**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C. : ER15-623-000

**COMMENTS AND LIMITED PROTEST**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

January 20, 2015

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Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (Com­mission) Rules of Practice and Procedure, 18 C.F.R. 385.211, and the notice issued by the Commission on December 12, 2014, the Public Utilities Commission of Ohio (PUCO) hereby submits the following com­ments and limited protest in response to PJM Intercon­nection, L.L.C’s (PJM) proposed reforms to its Reliability Pricing Model (RPM), Open Access Transmission Tariff (Tariff) and Reliability Assurance Agreement (RAA). The PUCO intervened in this matter on January 12, 2015.

# I. Introduction

The PUCO supports PJM’s proposed reforms to its RPM (referred to herein as “Capacity Performance”). The PUCO maintains that the proposed Capacity Perfor­mance reforms reflect a reasonable approach to improve reliability and are consistent with the Commission’s concerns regarding generation unit performance.[[1]](#footnote-1) Specifically, the PUCO supports PJM’s efforts to:

* Improve reliability through the establishment of performance incentives.
* Provide transparency for generation units to value risk associated with becoming a Capacity Performance resource.
* Remove force majeure conditions to create a bright-line performance stand­ard.
* Allow sufficient time for generation units to invest and update facilities to meet higher performance standards.
* Apply its proposed penalty and incentive mechanism to all entities, including those with Fixed Resource Requirements (FRR).

Although the PUCO generally supports PJM’s proposed tariff revisions, in order to ensure that the revisions are not unnecessarily complex and appropriately consider cost implications, the Commission should adopt the following modifications:

* Retain the short-term resource procurement target.
* Allow for the review of generation unit data to mitigate the exercise of mar­ket power.
* Simplify its treatment of demand resources.

The PUCO urges the Commission to approve PJM’s filing with the modifications discussed herein.

# II. Comments

The excessive generation forced outage rate of 22 percent from January 2014 reflects that RPM, in its current form, fails to safeguard resource adequacy and system reliability.[[2]](#footnote-2) The PUCO places its trust in PJM to not only provide market efficiencies, but to also preserve reliability during periods of peak demand. As evidenced by the winter weather events from January 2014, RPM in its current form does not encourage high gen­eration performance during peak periods in the winter months.

## A. Capacity performance will improve reliability.

The PUCO supports improvements to PJM’s capacity construct that will ensure reliability for Ohio’s electric consumers. Without revisions to RPM, not only could generation performance continue to decline, but also higher energy and uplift costs would permeate as a result of a less efficient dispatch of PJM’s generation fleet.

### 1. PJM needs reform to prepare for winter peaks.

The PUCO maintains that PJM’s excessive forced outage rate from January 2014 could have been substantially mitigated. The majority of forced outages reflect a lack of appropriate weatherization or investment in generation facilities.[[3]](#footnote-3) PJM correctly points out the generation units within its footprint were unprepared to handle extreme winter weather conditions. Absent changes to RPM, a generation unit may still lack the financial incentives that are necessary to perform necessary maintenance or updates on their facility. PJM’s holistic approach toward balancing both penalties and incentives during winter months is necessary to align resource performance with reliability. A reformed penalty and incentive structure also prevents the creation of excessive of uplift costs by providing PJM with access to a more efficient and flexible resource mix.

### 2. PJM provides transparency for generation units to understand performance obligations.

PJM provides clarity on the attributes required of a Capacity Performance resource to deliver energy and reserves when called upon to perform. Transparency is essential for generation units to understand performance obligations and to value the risk associated with becoming a Capacity Performance resource.   The PUCO supports these tariff revisions.

PJM’s proposed tariff provisions require generation units to be available for periods of sustained performance. However, PJM reasonably allows a generation unit to flexibly determine the means by which it can meet the higher performance requirements. The PUCO asserts that by allowing a unit to determine how to manage its risk, whether through firm transportation, dual fuel capability, on-site storage, or general maintenance and weath­erization upgrades, PJM promotes reliability in an equitable manner. By providing a gen­eration unit with choice, PJM avoids creating an administrative overreach that would dic­tate how a generation unit should meet higher performance requirements.

