

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

<b>Joint Consumer Representatives,</b>	)	
	)	
<b>Complainants,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL15-83-000</b>
	)	
<b>PJM Interconnection, L.L.C.,</b>	)	
	)	
<b>Respondent.</b>	)	

**PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),<sup>1</sup> the Electric Power Supply Association (“EPSA”)<sup>2</sup> hereby submits this protest to the complaint filed on June 30, 2015 by the “Joint Consumer Representatives”<sup>3</sup> against PJM Interconnection, L.L.C.

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<sup>1</sup> 18 C.F.R. § 385.211 (2014).

<sup>2</sup> EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. This filing represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA has separately filed a motion to intervene in this proceeding. See (doc-less) Motion to Intervene of the Electric Power Supply Association, Docket No. EL15-83-000 (filed July 8, 2015).

<sup>3</sup> For purposes of this proceeding, the “Joint Consumer Representatives” include: the PJM Industrial Customer Coalition, the Sustainable FERC Project/Natural Resources Defense Council, Sierra Club, the New Jersey Board of Public Utilities (“NJBPU”), the New Jersey Division of Rate Counsel (“NJ Rate Counsel”), Maryland Office of People’s Counsel (“MD OPC”), the Office of the People’s Counsel for the District of Columbia (“DC OPC”), the Pennsylvania Office of Consumer Advocate (“PA Consumer Advocate”), the Delaware Public Service Commission (“DE PSC”), the Delaware Division of the Public Advocate (“DE Public Advocate”), the West Virginia Consumer Advocate Division (“WV Consumer Advocate”) and the Maryland Public Service Commission.

("PJM") in the above-captioned proceeding.<sup>4</sup> On the eve of the Base Residual Auction ("BRA")<sup>5</sup> for the 2018/2019 Delivery Year (the "2015 BRA") and the Transition Auctions for the 2016/2017 and 2017/2018 Delivery Years, the Joint Consumer Representatives ask the Commission to force PJM to use a load forecast generated using a modified load forecasting model (the "New Specification") that is still being developed and vetted in the PJM stakeholder process. The Commission should reject this eleventh hour request to drastically reduce the amount of capacity that will be procured based on a model that is, as PJM has acknowledged, not yet ready for prime time.

The Commission should likewise reject the Joint Consumer Representatives' alternative request to reinstate the Short-Term Resource Procurement Target (the "Holdback") as a blatant collateral attack on a Commission order, issued less than a month earlier, approving the elimination of the Holdback.<sup>6</sup> The proper vehicle for challenging that ruling is a request for rehearing of the CP Order, like the one certain of the Joint Consumer Representatives filed a week after the Complaint.<sup>7</sup>

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<sup>4</sup> Complaint of the Joint Consumer Representatives Requesting Fast Track Processing, Docket No. EL15-83-000 (filed June 30, 2015) (errata filed July 2, 2015) (the "Complaint").

<sup>5</sup> Capitalized terms not herein defined have the meaning set forth in PJM's Open Access Transmission Tariff (the "Tariff"), as modified by PJM's July 9, 2015 compliance filing in Docket No. ER15-623-004. See Compliance Filing Pursuant to June 9, 2015 Order of PJM Interconnection, L.L.C., Docket No. ER15-623-004 (filed July 9, 2015).

<sup>6</sup> See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (the "CP Order").

<sup>7</sup> See Request for Rehearing of the Joint Consumer Representatives, Docket Nos. ER15-623-002, *et al.* (filed July 9, 2015) (the "Joint Consumers Rehearing Request"). For purposes of the Joint Consumers Rehearing Request, the Joint Consumer Representatives consist of: the NJBPU, the PJM Industrial Customer Coalition, the DE Public Advocate, the WV Consumer Advocate, the MD OPC, the DE PSC, the PA Consumer Advocate, the NJ

Finally, the Commission should reject the further alternative request of the Joint Consumer Representatives to delay the 2015 BRA and the Transition Auctions until the New Specification is ready. The Joint Consumer Representatives have not even attempted to make the showing necessary to justify such extraordinary relief.

