UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C., *et al.*	)	Docket Nos. EL25-49-000
	)	EL25-49-001
Large Loads Co-Located at Generating Facilities	)	AD24-11-000
Constellation Energy, LLC v. PJM Interconnection, L.L.C.	)	EL25-20-000 (Consolidated)

REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING OF THE INDUSTRIAL CUSTOMER COALITIONS

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure,[1] the PJM Industrial Customer Coalition ("PJMICC") and the Industrial Energy Consumers of America ("IECA") (collectively, "Industrials" or "Industrial Customer Coalitions") respectfully request clarification or, in the alternative, rehearing of portions of the Commission's December 18, 2025 Order ("Co-Located Load Order" or "Order") in the above referenced proceeding.[2]

I. INTRODUCTION

The Co-Located Load Order provides PJM Interconnection, L.L.C. ("PJM") with sweeping guidance to address customer electrical configurations involving both generation and load behind a retail customer's meter. The Order lays some groundwork for additional flexibility, clarity, and choice for consumers, and the Industrials welcome positive movement on these fronts. Yet, without key clarifications or modifications, the Order threatens to create dramatic, unwanted

[1] *See* 18 C.F.R. § 385.713.

[2] 193 FERC ¶ 61,217 (Order entered Dec. 18, 2025).

consequences to the large industrial customer base that has invested in on-site generation in the PJM region for decades to control their energy costs and advance their own reliability needs. While technical and nuanced, these questions are not minor—not for manufacturers and other traditional large users, not for the economy, and not for the grid, upon which all stakeholders depend.

The Industrials respectfully deliver a critical message from the industrial backbone of the American economy: **without key clarifications, the Order threatens to weaken some of the largest manufacturers in the PJM region, render hundreds of megawatts – if not more -- of existing retail behind-the-meter generation uneconomic, stall new projects, and further stress the resource adequacy of the electric grid at an inopportune time**. **These are concrete, measurable harms to both American industry and the PJM grid.** Therefore, the Industrials respectfully urge the Commission to grant all of the requested clarifications herein to avoid these devastating results. Further, because these critical issues remain unclarified in the Order currently, and because an inadequate record was developed on the impact of the retail behind-the-meter generation ("BTMG") rule changes and the shift to a "gross load" approach for transmission cost responsibility, the Industrials also respectfully submit the Request for Rehearing herein in the event that the Commission does not grant all of the requested clarifications herein.

II. THE CRITICAL ISSUE: EXECUTIVE SUMMARY

The Industrial Customer Coalitions include associations of leading manufacturing companies, trade-exposed electricity users, institutional users, and other energy-intensive customers representing well over $1 trillion in sales, including thousands of manufacturing

facilities and millions of family-sustaining jobs in the United States.[3] The predominant represented customers in the Industrial Customer Coalitions are American manufacturers, spanning industries as diverse as chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceuticals, building products, automotive, independent oil refining, cement, and more.[4] Many of the members of both coalitions have facilities throughout the PJM Region.

Many of these traditional industrial users have been investing in and building the PJM grid for decades. These organizations are energy-intensive, price-sensitive, frequently operate 24/7, and compete globally. For many manufacturers, energy can rank with raw materials and labor as a key cost driver. Many customers represented by the Industrial Customer Coalitions have on-site generation to offset their load and support the thermal needs of their business and manufacturing operations, and thus, many of these businesses will be directly impacted by the sweeping changes of the Order. These manufacturers and businesses are already facing significant headwinds, including labor shortages and rising electricity costs.

Unlike traditional industrial manufacturing loads, which typically evolve through deliberate, methodical planning, a substantial portion of today's large loads pursue highly accelerated interconnection timelines and unprecedented size and scale. These "super-sized" loads are driving demand for new generation and transmission infrastructure with an urgency that is reshaping the landscape of power system planning and investment and risks short-circuiting the

[3] Manufacturing employs over 15 million people in the United States[3] and contributed $2.3 trillion to U.S. Gross Domestic Product ("GDP") in 2023 (amounting to 10.2 % of total U.S. GDP, measured in chained 2017 dollars). *See* U.S. Bureau of Labor Statistics (2024 data), https://www.bls.gov/cps/cpsaat18.htm (last accessed Jan. 16, 2026). *See* U.S. Manufacturing Economy, NIST, https://www.nist.gov/el/applied-economics-office/manufacturing/manufacturing-economy/total-us-manufacturing (last accessed Jan. 16, 2026).

[4] The Industrials also represent other institutional and service customers, such as schools, data centers, and hospitals, some of which also operate retail BTMG and, as such, will suffer the same economic consequences described herein.

traditional manufacturing sector's ability to expand and grow as a key anchor in the nation's economy.

In light of this rapid growth, the Industrials support the Commission's goal of adding clarity and choice to the operation of the transmission system. The Industrials also welcome faster energization for generation and new loads, and improved flexibility for connecting loads. However, without key clarifications, the Order threatens to add significant expense to long-term retail behind-the-meter investments or to render them economically unviable for the retail customers who own and operate them.

The Industrials' central concern revolves around sweeping changes to the retail BTMG rules, including the removal of "netting" for on-site generation. In particular, the removal of retail BTMG rules above a certain, yet-undetermined threshold will dramatically increase costs for many businesses with BTMG. It will also discourage future investments in generation at the exact time the energy community is seeking resource adequacy. For over 20 years, industrial customers have relied on PJM's retail BTMG rules, making major investments in on-site generation with the understanding that key billing determinants would be based on netted (that is, *actual*) use of the system. Simply affording existing retail BTMG a three-year transition period or grandfathering existing contractual arrangements and then eliminating the netting approach will not resolve the underlying concern for multi-decade capital investments.

Given the limited record on retail customers' use of BTMG, the Commission may not be fully aware of the damaging effects on industrial customers of abandoning the long-held netting approach. Removal of retail BTMG rules is a dramatic change of direction—for some industrial customers, transmission and capacity cost savings are a critical factor that makes it worth the investment to build and operate generation on their premises. Absent a reasonable alternative,

applying a "gross load" measurement to retail BTMG for Network Integration Transmission Service ("NITS") and, subject to the clarification requested herein, capacity could seriously damage existing users' economic viability by requiring transmission and capacity payments that ignore power flow and demands at the meter during peak hours.

Such an approach implicates not only the economic viability of on-site generation but also foundational cost-causation principles. Because there is currently a significant financial incentive for on-site generation to operate consistently at key hours, retail BTMG owners design, plan, and operate their systems accordingly to avoid straining the grid. This has significant benefits for the grid, making it extremely rare for retail BTMG units to be down during peak hours. However, the Order does not take into consideration the performance of such generating units, many of which are cogeneration Qualifying Facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 ("PURPA").[5] BTMG operators, including cogeneration QFs, have every incentive to maximize generation output during key hours. Removal of the "netting" measurement for NITS and other key billing determinants creates a void of incentives and cost management for energy-intensive businesses. While the Order provides for new transmission service offerings that meet certain needs, including Firm Contract Demand service and Non-Firm Contract Demand service, these services do not necessarily account for back-up and maintenance power. Thus, retail BTMG customers may lose their ability to manage costs *even if they have a perfect record of generator operation at key times.* Worse, retail BTMG customers may lose their ability to manage costs *even if their load and generation are synchronized* or if they *never rely on transmission services.* This creates an enormous cost-causation gap, contrary to long-standing Commission precedent.

[5] Public Utility Regulatory Policies Act, Pub. L. 95–617, title II, § 210, Nov. 9, 1978, as amended (codified at 16 U.S.C § 824a-3).

As a result, removal of retail BTMG "netting" rules should not be implemented without ensuring retail BTMG customers can access alternatives that enable them to manage capacity and transmission costs in accordance with actual system use. This is particularly true for businesses operating cogeneration QFs, which have a right to be served with back-up and maintenance power under regulations enacted to implement PURPA.[6]

While the Industrials recognize the importance of PJM planning for loads that may suddenly come online, the PJM system has never been designed based on "potential load." No reasonable system could be designed this way. Consequently, it would be unjust and unreasonable—not to mention unfair—to charge retail BTMG on a gross basis without either (1) accounting for the reliability of the generating unit; or (2) allowing the retail customer to choose transmission and capacity options that fit with the retail BTMG configuration (e.g., back-up power). Put simply, generating units behind a customer's meter have long been a part of creating a *stable* power system and have incentivized generators to operate during key hours of grid congestion.

An additional concern is that the Order is not clear whether the new transmission services PJM must create for Co-Located Load ("New Services") must also be offered to load with minimal or no on-site generation. To best effectuate the Commission's attempt to introduce choice, flexibility, and clarity into the transmission and capacity planning process in PJM, the Commission should clarify that all load—including Co-Located Load, retail customers with BTMG, and retail customers without BTMG—must be provided access to the New Services. Such an approach reduces the risk of an unduly discriminatory result by providing similarly situated customers with identical transmission and capacity service options; offers optionality and choice; promotes greater

[6] 18 C.F.R. § 292.305.

uniformity, simplicity, and efficiency; and encourages greater competition and investment. This approach also has the potential to clarify and streamline the PJM Regional Transmission Expansion Planning ("RTEP") process, thereby avoiding transmission system overbuilding and unjust and unreasonable cost shifts.

In sum, if the Commission proceeds to remove large users (above a yet-undetermined threshold) from eligibility under the retail BTMG rules, the Industrials request the following clarifications:

1. QFs under PURPA will be provided a stand-by rate and/or credited for capacity based on the reliability of the generating unit.

2. New transmission services outlined in the Order will be made available to retail BTMG customers and load-only customers, not just Co-Located Load.