In its proposal, PJM creates resource sell offer representations that must be made in order to be eligible for Capacity Performance.[[4]](#footnote-4) By placing these obligations front and center in the process before a party can submit a sell offer, PJM is able to send a strong message that generation units must make the necessary investment to ensure a unit has the capability to perform in accordance with the Capacity Performance standards. By creating legally binding and transparent operational requirements, PJM sends a strong message that generation units must comply with higher performance standards.

### 3. Removing *force majeure* provisions holds generation units accountable for meeting higher performance requirements.

The PUCO supports PJM’s creation of a bright-line standard that removes broad, unverifiable excuses for generation unit unavailability.[[5]](#footnote-5) As the PUCO has consistently advocated, claiming “out of management control” is not a legitimate or acceptable exemp­tion from performance requirements.[[6]](#footnote-6) While the removal of force majeure conditions does place additional risk on generation units, PJM rightfully allows for a minimal exemption if a generation unit was unavailable because it was on a PJM-approved outage. Nonetheless, the Commission should ensure PJM diligently considers and carefully approves requests for outages, particularly during potential periods of peak demand in the summer and winter months. In the event PJM neglects to responsibly approve outages, leading to reliability issues and unnecessary uplift payments, PJM, and not end-use consumers, should be held responsible.

## B. PJM’s proposed penalty and incentive structure is con­sistent with Commission precedent.

In order to ensure reliability and consistent generation unit performance, the PUCO supports PJM’s proposed penalty and incentive structure. While PJM’s stop-loss penalty provision is stringent, higher penalties are necessary to not only incent generation units to perform, but also to submit offers reflecting the risk associated with higher perfor­mance standards. The PUCO notes that PJM’s transition mechanism reasonably creates a probationary period allowing generation units sufficient time to respond to higher penal­ties.

### 1. RPM requires an equitable balance of both penalties and incentives.

The proposed penalty and incentive structure reflects a reasonable balance necessary to protect reliability while sending transparent price signals for both new and existing generation resources. Specifically, PJM proposes a non-performance penalty con­sisting of Net CONE (in MWs per day) times 365, and divided by 30.[[7]](#footnote-7)

Net CONE is an appropriate starting place, as PJM correctly points out that the non-performance charge rate should be the general value of capacity. Further, the PUCO believes that PJM has justified 30 hours as a conservative allowance, consistent with the average number of hours PJM has issued Emergency Actions in the past.

One distinguishing characteristic between the recent ISO-NE tariff revisions and PJM’s Capacity Performance proposal is the stop-loss provision. Specifically, PJM proposes an annual stop-loss at 1.5 times Net CONE, consistent with the maximum clear­ing price permissible in accordance with PJM’s VRR curve.[[8]](#footnote-8) In light of the fact that gen­eration resources have the ability to clear RPM at 1.5 times Net CONE, it is reasonable for the proposed penalty structure to match the proposed compensation structure.

The PUCO understands that the annual stop-loss provision is significant. However, the PUCO suggests that this provision is necessary in order to ensure the incen­tive to perform is signaled through RPM. By creating too low of a penalty structure, there is no guarantee that generation units will make the necessary investments to improve gen­eration performance. If the penalty structure is not sufficient to encourage performance, then PJM will be essentially reforming RPM in vain, and the same problems from this last winter could perpetuate in the future, placing reliability in a precarious position. Con­versely, if PJM’s penalty structure is too extreme, generation units may leave RPM alto­gether, creating a new set of reliability challenges. It is imperative that PJM strikes the right balance.

