing in 2018. RPM was expressly approved on a three-year forward basis, and not a one-year forward or two-year forward basis, to enable competition from planned new entry.<sup>15</sup> The BRA also is intended to set capacity prices that are relatively durable over the ensuing three-year period, both to honor the expectations of resources that cleared the BRA based on that price level, and to provide prices that reliably signal to market participants the value of capacity based on the system's underlying physical conditions.<sup>16</sup> Dramatic post-BRA changes to those clearing prices, as would happen if the Commission was later compelled to strip out of the 2015 BRA thousands of megawatts of Demand Resource offers that are submitted in that BRA under the status quo rules, would defeat these fundamental objectives of the three-year forward auction. Similarly, any requirement to entirely re-run the BRA, after further Commission or court developments, only one or two years before the Delivery Year, would defeat these fundamental RPM objectives. Even litigation over the permissibility of end-user demand response in the capacity market, which likely would involve judicial review and thus would be protracted, would defeat those fundamental RPM objectives, because 2015

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<sup>15</sup> *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 6 (2006); *see also PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079, at P 72 (2006).

<sup>16</sup> *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079, at P 72 (“The existence of reliable and non-volatile forward prices in the capacity market will provide appropriate market signals to all resources.”); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at PP 47, 68.

BRA clearing prices that are premised on status quo Demand Resource rules would likely be viewed in the market as provisional while questions about *EPSA*'s scope and the Commission's implementation of the *EPSA* mandate remain pending. Given the wide-ranging implications of *EPSA*, and difficult questions about the scope of the Commission's remedial authority over the May Auction results if compensation to capacity Demand Resources is later found *ultra vires*, the results of the May Auction, if conducted under the status quo rules, face a level of uncertainty that is unprecedented in PJM's eight years of administering RPM.

For these reasons, there is significant risk in running the May Auction under the status quo rules if certiorari is denied. Protestors that focus solely on the differences between PJM's current Demand Resource rules and the proposed Wholesale Load Reduction rules are missing the essential issue. The essential question is how much risk should the Commission, PJM, and the stakeholders tolerate in running the May Auction under the status quo Demand Resource rules. Staying with the status quo and hoping for a good outcome requires assuming that *EPSA* will *not* be applied to upset the Commission's jurisdiction over end-user demand response in the capacity market, or that the Commission will somehow be able to preserve those end-user demand response offers in an auction conducted a year after the FE Complaint, notwithstanding such a jurisdictional finding. Given contrary arguments on those very points that are already before the Commission in the FE Complaint proceeding<sup>17</sup> and this case,<sup>18</sup> and the uncharted waters in which the Commission would find itself if certiorari is denied, the

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<sup>17</sup> Amended FE Complaint at 21-28.

<sup>18</sup> See Comments of the Electric Power Supply Association at 6 ("EPSA"); Protest of the PJM Power Providers Group at 2-3 ("P3").

risk of an adverse outcome on those issues must be acknowledged.<sup>19</sup> As outlined above, the consequences also would be significant, ranging from profound uncertainty over the validity of the May Auction clearing results, to needing to re-run the auction much closer to the Delivery Year, thereby sacrificing the three-year forward design, to (in the worst case) potentially losing any recognition of demand response in the capacity prices finally established for the 2018/2019 Delivery Year.<sup>20</sup>

Fortunately, section 205 offers PJM and the Commission a vehicle to address these circumstances. An appropriate, just and reasonable response to the risks *EPSA* poses to the May Auction (if certiorari is denied) is to establish rules, in advance of the May Auction, that allow the demand side in PJM to continue to play a significant role in price formation, while avoiding the jurisdictional issue in *EPSA*. That is exactly what PJM has proposed in the Stop-Gap Filing.<sup>21</sup> The Stop-Gap Filing permits thousands of MWs of demand response to be committed in the May Auction (as discussed below at

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<sup>19</sup> PJM emphasizes that it is not conceding any of those issues, and the Commission need not decide any of those issues, such as whether *EPSA* must be extended to capacity markets, in order to accept the Stop-Gap Filing.

<sup>20</sup> Notably, excising cleared Demand Resource offers and then recalculating the clearing prices is precisely the relief the FE Complaint has requested for the 2014 BRA. The Commission has an opportunity through this section 205 filing to ensure that that relief is not applied to the May Auction.

<sup>21</sup> Some state commissions propose that, as an alternative to the WLR approach, PJM should hold back from the BRA a portion of the Reliability Requirement equivalent to expected demand response, and then later allow demand response to compete to provide that increment of capacity, after it is clear what rules will apply to capacity market demand response. *See* MdPSC at 4-5; ICC at 13-14. The Commission should not accept this alternative. It would substantially suppress price in the BRA, and the subsequent competitive procurement of Demand Resources in the Incremental Auctions would not compete with the generation resources submitted in the BRA. PJM's proposed WLR approach is clearly preferable, because it enables demand response to submit competitive demand bids in the BRA and contribute to price formation in the BRA that reflects both supply offers and demand bids.

section II.C) on a basis that should significantly reduce the risks that those auction results could later be upset. Preserving that level of demand response participation, while also ensuring price and revenue certainty for the over 150 gigawatts of Capacity Resources that will clear the May Auction, is just and reasonable under the circumstances created here by the *EPSA* decision and the pending FE Complaint.

In choosing this course, PJM recognizes that parties may be emboldened by *EPSA* to appeal almost anything to do with demand response in the coming years, including PJM's WLR proposal if the Commission accepts it. But, as discussed at more length in section II.C below, the WLR proposal rests solidly on the Commission's express FPA jurisdiction over wholesale transactions, including the core element of the *purchase quantity* in that transaction. The WLR proposal thus relies on the FPA's own bright-line distinction between retail and wholesale transactions as a solid basis for avoiding the *EPSA* concern over direct wholesale market compensation to retail customers. Consequently, if certiorari is denied and the question of Commission jurisdiction over capacity market compensation for retail customer demand response comes to the fore, the LSE-centered approach provides a just and reasonable solution under FPA section 205 that avoids that jurisdictional vulnerability.

PJM also disagrees with those that complain that there will be little if any market response under the WLR approach, either because LSEs lack incentives to provide load reductions or work with CSPs, or because there is not sufficient time for LSEs and CSPs to enter arrangements that take mutual advantage of their distinct skills.<sup>22</sup> First, LSEs *do provide* a substantial percentage of Demand Resources today. PJM estimates that in the

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<sup>22</sup> PaPUC at 26-27; AEMA at 28, 36-42; PIOs at 11-12; JCR at 11-12.

2014/2015 Delivery Year, approximately 20% of total committed Demand Resources (i.e., 1,866 MWs) is provided by LSEs; for the 2013/2014 Delivery Year, approximately 28% of total committed Demand Resources (i.e., approximately 2,500 MWs) was provided by LSEs.<sup>23</sup> The WLR proposal helps ensure that this type of demand response is not “swept away” because it is governed by the same challenged tariff rules that are relied upon by end-users and CSPs. By establishing tariff rules that are explicitly based on LSE-provided load reductions, the Stop-Gap Filing helps identify and preserve current LSE-provided demand response.

Second, as highlighted by PHI in its comments, there are additional quantities of demand response (above that currently provided by LSEs) that are provided today in RPM from mass market programs and Standard Offer Service loads that could, subject to resolution of implementation issues, participate as WLR. PHI explains that it generally supports the Stop-Gap Filing, and asks the Commission to “ensure that the actual implementation of the proposal allows continued participation of DR programs such as PHI’s state authorized mass market programs, with rules and processes that are clear to all stakeholders.”<sup>24</sup> PJM agrees with PHI on the importance of practical implementation issues, and is working with stakeholders, including PHI, on those issues. PHI similarly

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<sup>23</sup> See James McAnany, PJM Demand Side Response Operations, *2014 Demand Response Operations Markets Activity Report: February 2015*, PJM Interconnection, L.L.C., Figure 4 (Feb. 11, 2015), <http://www.pjm.com/~media/markets-ops/dsr/2014-demand-response-activity-report.ashx>; James McAnany, PJM Demand Side Response Operations, *2013 Demand Response Operations Markets Activity Report: April 2014*, PJM Interconnection, L.L.C., Figure 3 (Apr. 18, 2014), <http://www.pjm.com/~media/markets-ops/dsr/2013-dsr-activity-report-20140418.ashx>.

