

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

PJM Interconnection, L.L.C.

)

Docket No. ER25-785-000

**PROTEST OF
AMERICAN MUNICIPAL POWER, INC.**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ American Municipal Power, Inc. (“AMP”) hereby files its protest of the December 20, 2024 filing by PJM Interconnection, L.L.C. (“PJM”) in the above-captioned docket,² in which PJM proposes to revise the PJM Open Access Transmission Tariff (“Tariff”) to: (1) eliminate the categorical must-offer exemption for certain resources under PJM’s Reliability Pricing Model (“RPM”) resource adequacy construct; and (2) revise certain aspects of RPM’s Market Seller Offer Cap (“MSOC”). PJM requests an effective date of February 21, 2025, so that the proposed changes are in place for the Base Residual Auction (“BRA”) for the 2026/2027 Delivery Year.³ As discussed below, the Commission should reject the PJM Filing.

I. INTRODUCTION

In its recent comments on PJM’s filing in Docket No. ER25-682-000, AMP expressed concerns that PJM had, once again, presented the Commission and stakeholders with hastily developed piecemeal modifications to the RPM framework to be rushed into place for the 2026/2027 BRA.⁴ On the heels of that expedited filing, PJM now

¹ 18 C.F.R. § 385.211.

² PJM, Extending the Capacity Must-Offer Requirement to All Generation Capacity Resources, Docket No. ER25-785-000, (December 20, 2024) (“PJM Filing”).

³ *Id.*, Transmittal Letter at 53.

⁴ AMP, Comments, Docket No. ER25-682-000, at 2-4 (Jan. 6, 2025).

proposes to implement additional, even more hastily developed revisions to RPM, insisting that the categorical must-offer exemption for Intermittent Resources, Capacity Storage Resources, and Hybrid Resources (collectively, “Exempted Resources”) should be eliminated immediately.⁵ Stakeholders were given little more than the minimum required notice of the proposed elimination of the must-offer exemption, even though it has been a feature of RPM since 2015, when PJM adopted the Capacity Performance framework. The expedited development of PJM’s changes left almost no time for meaningful review, analysis, or debate of PJM’s proposal, nor did the process accommodate consideration of potential changes to the proposal that might have rendered it just and reasonable.

AMP acknowledges the resource adequacy challenges facing the PJM region,⁶ and AMP likewise shares the rate impact concerns that have been raised by state regulators and consumer advocates regarding the significant increase in 2025/2026 BRA clearing prices.⁷ It is imperative that PJM undertake holistic reforms to its resource adequacy construct to promote resource adequacy while ensuring just and reasonable outcomes for consumers. Piecemeal changes to the RPM construct such as those proposed in the instant filing, however, are not the way to achieve meaningful reform. Here, the elimination of the must-offer exemption would impose unreasonable obligations on Exempted Resources without providing any assurance of resource adequacy

⁵ PJM proposes to retain the must-offer exemption for Demand Resources. See PJM Filing, Transmittal Letter at 29-30. The current must-offer exemption also applies to Energy Efficiency Resources, but such resources are no longer eligible to participate in the capacity market as of the 2026/2027 BRA. See *id.* at 14 n.39 (citing *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,095 (2024)).

⁶ See *id.* at 5-6.

⁷ See, e.g., Joint Consumer Advocates, Complaint, Docket No. EL25-18-000 (Nov. 18, 2024) (“JCA Complaint”).

improvements. Indeed, the proposed changes may have the effect of driving Exempted Resources out of the RPM auctions, adversely impacting resource adequacy and raising clearing prices – the opposite of the goals that PJM is trying to achieve with its filing.