While the stop-loss provision certainly creates additional risk for generation units, the clear performance requirements coupled with the transparent penalty structure allow for a generation unit to account for risk prior to offering into the Base Residual Auc­tion (BRA). The PUCO finds this concept beneficial because higher risk considerations may help to quell the problems associated with certain units offering at zero or well below market costs, which has caused mixed price signals in PJM’s markets and creates the pos­sibility of premature generation retirements. PJM’s stronger penalties will likely limit the number of price-takers in RPM. Consequently, although penalties are increasing, a con­fiscatory environment is not being created as generation units can weigh costs and risks when placing offers into the BRA.

Likewise, PJM’s monthly stop-loss value is also reasonable. The approach mirrors ISO-NE by setting the monthly value at one-third of the annual value, or 0.5 times Net CONE.[[9]](#footnote-9) As the monthly and annual stop-loss provisions provide the necessary incen­tives for generation performance, the Commission should approve PJM’s stop-loss provi­sions.

### 2. PJM’s transition mechanism creates a reasonable glide path for generation units to meet more stringent performance standards.

The PUCO supports PJM’s proposed transition toward a single Capacity Perfor­mance product. PJM sets forth a transition plan that calls for voluntary Capacity Perfor­mance offers for the 2016/2017 and 2017/2018 Delivery Years through an incremental auction structure. Initially, PJM seeks to procure 60 percent of PJM’s reliability require­ment in 2016/2017, and increase to 70 percent for the 2017/2018 Delivery Year.[[10]](#footnote-10) For Delivery Years in 2018/2019 and 2019/2020, PJM aims to procure about 80 percent of its reliability requirement through Capacity Performance resources, with Base Capacity resources being phased out by the 2020/2021 Delivery Year.[[11]](#footnote-11)

In addition to phasing in Capacity Performance, PJM delicately rolls out the price cap for the new product beginning with 50 percent of Net CONE for the 2016/2017 Delivery Year, and 60 percent Net CONE for the 2017/2018 Delivery Tear. Likewise, PJM’s penalty structure is the same, with the maximum stop-loss for the 2016/2017 Deliv­ery Year at 0.75 times Net CONE and for 2017/2018 the stop-loss increases to 0.9 times Net CONE.[[12]](#footnote-12)

PJM’s gradual transition provides sufficient time for generation units not able to offer as a Capacity Performance resource to make the necessary improvements to ensure performance during periods of peak demand. The PUCO agrees with PJM’s plan to recognize generation units that are already able to perform by incrementally increasing the offer caps. Further, the incremental increase in offer caps appropriately lines up with the phased-in penalty provisions. These transition tariff revisions are just and reasonable, as they not only reflect higher performance obligations to promote system reliability on an expedited basis, but also provide sufficient time for generation units to implement unit improvements.

Because Ohio is a restructured state, the PUCO stresses the importance of PJM maintaining a reliable electric system. The PUCO notes that this transition period reflects the need for reliability improvements to begin immediately. It is not beneficial for generation units or end-use customers to wait until the 2018/2019 Delivery Year to begin contemplating a new product. Any delay would only extend market uncertainty.

Further, the PUCO urges the Commission to adopt PJM’s proposal to phase out its Base Capacity product after the 2019/2020 Delivery Year.[[13]](#footnote-13) Having a single capac­ity product allows for a more simplistic approach and avoids administrative overreach by PJM. Importantly, one product highlights the PUCO’s belief that all generation units and capacity products that clear in RPM must perform and be available when called upon.

### 3. All resources physically capable of meeting capacity performance requirements should be required to sub­mit capacity performance offers.

As previously stated, the PUCO favors simplicity and transparency within the RPM construct. The PUCO is agreeable to a Base Capacity Product on an interim basis in the interest of allowing for a reasonable transition to Capacity Performance require­ments. However, such acquiescence is dependent on safeguard provisions to ensure there is no withholding of resources that are capable of meeting Capacity Performance require­ments. Accordingly, to prevent the exercise of market power, the Commission should adopt PJM’s recommendation that all units capable of meeting Capacity Performance standards be required to offer as a Capacity Performance resource in all RPM auctions for each delivery year.