## I. BACKGROUND

### A. Proceedings In Docket No. ER15-623-000

On December 12, 2014, PJM filed proposed revisions to the Reliability Pricing Model (“RPM”) rules to implement a Capacity Performance Resource product in Docket No. ER15-623-000 (the “CP Proceeding”).<sup>8</sup> In that filing, PJM also proposed to eliminate the Holdback, which, as PJM explained, “reduces the Reserve Requirement, which sets the amount of capacity to meet the PJM Region’s reliability needs, used in a BRA by 2.5 percent, and spreads that 2.5 percent to be procured over the three Scheduled Incremental Auctions.”<sup>9</sup>

On March 31, 2015, the Commission issued a letter requesting additional information regarding PJM’s proposed changes.<sup>10</sup> PJM provided the requested information,<sup>11</sup> and, separately, requested a tariff waiver in order to delay the 2015 BRA, originally scheduled to be held in May 2015, until 30-75 days after the

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Rate Counsel, the DC OPC, the Public Power Association of New Jersey and the Duquesne Light Company.

<sup>8</sup> See Reforms to the Reliability Pricing Market (“RPM”) and Related Rules in the PJM Open Access Transmission Tariff (“Tariff”) and Reliability Assurance Agreement Among Load Serving Entities (“RAA”), Docket No. ER15-623-000 (filed Dec. 12, 2014) (the “CP Filing”).

<sup>9</sup> *Id.*, Transmittal Letter at 75.

<sup>10</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-623-000 (Mar. 31, 2015) (unreported).

<sup>11</sup> PJM Response to Deficiency Letter, Docket No. ER15-623-001 (filed Apr. 10, 2015).

issuance of an order on the merits of the CP Filing but in no event later than August 10-14, 2015.<sup>12</sup> The Commission granted PJM's request on April 24, 2015,<sup>13</sup> and the 2015 BRA is currently scheduled to take place from August 10-14, 2015.<sup>14</sup>

On June 9, 2015, the Commission issued the CP Order which, among other things, accepted PJM's proposal to eliminate the Holdback.<sup>15</sup> The Commission accepted this proposal over the objections of various intervenors, including certain of the Joint Consumer Representatives, who "cit[ed] the role that PJM's holdback has played in partially mitigating the effects of using an overstated load forecast in the [BRA]."<sup>16</sup> On July 9, 2015, certain of the Joint Consumer Representatives sought rehearing of various aspects of the CP Order, including the Commission's decision to "accept[] PJM's proposed elimination of the Short-Term Resource Procurement Target . . . to be made effective for the [2015] BRA . . . ."<sup>17</sup>

## **B. The Complaint**

In the Complaint, the Joint Consumer Representatives claim that "PJM staff has completed the requisite testing of its modified load forecasting model and has indicated to stakeholders that the model is ready for development of the 2016 load forecast," and that "[u]se of this updated and more accurate load forecasting model

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<sup>12</sup> Request of PJM Interconnection, L.L.C. for Expedited Grant of Tariff Waiver, Docket No. ER15-1470-000 (filed Apr. 7, 2015) (the "ER15-1470 Waiver Request").

<sup>13</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067 (2015) (the "ER15-1470 Order").

<sup>14</sup> See PJM, *RPM Schedule*, Revised 2018/2019 BRA schedule based on FERC June 9, 2015 Order (ER15-623-000), available at <https://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx>.

<sup>15</sup> See CP Order, 151 FERC ¶ 61,208 at PP 394-396.

<sup>16</sup> CP Order, 151 FERC ¶ 61,208 at P 386.