When PJM proposed the Capacity Performance framework in 2014, it recognized that it would be unreasonable to expose resources to non-performance penalties during periods in which it would be impossible for the resources to perform – such as a solar resource at night.⁸ To address this undeniable concern with the Capacity Performance framework, PJM proposed the must-offer exemption for Exempted Resources, which provides optionality for these facilities. Exempted Resources can decide to participate in the BRA and take on the attendant risk of incurring Non-Performance Charges for Performance Assessment Intervals (“PAIs”) during which operation is impossible, or they can opt not to offer into the BRA given those risks. PJM proposes to eliminate this optionality without adequate justification and without doing anything that would effectively address the core, irrefutable problem that Exempted Resources could be exposed to penalties (up to 150% of their annual auction revenues) that they have no practical way to avoid. While there may be merit in identifying a way to facilitate greater participation of Exempted Resources in the BRA (such as pairing elimination of the must-offer exemption with insulation from Non-Performance Charges during periods when a resource cannot perform), PJM’s last-minute proposal to force these resources into the auction with no way to avoid Non-Performance Charges is unreasonable.

⁸ See PJM Filing, Transmittal Letter at 21.

The MSOC changes in the PJM Filing do not resolve the problems that PJM would create by eliminating the must-offer exemption for Exempted Resources. Setting the MSOC floor at a resource's Capacity Performance Quantifiable Risk ("CPQR")⁹ may allow some Exempted Resources to submit auction offers somewhat higher than would be permitted under the current rules, but this Tariff change would likely increase BRA clearing prices while failing to address the fundamental problem that Exempted Resources could be subject to penalties they cannot avoid. And while the concept of allowing segmented offer caps is generally reasonable, it does not resolve the core concerns with exposing Exempted Resources to unavoidable Non-Performance Charges.

PJM has not satisfied its burden under section 205 of the Federal Power Act ("FPA")¹⁰ to show that the complete package of Tariff changes proposed in this docket is just and reasonable. Given limitations on the Commission's authority to accept discrete portions of PJM's FPA section 205 filing,¹¹ the Commission must reject the entire filing, even though there are certain components of the filing – such as the use of segmented offer caps – that may tend to result in more reasonable BRA outcomes. If the Commission rejects the PJM Filing, it should encourage PJM to focus available resources on open and inclusive discussions regarding reliability-focused initiatives that more holistically and constructively address resource adequacy concerns in PJM.

⁹ See *id.* at 31-43.

¹⁰ 16 U.S.C. § 824d.

¹¹ See *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

II. PROTEST

A. PJM's proposed elimination of the must-offer exemption for Exempted Resources is not just and reasonable.

1. Exempted Resources should not be exposed to penalties they have no practical way to avoid.

Under PJM's Capacity Performance construct, Capacity Resources that fail to perform during PAIs may be subject to Non-Performance Charges.¹² Under the Tariff changes accepted by the Commission in Docket No. ER24-99-000,¹³ resources face a maximum potential loss of 1.5 times available annual revenue (the "stop-loss" limit).¹⁴ Resources that over-perform during PAIs are eligible for bonus payments.

PJM's must-offer exemption for Exempted Resources was initially proposed based, in part, on the recognition that these resources could be exposed to unavoidable Non-Performance Charges if a PAI were declared during a period when the resource is incapable of operating, such as a solar resource at night.¹⁵ In its filing proposing the Capacity Performance construct, for example, PJM explained that this constituted an "unreasonable risk" to Exempted Resources:

[A] must-offer requirement would be difficult to enforce against these types of resources. It is not clear, for example, how PJM could compel a party to offer load reductions into RPM, *or demand that an intermittent resource assume its resource will operate when solar or wind conditions do not allow operation, or require the operator of a storage resource to take an*

¹² See, e.g., *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080, at PP 11-13, *order on reh'g*, 189 FERC ¶ 61,043 (2024). The Non-Performance Charge rate is calculated with reference to Net CONE, *i.e.*, the projected cost of new entry for the Reference Resource, less the energy and ancillary services ("EAS") revenues the Reference Resource is expected to be able to earn. See *id.*

¹³ *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080.

¹⁴ *Id.* PP 234-40.