<sup>24</sup> Comments of Pepco Holdings, Inc., Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company at 7 (“PHI”).

notes that, based on the “Provisions to Facilitate Flexible Implementation Approaches” and “implementation and transactional tools and options” described in the Stop-Gap Filing, PHI “is able to see a path forward for Demand Response and Energy Efficiency programs that it offers to its customers with Standard Offer Service (SOS) in Delaware, the District of Columbia and Maryland and Basic Generation Service (BGS) in New Jersey.”<sup>25</sup> PHI cautions, however, that “this path forward will require PHI to work very closely with its state commissions . . . to modify the SOS/BGS contracts to include language necessary to ensure that PHI’s customers will continue to derive the intended benefits from DR programs under the new construct proposed by PJM.” PJM supports these efforts and has made clear its willingness to facilitate them.

Similarly, as discussed below in section II.C.3.A, Exelon has proposed to implement the WLR rules by relying on a state-authorized central role for the electric distribution company (“EDC”). PJM has discussed this approach with Exelon, the ICC, and other stakeholders, and believes it holds promise as a vehicle for *EPSCA*-compliant demand response in the May Auction, subject to assuring that each LSE only receives capacity obligation reductions during the Delivery Year for WLR provided from that LSE’s loads.

Therefore, each of the above implementation approaches, i.e., mass-market, Standard Offer Service, and EDC-centered demand response, could, depending on achievement of certain limited but important changes, provide significant amounts of WLR as early as the May Auction. PJM has discussed these and other implementation approaches with states and other stakeholders, in furtherance of the essential objective of

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<sup>25</sup> PHI at 8 (citing Stop-Gap Filing at 28).

the Stop-Gap Filing, which is to establish a solid jurisdictional foundation, regardless of the final status and reach of *EPSA*, for the participation in the May Auction of as much of the region's current demand response as reasonably possible. To that end, PJM has explored with stakeholders flexible approaches to implementation, subject to not undermining the basic goal of ensuring that demand response committed in the May Auction will not later be removed as a result of extension of the *EPSA* holding to the capacity market. For reference, PJM has compiled a summary of the ongoing results of these implementation discussions into a working draft paper which it has posted to its website.<sup>26</sup>

Third, the demand response industry has arisen in the context of fast-moving changes in the retail and wholesale electric markets and includes many firms that are focused on innovation. Firms that are nimble and innovative will find ways to be profitable in a post-*EPSA* world should certiorari be denied. In that regard, the new challenges to possible demand response participation in capacity markets has been evident since May 2014, when *EPSA* was issued and the FE Complaint was filed. Moreover, PJM set forth the fundamentals of its proposal for LSE-centered demand response in October 2014.<sup>27</sup> Therefore, CSPs have already had a fair amount of time to make contingency plans for their continued pursuit of capacity business in prudent

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<sup>26</sup> See *PJM Stop Gap Proposal (Demand Side Wholesale Load Reduction or "WLR") and Summary of Implementation Issues Under Discussion*, PJM Interconnection, L.L.C., (Mar. 4, 2015), <http://www.pjm.com/~media/markets-ops/demand-response/stop-gap-proposal-and-summary-of-implementation-issues-under-discussion.ashx>.

<sup>27</sup> See *The Evolution of Demand Response in the PJM Wholesale Market*, PJM Interconnection, L.L.C. (Oct. 6, 2014), <http://www.pjm.com/~media/documents/reports/20141007-pjm-whitepaper-on-the-evolution-of-demand-response-in-the-pjm-wholesale-market.ashx>.

anticipation that the *EPSA* holding might be extended to capacity markets. Given the importance of capacity revenues to many of these market participants, they already have had strong incentives to pursue alternative means to preserve or obtain those revenues, including reaching out to LSEs, EDCs, and states. For example, while Direct Energy (“one of the most active providers of demand response in the nation”) expresses concerns with aspects of the stop-gap proposal, they “support PJM’s overall conceptualization of the demand-side reorganization of demand response.”<sup>28</sup> Therefore, the Commission should not discount the demand response expertise and capabilities developed by CSPs as a source of successful WLR Bids in the May Auction.

Fourth, while certain parties raise concerns that LSEs may unduly discriminate against some CSPs,<sup>29</sup> that is not a reason to deny PJM’s WLR proposal. States have a long history of monitoring and protecting against improper or unduly discriminatory behavior by entities that provide retail electric service, such as the LSEs at issue here.

In short, PJM’s just and reasonable proposal under FPA section 205 can provide a vehicle for thousands of megawatts of demand response to be recognized in the May Auction clearing results. That is a reasonable proposal, and a reasonable result, considering the very real obstacles that denial of certiorari in *EPSA* could present to delivery of end-user, supply-side demand response as capacity for the 2018/2019 Delivery Year.

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<sup>28</sup> Comments and Protest of Direct Energy Business, LLC and Direct Energy Business Marketing, LLC at 1, 3 (“Direct Energy”).

<sup>29</sup> NRG at 12-18; *see also* MdPSC at 3; PaPUC at 26-27.



**B. PJM’s Existing Price Responsive Demand Program Is Not at Present a Workable Alternative for Enabling the Participation of the Region’s Substantial Quantities of Existing Demand Response Capability.**

A number of parties contend that PJM’s WLR proposal is unnecessary because PJM already has in its Tariff an approved Price Responsive Demand (“PRD”) mechanism that allows demand reduction commitments to be recognized in capacity obligations.<sup>30</sup>

However, the PRD mechanism is not well suited to the challenge that PJM now faces: providing a reasonable opportunity for the region’s thousands of megawatts of demand reduction capability to continue to be recognized in the PJM Region’s capacity procurement in the face of the threat to that participation posed by *EPSA*.

Given the focus of the PRD rules on the anticipated development of technological and rate developments at the retail level when they were proposed nearly four years ago, they include certain qualification conditions that would greatly limit their viability as an immediately available vehicle for substantial quantities of capacity demand response in the May Auction. Specifically, the RAA prescribes that PRD must “result[ ] in a predictable automated response to varying wholesale electricity prices,” and therefore must include, among other requirements:

- “[A] retail rate structure, or equivalent contractual arrangement, capable of changing retail rates as frequently as an hourly basis, that is linked to or based upon changes in real-time [LMP] at a [substation] level;” and
- “Supervisory Control,” meaning “the capability to curtail load registered as [PRD]” where such curtailment “shall be automated,” i.e., the PRD load “shall be reduced automatically in response to control signals sent by the PRD Provider . . . directly to the control equipment where the load is located without the requirement for any action by the end-use customer.”<sup>31</sup>

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<sup>30</sup> *EPSA* at 10-11; Comments of the Independent Market Monitor for PJM at 7-8 (“IMMP3 at 9-11; Protest of the PPL Companies at 12-17 (“PPL”).

<sup>31</sup> RAA, sections 1.71F (“Price Responsive Demand” definition), 1.81A (“Supervisory Control” definition).