<sup>17</sup> Joint Consumers Rehearing Request at 3.

in the upcoming BRA and [Transition Auctions] would reduce the Peak Load Forecast for the 2016/2017, 2017/2018, and 2018/2019 Delivery Years by approximately 7,000 MW.”<sup>18</sup> Although acknowledging that PJM has also stated “that the [modified] model will not be ready for actual use until November 2015,” the Joint Consumer Representatives ask the Commission to order PJM to use that model for the upcoming 2015 BRA and the Transition Auctions.<sup>19</sup> In the alternative, the Joint Consumer Representatives propose that the Commission (1) reinstate the Holdback “that was previously included in the [Tariff] and was serving to mitigate the harm associated with PJM’s over-forecasting under PJM’s current forecasting model”<sup>20</sup>; or (2) delay the 2015 BRA and the Transition Auctions “until all parties agree that the New Specification is ready to be used . . . , which will likely be in Fall 2015.”<sup>21</sup>

## II. PROTEST

### A. Notwithstanding The Joint Consumer Representatives’ Claims To the Contrary, The New Specification Is Not Ready For Implementation

The Complaint suggests that PJM’s refusal to implement the New Specification until November 2015 is unreasonable because of PJM’s supposed “assurance to stakeholders that the model is ready for implementation,”<sup>22</sup> and indications by PJM staff that “the New Specification will be used to develop the

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<sup>18</sup> See Complaint at 2-3.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at 3.

2016 Load Forecast, without further changes or adjustments.”<sup>23</sup> But the Joint Consumer Representatives have jumped the gun, because the New Specification is *not* ready for implementation.

The Joint Consumer Representatives and their witness, Paul R. Peterson, appear to base their claims that the New Specification is ready for use solely on statements by PJM staff to the Load Analysis Subcommittee (the “LAS”).<sup>24</sup> But the LAS is just a subcommittee that “reports to the Planning Committee,”<sup>25</sup> which is “responsible for the stakeholder review of the peak forecasts and techniques for their determination.”<sup>26</sup> PJM’s Planning Committee is also “responsible for reviewing the techniques used to evaluate PJM reliability and determine capacity obligations.”<sup>27</sup> In this case, the Planning Committee has specifically identified “remaining tasks” that must be completed before the New Specification can be used, including:

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<sup>23</sup> *Id.*, Exhibit I, Affidavit of Paul R. Peterson on behalf of Joint Consumer Representatives at 6 (the “Peterson Affidavit”).

<sup>24</sup> See, e.g., Complaint at 4-5 & nn.8-10; Peterson Affidavit at 2.

<sup>25</sup> PJM, Load Analysis Subcommittee, <http://www.pjm.com/committees-and-groups/subcommittees/las.aspx>. See also PJM, *Load Analysis Subcommittee – Team Charter*, at 1 (also indicating that the LAS is intended to “[p]rovide a forum for discussion and exchange of non-competitive information on” various issues, including the “forecast methodology”), available at <http://www.pjm.com/~/media/committees-groups/subcommittees/las/postings/20050815-las-charter.ashx>.

<sup>26</sup> PJM, *Manual 19: Load Forecasting and Analysis*, at 3 (Mar. 26, 2015) (“Manual 19”), available at <http://www.pjm.com/~/media/documents/manuals/m19.ashx>. See also *id.* at 13 (“The PJM Load Forecast is reviewed by the Load Analysis Subcommittee and the Planning Committee. A member of the Planning Committee may submit an appeal for a review of part or all of the forecast . . .”).

<sup>27</sup> PJM, *Manual 20: PJM Resource Adequacy Analysis*, at 5 (Feb. 1, 2013) (“Manual 20”), available at <http://www.pjm.com/~/media/documents/manuals/m20.ashx>. See also *id.* at 24 (“The PJM load forecast is developed by PJM staff and reviewed by the Load Analysis Subcommittee and the Planning Committee.”).

- Update zones with new metropolitan area mapping
- Update weather stations for zones
- Investigate Weather-Normalized load
- Investigate current practice of using 40+ years in weather simulation to construct 50/50 load forecast
- Develop [PJM Manual 19] language and review through stakeholder process<sup>28</sup>

The foregoing list clearly shows that the New Specification is still very much a work-in-progress and that there is substantial work to be done under the established procedures set forth in the PJM Manuals. The Joint Consumer Representatives elsewhere concede as much, acknowledging that PJM has informed stakeholders that “the improved load forecasting model would not be ready for implementation for development of the 2016 Peak Load Forecast until this Fall.”<sup>29</sup>