¹⁵ See PJM Filing, Transmittal Letter at 21; see also, *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 355 (2015), *order on reh'g*, 155 FERC ¶ 61,157, at PP 209-210 (2016).

*unreasonable risk on the amount of charging time it will have for its resource before an Emergency Action occurs.*¹⁶

This unreasonable risk continues today. Just as in 2014, it is not clear why PJM should demand that an Intermittent Resource operate when its “fuel” (e.g., sun, wind, water) is not available and there is no way to obtain it. The risk is currently (if imperfectly) addressed by providing Exempted Resources the option not to participate in the auction at all. Eliminating this optionality without affording Exempted Resources with a practical mechanism for avoiding Non-Performance Charges is unreasonable.

PJM’s proposal to retain the categorical must-offer exemption for Demand Resources highlights the unreasonableness of PJM’s position as to the Exempted Resources. PJM primarily argues that a must-offer exemption is appropriate for Demand Resources because it would be difficult to enforce a must-offer requirement for such resources.¹⁷ But, as PJM recognized in 2014, it also lacks the ability to enforce a must-offer requirement against Exempted Resources during periods when it is simply impossible for such resources to produce energy, regardless of the resource’s level of planning or investment.¹⁸ In this crucial respect, Exempted Resources and Demand Resources *are* similarly situated, contrary to PJM’s assertion.¹⁹

¹⁶ PJM, Reforms to the Reliability Pricing Market and Related Rules in the PJM Open Access Transmission Tariff and Reliability Assurance Agreement Among Load Serving Entities, Docket No. ER15-623-000, at 61 (Dec. 12, 2014) (“PJM Capacity Performance Filing”) (emphasis added).

¹⁷ See PJM Filing, Transmittal Letter at 29-30. PJM asserts that a must-offer requirement for Demand Resources “would essentially force consumers to commit to reducing their consumption [or face financial Non-Performance Charges], even if market conditions or their individual preferences change.” *Id.* at 29 (quoting Graf Aff. at ¶ 31 (internal quotes omitted)). PJM also contends that “it would be challenging to enforce a must-offer requirement for end-use customers that are included in Demand Resource registrations given that they are also much more mobile than traditional Generation Capacity Resources.” *Id.* at 30.

¹⁸ See PJM Capacity Performance Filing at 61.

¹⁹ See PJM Filing, Transmittal Letter at 29.

It is illogical and inconsistent with the rationale underlying the Capacity Performance framework, moreover, to impose unavoidable Non-Performance Charges on Capacity Resources that have no ability to respond to the incentive the penalties are supposed to provide. As the Commission has observed, “the Capacity Performance market design . . . provide[s] incentives for resource owners to make appropriate investments to maintain their resources and discourage[s] non-performing resources from taking on capacity obligations.”²⁰ But no amount of “appropriate investment” can make a solar array produce energy at night or a run-of-river hydroelectric resource operate when water is not flowing. While the current framework allows Exempted Resources to decide whether to take on this “unreasonable risk,” PJM now proposes to *eliminate* that optionality for Exempted Resources that are Existing Capacity Resources.²¹

The Independent Market Monitor for PJM (“IMM”), while supporting removal of the must-offer exemption for Exempted Resources, has observed that penalizing solar and other intermittent resources when they are unable to perform is a “clearly illogical and unfair rule.”²² Thus, in its analysis of the 2025/2026 BRA, the IMM observes that “[t]he inclusion of a must offer obligation for categorically exempt intermittent and capacity storage resources *should be coupled with the removal of PAI penalty liability for such*

²⁰ *Indep. Market Monitor v. PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,129, at P 33 (2024).

²¹ Exempted Resources could also opt to become energy-only resources, but as discussed below, this is not an option PJM should encourage given its concerns about the quantity of Exempted Resources that already choose not to participate in the BRA.