## C. Because capacity performance is a reliability initiative, it must apply to ALL generation resources, including FRR entities.

The PUCO supports PJM’s inclusion of FRR entities in its Capacity Perfor­mance proposal.[[14]](#footnote-14) The PUCO maintains that, absent the Capacity Performance require­ments being extended to entities that have opted out of RPM, or FRR generation units, PJM creates an administratively burdensome system. Allowing generation units to have varying reliability responsibilities not only would act to the detriment of an RTO vested with reli­ability responsibilities, but also creates different treatment standards for generation units that are all within the same RTO. Arguably, if FRR entities were able to opt-out of Capac­ity Performance, PJM would be holding certain units within its footprint to higher perfor­mance standards than other generation units.

Removing FRR entities from Capacity Performance runs contrary to reliabil­ity principles. FRR generation units with more lax performance standards may not be able to perform during periods of peak demand, causing PJM to lean on RPM units that are able to perform. This type of a scenario unfairly punishes restructured states with RPM entities. RPM units would bear costs associated with a Capacity Performance construct that benefits reliability for the entire PJM footprint. Not only would precluding FRR entities violate cost causation principles, but it lends itself to the possibility of RPM entities switching over to FRR to avoid costs associated with generation unit maintenance and weatherization. In order to avoid an absurd outcome, the PUCO urges the Commission to adopt PJM’s pro­posal to allocate Capacity Performance standards to FRR entities.

# III. Recommendations

Although the PUCO generally supports PJM’s proposed tariff revisions, in order to ensure that the revisions are not unnecessarily complex and appropriately consider cost implications, the Commission should retain the short-term resource procurement tar­get and continue to conduct up-front generation unit reviews to prevent the exercise of market power. Further, in the interest of simplicity, PJM should avoid the creation of a “hybrid” demand response product.

## A. The short-term resource procurement target should be maintained.

PJM explains that its Short-Term Resource Procurement Target, known as the 2.5 percent holdback, reduces the Reserve Requirement used in a BRA by 2.5 percent.[[15]](#footnote-15) The holdback is spread over three scheduled Incremental Auctions. PJM maintains that the 2.5 percent holdback is no longer necessary, as it suppresses BRA clearing prices by withholding demand.[[16]](#footnote-16) In support of the holdback removal, PJM reports that it has made load forecast adjustments that will reduce the peak load forecast for the 2018/19 Delivery Year, as well as future refinements to its forecasting model.[[17]](#footnote-17)

The Commission should reject PJM’s removal of the 2.5 percent holdback provision. Inaccurate forecasting by PJM results in the over-procurement of capacity and increases capacity costs.[[18]](#footnote-18) While the PUCO appreciates PJM’s efforts to review its fore­casting model for the upcoming BRA, PJM has not adequately demonstrated that its fore­casting changes will actually provide more consistent results.

Accordingly, additional discussion and review of PJM’s forecasting method­ology must be completed prior to the elimination of the 2.5 percent holdback. The 2.5 percent holdback is not germane to the reliability and operability issues addressed by PJM in this proceeding. PJM should retain its 2.5 percent holdback until PJM’s forecasting methodology has proven to be more consistent for the next three BRAs. The PUCO urges the Commission to reject PJM’s removal of the 2.5 percent holdback.

## B. PJM must allow for the review of generation unit data to avoid the exercise of market power.

PJM proposes to increase the Market Seller Offer Cap for Capacity Performance generation resources to Net CONE for the applicable Delivery Year and LDA.[[19]](#footnote-19) In support of the increase, PJM points out that the Commission recently approved changes to RPM in its Triennial Review Order to ensure that Net CONE for the next three years is just and reasonable.[[20]](#footnote-20)