Even assuming *arguendo* that the New Specification could otherwise be said to be fully baked, it would still be far from ready for use in the RPM auctions as it has yet to be fully vetted through the PJM stakeholder process. The Commission has specifically recognized the importance of such vetting where changes in load forecasting are involved. Indeed, in granting a complaint alleging that PJM moved too fast to revise its load forecast for the Dominion Zone, the Commission “strongly encourage[d] PJM to fully engage all stakeholders in the future whenever it considers making changes that could materially impact the outcome of the load

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<sup>28</sup> PJM, Planning Committee, *Load Forecast Update* at 10 (July 9, 2015), available at <http://www.pjm.com/~media/committees-groups/committees/pc/20150709/20150709-item-13-load-forecast-update.ashx>.

<sup>29</sup> Complaint at 5.

forecast, especially in light of the significant financial impact such changes could have.”<sup>30</sup> That is precisely what PJM is in the process of doing with respect to the New Specification, and it should be commended, not attacked, for having learned from its earlier mistakes in this area.

The PJM Manuals quite appropriately provide for extensive stakeholder vetting of proposed changes to parameters of the RPM auctions. For a BRA, this process includes:

1) *May*, 4 years before Delivery Year — The Planning Committee (PC), with [the Resource Adequacy Analysis Subcommittee’s] input, establishes the assumptions and modeling parameters for the upcoming study.

2) *October* — PC reviews analysis results and the Study report in September and, at their October meeting, recommends the Installed Reserve Margin [(“IRM”)], Forecast Pool Requirement [(“FPR”)], and DR Factor that the PJM RTO requires for the future delivery year. The PC also recommends a winter weekly reserve target to the Operating Committee for the upcoming winter period.

3) *November - January* — The [Markets and Reliability Committee] and then the [Members Committee (“MC”)] review the study results and PC recommendation and the MC provides a recommendation for the given delivery year to the PJM Board of Managers. The PJM Board of Managers approves and establishes the planning parameters (IRM, FPR, and DR Factor) for posting on the PJM web site by February 1.<sup>31</sup>

The Joint Consumer Representatives have provided no justification for bypassing the established review and vetting process that is used to establish the BRA parameters in this case. Indeed, the Commission has previously recognized

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<sup>30</sup> *Virginia Elec. & Power Co. v. PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,032 at P 21 (2010).

<sup>31</sup> Manual 20 at 10. See also *id.* at Exhibit 2.

that “several market parameters are critically dependent on the load forecast being available to market participants and the [Independent Market Monitor (“IMM”)] three months prior to the auction. It will therefore be disruptive to the market to change the forecast only one month before the auction.”<sup>32</sup> Similarly, the 2015 BRA and the Transition Auctions are scheduled to take place in less than a month, and the Joint Consumer Representatives have provided no basis for rushing a load forecast model that still has not been properly vetted into production, rather than following the established procedures for considering such changes.

**B. The Joint Consumer Representatives’ Request For The Reinstatement Of The Holdback Is An Impermissible Collateral Attack On The CP Order**

Less than a month after the Commission approved the elimination of the Holdback, the Joint Consumer Representatives sought to resurrect that device through the Complaint, rehashing the same arguments that were expressly rejected in the CP Order.<sup>33</sup> And lest there was any doubt that the Joint Consumer Representatives are simply interested in overturning the Commission’s ruling on the Holdback, they reprised the same arguments once again in a request for rehearing of the CP Order filed just a week after the Complaint. The Commission should

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<sup>32</sup> *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at P 200 (“*PJM*”), *on clarification*, 127 FERC ¶ 61,104, *on clarification & reh’g*, 128 FERC ¶ 61,157 (2009).

<sup>33</sup> *Compare* Complaint at 11 (arguing that the Holdback “has served as an important mitigating check on (though not a complete solution for) the current load forecast model’s tendency to result in substantial over-procurement of capacity”), *with* CP Order, 151 FERC ¶ 61,208 at P 396 (“[W]e are not persuaded that a holdback requirement is necessary to address load forecast errors, or that the historical overstatements experienced to date are unavoidable or likely to recur at a level that requires mitigation.”).

reject this exceedingly transparent and impermissible collateral attack on the CP Order.