²² IMM 2024 Quarterly State of the Market Report, at 337 (Nov. 14, 2024), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2024/2024q3-som-pjm-sec5.pdf.

*resources when it is not physically possible to perform.*²³ Similarly, in their pending complaint in Docket No. EL25-18-000, the Joint Consumer Advocates (“JCA”) seek elimination of the must-offer exemption for Exempted Resources, but propose to pair this elimination with changes to Capacity Performance that would excuse intermittent and battery storage resources from Non-Performance Charges if a resource is “operating at maximum *possible* output during the PAI event.”²⁴

The PJM Filing does not include any such adjustments to Capacity Performance’s penalty framework to address the undeniable problem that Intermittent and other Exempted Resources will be forced to participate in the BRA with no practical way to avoid Non-Performance Charges if a PAI occurs at a time the resource is incapable of operating (or incapable of operating at the required output). While Capacity Performance’s practice of imposing penalties on Exempted Resources regardless of their ability to operate is “clearly illogical and unfair”²⁵ even for participating resources, the must-offer exemption at least provides market participants with optionality regarding BRA participation, allowing for avoidance of Capacity Performance penalties – albeit at the price of forgoing participation altogether. This optionality is crucial to AMP and its members, which own and operate 261 MW of run-of-river hydroelectric facilities in PJM that are classified as Intermittent Resources under the PJM Tariff,²⁶ and properly

²³ IMM Analysis of the 2025/2026 BRA, Part D at 10 (Dec. 6, 2024), https://www.monitoringanalytics.com/reports/Reports/2024/IMM_Analysis_of_the_20252026_RPM_Base_Residual_Auction_Part_D_20241206.pdf.

²⁴ JCA Complaint at 38-39.

²⁵ IMM 2024 Quarterly State of the Market Report, at 337.

²⁶ PJM Tariff, Definitions, I-J-K (defining “Intermittent Resource” as “a Generation Capacity Resource with output that can vary as a function of its energy source, such as wind, solar, run of river hydroelectric power and other renewable resources.”).

encompassed by the must-offer exemption. These resources are dependent on the availability of water to operate – a factor that AMP has no power to control. While AMP has historically offered its run-of-river hydroelectric resources into the BRA, having the option not to participate and thereby avoid potential Non-Performance Charges is important for AMP in protecting the interests of its members and the customers they serve.

The Commission has recognized that the must-offer exemption allows Exempted Resources to mitigate the risk associated with the inability to perform during certain periods.²⁷ Providing such a mechanism for Exempted Resources to avoid Non-Performance Charges is consistent with the Commission's recognition that market participants ought not to be subject to penalties that they have no practical ability to avoid.²⁸ In contrast, PJM's proposal will expose Exempted Resources to penalties that they will have no practical way to avoid, regardless of the level of investment or prudence of operation, in contravention of Commission policy.

As the PJM Filing notes, the PJM Tariff also allows a resource to seek a unit-specific exemption from the must-offer requirement,²⁹ but this exemption process is not tailored to, and does not appear to encompass, resources that seek an exemption based on the inability to provide capacity as a result of the fundamental characteristics of the resource itself, such as that solar resources can only operate when the sun is shining, and run-of-river hydroelectric resources can only operate when the river conditions are

²⁷ *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,043 at P 42 n.144.

²⁸ *See, e.g., El Paso Nat. Gas Co.*, 125 FERC ¶ 61,309, at P 105 (2008).

²⁹ *See* PJM Filing, Transmittal Letter at 13; *see also* Tariff, Attach. DD, § 6.6(g).

conducive. Indeed, the PJM Filing does not suggest that the unit-specific exemption would be available to Exempted Resources on such grounds,³⁰ and given PJM's view that Intermittent and other Exempted Resources should be required to offer into the BRA, it hardly seems likely that PJM would grant an exemption based on these fundamental resource characteristics.