3. Removal of the retail BTMG "netting" rules will be applicable to transmission services and specified ancillary services only, not capacity obligations.

4. Any retail BTMG applicability threshold implemented by the Commission will be sufficiently high to permit traditional manufacturers and institutional customers to continue to net generation, consistent with actual use of the transmission system.

The Industrials value stability and clarity in managing their energy costs, investments, and related issues. The Industrials seek a durable resolution of the issues raised in the above-captioned proceeding. The above clarifications would substantially mitigate concerns about the Order while maintaining the positive momentum the Commission seeks by offering a suite of transmission services tailored to different customer types.

III. STATEMENT OF ISSUES/ERRORS FOR ALTERNATIVE REHEARING REQUEST

If the Commission grants all of the above requested clarifications in full, then the Commission will have absolved the issues and errors raised in the Industrials' request for rehearing. However, if the Commission does not grant the requested clarifications in full, the

Industrials seek rehearing with respect to the several violations of the Administrative Procedures Act, on the following issues:

1. The Co-Located Load Order errs because the changes to retail BTMG rules in the Order are outside the scope of the Show Cause Order.

2. The Co-Located Load Order errs because it does not reflect reasoned decision-making regarding retail BTMG because the Commission did not develop a sufficient record on which to base its retail BTMG decisions, resulting in conclusions that are arbitrary and capricious.

3. The Co-Located Load Order indirectly effectuates an unlawful taking of private property without providing just compensation in violation of the Fifth Amendment.

4. The Co-Located Load Order errs by failing to address its own prior precedent on cost-causation or to demonstrate that the retail BTMG rules were unjust and unreasonable.

5. The Co-Located Load Order errs by failing to establish Commission jurisdiction over customer generation behind the meter that is not used in PJM's energy or capacity markets, as defined in the PJM Tariff.

6. The Co-Located Load Order's grandfathering provision and megawatt-based applicability threshold fail to correct the defects created in the Order.

IV. PROCEDURAL HISTORY

On February 20, 2025, the Commission unanimously voted to launch a review of issues associated with the co-location of large loads at generating facilities in PJM, including whether the PJM tariff should establish rules to provide clarity while ensuring grid reliability. The February 20, 2025, Order[7] ("Show Cause Order") instituted a show cause proceeding involving PJM and the PJM Transmission Owners[8] and combined the records of two pending proceedings due to the common issues associated with each docket.[9] The Show Cause Order found that PJM's tariff did

[7] *Order Instituting Proceeding Under Section 206 of the Federal Power Act and Consolidating with Other Proceedings*, 190 FERC ¶ 61,115 (Order entered Feb. 20, 2025).

[8] The PJM Transmission Owners are a group of transmission owners who are named parties in the Show Cause Order.

[9] The Commission combined the FERC's November 2024 technical conference on large load co-location (Docket No. AD24-11) and a complaint filed on November 22, 2024, by Constellation Energy Generation, LLC, against PJM (Docket No. EL25-20) to form a consolidated proceeding, identified under Docket No. EL25-49.

not appear to sufficiently address the rates, terms, and conditions of service that apply to co-location arrangements. The Commission directed PJM and the PJM Transmission Owners to explain why the PJM Tariff remains just and reasonable or, alternatively, what changes to the PJM Tariff would remedy the Commission's identified concerns.[10] The Commission also directed that interested entities may respond within 30 days of PJM's filing, addressing either or both of: (1) whether the Tariff remains just and reasonable and not unduly discriminatory or preferential; and (2) if not, what changes to the Tariff should be implemented as a replacement rate.[11] On March 24, 2025, Answers were filed by PJM and several other parties, including some PJM Transmission Owners. Many other parties filed responsive Answers, including the Industrials.

On December 18, 2025, the Commission issued the Co-Located Load Order, requiring PJM to implement changes to its tariff and initiating a paper hearing, among other instructions. The Industrials respectfully submit this Request for Clarification or, in the Alternative, Rehearing in response to the Co-Located Load Order.

V. REQUEST FOR CLARIFICATION

The Industrials respectfully request clarification regarding four issues: (1) the ability for cogeneration QFs and other customers with retail BTMG to have access to back-up power service or another reasonable alternative under the "gross load" calculation approach; (2) the applicability of the new transmission services PJM must implement under the Order; (3) the applicability of "netting" rule changes to capacity obligations; and (4) a minimum applicability threshold for inclusion in retail BTMG netting rules.

[10] Show Cause Order at P 65.

[11] Show Cause Order at P 87.

A. Issue #1. The Industrials seek clarification on whether cogeneration QFs under PURPA will be provided access to back-up and maintenance power at just and reasonable rates and/or be credited for capacity based on the reliability of their generating units.

PURPA is codified as Section 210 of the Federal Power Act ("Section 210").[12] Congress sets forth the policy behind PURPA in Section 210(a), explaining that the purpose of Commission rules implementing PURPA are to "*encourage* cogeneration and small power production, and to *encourage* geothermal small power production facilities of not more than 80 megawatts capacity."[13] Under PURPA, electric utilities are required to offer QFs the opportunity to sell electric energy and to purchase electric energy output from those QFs.

PURPA has been a boon to manufacturers and the electric grid for well over four decades, providing market access where such access did not previously exist, taking strain off the grid, and supporting American industry by allowing for economic means of reducing energy costs. Many QFs are highly efficient facilities, including cogeneration facilities, which produce both electricity and heat from the same fuel source, then making use of the "waste heat" in industrial operations. QFs are entitled to have access to supplementary power, back-up power, maintenance power, and interruptible power, pursuant to enacting regulations.[14]

While PURPA permits many kinds of generation to qualify as QFs, many QFs come in the form of cogeneration facilities. Pursuant to PURPA, "the electrical, thermal, and chemical output" of a qualifying cogeneration facility must be "used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility."[15] As set

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[12] 16 U.S.C. § 824a-3.

[13] 16 U.S.C. § 824a-3(a) (emphasis added). PURPA requires electric utilities to offer to "(1) sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities" and to offer to "(2) purchase electric energy from such facilities." *Id.*

[14] 18 C.F.R. § 292.305.

[15] 16 U.S.C. § 824a-3 (n)(1)(A)(ii).

forth in greater detail in the Request for Rehearing below, these facilities are deeply integrated with the operations of the adjacent plant or facility. In some cases, generation and load are tightly coupled, so that if the generator goes offline, the load promptly follows because the manufacturing facility cannot function without the steam output from the generation process.

Consequently, strong operational and financial incentives exist for cogeneration facilities to operate efficiently, even above the ordinary cost-savings incentives of all generators. Even more notably, to maintain QF status, Commission regulations require certain QFs to meet specified efficiency standards.[16] Consequently, for both operational and regulatory reasons, many QFs operate with a high capacity factor, reliably operating during transmission peaks. As a result, the Industrials are deeply concerned that the Co-Located Load Order has been issued without clarification of whether and how the Order will apply to cogeneration QFs. The removal of netting rules will directly harm large American manufacturing facilities that have invested substantial resources into developing and maintaining on-site generation. The removal of netting rules, without consideration of back-up and maintenance service rights and obligations, also may contradict Commission regulations that require such services for cogeneration QFs.

As described above, Congress's mandate under PURPA is to encourage cogeneration, small power production, and geothermal energy production. In contrast to this mandate, with the removal of netting rules and without reasonable alternatives (such as a PJM-based back-up transmission rate, or an exemption from the "gross load" approach), cogeneration QFs that are operating excellently with a high capacity factor will suddenly be paying for transmission service that they do not use. Moreover, the Firm Contract Demand and Non-Firm Contract Demand combination of new transmission service options outlined in the Order might work for planned

[16] 18 C.F.R. § 292.205.

generation outages, but they do not appear to account for forced generation outages. For example, while Non-Firm Contract Demand service would be available on an hourly basis, it does not appear to provide for occasional forced outages—instead, it forces a customer to choose between paying full price for occasional or back-up service or risk penalties. Removal of netting without an available alternative will be devastating to many industrial entities, including those that own cogeneration QFs, and in turn, damage the grid by rendering on-site generation uneconomic (and effectuating an unlawful taking of private property), chilling future on-site generation investment, and harming both American manufacturing *and* efforts to resolve the pending resource adequacy crisis in PJM. Vivid illustrations of the damage this will cause American manufacturers and other large businesses and institutions are provided in greater detail in the Request for Rehearing below.

While the Commission's goal of uniformity and contract-based transmission services offers some potential benefits, the Order, absent appropriate clarifications, strikes a blow against resource adequacy—a critical issue that FERC is addressing in other dockets.[17] By harming QFs and other retail BTMG arrangements, the Order also threatens to harm American industry at a time when it is under pressure from, among other things, labor shortages and international competition. To avoid these results, the Commission should clarify that either (1) cogeneration QFs are exempt from the "gross load" approach mandated under the Order; or (2) PJM must include a reasonable "Back-up Power" transmission option that retail BTMG customers, including QFs, can purchase

[17] The pending resource adequacy crisis in PJM has gained significant attention in recent months, at FERC and elsewhere. In addition to various FERC proceedings, PJM and its stakeholders have been working for months to address pending resource adequacy concerns through the Critical Issue Fast Path ("CIFP") process. Further, a collaboration of the White House and PJM regional governors recently announced a proposal to address the resource adequacy and cost crisis. However, the Commission's Order threatens to go the wrong direction by *disincentivizing existing generation*—essentially, what PJM was criticized for in the Department of Energy's Fact Sheet announcing its initiative to provide long-term revenue certainty to promote development of new generation. *See FACT SHEET: Trump Administration Outlines Plan To Build Big Power Plants Again*, available at https://www.energy.gov/articles/fact-sheet-trump-administration-outlines-plan-build-big-power-plants-again (last visited Jan. 19, 2026).

alongside the other New Services PJM must offer. Otherwise, QFs and other similarly situated BTMG customers will pay for full use of the transmission system based on "potential" use, which is inconsistent with Commission precedent supporting charging customers based on "actual use" of the system.[18]

B. Issue #2. The Industrials seek clarification that PJM's new transmission services must be made available to load-only customers with load flexibility.