As PJM explained in its CP Filing, the Holdback was never meant to mitigate inaccuracies in the load forecast. Rather, the Holdback was designed “to ensure RPM participation for short-lead time resources that can better commit one or two years in advance of the Delivery Year, rather than the three years needed for BRA participation.”<sup>34</sup> Experience has shown the Holdback to be unnecessary, however, because the three-year forward period has proved “to be little impediment to the participation of resources like demand response, energy efficiency, generation uprates, or external resources.”<sup>35</sup> Accordingly, the Commission approved the elimination of the Holdback, finding that:

[w]hile PJM sought to accommodate short-term resource procurement, as of the establishment of its market, PJM is not obligated to propose to retain this provision. Moreover, PJM contends that elimination of this provision will help promote reliability by ensuring that PJM has obtained committed capacity and is not reliant on short-term procurement. Given the purpose and nature of PJM’s Capacity Performance proposal, we concur.<sup>36</sup>

While conceding that the “original intent” of the Holdback was to “provide an opportunity for shorter-term resources . . . to qualify as Capacity Resources and help meet the Reliability Requirement,”<sup>37</sup> the Joint Consumer Representatives insist that it “remained just and reasonable primarily as a mitigating offset to over-load

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<sup>34</sup> CP Filing, Transmittal Letter at 75 (citations omitted).

<sup>35</sup> *Id.*

<sup>36</sup> CP Order, 151 FERC ¶ 61,208 at P 394.

<sup>37</sup> Complaint at 5 (citation omitted).

forecasting by PJM . . . .”<sup>38</sup> But neither the Commission nor PJM has ever endorsed the idea of retaining the Holdback for this secondary purpose. To the contrary, as PJM explained:

There is no basis for retaining the [H]oldback as a means of addressing load forecast error. The two issues are and should be distinct: 1) PJM should prepare a reasonable load forecast; and 2) to set an appropriate clearing price, the [BRA] should seek to procure capacity to meet all of the region’s projected capacity needs.<sup>39</sup>

PJM further explained that, in addition to its continuing efforts to improve the load forecasting model, it was making a number of specific load forecast adjustments in time for the 2015 BRA that “overall, will reduce the peak load forecast for the 2018/2019 Delivery Year by 2.5-3%.”<sup>40</sup>

In the CP Order, the Commission rejected the Joint Consumer Representatives’ “assert[ion] that PJM’s holdback should be retained because it mitigates the effects of overstated load forecasts.”<sup>41</sup> The Commission made crystal clear that like PJM, it was “***not persuaded that a holdback requirement is necessary to address load forecast errors***, or that the historical overstatements experienced to date are unavoidable or likely to recur at a level that requires mitigation.”<sup>42</sup>

In the Complaint the Joint Consumer have trotted out exactly the same arguments that were rejected in the CP Order. Consistent with a long line of

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<sup>38</sup> *Id.*

<sup>39</sup> CP Filing, Transmittal Letter at 76.

<sup>40</sup> *Id.*

<sup>41</sup> CP Order, 151 FERC ¶ 61,208 at P 396.

<sup>42</sup> *Id.* (emphasis added).

Commission precedent barring collateral attacks on its orders,<sup>43</sup> the Commission should reject this blatant attempt by the Joint Consumer Representatives to get a “do-over” of the case they lost (and which they are continuing to pursue) in the CP Proceeding. As the Commission has explained:

A collateral attack is “[a]n attack on a judgment in a proceeding other than a direct appeal” and is generally prohibited. Disfavor for collateral attacks is embodied in the doctrine of collateral estoppel: once a court or adjudicative body has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.<sup>44</sup>

In fact, the Complaint reads very much like the Joint Consumers Rehearing Request, which argues, for example, that the Commission should not have accepted PJM’s proposal to eliminate the holdback because “[t]he primary benefit of the 2.5% Holdback in the current workings of RPM is to offset the persistent load over-forecasting that drives higher-than-necessary Reliability Requirement levels in the BRAs,”<sup>45</sup> and that “retention of the 2.5% Holdback is critical to address PJM’s