Simply put, given the fact that the anticipated developments at the retail level have not progressed at the expected rate when the PRD rules were created, very little of the demand response capability in the PJM Region satisfies these conditions at present. PJM notes that, although the PRD rules have been in place for the last three BRAs, no PRD has yet been submitted in connection with those BRAs. Given the distinct purpose for which they were developed, the current PRD rules also do not contain certain provisions on which demand response providers have come to rely; specifically, the different categories of demand response that the Commission previously has found just and reasonable. PJM defends these aspects of the WLR proposal in section II.D below. Relevant to arguments that PJM should instead have relied on PRD, however, the key question is whether the Stop-Gap Filing should focus on the changes needed to permit demand response to continue in an *EPSA*-compliant fashion, or whether this filing also should make other, unrelated changes to the demand response rules that have developed in the PJM Region. Appropriately, the Stop-Gap Filing made only those changes needed to provide a form of demand response that would avoid the jurisdictional concerns in *EPSA*.

The current PRD rules also do not include changes to reflect the Capacity Performance Filing. Therefore, to provide seamless coordination with the rest of RPM in the event the Commission accepts the Capacity Performance Filing, the Stop-Gap Filing appropriately includes an optional set of changes to integrate WLR into the version of RPM that has Capacity Performance rules. Simple reliance on PRD, by contrast, would ignore this important need for seamless integration of the various RPM capacity products into the Capacity Performance model—should that model be accepted by the Commission.

In short, parties that seek to reject the WLR changes and instead rely solely on PJM's current PRD rules have not shown that those PRD rules provide a viable alternative for significant quantities of demand response in the forthcoming May Auction. PJM of course maintains its PRD rules, and they could be part of a long-term model for demand response, depending on state actions. But the presence of the PRD rules does not prevent PJM from filing under section 205 a reasonable stop-gap proposal that is directly tailored to the specific challenges of conducting a three-year forward capacity auction in May 2015 in the face of the novel threat posed by *EPSA*.

**C. The WLR Proposal, by Focusing on the Wholesale Transaction, Plainly Falls Within the Commission's Jurisdiction; the Stop-Gap's Resulting Focus on Wholesale Entities Is Therefore Necessary and Appropriate.**

*1. PJM's WLR/WEEL Proposal Is Plainly Within the Commission's Jurisdiction.*

The fundamental jurisdictional basis for PJM's WLR/WEEL construct is the distinction Congress itself drew in the FPA between wholesale and retail electricity rates and markets. Under its proposal, PJM will reflect in the VRR Curve wholesale entities' commitments to reduce their wholesale purchases (or to forego additional purchases) of capacity from PJM at specified prices. In short, a Wholesale Entity may inform the capacity market of how much capacity the entity requires at various price points. Should the market reach a price the Wholesale Entity is unwilling to pay, it commits to an interruption of its wholesale supply service to the extent of its cleared WLR Load or WEEL. In return, the purchaser's capacity obligation is reduced, and the capacity charges it must pay to PJM are also reduced commensurately.

As explained in the Stop-Gap Filing, PJM's proposal is consistent with the long-standing principle that wholesale customers have the right to reduce their power cost

responsibility by reducing their peak-period consumption.<sup>32</sup> It finds further support in the Commission’s long-recognized authority under the FPA to approve system operators’ tariff terms regarding wholesale capacity obligations, capacity deficiency charges, and other terms of administering markets to ensure resource adequacy at just and reasonable prices.<sup>33</sup> Moreover, by enabling demand response resources to continue participating meaningfully in RPM even if *EPSA* is upheld, PJM’s WLR/WEEL initiative furthers Congress’ policy goal of eliminating “unnecessary barriers to demand response participation in energy, capacity and ancillary service markets.”<sup>34</sup>

NRG and PSEG contend that PJM’s proposal to rely on demand-side, wholesale load reductions is inconsistent with *EPSA*, but neither protest responds to PJM’s careful explanation of the jurisdictional basis for the WLR proposal in the Stop-Gap Filing.<sup>35</sup> NRG and PSEG argue that Wholesale Load Reductions are functionally the same as the demand response that was at issue in *EPSA*, and that the WLR proposal improperly “lures” end-user demand response into the wholesale capacity market in the same manner critiqued by *EPSA*.<sup>36</sup> They even go so far as to argue that there is no meaningful difference between recognizing a wholesale purchaser’s reduction in its wholesale

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<sup>32</sup> See Stop-Gap Filing at 31-33 (citing *La. Pub. Serv. Comm’n v. FERC*, 184 F.3d 892, 895 (D.C. Cir. 1999); *Delmarva Power & Light Co.*, 24 FERC ¶ 61,199, at 61,462 (1983); *Ky. Utils. Co.*, Opinion No. 116, 15 FERC ¶ 61,002, at 61,004 (1981); *Minn. Power & Light Co.*, Opinion No. 12, 3 FERC ¶ 61,045, at 61,140 (1978)).

<sup>33</sup> See Stop-Gap Filing at 33-34 (citing, *inter alia*, *Muns. of Groton v. FERC*, 587 F.2d 1296 (D.C. Cir. 1978); *Conn. Dep’t. of Pub. Util. Control v. FERC*, 569 F.3d 477 (D.C. Cir. 2009)).

<sup>34</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1252(e)(3)(E), 119 Stat. 594.

<sup>35</sup> Stop-Gap Filing at 9-11, 31-38.

<sup>36</sup> Protest of the NRG Companies at 6-8 (“NRG”); Protest of the PSEG Companies at 4-5 (“PSEG”).

capacity obligation and the direct payments to retail customers for reducing their electricity consumption that *EPSA* held to be beyond the Commission’s FPA jurisdiction.

These arguments are without merit. Contrary to the protestors’ claims, PJM’s proposed WLR/WEEL construct does not “lure” or otherwise bring retail end users or retail consumption into RPM. Indeed, the very language of *EPSA* on which PSEG relies<sup>37</sup> in its argument reveals the claim’s fallacy:

If FERC had directed ISOs to give a credit to any *consumer* who reduced its expected use of *retail electricity*, FERC would be directly regulating the retail rate. . . . Ordering an ISO to *compensate a consumer* for reducing its demand is the same in substance and effect as issuing a credit.<sup>38</sup>

Far from equating all credits with all payments in the context of demand response, as PSEG and NRG seemingly imply, this passage explains that *EPSA*’s holding is based on the fact that Order No. 745<sup>39</sup> prescribed compensation to *retail consumers*. That is what the court determined was the improper “lure” to retail end-users. Therefore, that is what made the Order No. 745 demand response compensation scheme an impermissible intrusion into retail markets.<sup>40</sup>

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<sup>37</sup> See PSEG at 4.

<sup>38</sup> *EPSA*, 753 F.3d at 223 (emphasis added).

<sup>39</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 2008–2013 FERC Stats. & Regs., Regs. Preambles ¶ 31,322, *order on reh’g & clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh’g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012), *vacated EPSA, petitions for cert. filed*.

<sup>40</sup> *EPSA*, 753 F.3d at 221-23. To the extent protestors also seek to rely on statements in *EPSA* rejecting the Commission’s characterization of retail customer participation in wholesale energy markets as “wholesale demand response,” *EPSA* at 220-221, those statements have no bearing here. PJM is proposing to *remove* retail customer participation in the wholesale capacity market. By Wholesale Load Reduction, PJM refers to action by the wholesale customer to change the purchase quantity in its wholesale transaction, over which

But *PJM's proposal includes no compensation in any form to any retail consumer*.<sup>41</sup> Therefore, the stopgap proposal does not contravene the holding of *EPSA*.<sup>42</sup>

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the FPA grants the Commission exclusive jurisdiction. No such scenario was identified or discussed in *EPSA*.