PJM reasons that sell offers at or below Net CONE provide reasonable flexibility to sellers of Capacity Performance resources. Because the risk of non-performance rests with the market seller, PJM believes that the market seller is best positioned to determine what investments are necessary to ensure performance. PJM further explains that the Non-Per­formance Penalty is a substantial cost of Capacity Performance participation that market sellers must contemplate when formulating offers.[[21]](#footnote-21)

The PUCO supports PJM’s proposal to allow sell offers at or below Net CONE as a reasonable reflection of the risk and investment required of a Capacity Performance resource. However, the PUCO does not agree with the presumption that no market power can be exercised so long as a sell offer is at or below Net CONE. PJM’s filing revises its tariff, without justification, to find that the submission of a sell offer with an offer price at or below the Market Seller Offer Cap (i.e., Net Cone), “shall not, in and of itself, be deemed an exercise of market power in the RPM market.”[[22]](#footnote-22)

Currently, PJM requires that a capacity market seller must submit, both to the Inde­pendent Market Monitor (IMM) and PJM, unit-specific cost data to establish each unit’s Market Seller Offer Cap. The capacity market seller must communicate with the IMM to address any concerns regarding the data and documentation provided to support the pro­posed level of the Market Seller Offer Cap. This process allows for the up-front mitigation of market power by the IMM.

The PUCO notes that market power reviews are essential to allow RPM to operate effectively and avoid negative outcomes that act to distort market price signals. It is erro­neous to assume that market power issues will no longer exist at or below Net CONE for each unit or portfolio of generation resources. Absent prior review, litigation at the Com­mission and in the Courts will likely occur if an after-the-fact claim of market power is raised. Not only would after-the-fact challenges be administratively burdensome for all parties, but PJM’s energy and capacity mechanisms may be harmed as a result of poten­tially irreversible outcomes.

Accordingly, the PUCO recommends, at a minimum, that PJM’s proposal be revised to require informational data to be submitted to the IMM and PJM. The informational data should reflect each generation unit’s specific attributes and portfolio position under the new Market Seller Offer Cap. Requiring the submission of generation unit data strikes an appropriate balance by allowing market offers to reflect unit costs while maintaining an opportunity for an up-front review of market-power issues as opposed to an extensive review in which all offers require approval from the IMM and PJM.

## C. PJM should avoid creating a “hybrid” base capacity demand resource product.

As with other Base Capacity products, PJM is proposing to transition from the three current Demand Resource products to a single Annual Demand Resource product by the 2020/2021 Delivery Year. Specifically, PJM is proposing to replace the Extended Summer and the Limited Demand Resources at the end of the 2017/2018 Delivery Year with a new Base Capacity Demand Resource. The proposed Base Capacity Demand Resource reflects a combination of the characteristics of the Limited and Extended Summer Demand Resource products.[[23]](#footnote-23)

The PUCO believes that demand resources have a vital role in their ability to reduce load during times of critical demand. By requiring an Annual Demand Resource product, PJM appropriately aligns performance requirements and compensation with other similarly situated capacity products. The PUCO supports an Annual Demand Resource product that will meet all of the CP requirements. However, in order to maintain simplicity and avoid an overly burdensome process, the PUCO recommends that PJM revise its consideration of Demand Resources. Specifically, PJM should not create a new hybrid Base Capacity Demand Resource product for the final two transition years, but rather should eliminate Limited and Extended Summer Demand Resource products at the end of the 2017/2018 Delivery Year. Beginning with the 2018/2019 Delivery Year, PJM should only procure Annual Demand Resources.[[24]](#footnote-24)

Similar to the treatment of other Capacity Performance resources, Annual Demand Resources should not have to meet the operational and performance requirements until the 2020/2021 Delivery Year. By placing Demand Resources into a single product, PJM can maintain a clear, transparent, and simple process that avoids unnecessary costs that would be created with the introduction of yet another demand resource product.