2. PJM does not justify exposing Exempted Resources to Non-Performance Charges that they cannot avoid.

PJM points to a number of post-Capacity Performance Tariff changes, both approved and proposed, that it claims address concerns that Intermittent and other Exempted Resources will face an unreasonable risk of Non-Performance Charges that they cannot avoid.³¹ None of these arguments have merit.

a. PJM's MSOC offer floor proposal does not justify elimination of the must-offer exemption.

Reviving a proposal that the Commission rejected in Docket No. ER24-98-000,³² PJM proposes to set a floor for the MSOC at the level of the resource's CPQR, even if a resource earns adequate revenue from the EAS markets (and thus has a net avoidable cost rate ("ACR") that may be lower than CPQR or even negative).³³ Although PJM proposes to apply this Tariff change to all Existing Generation Capacity Resources,³⁴ PJM suggests that using a resource's CPQR as the MSOC floor is particularly responsive to

³⁰ See PJM Filing, Transmittal Letter at 13 (stating that "[u]nit-specific exceptions from the must-offer requirement are allowed if a resource will not be available for the relevant Delivery Year; for example, if it will retire or will be committed to a firm sale outside the PJM Region.").

³¹ PJM Filing, Transmittal Letter at 9, 20-23, 34-36.

³² *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,097, at PP 35-37 (2024).

³³ See PJM Filing, Transmittal Letter at 9-10.

³⁴ *Id.* at 10, 41.

the “unique challenges”³⁵ presented by Exempted Resources, which “generally have net [EAS] revenues that are greater than their relatively low going-forward costs, which results in a net ACR of \$0/MW-day, and relatively high performance risk during extended PAI events as they do not control their fuel source.”³⁶ PJM’s MSOC offer-floor proposal is problematic for at least two reasons.

First, ensuring that Exempted Resources can include CPQR in their offers may allow them to reflect the costs of mitigating Non-Performance Charge risk to some extent, but the ability to price a certain amount of risk mitigation cost into an offer does not address the fundamental problem that Exempted Resources could be subject to penalties *they simply cannot avoid* regardless of efforts to mitigate that risk. And while the Tariff may allow resources to include the cost of insurance against Non-Performance Charges in CPQR,³⁷ PJM does not present evidence regarding whether and to what extent insurance provides a practical way for Exempted Resources to mitigate the risk of exposure to Non-Performance Charges.

Second, applying a CPQR MSOC floor to *all* Existing Generation Capacity Resources is likely to unreasonably increase BRA clearing prices (assuming the BRA does not otherwise reach the maximum price). The PJM Filing does not provide *any* analysis concerning the potential increase in clearing prices or the resulting impact on consumers from its proposal, nor does PJM indicate whether these increased costs are likely to offset presumed downward pressure on clearing prices from the participation of

³⁵ *Id.* at 9.

³⁶ *Id.*

³⁷ See PJM Tariff, Attachment DD, section 6.8(a) (defining CPQR to include “insurance expenses associated with resource non-performance risks”); see also *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,097 at P 3.

additional Exempted Resources in the auction. PJM may not be required to provide a strict cost-benefit analysis to find a tariff proposal just and reasonable, but the cost to consumers is always an important consideration in evaluating proposed market reforms under the FPA.³⁸ The PJM Filing ignores this factor. This omission is of significant concern, as information in the filing suggests that the price impact from this change could be material. Specifically, PJM states that “in the 2025/2026 Base Residual Auction, 75% of all Accredited UCAP was offer capped at \$0/MW-day, largely because the default [Market Seller Offer Cap] for those resources reflected EAS revenues equal to or greater than their default ACR.”³⁹ Stated another way, 75% of Accredited UCAP will apparently now be eligible to submit higher BRA offers as a result of PJM’s proposal, resulting in higher prices without any likely resource adequacy benefit beyond the inclusion of a relatively small amount of additional Exempted Resource capacity that may now participate in the BRA.