<sup>41</sup> Stop-Gap Filing at 27, 32, 38. The PJM Utilities Coalition errs in its claim that PJM proposes, purportedly in contravention of *EPSA*, “to distribute revenue generated from Non-Perform[ance] Charges to . . . WEEL and WLR Load that provide ‘Demand Response Bonus Performance’” under the Capacity Performance Filing. Comments and Protest of the PJM Utilities Coalition at 14 (“PJM Utilities Coalition”). In fact, PJM’s proposed tariff contemplates no payments directly to any WLR/WEEL Load. The provision on which the PJM Utilities Coalition focuses, proposed Tariff, Attach. DD, section 10A(g) (Option A), states that Non-Performance Charge revenues “shall be distributed to each Market Participant, whether or not such Market Participant committed a Capacity Resource, Locational UCAP, WEEL, or WLR Load.” This language does not, and is not intended to, mean that payments related to bonus performance of WLR/WEEL Load will go to the load itself. *See, e.g.*, Stop-Gap Filing at 46 (“[T]he Wholesale Entity always remains the actual participant in the RPM market.”). PJM acknowledges, however, that the PJM Utilities Coalition correctly quotes (at 14 n.39) a statement at page 70 of the Stop-Gap Filing which seemingly refers to direct payments. Accordingly, PJM here clarifies that, if the WLR stopgap proposal is made effective, PJM will not pay Non-Performance Charge revenues directly to WLR/WEEL Load. Any distribution of such revenues related to the performance of WLR/WEEL Load will be only to WLR Providers. Should the Commission so direct, PJM will modify appropriate terms of the PJM Tariff to remove any ambiguity in this regard.

<sup>42</sup> PSEG’s apparent attempt to move beyond *EPSA* to find support in *United Gas Improvement Co. v. Continental Oil Co.*, 381 U.S. 392 (1965) (“*United*”) fares no better. *See* PSEG at 5. According to PSEG, *United* stands for the proposition that a transaction’s economic effects may control whether it is within the Commission’s jurisdiction, regardless of the transaction’s form. Here, PSEG says, the purportedly “determinative economic fact” is that PJM’s proposal “constitutes an agreement to curtail load as directed by PJM for a valuable consideration just like the current market design.” *Id.* PSEG is wrong; PJM’s WLR/WEEL construct is not at all “like the current market design.” To the contrary, PJM’s proposal explicitly relies only on load reduction commitments from wholesale purchasers; makes such wholesale purchasers solely responsible for implementing their load reduction commitments and for bearing penalties in the event they fail to meet those commitments; removes from RPM all demand response provided (directly or indirectly, e.g., through CSPs) by retail end-users; places all demand reductions in RPM on the demand side of the market balance;

Perhaps seeking to gloss over this fatal flaw in its argument, NRG attempts to circumvent the critical wholesale-retail distinction with the assertion that “the fact that the flow of dollars [under PJM’s proposal] bypasses the retail customer and only appears as a credit against the LSE’s purchase obligations . . . is a distinction without a legal difference.”<sup>43</sup> NRG’s argument fails for the simple reason that the wholesale-retail distinction is the bedrock under *EPSA*’s holding<sup>44</sup>—and understandably so, because the same distinction is precisely how Congress differentiated the Commission’s jurisdiction under the FPA from the matters it reserved for state regulation.<sup>45</sup>

In short, NRG and PSEG disregard the essential principle of *EPSA*’s interpretation of the Commission’s jurisdiction over matters that affect wholesale rates: “FERC can regulate practices affecting the wholesale market under [FPA] §§ 205 and 206, provided the Commission is not directly regulating a matter subject to state control,

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and involves no wholesale market consideration whatsoever to any retail consumer. Therefore, even if PSEG has correctly characterized the holding of *United* (which PJM does not concede), PSEG cannot reasonably analogize to that ruling without regard for the principal features of PJM’s proposal.

<sup>43</sup> NRG at 6.

<sup>44</sup> See *EPSA* at 221 (rejecting FERC’s argument that its jurisdiction under the FPA over matters “affecting” wholesale rates “can be appropriately limited to ‘direct participants’ in jurisdictional wholesale energy markets,” because the “‘direct participant’ theory also assumes FERC can ‘lure’ non-jurisdictional resources into the wholesale market in the first place to create jurisdiction, . . . which is the heart of the Petitioners’ challenge [to Order No. 745].”), 223 (“[W]hile it is true demand response can occur in two ways—through a response to either price change or incentive payments—nothing about the latter makes it ‘wholesale.’”).

<sup>45</sup> See FPA § 201(a), 16 U.S.C. § 824(a) (Federal regulation “of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.”); *EPSA* at 221 (“States retain exclusive authority to regulate the retail market.”).

such as the retail market.”<sup>46</sup> Approval of PJM’s proposed demand-side, wholesale load reduction model plainly will not involve the Commission in direct regulation of any aspect of the retail market. In fact, PJM’s proposal explicitly leaves open to state regulatory authorities, along with LSEs and their agents and contractors, as well as end-users, all matters relating to whether, how, and on what terms, to compensate end-use consumers that support an LSE’s Wholesale Load Reductions.<sup>47</sup> Therefore, contrary to NRG and PSEG’s contentions, PJM’s proposal is clearly within the Commission’s jurisdiction under section 205 of the FPA.

*2. Permitting Only Wholesale Entities to Offer WLR/WEEL into RPM Auctions Is Appropriate, Just and Reasonable.*

Despite PJM’s explanation that its proposal contemplates offers of WLR and WEEL only by Wholesale Entities in order to ensure compliance with *EPSA*,<sup>48</sup> a few protests argue for expanding the proposal to permit other types of entities also to participate. For example, JCR contends that, because *EPSA* states that demand response is not a sale of power, the entity offering it in the wholesale market is not critical to compliance with the court’s holding. Therefore, it says, CSPs and other non-LSEs should be eligible to offer WLR into RPM Auctions.<sup>49</sup>

The Microgrid Resources Coalition asserts that a better approach than PJM’s proposal would be to leave demand response on the supply side of the capacity market, but limit PJM to procuring demand resources only from state-authorized providers at

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<sup>46</sup> *EPSA* at 222.

<sup>47</sup> *See Stop-Gap Filing* at 8, 38.

<sup>48</sup> *See Stop-Gap Filing* at 8.

<sup>49</sup> JCR at 16-17.



state-determined prices.<sup>50</sup> The Maryland PSC argues that, if the Commission accepts PJM's stop-gap proposal, it should condition it to provide that CSPs may offer demand response into RPM auctions directly, and to allow direct payments for demand response by PJM to CSPs.<sup>51</sup> AEMA claims that limiting LSEs to providing WLR and WEEL only from the loads an LSE is responsible to serve is unduly discriminatory, unjust and unreasonable.<sup>52</sup>

The common denominator of these protests is a concern that demand response participation in RPM under PJM's stopgap proposal will be less robust than it has been under the current market regime. PJM recognizes that concern.<sup>53</sup> However, because PJM's proposal will be made effective (assuming Commission acceptance) only if the Supreme Court permits *EPSA* to stand without review, *EPSA*'s interpretation of the Commission's jurisdiction is the overriding constraint on what the Stop-Gap Filing may and may not allow. PJM's objective is to put in place for the May Auction a workable mechanism for retaining as much demand response in the 2018/2019 Delivery Year as possible, even if *EPSA*'s holding is extended, after the May Auction, to eliminate Commission jurisdiction over compensation to retail customer demand response in the capacity market.

The Stop-Gap Filing's proposal to limit WLR to load reductions provided by LSEs from the loads they are responsible for serving is a reasonable approach to insulate the May Auction from fall-out from the *EPSA* decision by avoiding *EPSA*'s holding that

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<sup>50</sup> Comments of the Microgrid Resources Coalition at 6-7.

<sup>51</sup> MdPSC at 5-6.

<sup>52</sup> AEMA at 44-50.

<sup>53</sup> See Stop-Gap Filing at 77-80.

the Commission may not order compensation to retail customers participating in a wholesale market. Accordingly, AEMA's failure to provide any jurisdictional rationale or analysis of *EPSA* as a basis for its contention that PJM's proposal is unjust, unreasonable, and unduly discriminatory, reduces its claim to nothing more than an assertion that *EPSA* is bad policy. Therefore, AEMA's protest is entitled to no weight in the Commission's disposition of the Stop-Gap Filing.