The Order defines "Co-Located Load" as a "configuration [that] refers to end-use customer load that is physically connected to the facilities of an existing or planned Customer Facility on the Interconnection Customer's side of the Point of Interconnection to the PJM Transmission System."[19] In turn, the PJM Tariff defines "Customer Facility" as "Generation Facilities or Merchant Transmission Facilities interconnected with or added to the Transmission System pursuant to an Interconnection Request under Tariff, Part IV."[20] The Tariff does not define "Generation Facilities," but uses the term broadly.[21]

In light of this language, the Industrials seek clarification that, to the extent PJM must make the New Services available to Co-Located Load, it must make the New Services available broadly to load customers with minimal retail BTMG or even no retail BTMG. Such an approach would align with the natural gas industry's long history of large gas consumers electing how much service they purchase. Making the New Services available to all load customers avoids unduly

[18] It is worth noting that qualifying cogeneration facilities, which must be "used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility," share characteristics with other non-QF BTMG units, which are generally developed behind the retail meter to support on-site operations and offset retail load.

[19] Co-Located Load Order at P 3.

[20] PJM, Intra-PJM Tariffs, OATT, § I.1 Definition – C-D (45.0.1).

[21] In contrast, the term "Generating Facility" is defined in Parts VII and VIII of the Tariff.

discriminatory treatment; provides benefits to all customers; supports PJM and the PJM Transmission Owners in system planning; and reduces the risk of cost shifts.

First, providing the New Services to all transmission customers reduces the risk of an unduly discriminatory result. If the PJM Tariff changes directed by the Commission go into effect as designed—treating large retail BTMG configurations and Co-Location Arrangements similarly—the New Services should be available to retail BTMG customers and load-only customers to avoid undue discrimination between customers with generation and customers without generation. Many large load customers can curtail their load at key times and control the amount of transmission service they use and when they use it. Allowing those customers to access Firm Contract Demand, non-Firm Contract Demand services, and the interim, as-available NITS service, would provide the same planning and investment benefits to customers and avoid giving undue preference to one group of customers over another where grid impacts are similarly situated.

Second, ensuring the New Services are available to all load avoids potential cost shifts that would occur if similarly situated customers were given radically different options depending only on whether they had a small/perfunctory generating facility on site to qualify them.

Third, the New Services offer optionality and choice, potentially increasing uniformity, simplicity, and efficiency, which in turn could lead to greater competition and investment. The design of the New Services, as explained in the Order, is similar to how interstate natural gas pipeline service works in the United States; in the natural gas context, customers may choose between firm and interruptible options, with associated curtailment hierarchy. In contrast, there is currently little guidance on curtailment procedures in the event of transmission congestion or resource adequacy shortfalls. In theory, the New Services provide additional options for customers to balance reliability and cost efficiently. If these benefits are offered to Co-Location

Arrangements, they should also be made available to retail BTMG customers and load-only customers.

Finally, enabling load to contract ahead for needed transmission and capacity has the potential to make the PJM RTEP planning process more efficient, leading to efficient investment and avoiding overbuilding the transmission system. Like in the natural gas context, contract-based options provide transparency not only to customers but also to system planners.

C. Issue #3. The Industrials seek clarification that the removal of "netting" rules for retail BTMG will be applicable to transmission and specified ancillary services only, not to capacity obligations.

The Co-Located Load Order does not provide clear direction on the removal of "netting" rules as they apply to PJM Capacity obligations. The Industrials seek clarity that the Order's removal of the "netting" rules for retail BTMG is applicable only to transmission and specified ancillary services and does not affect the netting for capacity obligations. Schedule 8 of the PJM Reliability Assurance Agreement ("RAA") specifically states that the "Obligation Peak Load" is net of operating Behind the Meter Generation. This directive in the RAA is not part of the retail BTMG rules but rather addresses the determination of LSE obligations rather than individual retail customer obligations. The determination of retail customers' capacity tags is made by individual electric distribution companies. Like with transmission services, large industrial and institutional users have a variety of configurations and approaches to meeting their capacity requirements, including behind-the-meter configurations, direct contracts, and purchases from PJM's capacity market. As demonstrated in Section VI.B.2 below (part of the Request for Rehearing) regarding transmission services, the Commission should develop a full record before making major changes to the operations of American manufacturing plants and other large users that depend on long-established PJM rules. The same applies to major changes to the PJM capacity construct. As Section VI.B.2 illustrates, many large manufacturers have made enormous capital outlays to create

and maintain on-site generation. For many of these customers, the capacity and transmission savings by reducing reliance on the electric grid is substantial.

In its Order, the Commission has not provided an analysis or reasoning concerning the impact of the BTMG rule changes on retail customers' capacity obligations. Nor does the Order address alternate capacity products that a retail customer with BTMG could elect. The Industrials seek clarification on whether this lack of specificity means that, in the Order, the Commission is not directing changes to "netting" rules pertaining to capacity.

D. Issue #4. The Industrials seek clarification that any retail BTMG applicability threshold implemented by the Commission will be sufficiently high to permit traditional manufacturers and institutional customers to continue to net generation, consistent with actual use of the transmission system.

As explained in greater detail in Section VI.B.5 of the Request for Rehearing below, if the Commission maintains a "gross load" approach and pursues a mandatory threshold, the FERC should clarify that the threshold will be set at a sufficiently high level to permit traditional manufacturers and industrial load to continue netting, to avoid stranded costs, and to continue to benefit from their own decades-long energy infrastructure investments.[22] As demonstrated by the examples in VI.B.2 below, a threshold of at least 200 MW would, as a practical matter, appropriately recognize the major energy investments most existing industrial and institutional loads have made over decades, consistent with the "actual use" principle, without making uneconomic their resource adequacy contributions.[23] Such a threshold would permit the

[22] Such investments are not limited to capital outlay, but also include personnel, expertise, fuel, maintenance contracts, and much more. Loss of these facilities, which may occur in some cases if a sufficiently high threshold is not set, would be a significant setback to PJM's resource adequacy efforts and to grid reliability generally.

[23] We understand that industrial combined heat and power ("CHP") units may, in certain cases, exceed 200 MW. Given the Administration's interest in reshoring American manufacturing and the pressing need to keep long-established generation units economic, 200 MW may be insufficient.

Commission to still address the primary concern driven by new, super-sized, large load entrants.[24] As stated by a large group of PJM transmission owners in the currently pending Large Load ANOPR Proceeding, large data centers of 200 MW or greater are the primary drivers of load growth.[25]

Industrial and institutional users require stability and clarity with which to plan, invest, and grow. The Industrials respectfully request that the Commission grant the clarifications requested above.

VI. REQUEST FOR REHEARING

The Industrial Coalitions respectfully request rehearing on the Co-Located Load Order, as set forth below.

A. STATEMENT OF ISSUES / SPECIFICATION OF ERRORS

Pursuant to Rule 713(c),[26] the Industrials respectfully submit that the Co-Located Load Order's determinations with respect to PJM's retail Behind-the-Meter Generation rules are arbitrary and capricious, do not reflect reasoned decision-making, are insufficiently supported, and result in a rate outcome that is unjust, unreasonable, unduly discriminatory, and preferential. Due to the specific errors identified herein and the lack of a record upon which to base these determinations, the Co-Located Load Order should be modified on rehearing if any of the

[24] Paragraph 186 of the Order explains that the Commission's finding on BTMG is because "circumstances have changed since the Commission approved PJM's retail BTMG rules." The Commission cites to PJM's explanation that the BTMG rules were designed for "substantially smaller loads (like a warehouse with solar panels) and not on the scale of large data centers." Historically, large industrial and institutional customers have relied on retail BTMG rules for many years. However, super-sized new load entrants, which dwarf even the largest industrial customers, are raising new questions about transmission planning and cost allocation.

[25] Reply Comments of the Indicated PJM Transmission Owners, *Interconnection of Large Loads to the Interstate Transmission System*, Docket No. RM26-4-000 (Dec. 5, 2025) ("To the extent the Commission asserts jurisdiction over large load interconnections, it should adopt a sufficiently narrow definition of 'large load customer' limited to large (200 MW or greater) data center customers. It is those customers that are primarily driving load increases.").

[26] 18 C.F.R. § 385.713(c).

Clarifications requested herein are not granted. The Industrials respectfully specify the following errors:

1. The Co-Located Load Order errs because the changes to retail BTMG rules in the Order are outside the scope of the February 20, 2025 Show Cause Order. 18 C.F.R. § 385.209; *PJM Interconnection, L.L.C.*, 185 F.E.R.C. ¶61,158 (Order entered Nov. 30, 2023); *Tex. E. Transmission, LP*, 179 F.E.R.C. ¶61,201; *Am. Elec. Power Serv. Corp. Aquila Merch. Servs.*, 103 FERC ¶61,020 (Order entered Jan. 22, 2004).

2. The Co-Located Load Order errs because it does not reflect reasoned decision-making regarding retail BTMG, because the Commission did not develop a sufficient record on which to base its retail BTMG decisions, resulting in conclusions that are arbitrary and capricious. 16 U.S.C. § 824d, 16 U.S.C. § 825l(b); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *ExxonMobil Oil v. FERC*, 487 F.3d 945 (D.C. Cir. 2007); *New York v. FERC*, 535 U.S. 1 (2002); *Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000); *North Carolina Util. Comm'n v. FERC*, 42 F.3d 659 (D.C. Cir. 1994); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).