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<sup>43</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040 at P 95 (2015); *Southwest Power Pool, Inc.*, 151 FERC ¶ 61,045 at P 52 (2015); *Avista Corp.*, 148 FERC ¶ 61,212 at P 237 (2014) (“to the extent [parties] are re-litigating that argument here, we reject their arguments as a collateral attack”); *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054 at P 12 (2013) (“A collateral attack is an ‘attack on a judgment in a proceeding other than a direct appeal’ and is generally prohibited.” (citation omitted)); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 136 FERC ¶ 61,037 at P 6 (2011) (explaining that the Commission had rejected a request, finding that it “constituted an impermissible collateral attack on prior Commission orders” and that the Commission “had ‘previously considered and rejected such arguments on multiple occasions’” (citation omitted)).

<sup>44</sup> *New England Conference of Pub. Utils. Comm’rs, Inc. v. Bangor Hydro-Elec. Co.*, 135 FERC ¶ 61,140 at P 27 (2011) (citation omitted).

<sup>45</sup> Joint Consumers Rehearing Request at 20.

continual load forecasting errors under the current RPM construct.”<sup>46</sup> The Joint Consumers Rehearing Request also argued that “[g]iven that PJM ***continues to develop a revised load forecasting model***, and has indicated it will not implement any permanent model changes to its load forecast assessment before November 2015, it is arbitrary and capricious to allow PJM to eliminate the Holdback at this time.”<sup>47</sup> Not only does this statement acknowledge the ongoing work that is being done with respect to the development of the load forecasting model, it also shows that the relief sought by the Joint Consumer Representatives in the CP Proceeding is the same as that sought here.

For obvious reasons, the Joint Consumer Representatives do not claim, in so many words, that circumstances changed so dramatically in the three weeks that elapsed between issuance of the CP Order and the filing of the Complaint as to justify a different result. That said, in a tortured attempt to suggest that the Commission should revisit its determination in the CP Order, the Joint Consumer Representatives assert that adoption of the New Specification in time for the 2015 BRA and the Transition Auctions was “the premise for the Commission’s approval of the Holdback elimination. . . .”<sup>48</sup> This assertion has no basis in the CP Order or in reality. As an initial matter, the sentence on which the Joint Consumer Representatives base this assertion is *dicta* that was in no way essential to the Commission’s holding with respect to the Holdback. To the contrary, the

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<sup>46</sup> *Id.* at 20-21.

<sup>47</sup> *Id.* at 22 (emphasis added).

<sup>48</sup> Complaint at 7.

Commission had already unambiguously rejected the Joint Consumer Representatives' argument that the Holdback should be retained as a remedy for alleged load forecasting errors,<sup>49</sup> and was merely noting that "PJM's stakeholders have discussed [load forecasting] issues, including proposed modeling changes, with load forecast adjustments recently adopted by PJM."<sup>50</sup> In any event, there is nothing in this statement – or in any of the Commission's or PJM's statements in the CP Proceeding (or elsewhere, for that matter) – that even remotely suggests that the Commission approved the elimination of the Holdback with an understanding that the New Specification would be in place in time for the 2015 BRA and the Transition Auctions. To the contrary, the sentence in the CP Order upon which the Joint Consumer Representatives rely expressly recognizes that forecasting issues were only under discussion, and, stakeholder materials posted at the web address referenced in the order further indicate that the New Specification is not yet ready for use.<sup>51</sup>

### **C. There Is No Basis For Further Delaying The 2015 BRA**

As with its other two options for relief, the Complaint provides no basis for delaying the 2015 BRA. As a practical matter, any market participant may, at

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<sup>49</sup> See CP Order, 151 FERC ¶ 61,208 at P 396.