Similar omissions compel PJM respectfully to oppose the Maryland PSC's proposed conditions on the Commission's acceptance of the Stop-Gap Filing that would allow direct CSP offers of, and compensation for, WLR and WEEL. Those terms would effectively restore the current, retail-customer demand response approach, albeit perhaps on the demand side of the market (the protest is not clear on this point). Notably, however, the Maryland PSC offers no explanation of why its proposed conditions would conform to *EPSA*'s jurisdictional holding. If *EPSA* stands, the risks of the approach Maryland PSC suggests make it unacceptable for the reasons PJM explained in the Stop-Gap Filing.

The same flaw undercuts AMEA's request that the Commission reject PJM's proposal because it precludes LSEs from committing WLR Load or WEEL from loads other than those the LSE is responsible for serving. AMEA does not explain why it thinks this approach could be reconciled with *EPSA*. Without such a foundation, however, AMEA's argument certainly provides no basis for AMEA to ask the Commission to withhold approval of PJM's proposal. In any event, PJM's approach is justified because, as explained, it is prudent to limit the risk that demand response commitments in the May Auction might be found inconsistent with *EPSA* after the auction has closed. Requiring each WLR and WEEL commitment to be a commitment to reduce the wholesale load of

the LSE responsible for serving the load behind that commitment ensures that all aspects of the transaction in the PJM market are wholesale in nature, and therefore, within the confines of *EPSA*'s interpretation of the Commission's jurisdiction.

To its credit, JCR attempts to rationalize with *EPSA* its position that non-LSEs should be permitted to participate directly in offering WLR and WEEL in RPM. However, it misplaces its reliance on the court's statement that "demand response is not a wholesale sale of electricity; in fact, it is not a sale at all."<sup>54</sup> That proposition was not a basis for *EPSA*'s jurisdictional ruling,<sup>55</sup> and thus has no bearing on PJM's proposal. Instead, the key jurisdictional principle articulated by *EPSA* is, as noted, "FERC can regulate practices affecting the wholesale market under §§ 205 and 206, provided the Commission is not directly regulating a matter subject to state control, such as the retail market."<sup>56</sup> While there may be room to debate whether, as JCR suggest, permitting non-LSEs to offer WLR in RPM auctions is permissible under *EPSA*, their proposal on its face seems perilously similar to the Commission's argument that "the 'affecting' jurisdiction can be appropriately limited to 'direct participants' in jurisdictional wholesale" markets, which the *EPSA* court found insufficient.<sup>57</sup> Accordingly, JCR's argument, at best, offers an alternative approach that perhaps could also be found just and reasonable subsequent to *EPSA*. That such an alternative may exist, however, provides no

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<sup>54</sup> *EPSA* at 221, quoted in JCR at 16.

<sup>55</sup> In fact, the Commission conceded that it did not base Order No. 745 on the premise that demand response was a wholesale sale. *See id.*

<sup>56</sup> *Id.* at 222.

<sup>57</sup> *Id.* at 221.

basis cognizable under section 205 of the FPA for the Commission to withhold approval of PJM's stopgap proposal.<sup>58</sup>

3. *Certain Requested Clarifications Regarding the Roles of EDCs, LSEs, and Agents May Be Appropriate.*

Several parties suggest various clarifications and modifications to PJM's WLR proposal with respect to the roles of EDCs, LSEs, and agents in the new demand-side load reduction paradigm. PJM recognizes that this proposal entails significant changes to the RPM rules, and understands that refinements of some aspects of the proposal may be warranted to ensure that sound market parameters are in place for the start of the May Auction, in the event the stop-gap proposal is implemented. PJM responds below with respect to the indicated suggestions for clarification or modification of the Stop-Gap Filing.

a) Authorizing EDCs to Offer WLR/WEEL

Exelon asks the Commission to direct PJM to clarify in the RAA that, to the extent an EDC offers and clears WLR/WEEL in RPM, the EDC may elect to have PJM allocate the resulting reduction in capacity obligation among the LSEs in the EDC's zone pro rata based on each LSE's share of the zonal peak load contribution. Exelon further proposes that, when an EDC uses this approach, PJM should measure the performance of the aggregate load reduction for the EDC on a zonal basis. It further asserts that when an EDC is the WLR Provider and elects an allocation of the accompanying reduction in capacity obligation, it should be exempt from reporting when WLR/WEEL Loads move

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<sup>58</sup> See *Cities of Bethany v. FERC*, 727 F.2d 1131, 1336 (D.C. Cir. 1984).

from one LSE to another within the EDC.<sup>59</sup> Exelon offers an Attachment to its comments with suggested revisions to Schedule 6.2 of the RAA, as proposed in the Stop-Gap Filing.

Based on discussions with Exelon, the ICC, and other affected stakeholders, PJM believes that an approach with a central role for an EDC could provide a workable means to implement WLR.<sup>60</sup> As PJM understands the concept, LSEs would be required by state rule to designate the EDC as their agent for submission of WLR bids. This would simplify administration and also help address the practical issue that an LSE expecting to serve a load at the time of the BRA may not be the LSE serving the load in the Delivery Year. As the single entity connected to all loads, the EDC could, if properly authorized, stand in, at the time of the BRA, for whichever LSE ultimately serves the load. An agency relationship, which can arise by contract or by law (as the EDC approach apparently anticipates), was expressly contemplated and permitted by the Stop-Gap Filing.<sup>61</sup>

But other aspects of Exelon's proposed modifications may not be compatible with the WLR approach. As explained above and in the Stop-Gap Filing, PJM proposes to avoid the jurisdictional issue raised in *EPSA* by focusing on the wholesale purchaser's reduction of its wholesale purchase obligation, i.e., an LSE's reduction of the peak loads that LSE is responsible for serving, and that define that LSE's wholesale capacity obligation.

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<sup>59</sup> Comments of Exelon Corporation at 6 ("Exelon"). Exelon further proposes that the EDC could exclude wholesale municipalities from such an allocation to the extent required by state law or regulatory action. *Id.* at 6 n.15.

<sup>60</sup> Those discussions influenced the Stop-Gap implementation working draft paper that PJM referenced and cited above. *See* note 26, *supra*.

<sup>61</sup> *See* Stop-Gap Filing at 46; Proposed RAA, Schedule 6.2, section B(6) (Options A and B).

Exelon instead seems to be proposing that the EDC would allocate, pro rata among all LSEs in the zone, the capacity obligation reductions resulting from all WLR/WEEL cleared by the EDC in the zone, *whether or not* the obligation reduction for a particular LSE corresponded to the WLR provided from the loads served by that LSE. PJM is concerned that such an approach would open the transaction to challenge if *EPSA* is applied to the capacity market, because the “pro rata” approach provides an LSE the financial benefit of compensation for a load reduction that is not related to the LSE’s wholesale purchase. If an LSE is compensated for load reductions by an end-user that is not part of the LSE’s jurisdictional purchase of electricity for resale, then it is not clear how that LSE is different, as a jurisdictional matter, from any other market participant that asks to be compensated by the wholesale market for a retail customer’s load reduction. On the other hand, if the load serving responsibility itself is allocated to LSEs in a given retail jurisdiction on a “pro-rata” basis, then also allocating the obligation reductions resulting from WLR commitments in that jurisdiction would be a consistent and therefore likely acceptable result.