3. The Co-Located Load Order errs by indirectly effectuating takings of private property at several manufacturing facilities in the PJM grid without providing just compensation pursuant to the Fifth Amendment of the United States Constitution. U.S. Const. amend. V.; *Lingle v. Chevron U.S.A.*, 544 U.S. 528 (2005); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Penn Central Trans. v. New York City*, 438 U.S. 104 (1978).

4. The Co-Located Load Order errs by failing to address its own prior precedent on cost-causation or to demonstrate that the retail BTMG rules were unjust and unreasonable. 16 U.S.C. § 824d(a)-(e); 16 U.S.C. § 824e(a),(d); *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017); *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, (2016), *as revised* (Jan. 28, 2016); *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486 (D.C. Cir. 1984); *New England Power Generators Ass'n, Inc. v. FERC*, 881 F.3d 20 (D.C. Cir. 2018); *Missouri Public Service Com'n v. FERC*, 234 F.3d 36 (D.C. Cir. 2000); *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150 (2016); *New York v. FERC*, 535 U.S. 1 (2002).

5. The Co-Located Order errs by failing to establish Commission jurisdiction over customer generation behind a retail meter that is not used in PJM's energy or capacity markets, as defined in the PJM Open Access Transmission Tariff. 16

U.S. Code § 824d(a), 16 U.S. Code § 824(b)(1); *Detroit Edison Co. v. FERC*, 334 F.3d 48, 53 (D.C. Cir. 2003).

6. The Co-Located Load Order's transition and grandfathering provisions and undefined megawatt-based applicability threshold fail to correct the defects created in the Order.

B. ARGUMENT

For many years, industrial and institutional customers have constructed, maintained, and expanded on-site generation as a part of their strategy to manage energy costs. Many of these entities have invested tens or even hundreds of millions of dollars to build, connect, deploy, and operate these units. These generating facilities have, in turn, produced many benefits—reducing transmission congestion, decreasing dependence on the capacity and energy markets, and providing additional stability to the grid. They have enabled manufacturers and other energy-intensive customers to reduce energy spend and increase their own economic viability. The "net load" approaches of PJM's NITS and capacity constructs have provided significant incentives for retail BTMG customers to operate their generating units efficiently and at the proper times, thereby reducing net flow from the grid when the grid is congested.

The Commission's Co-Located Load Order poses a significant threat to these multi-decade investments. At a high level, the Order fails to demonstrate that the changes to retail BTMG rules are consistent with cost causation. Instead, the Order appears to weaken a structure that has incentivized efficient use of the grid for decades. Further, the Order acts in an unduly discriminatory manner by appropriately retaining peak management for the load side of the equation but not for customers with generation. For industrial customers who have limited curtailment options but who have invested in on-site generation, this may prove to be the worst of both worlds—they will be charged "as if" they were fully using the transmission system, while sophisticated new data centers that *do* regularly use the transmission system can shift load to other

facilities during peak times. In other words, the Commission's approach is "Peak management for me (load) but not for thee (generation)." This approach is unduly discriminatory because it treats similarly situated customers differently based on their behind-the-meter configurations, rather than on actual grid impacts. The Order, if not modified, will measure "actual use" for some customers and "potential use" for others. This hybrid structure is unduly discriminatory and without a reasoned basis. To be clear, the Industrial Customer Coalitions support facilitating customers' ability to manage their loads efficiently and effectively, especially during times of high prices and system stress. The Commission's policies should advance such customer-directed actions, not penalize them.

In fulfilling its duty to determine just and reasonable rates, courts have consistently affirmed the Commission's responsibility to substantiate its decisions with reasoned, principled decision-making. The D.C. Circuit has held that FERC must "adequately explain how the evidence it relied on supported the conclusion it reached."[27] Elsewhere, the D.C. Circuit held that the FERC's broad mandate to set just and reasonable rates under the FPA did not relieve FERC of the requirement to engage in reasoned decision-making.[28] The D.C. Circuit also found that the FERC failed to meet its obligation when the Commission did not adequately explain the rationale for its rate-setting decisions, emphasizing that reasoned and principled decision-making is essential.[29] While the Commission's determinations regarding technical issues are entitled to deference,

[27] *Emera Maine v. FERC*, 854 F.3d 9, 28 (D.C. Cir. 2017) (citing *Wis. Gas Co. v. FERC*, 770 F.2d 1144, 1156 (D.C. Cir. 1985)).

[28] *New England Power Generators Ass'n, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018).

[29] *See Missouri Public Service Com'n v. FERC*, 234 F.3d 36, 40 (D.C. Cir. 2000). This comports with the design of the FPA, where Commissioners are directed to give their reasoning even where the Commission cannot come to a decision due to a tie vote. 16 U.S. Code § 824d(g)(1).

deference is not owed if the FERC "has not substantiated the application of its policy, either through the development of specific facts or by making a reasoned explanation."[30]

Here, the Commission has failed to adequately explain how the evidence it relied on led to the conclusion it reached. The Order suffers from defects of due process and substance. First, the Order requires changes that are outside the scope of the Show Cause Order. The Order did not make clear that retail BTMG rules were being considered for major changes. Second, the Commission did not develop a sufficient record to support major decisions concerning retail BTMG. Third, the Order indirectly effectuates an unlawful taking of private property. Fourth, the Commission did not address its own contrary precedent on retail BTMG, particularly as regards to its prior determinations on cost causation. Fifth, the Order does not sufficiently explain the legal basis for asserting jurisdiction over retail customers with generation behind their meter that is not otherwise used in PJM's energy or capacity markets and does not use the PJM transmission system. Finally, the megawatt-based threshold proposed by the Commission and the proposed transition and grandfathering provisions, while possibly mitigating some negative effects of the Order, do not resolve the fundamental flaws of the Order. However, if the Commission selects a sufficiently high threshold to allow traditional industrial users to continue net generation, consistent with their actual use of the system, it will substantially reduce the negative impact of the Order and avoid creating stranded costs and lost investments for America's manufacturing sector. A threshold of at least 200 MW for retail BTMG, or an exemption for cogeneration QFs, would allow the Commission to focus on the impacts of new, super-sized load entrants without damaging the long-developed behind-the-meter systems built by industrial and institutional customers.

[30] *El Paso Elec.*, 832 F.3d 495, 503 (5th Cir. 2016) (quoting *Fla. Gas Transmission Co. v. FERC*, 876 F.2d 42, 45 (5th Cir. 1989)).

1. The Co-Located Load Order errs because the changes to retail BTMG rules in the Order are outside the scope of the Show Cause Order.

The Administrative Procedures Act provides that a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be … arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[31] When factual issues are in dispute in an adjudicated proceeding, a hearing is appropriate.[32]

The Commission's Rules of Practice and Procedure ("Rules") govern the show cause order process. Rule 209(b) states, "A notice of examination or an order to show cause will contain a statement of the matters about which the Commission is inquiring, and a statement of the authority under which the Commission is acting. The statement is tentative and sets forth issues to be considered by the Commission."[33] Here, the Commission's Show Cause Order that set the scope of the proceeding to Co-Located Load and Co-Location Arrangements, not to "all behind-the-meter arrangements."[34] This is evident for several reasons. First, the Show Cause Order stated that

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[31] 5 U.S.C. § 706.

[32] *Gen. Motors Corp. v. Fed. Energy Regulatory Com.*, 211 U.S. App. D.C. 202, 656 F.2d 791, 794-95, 798 (1981). (D.C. Circuit explained that "FERC need not hold an evidentiary hearing when no issue of material fact is in dispute," but also "remind[ed] the Commission, however, that it bears a weighty burden in justifying a denial of an evidentiary hearing" (citing *Public Service Co. of New Hampshire v. FERC*, 195 U.S. App. D.C. 130, 600 F.2d 944, 955 (D.C. Cir. 1979); *Citizens for Allegan County, Inc. v. FPC*, 134 U.S. App. D.C. 229, 414 F.2d 1125, 1128 (D.C. Cir. 1969; *Independent Bankers Ass'n of Georgia v. Board of Gov. of Federal Reserve System*, 170 U.S. App. D.C. 278, 516 F.2d 1206, 1270 (D.C.Cir.1975)).

[33] 18 C.F.R. § 385.209.

[34] The Show Cause Order stated:

> As discussed below, based on the combined records of the technical conference and the Constellation complaint proceeding, we find that PJM's Tariff appears to be unjust, unreasonable, unduly discriminatory or preferential. We institute a show cause proceeding pursuant to section 206 of the FPA, and we direct PJM and the Transmission Owners, within 30 days of the date of the order, to either: (1) **show cause as to why the OATT, the Amended and Restated Operating Agreement of PJM, and Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (the Tariff) remains just and reasonable and not unduly discriminatory or preferential without provisions addressing with sufficient clarity or consistency the rates, terms, and conditions of service that apply to co-location arrangements**; or (2) explain what changes to the Tariff would remedy the identified concerns if the Commission were to determine that the Tariff has in fact become unjust and unreasonable or unduly discriminatory or preferential

the PJM Tariff "appears to be unjust, unreasonable, unduly discriminatory or preferential" because of a *lack* of clear or consistent provisions for Co-Location Arrangements. In contrast, retail BTMG has existed in PJM's Tariff for decades.