To the extent that PJM’s MSOC floor proposal has any merit as a way to address the Non-Performance Charge risk of Exempted Resources, PJM could have limited the proposal to Exempted Resources. The PJM Filing expresses concern that such an approach would be unduly discriminatory,⁴⁰ but PJM acknowledges that Exempted Resources “present unique challenges.”⁴¹ These unique challenges mean that Exempted Resources are not similarly situated to other Existing Generation Capacity Resources,

³⁸ See, e.g., *NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 21 (D.C. Cir. 2018) (explaining that “[t]he Commission must protect consumers from excessive rates and charges.” (internal quotes and citations omitted)).

³⁹ PJM Filing, Transmittal Letter at 32 (quoting Graf Aff. at ¶ 37) (internal quotes omitted, emphasis added).

⁴⁰ *Id.* at 10.

⁴¹ *Id.* at 9.

justifying different treatment notwithstanding the FPA's prohibition on undue discrimination.⁴²

b. Segmented offer caps do not justify elimination of the must-offer exemption.

Segmented offer caps (which AMP otherwise generally supports) also would not fully address the problem of unavoidable Non-Performance Charges.⁴³ Segmented offer caps would allow Capacity Market Sellers to submit unit-specific offer caps reflecting incremental costs of having a capacity obligation across different segments of a unit. As the owner and operator of run-of-river hydro resources, AMP concurs that segmented offer caps can be appropriate for such resources “to allow offers to better reflect the incremental costs of risk associated with higher committed levels of capacity.”⁴⁴ But allowing incrementally higher segmented CPQRs to reflect incremental risks of offering additional energy from a unit is not directly responsive to concerns that the resource may not be able to operate at all when called upon.

c. Revisions to RPM since 2015 do not support PJM's proposed elimination of the must-offer exemption.

PJM suggests that changes to the triggers for PAIs adopted in 2023 reduce the risk of Non-Performance Charges for Capacity Market Sellers, as “there are now expected to be fewer instances in which resources are exposed to Non-Performance Charges compared with when Capacity Performance was first implemented.”⁴⁵ While

⁴² See, e.g., *City of Lincoln v. FERC*, 89 F.4th 926, 935 (D.C. Cir. 2024) (explaining that “undue discrimination occurs only if the entities are similarly situated, such that there is no reason for the difference.” (internal quotes and citations omitted)).

⁴³ PJM Filing, Transmittal Letter at 43-52.

⁴⁴ *Id.* at 10.

⁴⁵ *Id.* at 22; see also *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,058 (2023).

narrowing the definition of Emergency Actions arguably diminishes the likelihood that a PAI will be declared in the first place, it does not alter the fundamental *nature* of the unreasonable risk faced by Exempted Resources; namely that a resource will be unable to avoid Non-Performance Charges through any action it takes or could have taken.

PJM also claims that its implementation of a marginal effective load carrying capability (“ELCC”) approach “incrementally reduces the probability of a resource underperforming its capacity obligation during a PAI, thus mitigating exposure to Non-Performance Charges associated with capacity commitments for many intermittent and storage resources.”⁴⁶ This argument does not withstand scrutiny. The marginal ELCC approach produces a class rating for each resource class (subject to resource-specific adjustment), which essentially identifies the *quantity* of capacity that can be counted as UCAP for a given resource relative to the resource’s “nameplate” capacity.⁴⁷ PJM’s argument is basically that, because marginal ELCC generally results in a lower quantity of Accredited UCAP for Exempted Resources in the first place, these resources now face less risk exposure.⁴⁸ But use of marginal ELCC does nothing to reduce the risk that any given Exempted Resource – *whatever its level of Accredited UCAP* – may be dispatched during a PAI that occurs when the resource is incapable of operating.

If anything, the implementation of marginal ELCC highlights the *unreasonableness* of PJM’s proposal. PJM’s marginal ELCC approach accounts for the operational limitations of Exempted Resources, which effectively discounts these resources’

⁴⁶ PJM Filing, Transmittal Letter at 22 (quoting Graf Aff. at ¶ 27 (internal quotes omitted)).