Accordingly, PJM will continue to work with Exelon and other stakeholders on this potentially promising approach to implementation of WLR, consistent with the principles described above.

b) LSE Aggregation of WLR/WEEL Load Within a Zone or LDA

Direct Energy suggests a different, but somewhat related modification to the Stop-Gap Filing. Direct Energy proposes that an LSE should be allowed to offer and clear WLR/WEEL commitments in RPM from any loads in the LSE’s zone or LDA, even if the LSE is not responsible for serving some or all of the WLR/WEEL Loads that it clears. Direct Energy argues that wholesale load is measured on either a zonal or LDA basis, and

that aggregation of WLR/WEEL across a zone or LDA would not contravene *EPSA* because it would not intrude on state regulation of retail electricity or demand response prices.<sup>62</sup>

PJM appreciates the difficulty that *EPSA* presents for Direct Energy and other CSPs across the PJM Region. However, Direct Energy’s suggested modification presents the same concern as Exelon’s proposal regarding whether and to what extent an LSE may properly obtain reductions in its capacity obligation based on commitments to reduce consumption by loads which it is not responsible to serve, and for which it, therefore, has no obligation to purchase wholesale power. Direct Energy’s concept thus presents a significant risk of running afoul of *EPSA*’s finding that the Commission may not lawfully authorize incentives to “lure” retail consumers into wholesale markets.<sup>63</sup> That jurisdictional vulnerability would undermine a primary objective of the Stop-Gap Filing: providing a sound alternative legal basis for the participation of demand response in the May Auction. Trading one set of jurisdictionally suspect rules for another set of jurisdictionally suspect rules would not serve the basic objectives of: i) ensuring that demand response participation in the May Auction will not later be undone; and ii) giving market participants confidence that they can rely on the results of the May Auction in setting the revenues Capacity Resources can expect to receive in the 2018/2019 Delivery Year. Accordingly, the Commission should reject Direct Energy’s aggregation proposal.

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<sup>62</sup> Comments and Protest of Direct Energy Business, LLC and Direct Energy Business Marketing, LLC at 10-11, 16-18 (“Direct Energy”).

<sup>63</sup> The same problem counsels against the PaPUC’s request that PJM modify its proposal to “permit full portability of WLR/WEEL amongst LSEs.” PaPUC at 29. PaPUC’s proposal that an LSE should be allowed to offer WLR/WEEL from other LSEs’ customers, appears to be subject to challenge if *EPSA* is applied to the capacity markets, for the reasons explained above and in the Stop-Gap Filing.

c) Provisions Regarding Agents

i). Direct Energy supports the agency provisions of PJM’s proposal, but proposes additional language to clarify proposed RAA Schedule 6.2, section C. The purpose of the suggested addition is to clarify that section C’s authorization of the use of agents will not be interpreted to allow an agent to change a load’s peak load contribution.<sup>64</sup> An agent cannot lawfully perform any act that is beyond the scope of its agency, and the scope of any agency is a matter of agreement between principal and agent (or, in this context, potentially prescribed by a state regulatory authority). Accordingly, Direct Energy’s proposed exclusionary language should not be added to section C of Schedule 6.2.

ii). PaPUC requests that PJM clarify the definition in section 1.87C of the proposed RAA to ensure that an LSE’s agent can commit WLR/WEEL in RPM.<sup>65</sup> This proposed change would not be appropriate. Section 1.87C correctly defines WLR as a commitment by an LSE “to reduce the load served or to be served by such” LSE. But section C of proposed Schedule 6.2 of the RAA permits the LSE to authorize one or more agents to act on its behalf regarding any rights or obligations under Schedule 6.2, including offering and clearing WLR in RPM Auctions. Nevertheless, the LSE alone remains responsible to PJM for the performance of the WLR/WEEL that it (or its agent) commits in RPM.<sup>66</sup>

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<sup>64</sup> Direct Energy at 26-27.

<sup>65</sup> PaPUC at 29.

<sup>66</sup> PaPUC also asserts that PJM’s proposed tariff is unclear about whether an EDC can bid WLR into a BRA. PaPUC at 29. However, section A of proposed RAA Schedule 6.2 states unequivocally that any Wholesale Entity may submit WLR bids in BRAs. The definition of Wholesale Entity, in turn, includes EDCs,



d) WLR Transfer Provisions

i). PHI requests that PJM clarify what PHI suggests is a potential conflict in statements in the Stop-Gap Filing relating to (i) the continuing liability to PJM of a Wholesale Entity without regard for the Wholesale Entity's designations of any agent to act on its behalf with respect to WLR/WEEL, and (ii) authorized transfers of WLR/WEEL Load from one WRL/WEEL Provider to another.<sup>67</sup> No modification or clarification of the proposed tariff is needed, however, for there is no conflict.

The two statements to which PHI refers deal with different subjects, and are in harmony. At page 46 of the Stop-Gap Filing, PJM discussed section C of proposed Schedule 6.2 of the RAA, which authorizes any Wholesale Entity to use one or more agents to exercise the rights and meet the obligations of the Wholesale Entity under that schedule. Section C further provides that the Wholesale Entity will remain responsible to PJM for all of its duties and obligations under Schedule 6.2, notwithstanding any of the designation of any such agent.

In contrast, the passage noted by PHI at pages 56-57 of the Stop-Gap Filing discussed transfers of WLR/WEEL between LSEs. Such transfers are authorized by section J of proposed Schedule 6.2 of the RAA. PHI is correct that a WLR Transfer places the transferee WLR Provider in the shoes of the transferor WLR Provider as of the effective date of the transfer, and thus releases the transferor from its obligations under Schedule 6.2 with respect to the transferred WLR Load. However, there is no

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because they are Parties to the RAA. *See* proposed RAA, section 1.87B (Options A&B).

<sup>67</sup> PHI at 11-12 (citing Stop-Gap Filing at 46), 12 n.9 (citing Stop-Gap Filing at 56-67).

inconsistency between sections C and J of proposed Schedule 6.2 because each provision addresses a different type of transaction or arrangement.

ii). PaPUC asserts that sections G and J of proposed Schedule 6.2 of the RAA are unclear about whether a WLR Provider may transfer WLR obligations to another WLR Provider in the same zone during the Delivery Year.<sup>68</sup> PaPUC does not explain specifically why it finds these provisions unclear. However, PJM can confirm that, as PaPUC advocates, the proposed tariff provisions “provide for transfer of WLR commitments, at both the zonal and sub-zonal [LDA] levels, both before and within the [Delivery Year].”<sup>69</sup>

iii). ICC seeks clarification that any WLR transfer under paragraph J of proposed Schedule 6.2 of the RAA must require the concurrence of the transferee LSE, and will be subject to state law.<sup>70</sup> PJM confirms that the intent of paragraph J is that WLR transfers will be voluntary, and thus only permitted with the consent of both the transferee and the transferor. The incentive for the transferee is that the WLR transfer includes transfer of the reduction in capacity obligation attendant to the WLR Load commitment that the transferee obtains. PJM further concurs with ICC that, insofar as any WLR transfer is a contractual matter, it will be subject to state law.

e) Demand Resources Already Committed in RPM

PaPUC expresses concern about the effect of PJM’s proposal on “the availability and performance” of Demand Resources already committed in RPM Auctions for Delivery Years 2015/2016, 2016/2017, and 2017/2018. PaPUC refers to PJM’s proposed

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<sup>68</sup> PaPUC at 30.

<sup>69</sup> *Id.*

<sup>70</sup> ICC at 19-20.

revision to the tariff to state that, “except to the extent committed before April 1, 2015,” new commitments of supply-side Demand Resources and Energy Efficiency Resources will not be permitted in RPM Auctions, by bilateral transactions, or through self-supply or any other means.<sup>71</sup>

PaPUC states several concerns with this provision. First, it asserts that the cited language “may prevent new DR from participating in incremental auctions.”<sup>72</sup> In fact, that is exactly the intention of the proposed revision, and appropriately so, to deal with the risk that *EPSA*, if certiorari is denied, could be extended to capacity markets and used to nullify end-user demand response that clears further auctions, including Incremental Auctions.