Second, a Co-Location Arrangement (as newly defined, as it does not exist currently in the Tariff) is a wholesale-system-impacting load integration construct, in contrast to retail BTMG, which is a retail load-modification construct. In the Show Cause Order, the Commission adopted PJM's definition of "Co-Located Load" in a PJM-published guidance document, *PJM Guidance on Co-Located Load* ("Guidance Document") (since rescinded by PJM, pending the Commission's direction in this docket).[35] The definition, as quoted in the Show Cause Order, is:

> A co-located load configuration refers to end-use customer load that is physically connected to the facilities of an existing or planned Customer Facility on the Interconnection Customer's side of the Point of Interconnection ("POI") to the PJM Transmission System (co-located Customer Facility).[36]

The Show Cause Order defined Co-Location Arrangements as referring to both the Co-Located Load and the associated generator.[37] The Co-Located Load Order adopted these definitions. It is clear from the Guidance Document, upon which the Commission relied, that Co-Location Arrangements include a "Generating Facility" as the term is used in the Generation Interconnection Agreement ("GIA") and Wholesale Market Participation Agreement ("WMPA") in Part IX of the PJM Tariff and "Participant Facility" as used in the pre-Transition Date WMPA.[38] Further, the

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> and, therefore, proceeds to establish a replacement Tariff. We also consolidate the show cause proceeding with the technical conference and Constellation complaint proceeding.

Show Cause Order at P 2 (emphasis added).

[35] *PJM Guidance on Co-Located Load* (Mar. 22, 2024) (updated Apr. 17, 2024), available at https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/pjm-guidance-on-co-located-load.pdf (last visited Jan. 16, 2026).

[36] Show Cause Order at P 3, footnote 4 (citing PJM Guidance Document at 1). The Show Cause Order defines Co-Location Arrangement as "[…]the entire arrangement, both the co-located load and the co-located generator […]."

[37] *Id.*

[38] Guidance Document at 1, footnote 1.

Guidance Document clarifies that it uses the term "Interconnection Customer" synonymously with "Project Developer" as used in the GIA and WMPA and "Wholesale Market Participant" as used in the pre-Transition Date WMPA.[39]

In contrast to Co-Location Arrangements, retail BTMG is defined in the context of retail load, and retail BTMG generation by definition does not include sales for resale or capacity designated as a Generation Capacity Resource. The PJM Tariff states:

> "Behind The Meter Generation" shall refer to a generation unit that delivers energy to load without using the Transmission System or any distribution facilities (unless the entity that owns or leases the distribution facilities has consented to such use of the distribution facilities and such consent has been demonstrated to the satisfaction of the Office of the Interconnection); provided, however, that Behind The Meter Generation does not include (i) at any time, any portion of such generating unit's capacity that is designated as a Generation Capacity Resource; or (ii) in an hour, any portion of the output of such generating unit that is sold to another entity for consumption at another electrical location or into the PJM Interchange Energy Market.[40]

As seen in the Tariff definition, retail BTMG definitionally does not use the PJM Transmission System. BTMG is a retail load-modification construct, whereas Co-Located Load is a wholesale-system-impacting load integration construct.

Third, the Show Cause Order refers to BTMG as a distinct arrangement from Co-Location Arrangements. BTMG, as a defined PJM Tariff construct, is scarcely mentioned in the Show Cause Order. In Paragraphs 87-88 of the Show Cause Order, the Commission instructed PJM and the Transmission Owners to address a large number of specific topics ("Briefing Questions").[41]

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[39] Guidance Document at 1, footnote 2.

[40] PJM, Intra-PJM Tariffs, OATT, § I.1 Definition – A-B (22.0.0).

[41] Show Cause Order at PP 87-88.

BTMG is mentioned only once in the Briefing Questions, and it is discussed as a distinct arrangement from Co-Location Arrangements.[42] Specifically, the Show Cause Order states:

> Parties may also address how co-located loads are similar to or disparate from other types of arrangements where load and generation share the same point of interconnection (such as Behind the Meter Generation as defined in PJM's Tariff or non-retail behind the meter generation) and should consider how any proposed replacement rate would interact with **these other arrangements**.[43]

Clearly, retail BTMG is a distinct concept from Co-Located Load. The Commission did not direct parties to "show cause" as to the justness and reasonableness of Tariff rules concerning retail BTMG. Instead, it directed PJM and the Transmission Owners to show cause why the Tariff, the PJM Operating Agreement, and the RAA were just and reasonable *without* adequate provisions addressing the rates, terms, and conditions of service. In contrast to this show cause directive, retail BTMG is defined and outlined in PJM's Tariff.

Because both the PJM Tariff and this proceeding treat Co-Located Load (with its associated generation) and retail BTMG (with its associated load) as distinct concepts, a determination affecting retail BTMG must not be treated as a mere corollary of a Co-Located Load ruling. Each construct carries independent legal and operational consequences and therefore requires independent notice and analysis.[44] To avoid an arbitrary and capricious result under Rule 209 and the Administrative Procedures Act, the Commission should reconsider any determinations that were not properly noticed as within the scope of the Show Cause Order.[45] Consequently, he

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[42] Show Cause Order at P 88(iv).

[43] Show Cause Order at P 88 (emphasis added).

[44] 5 U.S. Code § 706(2)(A).

[45] The Commission often limits its holdings to the scope set for hearing in its initial orders. *See, e.g., PJM Interconnection, L.L.C.*, 185 F.E.R.C. ¶ 61,158 (Order entered Nov. 30, 2023); *Tex. E. Transmission, LP*, 179 F.E.R.C. ¶ 61,201; *Am. Elec. Power Serv. Corp. Aquila Merch. Servs.*, 103 FERC ¶ 61,020 (Order entered Jan. 22, 2004).

Commission should reconsider its determinations concerning retail BTMG determination in the Order, as it was outside the stated scope of this proceeding.

2. The FERC's decision in the Co-Located Load Order does not reflect reasoned decision-making because it did not develop a sufficient record on which to base its determinations on the retail BTMG rules in PJM's Tariff, resulting in conclusions that are arbitrary and capricious.

A Commission order will be reversed on review if it is arbitrary or capricious, reflects an abuse of discretion, is not otherwise in accordance with law, or is not supported by substantial evidence.[46] To satisfy its obligation to engage in reasoned decision-making, the Commission must examine the relevant data and articulate a rational connection between the facts found and the choices made.[47] The Commission must reach its conclusion through decision-making that is "reasoned, principled, and based upon the record."[48] Further, if the FERC "does not provide a rational explanation for its action based on relevant data, then that action is arbitrary and capricious."[49] To avoid an arbitrary and capricious decision or one that does not reflect reasoned decision-making, the Commission must consider all important aspects of the problem at issue.[50] It

[46] 5 U.S.C. § 706(2)(A); *Vistra Corp. v. FERC*, 80 F.4th at 312; *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 55 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 528 (D.C. Cir. 2010).

[47] *Sacramento*, 616 F.3d at 528; *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983)).

[48] *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202, 210-11 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10, 20 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945, 953 (D.C. Cir. 2007); *see New York v. FERC*, 535 U.S. 1, 36 (2002); *see also Transmission Access Policy Group v. FERC*, 225 F.3d 667, 705, 716 (D.C. Cir. 2000) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1021 (D.C. Cir. 1987)); *Colo. Interstate Gas Co. v. FERC*, 146 F.3d 889, 893 (D.C. Cir. 1998).

[49] *La. PSC. V. FERC*, 20 F.4th 1, 6-7 (D.C. Cir. 2021) (citing 5 U.S.C. § 706(2)(A) and *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43)).

[50] *See, e.g.*, *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (1983) ("an agency rule would be arbitrary and capricious if the agency . . . failed to consider an important aspect of the problem"); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998) ("In previous cases, we have rejected agency orders when the Commission neglected to deal with an important part of the problem…") (*citing Laclede Gas Co. v. FERC*, 997 F.2d 936, 945-48 (D.C. Cir. 1993)); *North Carolina Util. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994) (given the complexity of the issue, the FERC must more fully explain its decision).

is "well established that the Commission must 'respond meaningfully to the arguments raised before it.'"[51]

In the present case, the Co-Located Load Order does not have a well-developed record to support its determinations on retail BTMG rules. Without a well-developed record, the Commission may not be able to fully recognize the cost-causation implications of the removal of all netting rules. As a result, the Order fails to adequately account for the economic realities and unique configurations of retail BTMG, the customer base that has invested many millions of dollars in reliance on those rules, and the impact on the grid of radical changes to those rules.

The following are several examples of hypothetical but realistic Co-Location Arrangements and/or retail BTMG configurations. Similar examples can be found in PJM's territory and will be deeply affected by the Order, unless it is appropriately modified or clarified. All examples are offered as representative of potential impacts of the Order as it stands currently.

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Example 1: Synced Load and Generation Means Paying for 200 MW with Minimal Use.

- *Context: 200 MW of retail behind-the-meter generation offsetting factory load.*
- *Operations: Large boilers produce steam, which is used to turn generation turbines and support manufacturing operations.*
- *Key Fact: If the generation is down, load immediately comes offline.*

The first example is a large-scale production facility. This entity has well-developed retail BTMG configurations that are tightly tied to its manufacturing process. Because the manufacturing process *requires* steam produced for generation, the bulk of the load can remain online only if generation is operational. If the generation goes down, the load will largely cease as well. Beyond a potential momentary spike in power as the load powers down, the configuration does not allow

[51] *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015).

for the use of 200 MW of transmission service. A business like this, if situated in PJM and not otherwise exempted, will likely experience substantial transmission payments or penalties under the new "gross load" approach because the approach does not consider the customer's "actual use" of the transmission system in the event of a generation outage.

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Example 2: Over 100 MW of Combined Heat & Power Rendered Uneconomic.