⁴⁷ See, e.g., *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080 at P 32.

⁴⁸ See PJM Filing, Transmittal Letter at 22 (arguing that “lower Accredited UCAP values limit the available megawatts that can be offered by such resources, which in turn reduces the risk exposure to potential Non-Performance Charges.”).

expected performance for purposes of determining UCAP. But notwithstanding this recognition of operational limitations in the marginal ELCC process, Capacity Performance still imposes penalties for failure to provide energy when called upon, regardless of whether fulfilling that commitment is consistent with the assumptions underlying the ELCC Class Rating.

Nor does the lower stop-loss limit approved by the Commission in Docket No. ER24-99-000 alleviate the concerns with requiring Exempted Resources to take on the risk of Non-Performance Charges.⁴⁹ The stop-loss limit is now indexed to the BRA clearing price, with the result that resources generally face a maximum potential loss of 1.5 times available annual RPM revenue.⁵⁰ AMP agrees this change is a marked improvement over the previous stop-loss limit tied to Net CONE, but as PJM acknowledges, “the stop-loss still exceeds the capacity market revenues that a resource would be paid in a year.”⁵¹ Even as recently modified, the stop-loss limit still presents Exempted Resources with significant financial exposure *that they cannot practically avoid*.

B. PJM’s rationales for eliminating the must-offer exemption are neither reasonable nor adequately supported.

1. PJM does not adequately support its market power concerns.

PJM’s rationales for proposing to eliminate the must-offer exemption for Exempted Resources do not justify its about-face on the issue. PJM does not support its primary justification for the proposed change; namely that concerns about the exercise of market

⁴⁹ See *id.* at 22-23.

⁵⁰ *Id.*

⁵¹ *Id.* at 36.

power through physical withholding have emerged, contrary to circumstances existing when the must-offer exemption was originally adopted.⁵² While it is certainly essential that PJM and the IMM remain vigilant about improper physical withholding, PJM does not offer substantial evidence for the proposition that the growth in Exempted Resources has been, or is likely to be, accompanied by the exercise of market power.

As the PJM Filing indicates, the vast majority of Exempted Resources (over 85%) offer capacity into the BRA notwithstanding the availability of the must-offer exemption.⁵³ While the UCAP represented by the roughly 15% of Exempted Resources that were not offered into the auction may impact the BRA results, PJM does not provide any concrete evidence that these resources' non-participation is attributable to anything other than an understandable unwillingness to be exposed to the risk of unavoidable Non-Performance Charges – a risk that the PJM Filing does not adequately address.

PJM also argues that the Commission's primary stated rationale for approving the must-offer exemption in 2014 – *i.e.*, that Exempted Resources presented less risk of withholding owing to a lack of concentration of ownership – is no longer true.⁵⁴ The PJM Filing, however, does not adequately support a finding that Exempted Resource ownership concentration has increased, or that any such concentration presents market power concerns. The only evidence adduced by PJM regarding ownership concentration and market power is an analysis of the 2025/2026 BRA described by Dr. Graf that is not accompanied by any exhibits, workpapers, or meaningful discussion of assumptions or

⁵² See *id.* at 17-20; see also *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 355.

⁵³ PJM Filing, Transmittal Letter at 26 & Graf Aff. at ¶ 23.