# IV. Conclusion

PJM’s Capacity Performance filing, with the modifications raised herein, reflects a reasonable approach to improve reliability and is consistent with the Commission’s stated concerns regarding generator performance and efficient market operations in light of the winter of 2013/2014.[[25]](#footnote-25) PJM’s filing addresses the Commission’s requirement for each ISO/RTO to comprehensively address market and system performance and fuel assurance concerns.[[26]](#footnote-26) The PUCO recommends that the Commission approve PJM’s Capacity Per­formance filing including PJM’s new reliability requirements, transition, and inclusion of FRR entities under the plan. In addition, the PUCO urges the Commission to maintain the 2.5 percent holdback, require continued up-front review of market power and mitigation where warranted, and eliminate the proposed hybrid Demand Resource product for the last two transition years.

The PUCO appreciates the opportunity to provide comments on PJM’s filing and looks forward to continuing to work with the Commission to address challenges to grid reliability.

Respectfully submitted,

/s/ Jonathan J. Tauber

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**Attorney for the Public Utilities Commission of Ohio**

# V. Certificate of Service

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas W. McNamee)

**Thomas W. McNamee**

Dated at Columbus, Ohio this January 20, 2015.

1. *Order on Technical Conferences re Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators, et al,* under AD13-7, *et al.*, 149 FERC ¶ 61,145 at 2 (2014). [↑](#footnote-ref-1)
2. <http://www.pjm.com/~/media/documents/reports/20140509-analysis-of-operational-events-and-market-impacts-during-the-jan-2014-cold-weather-events.ashx> [↑](#footnote-ref-2)
3. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 17) (Dec. 12, 2014). [↑](#footnote-ref-3)
4. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 22-25) (Dec. 12, 2014). [↑](#footnote-ref-4)
5. *Id*. at 44-46. [↑](#footnote-ref-5)
6. See, PUCO Comments on Capacity Performance Proposal, Enhanced Liaison Committee, (Sep. 17, 2014) at 1-2. [↑](#footnote-ref-6)
7. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 43-44) (Dec. 12, 2014) [↑](#footnote-ref-7)
8. *Id.* at 44-46. [↑](#footnote-ref-8)
9. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 44-46) (Dec. 12, 2014). [↑](#footnote-ref-9)
10. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 29-31) (Dec. 12, 2014). [↑](#footnote-ref-10)
11. *Id*. [↑](#footnote-ref-11)
12. *Id*. [↑](#footnote-ref-12)
13. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 32) (Dec. 12, 2014). [↑](#footnote-ref-13)
14. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 77-78) (Dec. 12, 2014). [↑](#footnote-ref-14)
15. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 75-77) (Dec. 12, 2014). [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. *Id.* at 76-77 [↑](#footnote-ref-17)
18. *PJM Interconnection, L.L.C.,* Docket No. ER14-1461-000 (Public Utilities Commission of Ohio Comments at 14-16) (Mar, 31, 2014). [↑](#footnote-ref-18)
19. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 54-62) (Dec. 12, 2014). [↑](#footnote-ref-19)
20. *Id.* at 55. [↑](#footnote-ref-20)
21. *Id.* at 55-56. [↑](#footnote-ref-21)
22. See Proposed Tariff, Attachment DD, Section 6.4(a). [↑](#footnote-ref-22)
23. *PJM Interconnection, L.L.C.,* Docket No. ER15-623-000 (PJM Transmittal Letter at 35) (Dec. 12, 2014). Base Capacity resources are only expected to perform during the months of June through September but are available for an unlimited number of interruptions lasting up to 10 hours each during that period. [↑](#footnote-ref-23)
24. The jurisdiction of Demand Resources and its ability to participate in wholesale electric markets is subject to ongoing litigation. *See: Electric Power Supply Association v. FERC*, 753 F.3d 216 (DC Circuit 2014). [↑](#footnote-ref-24)
25. *Order on Technical Conferences re Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators, et al* under AD13-7, *et al.*, 149 FERC ¶ 61,145 at 2 (2014). [↑](#footnote-ref-25)
26. *Id* at 6-9. [↑](#footnote-ref-26)