- *Context: Two CHP units totaling approximately 100 MW.*
- *Operations: NITS and Capacity offsets provide over half the value of these units.*
- *Key Fact: Losing NITS and Capacity savings will likely render these units no longer commercially viable.*

A large manufacturing facility has two behind-the-meter CHP units totally approximately 100 MW. The facilities have been operational for an extended period of time and are QFs under PURPA, with full rights to export and sell power onto the PJM grid. Due to its exceptional track record of consistent operations, this retail customer has been able to control its NITS and Capacity obligations for these facilities, paying the distribution utility for back-up power when the units trip offline. The NITS and Capacity savings provide more than half of the value of the CHP units, allowing the organization to continue maintaining and operating these assets. Other benefits from the CHP units include the value of waste heat. However, removal of the NITS savings alone would likely render the customer's retail BTMG no longer commercially viable, resulting in the shutdown of the existing units and a lack of further expansion or new behind-the-meter CHP installations. That result would mean a loss of more than 100 MW of generation—the exact opposite direction of where the FERC and PJM have expressed that they need to go with regard to resource adequacy issues. The loss of the CHP units would also result in increased energy costs, burdening manufacturing viability at the site.

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Example 3: Two Cogeneration Facilities: Different Efficiency, Same NITS.

- *Context: Two customers with approximately 50 MW of gross load each; each customer has a 30 MW cogeneration plant ("Cogen") on site.*
- *Operations: The Cogen of Customer #1 operates at a 95% capacity factor, while the Cogen of Customer #2 operates at a 60% capacity factor.*
- *Key Fact: Under a gross-load only approach, both customers will pay approximately the same in NITS charges, despite dramatically different grid impacts.*

This example demonstrates how disconnected the "gross load" approach is from the "actual use" standard that the Commission has endorsed on multiple occasions.[52] The difference between a 95% capacity factor and a 60% capacity factor is dramatic – essentially, the Cogen of Customer #2 is out of commission 8 times more (40% downtime vs. 5% downtime). Yet, under the new regime, NITS charges would be the same for both customers (based only on how much of the total behind-the-meter load was operational during peak hours).

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Example 4: Battery Storage Investment No Longer Reasonable.

- *Context: Manufacturer is currently considering adding over 11 MW of behind-the-meter battery energy storage.*
- *Operations: The intended use for battery storage is to reduce capacity and transmission obligations by reducing energy purchases from the grid at peak times, which reduces congestion at appropriate times on the system.*
- *Key Fact: The primary driver for adding over 11 MW of load-reduction capability may be eliminated by a change in the retail BTMG netting rules.*

Battery storage is a rapidly developing field that was not addressed in the Order. Battery storage technology offers significant potential for improving grid efficiency. It is unclear from the Order how large-scale battery storage would be treated for purposes of measuring transmission obligations. If output from battery storage is deemed to be impermissible "netting" under the Order, a significant incentive to develop this technology on-site will be removed.

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[52] *Occidental Chem. Corp. v. PJM Interconnection*, 102 FERC ¶ 61,275; *PJM Interconnection, L.L.C.*, 167 FERC ¶61,268.

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Example 5: Multiple Units Behind the Meter; QF Agreement with Utility Terminated.

- *Context: Manufacturer with nearly 60 MW of load and approximately 35 MW of behind-the-meter generation.*
- *Operations: Multiple generation units comprise a full on-site generation fleet, anchored by a large CHP unit.*
- *Key Fact: Legacy QF, whose agreement with the local utility was terminated when the utility's mandatory purchase obligation was eliminated.*

This manufacturing customer operates multiple generation units behind the meter. Previously, the customer had an active QF agreement with its local distribution utility; the utility terminated this agreement many years ago due to the customer having market access. Changes to a gross load approach would significantly impact pricing for this customer and would fail to account for the longevity and stability of the multiple generation units operating behind the meter.

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Example 6: Non-QF Relies on Netting Rules for Long-Established BTMG Operation.

- *Context: Manufacturer with approximately 150 MW of load; facility is interconnected to a vertically integrated utility.*
- *Operations: Generates most power on-site; receives approximately 20 MW of power flow from the local utility.*
- *Key Fact: Not a QF.*

This manufacturer self-generates a substantial portion of its required power on site; it has used this configuration for decades. Though operating with substantial BTMG, this customer does not operate as a QF under PURPA. Rather, the manufacturer relies on netting rules to accurately measure its use of the grid. It works directly with its local utility to purchase its supplemental and back-up power requirements. If the customer's BTMG were to trip offline, the customer's own infrastructure would prevent it from relying on the grid for all its requirements. As such, if this customer were charged on a gross basis, it would be required to purchase service that it cannot

physically utilize. Changes to netting rules threaten to change how this manufacturer has operated in conjunction with its vertically integrated distribution utility for many years.

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The above "parade of horribles" are based on real-life facility configurations, offered as examples of how retail BTMG may be impacted by the Order. There are various other possible configurations and issues that may arise, as well. For example, the Commission has not clarified how the New Services will interact with Demand Response offerings or other load-balancing/load-shifting strategies designed to maximize grid efficiencies; and it has not addressed what the impact to the grid will be if key incentives that drive those innovations are removed.

The lack of a record on these issues warrants rehearing. Each of the above scenarios demonstrates the danger of the Commission taking such sweeping action without developing a full record. In the Industrials' view, the Commission's half-measure of trying to impose charges based on "potential load" for some customers and based on "actual load" for other customers is not supported by the limited factual record. The Industrials respectfully request that the Commission reconsider its changes to retail BTMG rules.

3. The Co-Located Load Order indirectly effectuates an unlawful taking of private property without providing just compensation, in violation of the Fifth Amendment.

The Fifth Amendment of the United States Constitution prohibits the federal government from taking private property for public use without just compensation.[53] The United States Supreme Court has explained that there are two kinds of regulatory actions that will be deemed *per se* takings under the Fifth Amendment: (1) where an owner suffers permanent physical

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[53] U.S. Const. amend. V.

invasion due to the government action;[54] and (2) where the owner is deprived of "*all* economically beneficial us[e]" of the property due to the government action.[55] The latter applies here.

As demonstrated above in Example 1 and Example 2 in the prior specification of error, the Co-Located Load Order will render certain manufacturing facilities with on-site generation completely uneconomic, thereby forcing a closure of the manufacturing facility and making the generating unit(s) no longer commercially viable. The Co-Located Load order threatens to directly put certain manufacturing facilities out of business, causing a total economic loss.

- Example 1: Assume a large-scale production facility with well-developed retail BTMG configurations (200 MW) that are tightly tied to its manufacturing process and help offset the load/consumption. Because the manufacturing process *requires* steam produced for generation, the bulk of the load can remain online only if generation is operational. If the generation goes down, the load will immediately come offline and cease production. The operations and configuration at this site does not allow for the use of 200 MW of transmission service. The customer will experience substantial transmission payments or penalties under the Co-Located Load Order's new "gross load" approach because the approach does not consider the customer's "actual use" of the transmission system in the event of a generation outage.

- Example 2: Assume a large manufacturing facility with two behind-the-meter CHP units totaling approximately 100 MW. The facilities have been operational for an extended period of time and are QFs under PURPA, exporting and selling power into the PJM grid. The NITS and Capacity savings provide more than half of the value of the CHP units. Yet, the Co-Located Load order directly threatens to put this manufacturer out of business, as removal of the NITS savings alone would likely render the customer's retail BTMG uneconomic, resulting in the shutdown of the existing units and inability of the manufacturer to continue operating.

As a result of the Co-Located Load Order's abrupt shift to a "gross load" approach for transmission cost responsibility, the property at the manufacturing sites in Example 1 and Example 2 will have little to no economically beneficial remaining uses. The Co-Located Load Order fails to consider

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[54] *Lingle v. Chevron U.S.A.*, 544 U.S. 528, 538 (2005) (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)).

[55] *Lingle*, 544 U.S. at 538 (quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992) (emphasis in original).

such circumstances at manufacturing sites and fails to provide a pathway toward providing just compensation if the Commission proceeds to deny the Industrials' Request for Clarification.

Outside of the context where a *per se* taking deprives an owner of all economically beneficial use of the property, the United States Supreme Court in *Lingle* also explained that regulatory taking challenges are governed by the factors in *Penn Central Trans. v. New York City*, 438 U.S. 104 (1978) where the primary factor is the economic impact of the regulatory action on the owner.[56] The *Penn Central* factors will be utilized when the regulatory action causes substantial, but perhaps not total, evisceration in the owner's property value or use of the property.[57] However, the extent to which the regulatory action "has interfered with distinct investment-backed expectations" is a relevant consideration.[58] The existence of a public program promoting the common good is also relevant to the takings analysis.[59]

In some instances, the Co-Located Load Order will cause devastating economic impacts to several manufacturing facilities, but perhaps not total deprivation of the use of the property, thereby triggering the application of the *Penn Central* factors. Importantly, the Co-Located Load Order's shift to the "gross load" approach causes substantial economic impacts and "has interfered with distinct investment-backed expectations."[60] Several manufacturing facilities have relied on the long-established PURPA framework for QFs, as noted in Example 2. Additionally, as noted in Example 6 in the previous section, a manufacturer may generate a substantial portion of its energy

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[56] *Lingle*, 544 U.S. at 538-539 (quoting *Penn Central*, 438 U.S. at 124).

[57] *See Lingle*, 544 U.S. at 539 (explaining that " the *Penn Central* inquiry turns in large part, albeit not exclusively, upon the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests.").

[58] *Penn Central*, 438 U.S. at 124.