⁵⁴ See, e.g., PJM Filing, Transmittal Letter at 8 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 355).

methodology.⁵⁵ While Dr. Graf purports to present the conclusions of this analysis, his affidavit is so conclusory and lacking in detail that it does not provide commenters a reasonable opportunity to analyze, and potentially rebut, the study. Even taken at face value, however, Dr. Graf emphasizes that his “analysis should not be construed as concluding that there was an exercise of market power in the 2025/2026 Base Residual Auction.”⁵⁶

PJM also suggests that, as Exempted Resources become a greater proportion of installed capacity, the concentration of ownership is likely to grow further, as will the reliability risks of allowing these resources to remove themselves from the capacity construct.⁵⁷ It is, of course, essential for PJM to pursue policies that promote reliability and resource adequacy as the resource mix evolves. But those rules must be just and reasonable, and, as discussed above, a framework that exposes resources to the risk of penalties that they have no practical way to avoid is not just and reasonable. Had PJM, for example, paired the proposed elimination of the must-offer exemption with appropriate relief from unavoidable Non-Performance Charges, it may have been able to reform its resource adequacy construct in a just and reasonable manner. A less expedited stakeholder process may have allowed for the development of such a proposal.

⁵⁵ See PJM Filing, Graf Aff. at ¶¶ 14-21.

⁵⁶ *Id.* at ¶ 21. Dr. Graf’s ownership concentration analysis, moreover, appears to reflect a *post hoc* rationale for eliminating the must-offer exemption, as the materials presented by PJM to stakeholders in support of the change acknowledged that PJM’s statistics on the level of Exempted Resources that did not offer into the 2025/2026 BRA did “not specifically speak to concentration.” PJM simply said that “we will look into that.” PJM, “Consultation with Members: Capacity Market Must Offer and Market Seller Offer Cap Changes” at 10 (Dec. 13, 2024), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/mc/2024/20241213-special/item-01---1-consultation-with-members-capacity-market-must-offer-and-market-seller-offer-cap-changes---presentation.pdf>.

⁵⁷ PJM Filing, Transmittal Letter at 17. Notably, PJM acknowledges that run-of-river hydro resources are not growing, and, in fact, have “seen a decrease in its installed capacity and UCAP.” *Id.* at 15 n.42.

2. PJM's CIR-based arguments do not justify eliminating the must-offer exemption.

PJM suggests that, as the quantity of Exempted Resources grows, the load paying for the transmission system is deprived of the full value of the investments made to assure the deliverability of the Exempted Resources through Capacity Interconnection Rights ("CIRs").⁵⁸ PJM also argues that the holding of CIRs by Exempted Resources that do not offer into the BRA constitutes an inefficient use of the transmission system.⁵⁹ PJM cannot seek to address one potentially unreasonable circumstance (potentially excessive cost to load), however, by imposing an unreasonable solution. As discussed above, it is not unreasonable for Exempted Resources to refrain from offering into the BRA on the basis that they could be subject to the "unfair and illogical" imposition of Non-Performance Charges for PAIs during which they are incapable of operating.

PJM unhelpfully suggests that Exempted Resources that do not wish to face Non-Performance Charges can convert to Energy Resources and relinquish CIRs altogether.⁶⁰ This suggestion, of course, runs counter to PJM's goal of *increasing* participation of Exempted Resources in the BRA. Even if PJM is right that the impact of any such conversions on reliability may be small,⁶¹ the simple fact that PJM's approach is likely to force Exempted Resources out of the capacity construct demonstrates the deficiency of PJM's proposal.

⁵⁸ *Id.* at 23-24.

⁵⁹ *Id.* at 24-25.

⁶⁰ *Id.* at 26-27.

⁶¹ *Id.* at 26. PJM's conclusion that any reliability impact is likely to be small is premised largely on the fact that "less than 15% of all categorically exempt Generation Capacity Resources did not actually offer into the auction." *Id.* PJM is apparently assuming without foundation, however, that the loss of optionality provided by the current must-offer exemption will not prompt additional resources beyond these 15% to convert to Energy Resources.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, American Municipal Power, Inc. respectfully requests that the Commission: (1) reject the PJM Filing, and (2) encourage PJM to engage in stakeholder processes with the goal of developing a just and reasonable set of reforms to its resource adequacy framework.

Respectfully submitted,

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DATED: January 10, 2025

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 10th day of January, 2025.

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