Second, PaPUC states that the referenced language may preclude a demand response provider with a long position from trading with a provider in a short position, and may prevent a demand response provider from replacing end-use loads that may no longer be available to it. In fact, however, those kinds of arrangements are matters of changing load registrations among demand response providers, and will not be prohibited by PJM’s tariff revision. As PJM stated clearly in the Stop-Gap Filing, the proposal does not affect the previously cleared commitment of any resource in RPM for the 2015/2016, 2016/2017, and/or 2017/2018 Delivery Years.<sup>73</sup>

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<sup>71</sup> PaPUC at 31.

<sup>72</sup> *Id.*

<sup>73</sup> Stop-Gap Filing at 9-11.

**D. Parties Object to a Number of Elements of the WLR Proposal that Closely Track Provisions the Commission Previously Has Found to Be Just and Reasonable.**

Because PJM and its stakeholders have developed extensive experience with demand response over the last decade, PJM was able, when drafting its WLR provisions, to draw on provisions from its existing Tariff, as necessary and appropriate. This has two important advantages: (1) it relies on provisions that the Commission previously has found just and reasonable; and (2) it minimizes disruptions for market participants that already must adapt to the shift to LSE-centered, demand-side load reductions. Notably, none of these pre-existing provisions on which PJM relied to flesh out the terms and conditions of WLR is in any way affected by *EPSA*. Consequently, as discussed in each of the following three subsections, parties that object to these provisions are objecting to provisions that the Commission has previously found just and reasonable. And they provide no convincing showing that any of these provisions must be rejected or modified to satisfy any requirement of *EPSA*.

*1. Incorporation of Sub-Annual Products Is Reasonable.*

Several parties protest PJM's proposal to allow types of WLR Loads without continuous, year-round obligations to participate in RPM—e.g., under Option A, Base Capacity WLR Load, and under Option B, Extended Summer WLR Load and Limited WLR Load.<sup>74</sup> These protestors warn that inclusion of such limited-availability resources

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<sup>74</sup> Motion to Intervene and Comments of America's Natural Gas Alliance at 3-4; IMM at 8-9; P3 at 7-9; PPL at 17-19.

“risks the continued viability of the PJM market design”<sup>75</sup> and “will . . . degrade reliability”<sup>76</sup> Such claims are misdirected at the Stop-Gap Filing.

PJM’s current effective Tariff allows Demand Resources with limited availability; and the pending Capacity Performance Filing likewise permits Demand Resources with limited availability, albeit only for a transitional period. The Stop-Gap Filing simply conforms WLR to the current effective Tariff’s provisions on when, how often, and for how long, load reductions must be provided. As an option, in case the Commission accepts the Capacity Performance Filing, the Stop-Gap Filing also includes rules conforming WLR to the rules in *that* filing on when, how often, and for how long, load reductions must be provided. That is a perfectly reasonable approach for a stop-gap proposal, which is designed to address the challenges that *EPSA* poses to the May Auction, rather than resolving every concern that any party has ever raised about demand response. Protestors make no credible argument that *EPSA* dictates how many months each year an LSE must provide wholesale load reductions.

*2. The Stop-Gap Filing Includes Appropriate Rules to Ensure Legitimate WLR and WEEL Bids.*

The PJM Utilities Coalition, P3, and PSEG assert that the WLR proposal does not protect against capacity market speculation<sup>77</sup> or price suppression.<sup>78</sup> In general, these parties argue that, under the proposed WLR rules, LSEs may use large demand response programs (either their own or in conjunction with third-party providers) “for the purpose

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<sup>75</sup> IMM at 8.

<sup>76</sup> PPL at 19.

<sup>77</sup> PJM Utilities Coalition at 11-13; P3 at 6-7.

<sup>78</sup> P3 at 4-6; PSEG at 8-11.

of suppressing capacity and energy prices below competitive levels”<sup>79</sup> and LSEs “will have every incentive to over-estimate the amount of WLR they can provide knowing that additional capacity can be purchased in subsequent incremental auctions.”<sup>80</sup>

To the contrary, PJM’s proposal includes adequate safeguards against speculative or over-inflated WLR Bids. Prior to submitting a WLR Bid into a BRA, WLR Providers must submit, and PJM must review and approve, a WLR Plan that details the Existing and Planned WLR Loads supporting the megawatt quantity of WLR Load the provider intends to bid in the auction (i.e., the Nominated WLR Quantity). Following PJM’s review of a WLR Plan, which includes opportunities for WLR Providers to cure any identified deficiencies, PJM will notify each WLR Provider of the approved Nominated WLR Quantity that the provider may offer into the auction.<sup>81</sup>

The proposed WLR Plan rules are closely modeled on the DR Sell Offer Plan rules<sup>82</sup> that the Commission found just and reasonable last year in Docket No. ER13-2108-000 following a technical conference.<sup>83</sup> The Commission found that the DR Sell Offer Plan rules “reasonably require that demand response offer levels must represent demand resources that will actually be available in the Delivery Year”<sup>84</sup> and “establish a threshold requirement that there is good faith support for the offer of demand resources

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<sup>79</sup> PSEG at 8.

<sup>80</sup> P3 at 6.

<sup>81</sup> See proposed RAA, Schedule 6.2, section D (Options A & B).

<sup>82</sup> See RAA, Schedule 6, section A-1 (setting forth requirements for DR Sell Offer Plans).

<sup>83</sup> *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,150 (2014).

<sup>84</sup> *Id.* at P 22.

into the auction.”<sup>85</sup> The commenters make no showing that rules like those approved just last year by the Commission will not provide reasonable assurances that the WLR Load quantities bid into a BRA represent the WLR Load quantities that will actually provide load reductions in the Delivery Year.

While WLR Plans provide upfront protections against speculative bids, Option A of PJM’s proposal also includes adequate back-end deterrence against speculative WLR Bids through enhanced non-performance charges. Such charges are modeled on the non-performance charges in PJM’s Capacity Performance proposal and are designed to provide a strong incentive for WLR Providers to not bid more load reductions than they can deliver.<sup>86</sup> Commenters do not show otherwise.

3. *The Stop-Gap Filing Properly Reflects WLR Bids in the VRR Curve.*

The PJM Utilities Coalition contends that shifting the VRR Curve to the left to account for reductions in demand at various price points as indicated by WLR Bids will somehow result in price suppression and “significant uncertainty for generators” by reducing transparency.<sup>87</sup> This argument is meritless. The net effect of shifting the VRR Curve to reflect bids to reduce load at various prices and clearing bids in accordance with the least cost solution (subject to applicable constraints) is no different than the current approach of including demand resources in the supply stack alongside generation

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<sup>85</sup> *Id.* at P 25.

<sup>86</sup> *See* proposed RAA, Schedule 6.2, section S (Option A); Stop-Gap Filing at 68-71. The non-performance charge for Capacity Performance WLR Loads under Option A is determined using a rate equal to the Net Cost of New Entry determined for that Delivery Year, times 365 (to state the rate on an annual basis) and divided by 30. For Base Capacity WLR Loads, the rate is equal to the BRA clearing price, times 365, divided by 30. *See* proposed RAA, Schedule 6.2, section S (Option A).

<sup>87</sup> PJM Utilities Coalition at 9.

resources. The left-ward shift of the VRR Curve merely reflects that the WLR Bids are for a *reduction in demand* rather than an increase in supply. As a result, auction participants should be no better or worse off from how PJM conducts the auction.

Moreover, PJM's proposal to adjust the VRR Curve to clear WLR Bids is consistent with PJM's description to the Commission of how it would account for PRD commitments. As PJM explained in its PRD proposal:

When a PRD Provider specifies a PRD Reservation Price, it effectively instructs PJM to include the identified load in the RPM auction at lower capacity prices, but exclude the load at higher capacity prices. PJM cannot simply remove the PRD load from the Reliability Requirement and thereby shift the entire curve lower. Rather, PJM must adjust downward only the portions of the VRR Curve that are at or above the PRD Reservation Price, since the PRD load can be excluded only if the auction clears at or above that price.<sup>88</sup>

Accordingly, PJM appropriately accounts for demand-side load reduction commitments, whether from PRD or Wholesale Load Reductions, by shifting the VRR Curve.