[59] *Id.*

[60] *See Penn Central*, 438 U.S. at 124.

on site, using such a configuration for decades, but may not operate as QF under PURPA. This manufacturer has long relied on the well-established netting rules to ensure accurate measurement for the manufacturer's use of the PJM transmission grid. The Co-Located Load Order interferes with these investment-backed expectations and does not promote or facilitate a public program or public good to justify the economic interference with the longstanding uses of private property at manufacturing facilities in the PJM grid.

Accordingly, the Co-Located Load Order errs by indirectly effectuating takings of private property at several manufacturing facilities in the PJM grid without providing just compensation pursuant to the Fifth Amendment of the United States Constitution.

4. The Co-Located Load Order errs by failing to address its own prior precedent on cost-causation or to demonstrate that the retail BTMG rules were unjust and unreasonable.

As is well established, cost causation is a bedrock principle of just and reasonable rates. As stated by the D.C. Circuit, "For decades, the Commission and the courts have understood [the just and reasonable] requirement to incorporate a 'cost-causation principle'—the rates charged for electricity should reflect the costs of providing it."[61] As expressed by the Fifth Circuit in *El Paso Electric Co. vs. FERC*, "This principle is 'foundational' and a 'basic tenet' of ratemaking."[62] Cost-causation jurisprudence has addressed two aspects of cost causation: those who cause the costs and those who reap the benefits. As stated in *El Paso*, "Courts have generally held that costs 'are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.'"[63]

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[61] *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1255 (D.C. Cir. 2018); *see also El Paso Elec. Co. v. FERC ("El Paso")*, 76 F.4th 352, 357 (5th Cir. 2023).

[62] *El Paso* at 357 (citing *El Paso Elec. v. FERC*, 832 F.3d 495, 505 (5th Cir. 2016)); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 85 (D.C. Cir. 2014) (per curiam).

[63] *El Paso* (citing *NARUC* at 1285); *see also BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268 (D.C. Cir. 2014) (The principle is a "matter of making sure that burden is matched with benefit.")

The rubber meets the road on this concept when the FERC determines how transmission infrastructure and upgrade costs are allocated and how cost responsibility is measured. However, the Commission has not contended with prior precedent in which it repeatedly has affirmed the "actual use" principle. Consequently, it has failed to provide a reasoned explanation to deem "netting" rules as applied to retail BTMG unjust and unreasonable.

In prior decisions, the Commission has determined that "actual use" of the transmission system is a just and reasonable approach for assessing transmission charges that comports with cost causation. In approving the implementation of Order 2003, the Commission approved PJM's retail BTMG tariff provisions as just and reasonable and not unduly discriminatory, finding that *no transmission or distribution facilities are used to deliver from the generating unit to the load.*[64] In fact, the PJM Tariff definition of "Behind the Meter Generation" reflects that fact, *definitionally* excluding any generation that uses the transmission system.[65]

Later, in *Occidental Chemical Corp. v. PJM Interconnection, L.L.C.*, the Commission declared that "[network] access charges for use of PJM's transmission system should be allocated to network customers based on a network customer's *actual use* of PJM's system, consistent with the principle of cost causation."[66] At issue in *Occidental* was PJM's use of a cost-allocation methodology that added the value of curtailed load back to a customer's actual load to determine the customer's network access charge based on a customer's coincident peak usage.[67] The

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[64] *See PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,113 at P 4 (2004) ("2004 BTMG Order"), *reh'g denied*, 108 FERC ¶ 61,302 (2004).

[65] The PJM Operating Agreement and Reliability Agreement contain the same "Behind the Meter Generation" term. See also PJM Manual 14G, Section 1.6 (explaining that Behind the Meter Generation "must deliver energy to load without using the Transmission System").

[66] *Occidental Chem. Corp. v. PJM Interconnection* ("Occidental"), 102 FERC ¶ 61,275 at P 14 (emphasis added) (2003).

[67] *Id.* at PP 1, 3-7.

Commission expressed concerns that this "calculation appeared inconsistent with the underlying rationale," and that such an approach would discourage demand response from customers.[68] PJM sought to defend the practice that the Commission ultimately found to be unjust and unreasonable by arguing that PJM's infrastructure would still serve the customers.[69] The Commission rejected that contention and instead embraced a netting approach. In its order on rehearing, the Commission stated that the netting approach is "in the public interest because it ensures that PJM allocates its transmission charges to those using the system on peak periods and helps ensure that customers have incentives to curtail load during peak periods."[70]

This principle, articulated in Occidental, has also been affirmed more recently by the Commission. In a 2019 opinion, the Commission rejected proposed revisions by PJM to its Tariff and RAA regarding Price Responsive Demand ("PRD"). The Commission affirmed the holding in *Occidental*, stating that "if load is reduced during a peak period used for billing, that load reduction should be credited consistent with principles of cost causation"—regardless of whether the reduction in load at the peak period was due to interruptible load reductions required by PJM or was voluntary by the customer.[71]

FERC reaffirmed the principle articulated in *Occidental* and *PJM Interconnection, L.L.C.*, yet again in a 2022 opinion that accepted tariff revisions proposed by ISO New England, Inc. ("ISO-NE") and the Participating Transmission Owners Administrative Committee (PTOAC). In *ISO New Eng., Inc.*, the proposed tariff revisions modified the calculation of Monthly Regional Network Load (Monthly RNL) to exclude load served by behind-the-meter generation, which does

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[68] *Id.* at P 4.

[69] *Id.* at PP 1, 7, 14.

[70] *Id.* at P 2.

[71] *PJM Interconnection, L.L.C.*, Order Rejecting Tariff Revisions, 167 FERC ¶ 61,268, at P 23 (2019).

not participate in the ISO-NE wholesale markets as a Generator Asset, as well as the portions of a Generator Asset utilized to net load at the same retail meter.[72] FERC found this approach was just and reasonable because each Network Customer's net load is a reasonable approximation of its actual use of the transmission system and is in line with cost causation principles.[73]

The Industrials recognize that the Commission is responding to the data center boom, which is driving both resource adequacy and transmission concerns. Prior to the data center boom, 100 MW would have been seen as a very large load; now, however, hyperscale data centers can be (and often are) several times that size. The Industrials recognize that the size and speed-to-market needs of certain large loads, such as data centers, have essentially added a new layer to the cost-causation analysis. The Commission may need to explore new ways to ensure true costs and benefits are borne by these super-sized large-load entrants—for example, the ancillary services cost-allocation discussion in this docket (which the Industrials are not opposing in this pleading). These efforts and similar ones may be necessary; however, abandoning the "net load" approach, grounded in actual use, does not follow logic or precedent. The "actual use" principle is critically important to the calculation of billing determinants and the assessment of various Commission-jurisdictional charges for transmission service. While the Commission clearly must respond to the unprecedented size and scale of the new loads, it must do so in a manner consistent with cost causation.

Unfortunately, the design of the Co-Located Load Order creates an unreasonable split between those who manage costs by *managing load* and those who manage costs by investing in *generation*. It weakens customers' ability to manage peaks (by discounting offsetting generation

[72] *ISO New Eng., Inc.*, Order Accepting Tariff Revisions, 178 FERC ¶ 61,086 at P 1 (2022).

[73] *Id.* at P 51.

behind the meter), but it does not prevent massive hyperscalers (who may be able to shift processing to other regions) from managing peaks fully on the load side and thereby avoiding most NITS costs. In other words, the effect of the "gross load" approach is unduly discriminatory, because it allows "actual use" to govern transmission costs for **some** (i.e., load-only customers), but not for **others** (i.e., those who have invested in retail behind-the-meter generation).[74]

Unfortunately, the Co-Located Load Order, by eliminating retail BTMG rules for an unknown portion of customers (depending on the selected size threshold), creates a lopsided structure that allows peak management only for customers with load flexibility—not for customers that have made massive capital investments in on-site generation assets. The PJM rules should encourage and incentivize such load flexibility by all customers, regardless of the manner in which it is accomplished.

Eliminating netting from the NITS and capacity calculations is like throwing the baby out with the bathwater—without solving potential cost shifts. As the Commission has long recognized, "It is long-established that the 'primary aim' [of the Federal Power Act] is the protection of consumers from excessive rates and charges."[75] If standby fees or other charges need to be considered in accordance with cost-causation principles, the Commission may explore those. But eliminating altogether the assessment of charges based on "actual use" is unduly discriminatory and fails to reckon with well-established Commission precedent.

[74] If the New Services are extended to all Eligible Customers, customers that do have load flexibility will be permitted to elect how much transmission and capacity they require for their business. This option may avoid both cost uncertainty and cost shifting, as customers opting into these services will focus on maintaining operations within the contracted amounts.

[75] *Xcel Energy Services v. FERC*, 815 F.3d 947, 952-53 (D.C. Cir. 2016) (emphasis added).

5. The Co-Located Load Order errs by failing to explain and justify the Commission's assertion of jurisdiction over retail BTMG that merely offsets retail load.

As acknowledged by the Commission, pursuant to Sections 201 and 205 of the FPA, the Commission's jurisdiction includes the "transmission of electric energy in interstate commerce and … the sale of electric energy at wholesale in interstate commerce."[76] Within these jurisdictional limits, the Commission has been charged by Congress with ensuring just and reasonable rates.[77] Consequently, any regulations the Commission fashions must be based on its statutory authority over interstate transmission and wholesale sales.[78]

To accomplish a durable result that stands the test of time, the Commission should ensure that its holding respects federal-state jurisdictional authority as set forth in the Federal Power Act. The Order affirms Commission jurisdiction "to oversee the interconnection of generating facilities to the interstate transmission system, including where generators serve Co-Located Load."[79] However, the Commission "decline[d] in this proceeding to comprehensively address jurisdictional matters regarding the interconnection of retail loads served through a Co-Location Arrangement to the interstate transmission system."[80]

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[76] 16 U.S. Code § 824(b). *See also* 16 U.S. Code § 824(a); *Nat'l Ass'n of Regul. Util. Commissioners v. FERC*, 964 F.3d 1177, 1181 (D.C. Cir. 2020) (Under the FPA "Congress gives the Federal Energy Regulatory Commission exclusive authority over the regulation of 'the sale of electric energy at wholesale in interstate commerce,' including both wholesale electricity rates and any rule or practice "affecting" such rates,' along with 'jurisdiction over all facilities for such transmission or sale of electric energy.'").