<sup>50</sup> *Id.*

<sup>51</sup> See *id.* & n.310. The CP Order cites specifically to the LAS's *2015 Load Forecast Report*, but other stakeholder materials available at the web address provided in the footnote (<http://www.pjm.com/committees-and-groups/subcommittees/las.aspx>) indicate that work remains to be done before the New Specification is ready for use. For example, the draft minutes of the May 27, 2015 meeting of the LAS (posted for the later-cancelled June 24, 2015 meeting) describe next steps including meetings with PJM management and review by the Planning Committee and the Markets and Reliability Committee.

various points, believe that changes that are under consideration by PJM or stakeholders will be to its benefit, and it is difficult to imagine that any auction would ever be conducted as scheduled if PJM were forced to delay its auctions until each and every stakeholder is satisfied. As the Commission recognized in rejecting a request to delay a BRA by two months in order to facilitate participation by energy efficiency resources, such delays are “highly disruptive to the RPM market.”<sup>52</sup>

To be sure, the Commission granted PJM’s request to delay the 2015 BRA by up to three months in order to allow the Commission to act on PJM’s Capacity Performance proposal. But both PJM and the Commission went to great pains to emphasize the unique and unprecedented circumstances of that case. PJM explained:

PJM does not take this step lightly. PJM has cleared BRAs for eight successive years on a 36-month forward basis. Market participants have integrated the BRA’s 36-month forward schedule into their business practices and development schedules. In particular, developers of new entry projects have come to rely on the current BRA schedule, and some generation project sponsors have made clear to PJM that a delay could impact the costs and construction schedule of certain planned units for which they structured their financing and schedules around receiving the results of the 2015 BRA in May. Under almost any other circumstance, PJM would not seek, and likely would oppose, a BRA delay.<sup>53</sup>

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<sup>52</sup> *PJM*, 126 FERC ¶ 61,275 at P 138.

<sup>53</sup> ER15-1470 Waiver Request at 3.

The Joint Consumer Representatives opposed PJM's request, arguing that the 2015 BRA "should be conducted as scheduled under the current RPM rules."<sup>54</sup>

In granting PJM's request, the Commission emphasized the "limited scope" of that request,<sup>55</sup> and the fact that "many parties favor PJM's request for waiver because it will allow the Commission time to fully consider the merits of PJM's Capacity Performance proposal."<sup>56</sup> Notably, although acknowledging that "delaying the auction will harm [certain parties] by increasing their costs to participate in the auction," the Commission found that "PJM has proposed to conduct the auction no later than mid-August, which mitigates the potential impacts on market participants," and further noted that "any additional costs incurred by participating resources may be included in their capacity sell offers, to the extent permitted by the rules in place for the auction."<sup>57</sup>

By contrast, the Joint Consumer Representatives seek further delay in running the 2015 BRA without making any similar showing that the benefits of such delay outweigh the harm.<sup>58</sup> Indeed, the Joint Consumer Representatives do not mention, much less attempt to satisfy, the criteria that the Commission considers in deciding whether to grant tariff waivers, despite having insisted, in their protest to

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<sup>54</sup> Protest of Joint Consumer Representatives in Opposition to Waiver Request at 1, Docket No. ER15-1470-000 (filed Apr. 14, 2015) ("Joint Consumer Representatives' Protest").

<sup>55</sup> ER15-1470 Order, 151 FERC ¶ 61,067 at P 26.

<sup>56</sup> *Id.* at P 27 (citation omitted).

<sup>57</sup> *Id.* at P 28.

<sup>58</sup> See Complaint at 4 (requesting that the 2015 BRA be delayed "until all parties agree that the New Specification is ready to be used in the TAs and the BRA, which will likely be in Fall 2015.").

PJM's earlier request to delay the 2015 BRA, that the Commission "has previously granted Tariff waivers only in circumstances where" these criteria are satisfied.<sup>59</sup> To make matters worse, the Joint Consumer Representatives do not address the implications of further delaying the already-delayed 2015 BRA. If granted, their open-ended request would delay the 2015 BRA until at least November 2015 "or later if necessary . . . ."<sup>60</sup> Given the months-long review and posting process described above in Section II.A., the "necessary" delay could easily push the 2015 BRA well into the Spring and cause what is supposed to be a three-year forward auction to be a two-year forward auction.

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<sup>59</sup> Joint Consumer Representatives' Protest at 7.

<sup>60</sup> Complaint at 12.