**E. PJM Is Open to Exploring Means for WLR Loads and WEELs to Participate in Incremental Auctions.**

Several parties protest PJM's proposal to limit WLR Load and WEEL participation to BRAs only.<sup>89</sup> While PJM has proposed to limit participation to BRAs only, PJM stated in the Stop-Gap Filing a willingness to work with its stakeholders on developing possible means for WLR and WEEL bids in the Incremental Auctions.<sup>90</sup> PJM explained that to implement the WLR proposal for the 2015 BRA for the 2018/2019

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<sup>88</sup> PRD Transmittal, Docket No. ER11-4628-000, at 27 (Sept. 23, 2011).

<sup>89</sup> See PIOs at 11-12; PaPUC at 25-26; Steel Producers at 9; PHI at 10-11.

<sup>90</sup> Stop-Gap Filing at 44.



Delivery Year, PJM focused the proposal on the needed new rules for demand-side participation in that auction. PJM also described some threshold issues that would need to be addressed to allow demand-side bids to clear in Incremental Auctions.<sup>91</sup> Given that the First Incremental Auction for the 2018/2019 Delivery Year will not be held until September 2016, there is ample time to develop such rules.

**F. CBL Is Properly Used to Measure Non-Summer Load Reduction Compliance.**

AMP and Direct Energy protest PJM's proposal to measure the performance of wholesale load reductions during non-summer emergency and compliance events using the Customer Baseline Load ("CBL") methodology, which is used to measure load reductions in the energy market.<sup>92</sup> AMP asserts that using the CBL method to measure performance "unfairly punishes WLR Load during the non-summer peak period"<sup>93</sup> and Direct Energy claims that it "would not appropriately recognize the value that the WLR Load is actually providing."<sup>94</sup>

Contrary to protestors' contentions, use of the CBL measurement methodology for non-summer load reductions seeks to ensure PJM will be able to obtain an actual reduction in load during the non-summer period.

As proposed, the measurement approach for non-Direct Load Control WLR Loads uses a peak load contribution ("PLC"), which is determined using summer peak load data, to provide the baseline from which summer load reductions are measured. The

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<sup>91</sup> Stop-Gap Filing at 43-44.

<sup>92</sup> Operating Agreement at Schedule 1 § 3.3A.2.

<sup>93</sup> Comments of American Municipal Power, Inc. at 6 ("AMP").

<sup>94</sup> Direct Energy at 25.

committed load reduction amount, known as the Nominated WLR Quantity, is the megawatt reduction from the PLC level.

The Stop-Gap Filing proposes to use the CBL approach to measure non-summer load reductions because seasonal differences in demand may result in a WLR Load's non-summer energy consumption level already being at a level below the WLR Load's PLC less the Nominated WLR Quantity when PJM calls for a load reduction. In such cases, the WLR Load would not need to reduce its consumption at all to have "performed" in accordance with its commitment. In other words, if an Annual WLR Load could comply during a non-summer emergency event simply by not changing its energy consumption level, then there would be no difference between WLR Loads with year-round commitments and summer-only WLR Loads, given that PJM would obtain no load reduction in the non-summer period from either commitment.

Thus, to ensure that each non-summer load reduction commitment has meaning and the PJM system will obtain the committed reliability benefit, PJM must be able to employ a measurement and verification approach that measures *an actual reduction in load*. The CBL method provides such assurance.

**G. The Stop-Gap Filing Properly Addresses Energy Efficiency, Because Energy Efficiency Is a Retail Customer Load Reduction Directly Compensated from PJM's Wholesale Markets, and Thus Raises Jurisdictional Questions Under *EPSA* Similar to Those Raised for Demand Resources.**

EMC protests PJM's proposal to prohibit supply-side energy efficiency resources from providing capacity and only allowing energy efficiency to participate in RPM as WEELs. EMC asserts that "EPSA does not apply to energy efficiency"<sup>95</sup> and that

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<sup>95</sup> Motion to Intervene and Protest of EMC Development Company at 3 ("EMC").

“energy efficiency should continue to be treated as a supply of capacity, all qualified market participants should remain eligible to offer and deliver energy efficiency capacity regardless of if they serve load, and energy efficiency should continue to be compensated through capacity payments.”<sup>96</sup>

The Commission should dismiss EMC’s assertions. As stated in the Stop-Gap Filing, PJM treated energy efficiency resources similar to demand response “because they are an important component of the RPM market, but also may be impacted by *EPSA*, as WEELs require action by retail customers.”<sup>97</sup> Indeed, the existing supply-side energy efficiency resources are composed of retail customers that make upgrades to permanently reduce their retail load consumption. In addition, third-parties, like EMC, aggregate energy efficiency resources and offer them into RPM as supply-side capacity, analogous to how CSPs aggregate retail demand response customers and offer such retail customers as capacity. Such arrangements require interaction with third parties who do not purchase energy for resale, and result in payments to retail customers. By contrast, PJM’s WEEL proposal ensures that only wholesale actors participate in PJM’s wholesale capacity market, and thus does not result in any payments to retail customers. Thus, to the extent *EPSA* applies to demand response resources in RPM, arguments will be made that *EPSA* likewise applies to energy efficiency resources. As a result, to avoid having to unwind auction results over this issue, PJM prudently developed “stop gap” rules to enable energy efficiency to participate in RPM in a jurisdictionally permissible fashion. As with the rest of this Stop-Gap Filing, PJM does not seek to foreclose any longer-term

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<sup>96</sup> EMC at 4.

<sup>97</sup> Stop-Gap Filing at 43.

inquiry by the Commission and the states as to the proper treatment of, and appropriate compensation to, Energy Efficiency if the *EPSA* mandate issues. However, such longer range initiatives do not render this section 205 Stop-Gap Filing unjust and unreasonable.

**H. FRR Plans May Include WLR Loads and WEELs.**

The Illinois Municipal Electric Agency (“IMEA”) complains that the Stop-Gap Filing is unclear as to whether FRR Entities may include wholesale load reductions in their FRR plans. IMEA therefore requests that PJM clarify that FRR Entities may use wholesale load reductions in their FRR plans to reduce their capacity obligations.<sup>98</sup>

PJM clarifies that FRR Entities may still continue to include all types of demand response resources, including wholesale load reductions provided by WLR Loads and WEELs, in their FRR Plans. The Stop-Gap Filing generally avoided making changes to the FRR rules because it is not clear if or how the *EPSA* holding could be applied to the FRR alternative, even assuming, arguendo, that the holding in *EPSA* could properly be extended to capacity markets. Under the FRR alternative, the FRR Entity does not participate in an RPM auction. Rather, it submits a plan indicating how it anticipates serving its peak load during the Delivery Year, including its planned use of Demand Resources. Under the FRR alternative, no retail customer participates in the RPM Auction, and no payments are made through RPM to any retail customer.

PJM therefore did not intend through the Stop-Gap Filing to provide that FRR entities could no longer include demand response resources in their FRR Plans. If so directed by the Commission, PJM will submit clarifying language to make clear that FRR

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<sup>98</sup> Comments of the Illinois Municipal Electric Agency at 3.

Entities may in their FRR Plans still include demand response resources and may now include WLR Loads and WEELs.

### III. CONCLUSION

For the reasons given above and in the Stop-Gap Filing, PJM asks that the Commission, on or before April 1, 2015, accept the changes in the Stop-Gap Filing effective April 1, 2015, but suspend those changes for a nominal five-day period to permit PJM to defer the effective date of these changes as needed to ensure that they are implemented only if the U.S. Supreme Court grants certiorari in the *EPSA* case.

Respectfully submitted,

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March 4, 2015

**CERTIFICATE OF SERVICE**

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

Dated at Washington, D.C., this 4th day of March, 2015.

/s/ Paul M. Flynn

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