[77] 16 U.S. Code § 824d(a). As stated by Section 205(a) of the FPA:

> All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

[78] 16 U.S. Code § 824(b)(1).

[79] Co-Located Load Order at P 171.

[80] Co-Located Load Order at P 170.

More significantly, the Commission blurs the distinction between Co-Located Load and retail BTMG and does not offer a reasoned explanation of the basis of its jurisdiction over activity behind a customer's meter that is wholly retail in nature. By definition, BTMG is produced by a generation unit "that delivers energy to load without using the Transmission System."[81] This aspect of the definition takes retail BTMG out of the Commission's jurisdiction over the transmission of electric energy in interstate commerce. Further, retail BTMG "does not include (i) at any time, any portion of such generating unit's capacity that is designated as a Generation Capacity Resource; or (ii) in an hour, any portion of the output of such generating unit that is sold to another entity for consumption at another electrical location or into the PJM Interchange Energy Market." This aspect of the definition excludes retail BTMG from the Commission's jurisdiction over sales of electric energy for resale in interstate commerce.

The Industrials recognize the Commission's practical concern about the PJM transmission system needing to account for super-sized loads that may appear quickly or suddenly on the system, and the Commission may have jurisdiction to address those concerns to the extent that they directly impact the interstate transmission system. However, the Commission's directed solution extends beyond its jurisdictional reach when applied to certain behind-the-meter configurations of retail customers. The Commission's directive necessarily entails piercing the retail meter veil, which serves as the bright-line boundary of the Commission's statutory authority—an intrusion that the Commission should reject.

The Commission has neglected to provide a well-reasoned basis for its assertion of jurisdiction over the behind-the-meter configurations of retail customers whose BTMGs are *not*

[81] PJM Tariff, Section 1 (Definitions). BTMG also does not deliver energy to load using any distribution facilities "unless the entity that owns or leases the distribution facilities has consented to such use of the distribution facilities and such consent has been demonstrated to the satisfaction of the Office of the Interconnection." *Id.*

selling wholesale power and are *not* using the transmission system,[82] whose retail service is a state-regulated part of the electric system. Further, the Commission also acknowledged in the Show Cause Order that the FERC has not historically exercised jurisdiction over any and all transmission-level interconnections of retail load.[83] As stated in the Show Cause Order:

> [T]he Commission has exclusive authority over the rates, terms, and conditions for the sales from generating resources used to serve co-located loads, as well as the practices directly affecting such sales, provided that they are sales for resale in interstate commerce. If they are not sales for resale—that is, if they are made directly to the end-use consumer—or if they are not in interstate commerce then the co-located generator's sales are under state jurisdiction.[84]

In *National Association of Regulatory Utility Commissioners ("NARUC") v. FERC*, the D.C. Circuit upheld the FERC's asserted authority over generation interconnections in Order No. 2003 because it "applies to jurisdictional transactions only."[85] In other words, the essential purpose of a generator interconnection—to transmit power and sell it at wholesale—was squarely in line with the FERC's clear jurisdiction to regulate the transmission and wholesale sales of power. The D.C. Circuit contrasted its holding in *NARUC* with its decision in *Detroit Edison*, where the D.C. Circuit rejected the FERC's attempt to assert jurisdiction over unbundled retail service.[86] In *Detroit Edison*, the FERC had attempted to assert jurisdiction where "such service involved neither jurisdictional sales nor jurisdictional transmission."[87] In this case, retail BTMG involves neither

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[82] Some retail BTMG arrangements do make wholesale power sales, which are under FERC jurisdiction. For example, cogeneration QFs generally size their generation to satisfy their thermal needs, which may result in energy beyond the retail customer's requirements. In some cases, the retail customer can sell its excess energy to the local utility under Section 210 of PURPA. In other instances, the retail customer must secure market-based rate authority from the Commission and a three-party interconnection service agreement or wholesale market participant agreement with PJM and the applicable utility.

[83] Show Cause Order at P 72.

[84] Show Cause Order at P 71.

[85] *Nat'l Ass'n of Regul. Util. Comm'rs v. FERC ("NARUC")*, 475 F.3d 1277, 1280 (D.C. Cir. 2007).

[86] *Detroit Edison Co. v. FERC*, 334 F.3d 48, 53 (D.C. Cir. 2003).

[87] *NARUC* at 1280 (explaining the court's holding in *Detroit Edison*).

jurisdictional sales nor jurisdictional transmission. *Detroit Edison*, and the provisions of the FPA that it interprets, should control.

The Commission has not articulated a clear basis for its jurisdictional determination regarding retail BTMG, which, by definition, neither uses the transmission system nor provides electric energy for resale. The Industrials respectfully request rehearing on this issue.

6. The Co-Located Load Order's megawatt-based applicability threshold, transition period, and grandfathering provision fail to correct the defects created in the Order.

In the Order, the Commission requires PJM to "propose a new MW threshold for the amount of load at a particular electrical location that Network Customers may net by using BTMG," and such threshold "should reduce the reliability and resource adequacy risks . . . that large loads may pose to PJM, while also allowing for Network Customers to reduce their transmission charges in a transparent, not unduly discriminatory fashion."[88] While the Industrials welcome exemptions as helpful in light of the overall removal of netting rules, they are the exception that proves the rule.

Setting an arbitrary megawatt-based threshold may yield unintended consequences that contradict the Commission's overall goals for resource adequacy, cost causation, and just and reasonable rates. For example:

- Setting an arbitrary limitation creates perverse incentives to size on-site generation projects smaller. If the limit is 50 MW, a customer with a planned project of 75 MW of generation may downsize to comply with the retail BTMG rules—reducing generation investment and increasing reliance on external (and currently inadequate) capacity resources.

- Establishing a bright-line threshold risks being challenged as unduly discriminatory, unless it is clearly grounded in the FERC's authority to regulate the transmission of electric energy in interstate commerce or in a reasonable connection to cost-causation

[88] Co-Located Load Order at P 221.

principles. Neither a MW-based threshold nor a grandfathering provision correct jurisdictional deficiencies.

- More broadly, the projected transmission challenges and looming resource adequacy crisis are primarily driven by substantially larger facilities than 10 MW or 20 MW. The Industrial Customer Organizations believe a 20 MW limit is far too low and would capture a significant number of manufacturing entities and other industrial and institutional organizations that have reliably provided on-site generation for many years.

These are all issues of concern with an arbitrary MW-based threshold, untethered to any jurisdictional limits. Rather than an arbitrary threshold, the Commission should maintain its traditional netting approach but find alternative means to ensure that standby or backup costs are addressed for very large loads—that is, loads that can cause reliability challenges for the grid if they suddenly come online.[89]

However, if the Commission maintains a "gross load" approach and pursues a mandatory threshold, as suggested in the Order, it should choose a multi-pronged threshold aligned with the key drivers of current transmission demand and the reliability risks posed. First, the Commission should act in accordance with Congress's express policy in PURPA and exempt all cogeneration QFs from the "gross load" rules. As explained above, PURPA states Congress's goal of encouraging cogeneration and small power production.

Second, if the Commission determines it must establish a megawatt-based threshold, it should base that threshold at a high enough level to permit traditional manufacturers and industrial loads to continue netting. Drawing on PURPA as an example, QFs other than cogeneration

[89] The North American Electric Reliability Council ("NERC") has been undertaking efforts to develop standards for new large loads. In a July 2025 white paper, *Characteristics and Risks of Emerging Large Loads*, NERC defined large load as "[a]ny commercial or industrial individual load facility or aggregation of load facilities at a single site behind one or more point(s) of interconnection that can pose reliability risks to the [Bulk Power System] due to its demand, operational characteristics, or other factors." *Characteristics and Risks of Emerging Large Loads*, NERC at p. 1 (July 2025), *available at* https://www.nerc.com/globalassets/who-we-are/standing-committees/rstc/whitepaper-characteristics-and-risks-of-emerging-large-loads.pdf (last accessed Jan. 16, 2026).

facilities have 80 MW limits. Cogeneration facilities have no size limit but must meet certain efficiency requirements to qualify as QFs. The Industrials believe that a threshold of 200 MW would, as a practical matter, permit most existing industrial and institutional loads to continue to benefit from the major energy investments they have made over decades, consistent with the "actual use" principle. As super-sized loads are a largely new phenomenon, the number of entities requiring grandfathering of existing contracts and facilities would be far more limited at a 200 MW threshold.

American industry is a vital part of the nation's electric grid. While the Commission's Order provides some positive movement, without modification or clarification on certain key issues, it threatens to harm American industry, weaken resource adequacy, and result in undue discrimination. The Industrials respectfully request that the Commission consider its Request for Clarification or, in the Alternative, Rehearing and address the concerns raised herein, leading to a better and more durable resolution of relevant issues.

VII. CONCLUSION

WHEREFORE, the PJM Industrial Customer Coalition and the Industrial Energy Consumers of America respectfully request that the Commission clarify the Co-Located Load Order as set forth herein, or, alternatively, grant rehearing of the Co-Located Load Order for the reasons set forth herein.

Respectfully submitted,

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Dated: January 20, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day served via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 20th day of January, 2026.

/s/ Matthew L. Garber

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